AMENDMENTS
TO THE CONSTITUTION OF NORTH CAROLINA
PROPOSED
BY THE GENERAL ASSEMBLY, 1937-1957:
TEXT AND COMMENTARY

Compiled for the NORTH CAROLINA CONSTITUTIONAL COMMISSION
Created by the 1957 General Assembly

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INSTITUTE OF GOVERNMENT
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Mr. Victor S. Bryant, Chairman
North Carolina Constitutional Commission
Durham, North Carolina

Dear Mr. Bryant:

The material gathered here is another in the sequence of constitutional data sent to you and your associates. We have previously forwarded: (1) a mimeographed reproduction of the June 1934 issue of Popular Government analyzing the constitution proposed by the General Assembly in 1933, and (2) the compilation called Commentaries on Proposals in 1933 and 1935 for Revision of the Constitution of North Carolina.

We now send you: (1) the texts of all amendments proposed by the General Assembly and ratified by the people since 1937; (2) the texts of all amendments proposed by the General Assembly since 1937 but either pending vote or rejected by the people; (3) material parts of the official explanations for voters prepared by the Attorney General and issued by the Secretary of State since 1944; (4) discussions of the proposed amendments appearing in Popular Government; and (5) citations to pertinent articles in the North Carolina Law Review.

Except where we have imposed uniformity of style upon section labels and captions, the text used for the amendments is that of the Session Laws containing the chapter proposing the amendment. The text for sections of the Constitution said to be existing as of a particular date has been the reprint of the Constitution found in the front part of the session law volume for that year. Where an amendment did not set out all of the section affected, the text for the balance of the section was again derived from the reprint in the front part of the session law volume containing the amendment.

Respectfully submitted,

Albert Coates
Director

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Of the Two Submitted, Both Were ADOPTED:

The first proposed amendment rewrote Article IV, Section 24, to read as follows:

> Sec. 24. Sheriffs and Coroners. In each county a sheriff and a coroner shall be elected by the qualified voters thereof as is prescribed for the members of the General Assembly, and shall hold their offices for a period of four years. [Emphasis added.] In each township there shall be a constable elected in like manner by the voters thereof, who shall hold his office for a period of two years. When there is no coroner in a county the Clerk of the Superior Court for the county may appoint one for special cases. In case of a vacancy existing for any cause in any of the offices created by this section the commissioners of the county may appoint to such office for the unexpired term.

[The amendment was proposed in Chapter 241 of the Public Laws of North Carolina, 1937 Session. It was ADOPTED by a vote of the people on November 8, 1938. The only substantial change effected by the amendment was to increase the terms of offices of sheriffs and coroners from two to four years.]

The second proposed amendment added a new section, Article III, Section 18:

> Sec. 18. [Department of Justice.] The General Assembly is authorized and empowered to create a Department of Justice under the supervision and direction of the Attorney General, and to enact suitable laws defining the authority of the Attorney General and other officers and agencies concerning the prosecution of crime and the administration of the criminal laws of the State.

/The amendment was proposed in Chapter 447 of the Public Laws of North Carolina, 1937 Session. It was ADOPTED by a vote of the people on November 8, 1938./

Commentary:

THE PROPOSED STATE DEPARTMENT OF JUSTICE

I. Criminal Law Administration

By Albert Coates

/Popular Government, November 1937, page 7./

In November, 1938, the qualified voters of North Carolina will decide for or against a Constitutional Amendment authorizing the General Assembly to create a Department of Justice under the supervision and direction of the Attorney General.

Department of Justice--What do these words mean? As used in the federal government they mean a unified and centralized control by the Attorney General of agencies for (1) the investigation of crime and the apprehension of criminals, (2) the acquisition, preservation and exchange of criminal identification records, (3) the prosecution, (4) probation, (5) punishment, and (6) parole of persons charged with crime. "Here, under the single direction of the Attorney General are all of the mechanisms that deal with criminal justice, from the time of the arrest to the time of the release of the prisoner from confinement. . . . In short, in the federal administration there is a continuity of effort and treatment. . . from the inception of a case to its conclusion--from the snatching of a man from the rest of society because of the performance by him of federal criminal acts to the time when he is returned, he remains in the custody of one responsible agency."

State Departments of Justice

In addition to the federal government, seven states have expressly created a Department of Justice: Iowa, Louisiana, Nebraska, New Mexico, Pennsylvania, Rhode Island, and South Dakota. California has reached the same result without the use of the words. Two of these states have provided for these departments through constitutional amendments, California and Louisiana. The other five states and the federal government provided for them by statute without constitutional amendment. In the federal government and in seven states the Department of Justice is headed by the Attorney General. In one, South Dakota, it is headed by a commission consisting of the Governor, Attorney General, and Warden of the State Penitentiary, who select the Superintendent to run it. In all these states the words "Department of Justice" have a variable meaning. To illustrate:

(1) The Attorney General's Control over Police in states with Departments of Justice varies from direct supervision and control to no control and little supervision. To illustrate: in California he may appoint as many as ten special agents with full law enforcing powers throughout the

state to serve at his pleasure, supervise every . . . sheriff in all matters pertaining to the duties of his office, and appoint another to perform the duties of sheriff with respect to the investigation of any particular crime; and he may be given "direct supervision over. . . such other law enforcement agencies as may be designated by law." In Louisiana, Nebraska, and Pennsylvania he has no direct supervision or control over state or local investigative officers or police.

(2) The Attorney General's Control over Prosecution in states with Departments of Justice varies from direct supervision and control to no control or supervision. To illustrate: in Rhode Island he is given power to appoint all prosecuting attorneys, and in California he is given direct supervision over every District Attorney and may assist or supersede him and take full charge of prosecution whenever in his opinion any law of the state is not being adequately enforced; while in Pennsylvania he can neither supervise nor intervene in local prosectuions unless the presiding judge requests him in writing to do so.

(3) The Attorney General's Control over Criminal Identification in states with Departments of Justice varies from direct supervision and control to no control or supervision. In Iowa, New Mexico, South Dakota, and Rhode Island the Identification Bureau is set up in the Department of Justice with the Attorney General as head. In California and Nebraska it is attached to the Governor's office, and in Pennsylvania and in Louisiana to the State Police, and in all four states is outside the Department of Justice and free from the control of the Attorney General.

(4) The Attorney General's power over Probation in states with Departments of Justice appears to be non-existent, and his power over Prisons, Pardons, and Paroles varies from a limited supervision and control to none at all.

Uniform State Act

The tentative draft of a Uniform State Department of Justice Act, prepared by the National Conference of Commissioners on Uniform State Laws, provides for a State Department of Justice (1) headed by the Attorney General or the Governor; (2) with six divisions for criminal prosecution, medical examiners, police criminal identification, investigation and statistics, pardons and paroles, prisons; (3) with alternative provisions for a greater or less degree of direct supervision and control of each division to be exercised by the head of the department. These alternative provisions are designed to bring about a unified control of the administration of the criminal laws within the existing constitutional framework of the several states.

It is apparent from the foregoing analysis that the words "Department of Justice" have a convenient vagueness. They mean different things in different states. They mean everything from highly centralized control of all the agencies involved in the administration of the criminal law in some states to highly decentralized control in others, and to all stages in between.

North Carolina

The words, "Department of Justice," under the proposed constitutional

amendment, will mean whatever the General Assembly of North Carolina makes them mean. It can write these words into a statute and under that statute: give the Attorney General completely centralized supervision of all the agencies involved in the administration of the criminal law, or give him partial control, or give him a title full of sound and fury signifying nothing. Out of this situation come the following questions: What is the present status of the criminal law enforcing machinery in North Carolina now? What can the General Assembly do without the aid of the proposed amendment? What can it do with the aid of the amendment that it could not do without it?

Police Agencies. Town and City police, township constables, county coroners and sheriffs, State Patrolmen and other state law enforcing officers constitute the chief investigative and arresting officers in North Carolina.

There is little doubt that the General Assembly already has the power: to increase, decrease or abolish the jurisdiction of any or all of the foregoing state agencies, or to create new agencies with powers to enforce criminal laws concurrent with existing state and local agencies to give the Attorney General a considerable degree of supervision as it thinks desirable, over all the foregoing state agencies and of many if not all local agencies. To the extent that there is any doubt about this power the proposed amendment would remove it.

Prosecution. The Attorney General now has complete control over prosecutions in the Supreme Court. He is directly required by the General Assembly to prosecute specific types of cases in the trial courts. On request of the Governor or of either branch of the General Assembly he is required to appear for the state in any court or tribunal in any criminal matter in which the state "is interested or a party." If these words are taken at their face value, it would seem that the General Assembly could authorize the Attorney General to appear in such cases on his own initiative. There is some doubt as to whether he may simply assist or assume control of the prosecution when he appears. There is also some doubt as to whether the General Assembly can now give him concurrent prosecution power with solicitors in all types of criminal cases or even supervision and control. To the extent that there is doubt about this power, the proposed amendment would remove it.

Identification, Investigation, and Statistics. The General Assembly in 1937 authorized the Governor, in his discretion, to appoint a staff of special investigators in criminal cases, to acquire scientific laboratory facilities to aid in the detection of crime, to establish a finger print bureau, and to collect crime statistics. There is little doubt that the General Assembly now has the power to extend the foregoing activities as far as it desires and that it may now give the Attorney General supervision and control over all of them. To the extent that any doubt exists, the proposed amendment would remove it.

Probation. There is little doubt that the General Assembly now has the power to give the Attorney General supervision over the Probation Commission established in 1937 if it desires to do so. To the extent that there is any doubt the proposed amendment would remove it.

Penal and Correctional Institutions. The Constitution of 1868 gave the State Board of Charities and Public Welfare the "supervision of all

charitable and penal state institutions." There is considerable doubt as to whether the General Assembly now has the power to give the Attorney General supervision over penal institutions. To the extent that this doubt exists the proposed amendment would remove it.

Paroles and Pardons. From the beginning of the state's history the Governor has exercised the power of pardon, commutation, and parole. In 1925 the General Assembly authorized him to appoint a Parole Commission and staff, to assist him in his duties. There is considerable doubt as to whether the General Assembly could now give the Attorney General supervision over the investigation and recommendatory aspects of this work. It is doubtful if the proposed amendment would remove it.

Summary

It is apparent from the foregoing analysis that without constitutional amendment the General Assembly can set up a Department of Justice with considerable supervision or control over any or all of the successive links in the chain of our criminal law enforcing machinery and that with the aid of a constitutional amendment it could go even further. The General Assembly can now, if it so desires, give the Attorney General supervision: (1) over most if not all city, county, and state agencies for the investigation of crime and the apprehension of criminals; (2) over city, county, and state prosecuting attorneys, though the extent and character of this supervision is subject to some doubt; (3) over the machinery of probation and the staff of probation officers; (4) perhaps to a limited extent over penal and correctional institutions, though this is doubtful; and (5) perhaps to a very limited extent over investigations preliminary to paroles and pardons, though even such preliminary investigations might be held encroachments on the Governor's constitutional power of pardon and parole. To the extent that doubts exist the proposed amendment would remove them in all of the foregoing cases except perhaps the last.

THE PROPOSED STATE DEPARTMENT OF JUSTICE

II. Civil Law Administration

By Albert Coates

/Popular Government, December 1937, page 8./

I. United States Department of Justice

"There shall be at the seat of government," says a federal statute enacted in 1870, "an executive department to be known as the Department of Justice, and an Attorney General, who shall be the head thereof." The Attorney General is appointed by the President.

Pursuant to this statute the Attorney General is required: (1) appellate court duties: to conduct and argue suits and writs of error and appeals in the Supreme Court where the United States is interested; (2) trial court duties: to conduct any kind of legal proceeding in which the United States is interested in any court and to exercise general superintendence and

direction over the attorneys and marshals of all the districts; (3) advisory duties: upon request to advise the President of the United States and the head of any executive department on matters of law arising in the administration of their respective departments and to supervise and control the Solicitors of executive departments including the Departments of State, Treasury, Interior, Commerce, Labor and Bureau of Internal Revenue.

Summary. "To avoid conflicts of jurisdiction and to achieve better co-ordination, uniformity, certainty, simplicity and economy," says the Attorney General's personal representative, "the governmental program has been to center the major part of all legal problems of all federal agencies in this Department. . . . The functions and duties of all these different departments and their heads and subheads are defined and supervised so as to mesh in with the operations of the Department as a whole. Over it all and centering in him as the trunk of this huge tree of many limbs is the Attorney General as the nation's chief law officer."

II. State Departments of Justice

In addition to the United States government, seven states have expressly created a "Department of Justice": Iowa in 1909, Nebraska in 1919, Louisiana in 1921, Pennsylvania in 1923, New Mexico in 1933, Rhode Island and South Dakota in 1935. California reached the same result in 1934 without the use of the words. Two of these states have provided for these departments through constitutional amendments: California and Louisiana. The other six states and the federal government provided for them by statute without constitutional amendment. In the federal government and in seven states the Department is headed by the Attorney General. In one state, South Dakota, it is headed by a commission consisting of the Governor, Attorney General, and Warden of the State Penitentiary, who select the Superintendent to run it. In seven of these states the Attorney General is elected by the people; in one, Pennsylvania, he is appointed by the Governor.

The Attorney General's power over appellate court proceedings in civil cases in which the state is a party or interested varies from the duty to prosecute and defend all such cases in the Supreme Court in seven states to the duty of conducting in the appellate courts only such cases as he has prosecuted or defended in behalf of state agencies in the trial courts. The Attorney General's power over trial court proceedings in civil cases in which the state is a party or interested varies from the duty to appear in all civil cases in which the State is interested to the duty to appear only on the failure of the district attorney to perform his duties as in New Mexico. The Attorney General's advisory duties vary from the duty to advise all state department heads and officials to the duty to advise specific state agencies; from the duty to advise prosecuting attorneys to the duty to advise no local official. The Attorney General's power to hire special counsel varies from the power to approve the hiring of all special counsel to the power to hire no special counsel. The Attorney General's power over legislative drafting bureaus appears to be non-existent. In practice, Attorney Generals, according to their reports, have always assisted State Departments and agencies in drafting measures in which they were interested. None of the states having departments of justice appear to provide for the collection of civil court statistics, with the possible exception of one state where the Attorney General is required to keep a docket showing the status of all civil cases in which the State is interested or a party.

Summary. It is apparent from the foregoing analysis that the words "Department of Justice" have a convenient vagueness. They mean different things in different states at the same time. They mean everything from highly centralized control of the machinery involved in civil law administration in some states, to highly decentralized control in others, and to all stages of centralization and decentralization in between. Many states without Departments of Justice have as greatly centralized control as states with such departments. They mean different things in the same state at different times. Some states have started with little more than a name and have gradually added meaning to the name. Other states have started with considerable meaning and gradually subtracted from the meaning. In one state an apparent contest between the Governor and Attorney General for the balance of power has resulted in a temporary impasse.

III. North Carolina Department of Justice

The proposed amendment to the North Carolina constitution authorizing the Gneral Assembly "to create a Department of Justice under the supervision and direction of the Attorney General, and to enact suitable laws defining the authority of the Attorney General and other officers and agencies concerning the prosecution of crime and the administration of the criminal laws of the state," says nothing about authorizing the General Assembly to enact sutiable laws defining the authority of the Attorney General and other officers and agencies concerning the administration of the civil laws of the state. This omission may be explained on the theory that the General Assembly already has in civil law administration the power it does not have in criminal law administration. We may therefore examine the accuracy of this assumption as it applies to the Attorney General's (1) appellate court duties, (2) trial court duties, (3) advisory duties, (4) employment of special counsel, (5) legislative drafting duties, and (6) the collection of court statistics.

Appellate Court Duties: The General Assembly now requires the Attorney General "to defend all actions in the Supreme Court in which the State shall be interested or is a party." The General Assembly could go no further with a constitutional amendment. Trial Court Duties: The General Assembly can now, without the aid of constitutional amendments, give the Attorney General power to supervise, supersede, or supplant the Solicitor in all civil cases in which the state is a party or interested, if it desires to do so; for the Constitution, which gives the Solicitor the right "to prosecute in behalf of the state in all criminal actions," does not give the Solicitor the right to represent the state in all civil actions, and it does authorize the General Assembly to "prescribe by law" the powers and duties of the Attorney General. Advisory Duties: The General Assembly, pursuant to Constitutional permission, has already designated the Atotnrey General as the legal adviser: (1) to all state departments, institutions, and agencies, (2) to Solicitors of the Superior Court, and (3) may without further constitutional authority designate him as adviser to county, city, and town officials. Legislative Drafting: The Attorney General, as legal counsel to state departments and agencies has long assisted in the drafting of legislative measures in which they were interested; the legislative drafting service created in 1915 was transferred to the Attorney General's department in 1933. Judicial Statistics: No state agency collects civil court statistics for the State.

Special Counsel: Since 1868 the General Assembly has vested the employment of special counsel exclusively in the Governor. The General Assembly has vested the employment of special counsel exclusively in the Governor. The General Assembly may without further constitutional authority transfer this power from the Governor to the Attorney General if and when it so desires. It is also apparent that the General Assembly can enlarge the Attorney General's staff to the point that no "special counsel" is necessary, or restrict it to the point that a great deal of "special counsel" is necessary, or extend to each state department the power to employ its own counsel as in the case of the State Highway and Public Works Commission, the Commissioner of Banking, and the Unemployment Compensation Commission.

THE PROPOSED STATE DEPARTMENT OF JUSTICE

III. Preliminary Report of Commission's Findings

By Albert Coates

/Popular Government, January 1938./

A Summary of the findings of the Commission on a State Department of Justice and the issues thus far raised furnish a convenient starting point for this discussion. The studies of the Commission show: (1) that the words "Department of Justice" have one meaning when used by the United States Government, another meaning when used by State Governments, and still another meaning when used by the Commissioners on Uniform State Laws. They mean criminal and civil law administration in some and only criminal law administration in others. They not only mean different things in different states at the same time but different things in the same state at different times. And they mean everything from highly centralized control of all agencies involved in criminal and civil law administration in some states to highly decentralized control in others and to all stages of centralization and decentralization in between.

As a result of these studies the Commission concludes that North Carolina is not only free to decide whether she wants to establish a Department of Justice, she is free to decide what sort of Department of Justice she wants to establish and whether to follow patterns already cut in other states or to cut patterns of her own. The following issues have already developed before the Commission:

(1) Within the last thirty or forty years a number of state agencies have developed for the enforcement of specific laws, chief among which are the State Highway Patrol established in 1929 and the special investigators authorized in 1937 as part of the State Bureau of Identification to be established in the discretion of the Governor. Should all these state agencies be transferred from the departments to which they are now attached and placed under the control of the Attorney General? And to what extent, if any, should the Attorney General be given supervision or control over sheriffs, coroners, constables, and police?

(2) Prosecutions in criminal courts of North Carolina are carried on at three levels: by the Attorney General in the Supreme Court and in a few instances in the trial courts, by solicitors in the Superior Courts,

and by solicitors in the Recorders Courts. To what extent, if any, should the Attorney General be given supervision and control over the prosecution of the criminal dockets in the Superior and Inferior Courts, with power to intervene in criminal proceedings and supplement, supersede or supplant the solicitor.

(3) To what extent, if any, should the agencies of probation, the investigatory aspects of parole and pardon, and prison operations be transferred to the supervision and control of the Attorney General.

(4) To what extent, if any, should the state establish a fingerprint bureau? scientific crime laboratory?

(5) To what extent, if any, should the state undertake to collect satistics on criminal and civil law administration and should the supervision and control of this work be transferred to the control of the Attorney General?

(6) To what extent, if any, should state departments, institutions, and agencies be permitted to employ their own counsel? To what extent, if any, should the Attorney General have supervision and control over the counsel thus employed? To what extent, if any, should the Attorney General's office furnish the exclusive counsel for all state departments and agencies? To what extent, if any, should the power to employ special counsel be transferred to the Attorney General? To what extent, if any, should the advisory opinions of the Attorney General be binding on state department heads in the absence of Supreme Court decisions?

(7) What should be the relationship between the Attorney General's office and the Governor's office in the event a State Department of Justice is established under the control of the Attorney General?

(8) How far can the General Assembly go toward setting up a Department of Justice without the aid of a constitutional amendment and what can it do with the constitutional amendment that it could not do without it?

Other issues will arise as public interest develops and public discussion proceeds. The Commission invites the opinions of all people on all sides of these issues.

AMENDMENTS PROPOSED IN 1941

/No amendments were proposed by the General Assembly in 1939./

Of the Two Submitted, Both Were ADOPTED:

The first proposed amendment altered Article IX in several ways:

Article IX, Sections 8 and 9, existing as of 1941 were eliminated and a new Article IX, Section 8, was substituted:

Sec. 8. State Board of Education. The general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, shall, from and after the first day of April, one thousand nine hundred and forty-three, be vested in a State Board of Education to consist of the Lieutenant Governor, State Treasurer, the Superintendent of Public Instruction, and one member from each Congressional District to be appointed by the Governor. The State Superintendent of Public Instruction shall have general supervision of the public schools and shall be secretary of the board. There shall be a comptroller appointed by the Board, subject to the approval of the Governor as director of the Budget, who shall serve at the will of the board and who, under the direction of the board, shall have supervision and management of the fiscal affairs of the board. The appointive members of the State Board of Education shall be subject to confirmation by the General Assembly in joint session. A majority of the members of said board shall be persons of training and experience in business and finance, who shall not be connected with the teaching profession or any educational administration of the State. The first appointments under this section shall be members from odd numbered Congressional Districts for two years, and members from even numbered Congressional Districts for four years and, thereafter, all appointments shall be made for a term of four years. All appointments to fill vacancies shall be made by the Governor for the unexpired term, which appointments shall not be subject to confirmation. The board shall elect a chairman and a vice-chairman.

A majority of the board shall constitute a quorum for the transaction of business. The per diem and expenses of the appointive members of the board shall be provided by the General Assembly.

The eliminated sections had read as follows:

Sec. 8. Board of Education. The Governor, Lieutenant-Governor, Secretary of State, Treasurer, Auditor, Superintendent of Public Instruction, and Attorney-General shall constitute a State Board of Education.

Sec. 9. President and secretary. The Governor shall be president and the Superintendent of Public Instruction shall be secretary of the Board of Education.

Article IX, Sections 10, 11, 12, and 13, existing as of 1941 were eliminated and a new Article IX, Section 9, was substituted:

Sec. 9. Powers and duties of the board. The State Board of Education shall succeed to all the powers and trusts of the President and Directors of the Literary Fund of North Carolina and the State Board of Education as heretofore constituted. The State Board of Education shall have power to divide the State into a convenient number of school districts; to regulate the grade, salary and qualifications of teachers; to provide for the selection and adoption of the text books to be used in the public schools; to apportion and equalize the public school funds over the State; and generally to supervise and administer the free public school system of the State and make all needful rules and regulations in relation thereto. All the powers enumerated in this section shall be exercised in conformity with this Constitution and subject to such laws as may be enacted from time to time by the General Assembly.

The eliminated sections had read as follows:

Sec. 10. Powers of the board. The Board of Education shall succeed to all the powers and trusts of the president and directors

of the Literary Fund of North Carolina, and shall have full power to legislate and make all needful rules and regulations in relation to free public schools and the educational fund of the State; but all acts, rules, and regulations of said board may be altered, amended, or repealed by the General Assembly, and when so altered, amended, or repealed, they shall not be reenacted by the board.

Sec. 11. First session of the board. The first session of the Board of Education shall be held at the Capital of the State within fifteen days after the organization of the State government under this Constitution; the time of future meetings may be determined by the board.

Sec. 12. Quorum. A majority of the board shall constitute a quorum for the transaction of business.

Sec. 13. Expenses. The contingent expenses of the board shall be provided by the General Assembly.

Article IX, Sections 14 and 15, existing as of 1941 were renumbered as the present Article IX, Sections 10 and 11.

/This amendment was proposed in Chapter 151, Public Laws of North Carolina, 1941 Session. It was ADOPTED by a vote of the people on November 3, 1942./

Commentary:

See Survey of Statutory Changes, 1941, 19 N.C.L.Rev., 435, 463-66 (1941). See also the commentary from Popular Government reprinted in connection with the 1943 proposed amendment.

The second proposed amendment rewrote Article IV, Section 23, to read as follows:

Sec. 23. /Solicitors and solicitorial districts./ The State shall be divided into twenty-one solicitorial districts, for each of which a solicitor shall be chosen by the qualified voters thereof, as is prescribed for members of the General Assembly, who shall hold office for the term of four years, and prosecute on behalf of the State in all criminal actions

in the Superior Courts, and advise the officers of justice in his district. But the General Assembly may reduce or increase the number of solicitorial districts, which need not correspond to, or be the same as, the judicial districts of the State.

The section had originally read as follows:

> Sec. 23. Solicicitors for each judicial district. A solicitor shall be elected for each judicial district, by the qualified voters thereof, as is prescribed for members of the General Assembly, who shall hold office for the term of four years, and prosecute on behalf of the State, in all criminal action in the Superior Courts, and advise the officers of justice in his district.

/This amendment was proposed in Chapter 261, Public Laws of North Carolina, 1941 Session. It was ADOPTED by a vote of the people on November 3, 1942./

A similar amendment had been proposed by the General Assembly in Chapter 140, Public Laws of North Carolina, 1929 Session, but the proposal was defeated by the people.

AMENDMENTS PROPOSED IN 1943

Of the Five Submitted, All Were ADOPTED:

The first proposed amendment made the following changes in Article III:

Article III, Section 1, was rewritten to add the Commissioners of Agriculture, Labor, and Insurance as constitutional officers:

> Section 1. Officers of the executive department; terms of office. The executive department shall consist of a Governor, in whom shall be vested the supreme executive power of the State; a Lieutenant Governor, a Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Labor,

and a Commissioner of Insurance, [Emphasis added.] who shall be elected for a term of four years by the qualified electors of the State, at the same time and places and in the same manner as members of the General Assembly are elected. Their term of office shall commence on the first day of January next after their election, and continue until their successors are elected and qualified: Provided, that the officers first elected shall assume the duties of their office ten days after the approval of this Constitution by the Congress of the United States, and shall hold their offices four years from and after the first day of January.

Article III, Section 13, was also rewritten to add these new constitutional officers.

Sec. 13. Duties of other executive officers. The respective duties of the Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance [Emphasis added.] shall be prescribed by law. If the office of any of said officers shall be vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another until the disability be removed or his successor be elected and qualified. Every such vacancy shall be filled by election at the first general election that occurs more than thirty days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in the first section of this article.

Article III, Section 14, was rewritten to add these new constitutional officers as members of the Council of State:

> Sec. 14. Council of State. The Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance /Emphasis added./ shall constitute, ex officio, the Council of State, who shall advise the Governor in the execution of his office, and three of whom shall constitute a quorum; their advice and proceedings in this capacity shall be entered in a journal, to be kept for this purpose, exclusively, and signed by the members present, from any part of which any member may enter his dissent; and such journal shall be placed before the General Assembly when called for by either house. The Attorney General shall be, ex officio, the legal adviser of the executive department.

/This amendment was proposed in Chapter 57, 1943 Session Laws of North Carolina. It was ADOPTED by a vote of the people on November 7, 1944./

Commentary:

See Survey of Statutory Changes, 1943, 21 N.C.L. Rev., 323, 330-31 (1943).

The official explanation of the amendment issued by the Secretary of State reads as follows:

> At present the governor, lieutenant governor, secretary of state, auditor, treasurer, superintendent of public instruction and the attorney general are named in the constitution as constituting the executive department. The secretary of state, auditor, treasurer and superintendent of public instruction constitute, ex-officio, the council of state, to advise the governor in the execution of his office. If adopted, the officers named in the amendment would be added to the executive department and also to the council of state.

The second amendment proposed in 1943 added notaries public to the proviso clause of Article IV, Section 7, in order to exempt them from the prohibition against dual office holding:

> Sec. 7. Holding office. No person who shall hold any office or place of trust or profit under the United States, or any department thereof, or under this State, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this State, or be eligible to a seat in either House of the General Assembly: Provided, that nothing herein contained shall extend to officers in the militia, notaries public, /Emphasis added./ justices of the peace, commissioners of public charities, or commissioners for special purposes.

/This amendment was proposed in Chapter 432, 1943 Session Laws of North Carolina. It was ADOPTED by a vote of the people on November 7, 1944./

Commentary:

See Survey of Statutory Changes, 1943, 21 N.C.L. Rev. 323, 331 (1943).

The official explanation of the amendment issued by the Secretary of State read as follows:

> At present a notary public is an officer contemplated in constitutional prohibition against double office holding. If adopted, a notary public could hold any other office or place of trust under the authority of the state.

The third amendment proposed in 1943 rewrote Article IX, Section 8, to read as follows:

Sec. 8. State Board of Education. The general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, except those mentioned in Section five of this Article, shall, from and after the first day of April, one thousand nine hundred and forty-five, be vested in the State Board of Education to consist of the Lieutenant Governor, State Treasurer, the Superintendent of Public Instruction, and ten members to be appointed by the Governor, subject to confirmation by the General Assembly in joint session. The General Assembly shall divide the State into eight educational districts, which may be altered from time to time by the General Assembly. Of the appointive members of the State Board of Education, one shall be appointed from each of the eight educational districts, and two shall be appointed as members at large. The first appointments under this section shall be: Two members appointed from educational districts for terms of two years; two members appointed from educational districts for terms of four years; two members appointed from educational districts for terms of six years; and two members appointed from educational districts for terms of eight years. One member at large shall be appointed for a period of four years and one member at large shall be appointed for a period of eight years. All subsequent appointments shall be for terms of eight years. Any appointments to fill vacancies shall be made by the Governor for the unexpired term, which appointments shall not be subject to confirmation. The State Superintendent of Public Instruction shall be the administrative head of the public school system and shall be secretary of the board.

The board shall elect a chairman and vice-chairman. A majority of the board shall constitute a quorum for the transaction of business. The per diem and expenses of the appointive members shall be provided by the General Assembly.

The original version of this section is set out above in the portion dealing with the amendments proposed in 1941.

/This amendment was proposed in Chapter 468, 1943 Session Laws of North Carolina. It was ADOPTED by a vote of the people on November 7, 1944./

Commentary:

See Survey of Statutory Changes, 1943, 21 N.C.L. Rev, 323, 331-32 (1943).

The official explanation of the amendment issued by the Secretary of State read as follows:

This would rewrite the amendment adopted at the last general election. The principal changes proposed are: The position of comptroller would be stricken out and the state superintendent of public instruction would be the administrative head of the public school system and secretary of the board; ten board members would be appointed by the governor subject to confirmation by the General Assembly, one from each of eight educational districts, and two members at large; (The present method of selection is by congressional districts); and the following provision in the present constitution would be stricken out: "A majority of the members of said board shall be persons of training and experience in business and finance, who shall not be connected with the teaching profession or any educational administration of the state."

SCHOOLS AND SCHOOL LAWS

1943 Legislation Affecting the Schools and School Laws

/Popular Government, June 1943, 15-16./

. . .

Stream-lined Control--The only question of statewide interest in the otherwise lack-luster election of last November was the passage of the Constitutional amendment creating a new State Board of Education. When education leaders all over the state began to divide and dispute over the advisability of such a measure, the proponents offered a compromise in the form of a promise to secure the passage of a bill by the 1943 Legislature submitting another amendment to the people. On the strength of that promise, the amendment was passed. And at the same time that the Legislature was enacting S.B. 281, putting the 1942 amendment into effect, it was enacting S.B. 29, submitting the new Board of Education amendment to the voters at the 1944 election.

Designed to meet the objections voiced by the opponents in 1942--that representation on the Board would be unfair, both because the appointive members were to come one from each Congressional district and because the majority were required to be from the ranks of business and finance, non-educators -- Ch. 468 (S.B. 29) would reduce the membership on the Board and change the manner of members' appointment. The amendment, if adopted, will provide that the general supervision and administration of the free public

school system, including the funds appropriated therefor, shall be vested in the State Board of Education from and after April 1st, 1945. The Board is to consist of the Lieutenant Governor, State Treasurer, Superintendent of Public Instruction, and ten members appointed by the Governor, subject to confirmation by a joint session of the General Assembly. The General Assembly is to divide the state into eight educational districts, subject to change from time to time; and from each of these districts one member of the Board is to be appointed. The remaining two appointive members are to be members at large, and staggered terms are provided for all appointive members.

Under the proposed amendment, the Superintendent of Public Instruction continues as administrative head of the public school system and secretary of the Board. But the job of comptroller provided for in the 1942 amendment, to be appointed by the Board and to have charge of its fiscal affairs, is eliminated in the new proposal.

The fourth amendment proposed in 1943 rewrote Article III, Section 11 to eliminate the constitutional limit on the compensation of the Lieutenant-Governor:

> Sec. 11. Duties of the Lieutenant-Governor. The Lieutenant-Governor shall be President of the Senate, but shall have no vote unless the Senate be equally divided. He shall receive such compensation as shall be fixed by the General Assembly.

The section has previously read:

> Sec. 11. Duties of the Lieutenant-Governor. The Lieutenant-Governor shall be President of the Senate, but shall have no vote unless the Senate be equally divided. He shall, whilst acting as President of the Senate, receive for his services the same pay which shall, for the same period, be allowed to the Speaker of the House of Representatives; and he shall receive no other compensation except when he is acting as Governor.

/The amendment was proposed in Chapter 497, 1943 Session Laws of North Carolina. It was ADOPTED by a vote of the people on November 7, 1944./

Commentary:

See Survey of Statutory Changes, 1943, 21 N.C.L. Rev. 323, 332 (1943).

The official explanation of the proposed amendment issued by the Secretary of State reads as follows:

At present the compensation of the lieutenant governor is fixed in the constitution at $700 for each session of the general assembly. If adopted, the general assembly could fix the compensation in its discretion.

The fifth amendment proposed in 1943 rewrote Article X, Section 8, to omit the constitutional requirement of the wife's private examination in the case of a deed to a homestead:

> Sec. 8. How deed for homestead may be made. Nothing contained in the foregoing sections of this article shall operate to prevent the owner of a homestead from disposing of the same by deed; but no deed made by the owner of a homestead shall be valid without the signature and acknowledgement of his wife. [Emphasis added.]

The former wording, superceded by the underlined clause, had read:

> . . . but no deed made by the owner of a homestead shall be valid without the voluntary signature and assent of his wife, signified on her private examination according to law. [Emphasis added.]

[The amendment was proposed in Chapter 662, 1943 Session Laws of North Carolina. It was ADOPTED by a vote of the people on November 7, 1944.]

Commentary:

See Survey of Statutory Changes, 1943, 21 N.C.L.Rev. 323, 332-33 (1943).

The official explanation of the proposed amendment issued by the Secretary of State read as follows:

At present, in order to convey absolute title to real estate free of dower and homestead rights, the wife must be examined privately, separate and apart from her husband, and there must be a certificate to the effect that she signed the instrument voluntarily without fear or compulsion. If this amendment is adopted, such private examination of the wife would not be necessary in the conveyance of absolute title to real estate.

WOMEN, DOMESTIC RELATIONS AND RELATED MATTERS

[Popular Government, July 1945, page 19.]

. . .

Private examination of married women. Last November, the voters of the State repealed the Constitutional requirement of Article X, section 8 of taking the private examination of married women in conveyances of the homestead. There remained, however, the statutory requirement of privately examining married women relative to their voluntary assent to such conveyances as well as to all other conveyances of real estate and to mortgages of house-

hold and kitchen furniture. H.B. 55 removes all such requirements. Married women may now simply acknowledge their execution of instruments as their husbands and single persons have done in the past. Contracts and conveyances between husband and wife, however, must still bear the special certificate of the officer before whom the acknowledgment is taken to the effect that "the same is not unreasonable or injurious to her."

Since a great many people had conducted their affairs under the mistaken belief that the Constitutional amendment had of itself done away with the requirement of private examinations, section 22½ of H.B. 55 ratifies instruments executed since November 7, 1944 (election day) without the private examination of married women having been taken. No part of the Act applies to pending litigation.

AMENDMENTS PROPOSED IN 1945

Of the Two Submitted, Only One Was ADOPTED:

The proposed 1945 amendment which was adopted primarily changed the word "men" to "persons" in various sections of Article I and changed Article VI, Section 1, to harmonize with Amendment IXX to the United States Constiution:

Article I, Section 1, was rewritten to substitute "persons" for "men" and "inalienable" for "unalienable":

> Section 1. The equality and rights of persons. That we hold it to be self-evident that all persons /Emphasis added./ are created equal; that they are endowed by their Creator with certain inalienable /Emphasis added./ rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

The only substantive change in Article I, Section 7, was the substitution of "person" and "persons" for "man" and "men":

> Sec. 7. Exclusive emoluments, et cetera. No person or set of persons /Emphasis added./ are entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.

Article I, Section 11, was changed in several technical regards to read as follows:

> Section 11. In criminal prosecutions. In all criminal prosecutions, every person charged with crime has the right to be informed of the accusation and to confront the accusers and witnesses with other testimony, and to have counsel for defense, and not be compelled to give self-incriminating evidence, or to pay costs, jail fees, or necessary witness fees of the defense, unless found guilty.

The section had originally read:

> Sec. 11. In criminal prosecutions. In all criminal prosecutions every man has the right to be informed of the accusation against him, and to confront the accusers and witnesses with other testimony, and to have counsel for his defense, and not to be compelled to give evidence against himself, or to pay costs, jail fees, or necessary witness fees of the defense, unless found guilty.

The only substantial change in Article I, Section 13, was the substitution of "persons" for "men":

> Sec. 13. Right of jury. No person shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful persons [Emphasis added.] in open court. The Legislature may, however, provide other means of trial, for petty misdemeanors, with the right of appeal.

A new sentence was added to the end of Article I, Section 19:

> Sec. 19. Controversies at law respecting property. In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable. No person shall be excluded from jury service on account of sex. [Emphasis added.]

Article I, Section 26, was rewritten to substitute "persons" for "men" and "inalienable" for "unalienable":

> Sec. 26. Religious liberty. All persons [Emphasis added.] have a natural and inalienable [Emphasis added.] right to worship Almighty God according to the dictates of their own consciences, and no human authority should, in any case whatever, control or interfere with the rights of conscience.

Article VI, Section 1, was rewritten to delete the word "male" in two places where it qualified the word "persons":

> Section 1. Who may vote. Every person [Emphasis added.] born in the United States, and every person [Emphasis added.] who has been naturalized, twenty-one years of age, and possessing the qualifications set out in this article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided.

This particular change merely conformed the text of the constitution with Amendment IXX to the United States Constitution granting women the right to vote. The General Assembly had previously provided for the registration and voting of women in Chapter 18 of the Public Laws of North Carolina, Extra Session 1920.

[This amendment was proposed in Chapter 634, 1945 Session Laws of North Carolina. It was ADOPTED by a vote of the people on November 5, 1946.]

Commentary:

See Survey of Statutory Changes, 1945, 23 N.C.L. Rev. 327, 336-37 (1945); cf. State v. Emery, 224 N.C. 581, 31 S.E.2d 858 (1944), 23 N.C.L. Rev. 152 (1945); Abbott, "Recent Supreme Court Decisions: Ladies of the

Jury," Popular Government, February 1946, page 16; Seawell, "Attorney General Rules in Favor of Women Jurors," Popular Government, October 1937, page 1.

The official explanation of the proposed amendment issued by the Secretary of State read as follows:

In [State v. Emery, 224 N.C. 581, 31 S.E. 2d 858 (1944)], the Supreme Court of North Carolina held that under Article I, Section 13, of the Constitution of North Carolina women are ineligible to serve on the jury in this State. In order to make the Constitution equally applicable to men and women as to jury service, and in order to make certain that the use of the word "man" or "men" in other sections of the Constitution includes both men and women, and in order to conform to the suffrage amendment to the Federal Constitution certain amendments to the North Carolina Constitution are proposed to Sections 1, 7, 11, 13, 19 and 26 of Article I, and to Section 1 of Article VI.

WOMEN, DOMESTIC RELATIONS AND RELATED MATTERS

[Popular Government, July 1945, page 19.]

Women as Jurors. When the Supreme Court handed down the opinion last November, in State v. Emery, 224 N.C. 581, that Article I, Section 13 of the State Constitution precluded women from serving on juries because they were not "good and lawful men," it stirred up something of a tempest, and it aroused a determination in some quarters to remove the last of the ancient discriminations against women--discriminations probably springing more from the protective male's desire to shield his lady from the rudeness of a man's world than from a purpose to deprive her of any actual right or benefit. Historically and traditionally the Supreme Court was correct in holding that "men" meant "men" and not "men and women"; for when the Constitution first had to put into it the guarantee of trials by juries of "good and lawful men," there was no thought that "men" meant other than "males." That this meaning has been almost universally accepted is indicated by the fact that there is probably not a jury room in any of the one hundred counties of North Carolina which has facilities for the accommodation of both sexes, let alone for both sexes of both the white and colored races.

Opponents of this discrimination followed the proper course when they sought an Act of the legislature to submit to the people at the next general election a Constitutional amendment to change "men" to "persons." The Act they got through, H.B. 3, goes the whole hog. Although other sections of the "Bill of Rights" have been construed as applying equally to men and women, the language of such sections will also be changed if the amendment is adopted, so that there will not thereafter be any doubt as to the inclusion of women as well as men. For example, "no person or set of persons" rather than "no man or set of men" will be entitled to exclusive emoluments, and it will be clear that all "persons" rather than merely all "men" are created equal. And although the matter of the right to vote has been taken care of by the Nineteenth Amendment to the Constitution of the United States, "male person" in Article VI, section 1, relative to the voting privilege, will become "person."

With this new Constitutional amendment well on its way toward a popular vote, H.B. 817 would have permitted women to avoid jury duty, in the event the amendment is adopted, merely by making a written request that they be excused. This bill was killed on its second reading in the House, and partly by the hand of the only lady member, Mrs. G. W. Cover, Sr., of Cherokee County, who argued that women should not seek a privilege and at the same time try to avoid the responsibility which goes with it.

The Amendment Which Was REJECTED:

The proposed amendment of 1945 which was rejected would have added a sentence /in brackets/ at the end of Article II, Section 28, existing as of 1945:

> Sec. 28. Pay of members and officers of the General Assembly. The members of the General Assembly for the term of their office shall receive a salary for their services of six hundred dollars each. The salaries of the presiding officers of the two houses shall be seven hundred dollars each: Provided, that in addition to the salaries herein provided for, should an extra session of the General Assembly be called, the members shall receive eight dollars per day each, and the presiding officers of the two houses ten dollars per day each, for every day of such extra session not exceeding twenty days; and should an extra session continue more than twenty days, the members and officers shall serve thereafter without pay.
>
> REJECTED /Provided further, that for the duration of both regular and
> REJECTED special sessions the members shall receive, in addition to
> REJECTED the salaries herein provided for, the sum of ten dollars per
> REJECTED day for each day not to exceed sixty days in any one session
> REJECTED in commutation for expenses incurred for travel to and from
> REJECTED their homes to the seat of government, subsistance /sic/, and
> REJECTED other necessary expenses./

[This amendment was proposed in Chapter 1042, 1945 Session Laws of North Carolina. It was REJECTED by a vote of the people on November 5, 1946.]

AMENDMENTS PROPOSED IN 1947

Of the Four Submitted, Only One Was ADOPTED:

The proposed 1947 amendment which was adopted rewrote the final clause of Article VII, Section 7:

> Sec. 7. No debt or loan except by a majority of voters. No county, city, town, or other municipal corporation shall contract any debt, pledge its faith or loan its credit, nor shall any tax be levied or collected by any officers of the same except for the necessary expenses thereof, unless approved by a majority of those who shall vote thereon in any election held for such purpose. [Emphasis added.]

The final clause had previously read:

> . . . unless by a vote of the majority of the qualified voters therein.

[This amendment was proposed in Chapter 34, 1947 Session Laws of North Carolina. It was ADOPTED by a vote of the people on November 2, 1948.]

Commentary:

See Survey of Statutory Changes, 1947, 25 N.C.L. Rev. 376, 396 (1947); cf. Coates and Mitchell, "Necessary Expenses" within the Meaning of Article VII, Section 7, of the North Carolina Constitution, 18 N.C.L. Rev. 93 (1940). [A condensed version of the article, without footnotes, later appeared as Coates, "Tax for Necessary Expense Takes No Vote, But What Is Necessary?" Popular Government, July-August 1940, page 3 (reprinted below).]

The official explanation of the proposed amendment issued by the Secretary of State read as follows:

If the proposed amendment should be adopted, it would mean that local bond and tax elections within the purview of this section would be decided by a majority of those actually voting for or against the measure, rather than by whether a majority of the registered voters voted in favor of it. In other words, the result would be determined by the sentiment of those actually voting, instead of by a vote "against the registration." A vote "against the registration" means that all registered voters who do not vote on election day are counted as having voted against the proposed tax levy or bond issue.

1947 LEGISLATIVE SUMMARY

CONSTITUTIONAL AMENDMENTS

2. Necessary Expense--Article VII, Section 7

/Popular Government, May 1947, page 43./

. . .

In making this proposal, the legislature took notice of the fact that because of its "majority vote of the qualified voters" requirement, this section has been the rock upon which many a county and municipal project has gone around, even when favored by a majority of those voting. As the section stands, it requires proponents of a tax or bond issue which is not for a "necessary expense" (within the meaning of this section as defined by dozens of Supreme Court decisions) to muster not a favorable majority of those who go to the polls and vote, but a favorable majority of all those qualified to vote,whether they do so or not. Thus it requires what is usually called a "vote against the registration." And one of the chief arguments which has been raised against it is that it puts a premium on non-voting, thus weakening our democratic form of government in that it encourages non-participation by the citizens at the polls. Its practical effect, argued the bill's sponsors in the legislature, is to arm opponents of local tax measures and bond issues at special non-necessary expense elections with a powerful weapon, in that they need only register as many people as they can, and then encourage them to stay away from the polls on election day. The way this would work can be seen from the following simple example; if 1,000 citizens were on the registration books for such an election, and if 499 voted for a proposal to levy a tax for a non-necessary expense and 1 voted against it, the proposal would be defeated notwithstanding the favorable majority among those actually voting. The effect of the proposed amendment on such a situation would be to allow the issue to be determined by a simple majority of those who actually voted.

PROPOSED CONSTITUTIONAL AMENDMENTS:

Majority Vote in Special Elections

By Albert Coates

/Popular Government, October 1948, page 14.7

. . .

To illustrate the meaning of this proposed change: Under the present voting requirement, if 1000 voters are registered ("qualified" voters are held to be "registered" voters) 501 votes must be cast for the proposition voted on in order to vote it in. If 500 votes are cast for and one against it, the proposition is voted out, because 500 votes are not a "majority of the qualified voters."

Under the proposed voting requirement, if 1000 voters are registered and 501 vote -- 251 for and 250 against it, the proposition is voted in, because 251 are a majority of those voting. Similarly, if only 100 of the 1000 registered vote, and 51 are for and 49 against it, the proposition is voted in, because 51 are a majority of those voting.

Issues involved in the Change. It is obviously more difficult to levy a tax or incur a debt under the present voting requirement than under the proposed voting requirement. Or, to put it another way, it is obviously more difficult for people to get what they want through a tax levy or a bond issue under the present than under the proposed voting requirement. In still other words, the present voting requirement makes it easier for people to keep down debts and taxes, while the proposed voting requirement makes it easier for people to get the services they want. It is for the voters to say which is the wiser policy and this policy will be decided on Tuesday, November 2, by a majority of those voting rather than by a majority of those registered.

Reasons cited for and against the change follow the line of cleavage outlined in the foregoing paragraph.

One official writes in opposition to the change: "My observation has been that in elections called for approval of the issuance of bonds, we have a very small registration and if the election is carried by only a majority of those who vote, then we have a bond issue authorized and saddled upon the tax paying unit by only a small proportion of the people. I think the present arrangement is better and fairer. If the majority of the people do not want bonds issued then I think a minority should not be permitted to authorize it." Another writes: "I do not think it would be wise to change the voting requirement in elections on necessary expenses. There are so many pressure groups today just waiting for an opportunity to further some pet project and in most cases the pressure groups are composed of people who do not own property and, therefore, would not have to bear the additional tax burden." Another writes: "I think that we should use every effort possible to hold down our bonded indebtedness; therefore my thought is that all bond elections should require registration and the vote counted against the registration in order to carry the bond election."

Officials favoring the change write: "Hot primaries increase registration. Special elections bring out a small percentage of the vote. Any proposal starts out with two strikes against it." . . . "Voters may register under the present system, stay away from the polls through forgetfulness, design, bad weather, sickness, and the like, and their absence from the polls counts as decisively against a proposal as if they had taken the time and trouble to cast their votes against it." . . . "Under the present system a minority can very easily block a measure by registering and failing to show up on election day. For example, I know of an instance where a registrar in an election to provide a supplement to teachers' salaries was personally opposed to the supplement, and he took his registration book to a baseball game, where he registered almost everyone in sight. These citizens failed to show up on election day, and their failure to do so counted as a vote against the supplement. It would seem to me that the more democratic way is the vote of the majority who actually appear at the polls." . . . "Most of the representative citizens in a certain area favored a local movement for the betterment of schools, even though, for a great many of them, it mean additional tax. There was a small minority group in opposition to the movement that succeeded in registering a sufficient number of people that did not vote in the election to defeat the movement; although the election carried by five or six to one. This is a specific case of where the old law stood in the way of the majority of the people." Another official writes: "I favor changing the laws governing special elections on necessary expenses and also on special school district matters from 'a vote of a majority of the qualified voters,' to 'a majority of those who shall vote thereon.' Recently, we had a very close school district election upon the question of enlargement of a Local Tax School District to include an outlying district of considerable size. Of course, under the law, the registrar is entitled to go from house to house and register any qualified voter at any time during the period the books are open for registration. Also, the registrar is entitled to receive three cents a name for each registrant placed on the books during a new registration. These two facts generally make for a large registration, particularly if the registrar happens to oppose the proposition under consideration. In the instant case, a rather popular proposal failed by some 200 votes. I feel that the burden placed on proponents under the present law is entirely too great, and that an equal burden should be placed on the opponents, in order to provide real democracy."

TAX FOR NECESSARY EXPENSE TAKES NO VOTE, BUT WHAT IS NECESSARY?

By Albert Coates

/Popular Government, July-August 1940, page 3./

For two hundred years of the state's history there was no constitutional limitation on the power of local governmental units to incur debt or levy taxes. In 1868 the Constitution provided that "no county, city, town or other municipal corporation shall contract any debt, pledge its faith or loan its credit, nor shall any tax be levied or collected by any officers of the same, except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein." From 1868 to 1940 these local units of government have been asking the Supreme Court of North Carolina to tell them what is a necessary expense for which they may incur debt and levy taxes without a vote of the people.

Necessary Expenses Enumerated

In answer to this question the Supreme Court has classified the following as necessary expenses: (1) the ordinary expenses of government, including salaries and wages and office expense (decisions specifically mention salaries of mayor, treasurer, city attorney, janitor, county commissioners' pay, county attorney, sheriff's salary and expense of sheriff's office, register of deeds' salary and expense of office, Clerk Superior Court's salary and expense of office, county accountant's salary, police, jurors' fees, feeding and care of prisoners, tax listing expense, expense of holding elections, etc.); (2) the building and repair of municipal buildings such as city halls, county courthouses, guardhouses and jails, fire alarm systems, fire stations and sites therefor, police station, office rent for suitable headquarters, etc.; (3) the building and repair of public roads and streets and bridges; (4) building and repair of market houses; (5) the building and repair of county homes and the maintenance of the poor; (6) furnishing adequate water supply, including the digging of wells, contracting for water supply, building of waterworks plants; (7) the building of sewerage systems; (8) the building of electric light plants; (9) performing autopsy, maintenance of the public peace and other phases of the administration of justice; (10) fire insurance for school buildings; (11) incinerators; (12) parks and playgrounds; (13) professional services in refunding bonds; (14) contract with hospital for care of indigent sick and afflicted poor; (15) jetties; (16) abbattoir; (17) county farm agent's salary; (18) cemeteries. By way of dictum the court has classified the following as necessary expenses: (19) hay scales, (20) town clock.

Non-Necessary Expenses Enumerated

The Court has classified the following as non-necessary expenses within the meaning of Article VII, Section 7: (1) liquor dispensary, (2) county stock fence, (3) chamber of commerce, (4) wharves and docks, (5) cotton platform, (6) county and city hospital, (7) municipal airport, (8) city auditorium, (9) schools, (10) public library, (11) land and buildings for athletic and recreational purposes, (12) railroads, and (13) "fire drill tower." By way of dictum, the Court has classified an electric street car line as a non-necessary expense.

Since 1868, the Court has reversed itself twice, transferring water works and electric lights from the non-necessary to the necessary expense grouping. While it has never reversed its ruling that schools are not a necessary expense, it has reached a substantial equivalent through a belated construction of Article IX. But it has never withdrawn a function from the necessary expense grouping once the favored classification has been granted.

Courts and Commissioners

What are the relative functions of the Court and the local legislative bodies--county commissioners and city councilmen--in solving the problem of "necessary expenses"? In Brodnax v. Groom the Court stated the question as follows: "Who is to decide what are the necessary expenses of a County?" Six years later the dissenting opinion in Wilson v. Charlotte appears to assume that Brodnax v. Groom gave sole say to the commissioners and put no limits to necessary expenses except the commissioners' will. But the

majority opinion interpreted it to mean that the Courts are to decide what are necessary expenses, and the commissioners are to decide whether those types of expenditures classed as necessary expenses by the court are in fact necessary in a particular time and place. This interpretation has come to be the accepted interpretation of the relative functions of Court and Commissioners in subsequent decisions.

Tests and Standards

The Court has suggested many tests and standards to guide local units and officials in drawing the line between necessary and non-necessary expenses: whether it falls within the analogy of the law of necessaries for infants; whether it is necessary to the existence of the unit; whether it is one of the unit's ordinary expenses; whether it is incident to the purposes for which the unit was created; the size and circumstances of the unit; the cost of the undertaking; and at times it has resorted to the procresses of induction, deduction, and analogy. There are decisions in which the majority opinion has relied on some of these tests to prove an undertaking is a necessary expense and the minority opinion has relied on the others to prove it is not, thereby demonstrating their interlocking, overlapping and conflicting characters.

Conflict and Confusion

The pressure on the Court to expand the concept of necessary expenses is as insistent today as ever. The Court has overruled itself in the past, and expanded this concept to include electric lights and waterworks. The Court is divided on many questions of necessary expense which have come before it in recent years. Is it likely that dissenting opinions will ultimately prevail and expand the limits of "necessary expenses" to include expenditures now excluded by a majority of the Court: wharves and docks? airports? hospitals? In fact, how does the Court stand on hospitals as a necessary expense? In Armstrong v. Commissioners of Gaston County, the Court held that a tubercular hospital was not a necessary expense for the County; in Nash v. Monroe, the Court held that "a hospital for the sick and diseased and others requiring surgical and medical attention" was not a necessary expense for the city; in Burleson v. Spruce Pine, and in Palmer v. Haywood County, this conclusion was reiterated.

But in Martin v. Commissioners of Wake County, and Martin v. Raleigh, the Court held that a thirty year contract with a hospital at $10,000 a year to care for the "indigent sick and the afflicted poor" of Raleigh and Wake County was a necessary city and county expense. Chief Justice Stacy pointed out in a dissenting opinion that this decision could not rest on the authority of Spitzer v. Commissioners, for that was limited to the construction of a county home, and that it could not rest on Article XI, Section 7 of the Constitution for that limited the obligation to the care of "the poor, the unfortunate and orphan" while in this case the parties agreed that the contract would result in "modern hospitalization for the poor of Wake County and all of its citizens." Has this dissent become the majority opinion in Palmer v. Haywood County, arising two years later, when a point was made of the fact that the annex to the county hospital was "principally" but not exclusively for the indigent sick and the afflicted poor? Or is the case to be distinguished on the slender ground of legislative authorization suggested by the Court? Has the majority

opinion in the Palmer case become the opinion of a unanimous court in Sessions v. Columbus County, arising one year later? Do the Raleigh and Wake County cases mean that each of the near to half the counties in the state covered by the legislative enactment mentioned there can immediately follow suit? or that the remaining counties may through the device of added legislation be brought within the limits of necessary expense? If they may contract for hospital services, as a necessary expense, may not the time come when building their own hospitals will be considered a necessary expense? Such were the steps through which waterworks systems became a necessary expense. In applying the doctrine of the Raleigh and Wake County cases will the Court approve a contract for the medical care of "indigent sick and the afflicted poor" of all counties which now are or may be included in authorizing legislative enactments regardless of the size, population, wealth or other differentiating conditions? or will it follow the other view and inquire whether under the particular circumstances such a contract is a necessary expense?

Where Do We Go From Here

What of other enterprises seeking the preferred status and already as far as the Attorney General's office? Such as beautifying streets? parking lots? swimming pools? community houses? Is it a necessary expense to build a road or street, widen it, grade it, pave it, patch it and not a necessary expense to beautify it? Is it a necessary expense to build roads and streets wide enough for cars to park near the curbing or on the shoulder without impeding traffic, and not a necessary expense to purchase land for parking lots accessible to but not adjacent to travelled thoroughfares? Is it a necessary expense to build parks and playgrounds for outdoor play and recreation and not a necessary expense to build a community house for indoor play and recreation? And what if the swimming pool, ruled not to be a necessary expense, is included among the facilities of the outdoor park and playground now held to be a necessary expense? Which tests or combination of tests to be found in the opinions of the Court are to be controlling in the future? The line, says the Court over and over again, must be drawn somewhere--but where?

The Three Amendments Which Were REJECTED:

The first of the proposed amendments of 1947 which were rejected would have rewritten Article II, Section 28, existing as of 1947 to read as follows:

REJECTED Sec. 28. Pay of members and presiding officers of the
REJECTED General Assembly. The Members of the General Assembly for the
REJECTED term of their office shall receive a salary for their services
REJECTED of twelve hundred dollars ($1,200.00) each. The salaries of
REJECTED the Presiding Officers of the two Houses shall be fifteen hun-
REJECTED dred dollars ($1,500.00) each. Provided, that in addition to

REJECTED the salaries herein provided for, should an Extra Session of
REJECTED the General Assembly be called, the Members shall receive two
REJECTED hundred and fifty dollars ($250.00) and the Presiding Officers
REJECTED of the two Houses three hundred dollars ($300.00) for such
REJECTED Extra Session.

The text of Article II, Section 28, existing as of 1947 is printed above in connection with the proposed amendment of 1945 [in brackets] which was rejected. See discussion of the proposed amendments of 1949 and 1955 for later changes.

[This amendment was proposed in Chapter 361, 1947 Session Laws of North Carolina. It was REJECTED by a vote of the people on November 2, 1948.]

Commentary:

The official explanation of this proposed amendment issued by the Secretary of State read as follows:

The General Assembly is without power to increase the salaries of its members or that of its presiding officers, or to provide for a subsistence allowance or other expenses. The most it can do is to submit to popular vote a constitutional amendment which, if adopted, will provide for increased compensation for legislators who will serve in the future. The 1947 Legislature, by Chapter 361, asks the voters of the State to raise the pay of future legislators and their presiding officers by rewriting Section 28 of Article II of the Constitution. This section . . . was last changed by popular vote twenty years ago . . . .

. . . .

Between the Constitutional Convention of 1875 and the amendment of 1928, members of the General Assembly had received $4.00 per day for not more than sixty days for a regular session, plus mileage of ten cents per mile for one round trip between home and capital. The presiding officers--President of the Senate and Speaker of the House of Representatives--had received $6.00 per day for not more than sixty days, plus mileage, for regular sessions, and a "like rate of compensation" was paid to members and presiding officers for not more than twenty days of any extra sessions.

From 1875 to 1928, therefore, members of the General Assembly and their presiding officers received $4.00 and $6.00 per day, respectively, for not more than sixty days for a regular session and not more than twenty days for a special session, plus one round trip mileage of ten cents for each session. From 1928 to the present time, members and presiding officers have received for their entire terms of office $600.00

and $700.00, respectively, plus $8.00 per day for members and $10.00 per day for presiding officers for not more than twenty days of extra sessions. (The Lieutenant Governor, who is ex officio presiding officer of the Senate, also receives an annual salary of $2,100.00 under an act of the 1945 Legislature.)

Chapter 361 of the Session Laws of 1947 will submit to popular vote in November 1948, the question of increasing the compensation of members of the General Assembly and their presiding officers by rewriting Article II, Section 28, to provide that members shall receive a term salary of $1,200.00 plus $250.00 for an extra session, and that the presiding officers shall receive a terms salary of $1,500.00 plus $300.00 for an extra session. Like the present provision, the proposed provision would not base the compensation of members and presiding officers on the number of days of a regular term, but, unlike the present provision, the proposed provision would base the compensation of members and officers for an extra session upon the entire extra session, rather than upon a per diem not to exceed twenty days.

1947 LEGISLATIVE SUMMARY

CONSTITUTIONAL AMENDMENTS

4. Legislators' Pay--Article II, Section 28

/Popular Government, May 1947, page 44./

Between 1875 and 1928, members of the General Assembly were paid, under the Constitutional provision then effective, "the sum of four dollars per day for each day of their session, for a period not exceeding sixty days. . . ." They were also entitled to ten cents per mile for one round trip between home and capital. Presiding officers of the two houses received six dollars per day for the same period, plus mileage. During extra sessions, members and presiding officers received the regular session daily rate of compensation, but for a period not exceeding twenty days.

In 1928 the people adopted the present provision of the Constitution, Section 28 of Article II, which provides: "The members of the General Assembly for their term of office shall receive a salary of six hundred dollars each. The salaries of the presiding officers of the two houses shall be seven hundred dollars each. . . ." In addition to these salaries, Section 28 declares that during an extra session, members shall receive eight dollars per day, and presiding officers ten dollars per day, for every day of the extra session, not exceeding twenty days.

The people of North Carolina have been notably reluctant to increase the pay of their representatives in the legislature--for example, the increase provided by the present Section 28 was voted on and defeated at four general elections before it was finally adopted in 1928. And the proposal of the 1945 General Assembly to amend the section to increase legislators' pay went down to defeat by a narrow margin at the general election of 1946.

The 1947 General Assembly considered two bills proposing amendments to rewrite Section 28. The one which failed (HB 287) would have proposed

a $900 biennial salary for members and $1,000 for presiding officers, with $13 and $15 daily for members and officers respectively, for not over twenty days of an extra session. The one which passed, Chapter 361 (HB 516), calls for a decision by the voters at the next general election on the following substitute which it proposes for the present Section 28: "The members of the General Assembly for their term of office shall receive a salary for their services of twelve hundred ($1,200) each. The salaries of the presiding officers of the two houses shall be fifteen hundred dollars ($1,500) each. Provided, that in addition to the salaries herein provided for, should an extra session of the General Assembly be called, the members shall receive two hundred and fifty ($250) and the presiding officers of the two houses three hundred dollars ($300) for such extra session."

It may be noted here, in connection with the question of legislator's compensation, that HB 276, which would have amended the 1946-47 Supplemental Appropriation Bill so as to provide each member of the General Assembly with the same subsistence and travel allowance authorized by the bill for State officials and employees ($6 per day for subsistence plus 6 cents per mile for travel), was tabled in the House on receipt of an advisory opinion previously requested from the Supreme Court by joint resolution, which opinion held that HB 276 would be unconstitutional.

PROPOSED CONSTITUTIONAL AMENDMENTS

Legislators' Pay

By Albert Coates

/Popular Government, October 1948, page 17/

. . .

Present Pay. Article II, Section 28 of the North Carolina Constitution allows members of the General Assembly a salary of $600 each for a regular session every two years, and $8 per day for extra sessions--not exceeding twenty days. It allows the Speaker and the Lieutenant Governor--presiding officers of the House and Senate, a salary of $700 each for regular sessions and $10 per day for extra sessions--not exceeding twenty days.

Proposed Pay. On Tuesday, November 2, the people of North Carolina will vote for or against an amendment to the Constitution allowing members of the General Assembly a salary of $1,200 each for a regular session of sixty days and a salary of $250 for extra sessions; allowing the Speaker and the Lieutenant Governor--presiding officers of the House and Senate, a salary of $1,500 each for regular sessions and $300 for extra sessions.

Reasons cited for pay increase. The present pay scale was voted by the people in 1928, changing the pay scale in force since 1875--$4 per day for members and $6 per day for presiding officers for sessions of sixty days, with like pay for as many as twenty days in extra sessions, and ten cents a mile for one round trip between home and capital.

The rise in living costs during the past twenty years has practically doubled, and the proposed increase in pay will leave legislators in 1949 in little if any better situation than legislators in 1929.

Most if not all people will agree that the pay of legislators should not be high enough to induce candidates to run on the profit motive. The pay increase proposed will leave most if not all legislators facing the question their predecessors have faced before them--not how much money they will make, but how much money they will lose: in paying for room, board, laundry, tips and other incidental living expenses; in paying for stationery and postage, telephone calls and telegrams in the course of dealings with constituents; for regularly recurring trips home on weekends to consult with their constituents, keep in touch with their families, and give a lick and promise to the business they left behind them.

Present and proposed pay is based on the theory of regular legislative sessions of sixty days. Since the present pay scale was adopted in 1928 seven sessions have lasted longer than sixty days--ranging from sixty-six to one hundred twenty days. This means that legislators who have barely made both ends meet for a sixty day session have had to dig into their own pockets to finance the added costs of six to sixty added days. With the growing volume and complexity of the business of the State which legislators are called upon to deal with these added days are likely to increase and pile up further living costs on long suffering legislators who have increased all state officials' salaries but their own.

The proposed increase in pay cannot be stretched to cover: the loss of income suffered by the legislator who lets his business slide while he is away from home--particularly biting on professional men and little business men; the support of the legislator's family and the upkeep of his office while he is undergoing this periodic income loss; the cost of running for the office--varying with the competition and the heat of local contests. In losing these things legislators suffer loss enough without incurring further loss from lack of living wages while working at their legislative jobs.

A poll of legislators indicates the common feeling that past and present payments of less than living wages to its legislators is costing the state many times its skimpy savings every year: in losing the services of many good men who cannot afford to take the loss involved--such as men without continuing incomes, little business men with large families to support, younger veterans of the wars seeking footholds in their professions, and many others with better heads than pocketbooks.

It may be argued that payment of less than living wages is operating in fact as a property qualification for public office nearly one hundred years after this qualification in theory was swept out of the Constitution. In well nigh every legislative session some men who had not previously counted the costs involved are forced to leave weeks before the session closes on account of sheer financial stringencies--leaving their localities and constituents unrepresented in the all important closing days. One of these legislators writes: "Only the following types of persons can offer their services as lawmakers: (1) men financially able to sustain a loss in order to render public service; (2)

men who may represent special interests who can see to it that the Legislator does not suffer a sacrifice; (3) men of wealth who are interested in the Legislature for the fame (?!) or excitement it may offer; (4) or men, unable financially, but willing to 'give' as a sacrifice to public service."

The second of the proposed amendments of 1947 which were rejected would have raised the limit on the property tax levy of Article V, Section 6, existing as of 1947, from fifteen cents (15¢) to twenty-five cents (25¢) per one hundred dollars ($100.00) valuation:

REJECTED Sec. 6. Taxes levied for counties. The total of the
REJECTED State and county tax on property shall not exceed twenty-five
REJECTED [Emphasis added.] cents on the one hundred dollars value of
REJECTED property, except when the county property tax is levied for a special
REJECTED purpose and with the special approval of the General Assembly,
REJECTED which may be done by special or general act: Provided, this
REJECTED limitation shall not apply to taxes levied for the mainte-
REJECTED nance of public schools of the State for the term required
REJECTED by article nine, section three, of the Constitution:
REJECTED Provided, further, the State tax shall not exceed five cents
REJECTED on the one hundred dollars value of property.

Changing the one word "fifteen" to "twenty-five" (underlined above) was the only change the proposed amendment would have effected. See the discussion of the proposed amendments of 1951 for the current text of this section.

[This amendment was proposed in Chapter 421, 1947 Session Laws of North Carolina. It was REJECTED by a vote of the people on November 2, 1948.]

Commentary:

See Survey of Statutory Changes, 1947, 25 N.C.L. Rev. 376, 394-95 (1947); cf. Coates and Mitchell, Property and Poll Tax Limitations Under

the North Carolina Constitution, Article V, Sections 1 and 6, 18 N.C.L. Rev. 275 (1940). [A condensed version of the article, without footnotes, later appeared as Mitchell, "General Tax Limited to 15¢, but What About Special Purposes?" Popular Government, July-August 1940, page 5 (reprinted below).]

The official explanation of the proposed amendment issued by the Secretary of State read as follows:

. . .[T]he State property tax and the county property tax for general county expenses may not exceed 15¢ on the $100.00 valuation. Special taxes may be levied by counties for special purposes with special approval of the General Assembly. Since 1920 the State has not levied a general property tax for the support of its general fund except to share in a small percentage of intangible tax collections which have been administered by the State since 1937. The General Assembly of 1931 was the last to levy a property tax (15¢ on the $100.00 valuation) in support of the public school system. Since 1920, therefore, counties have been able to levy the entire 15¢ on the $100.00 valuation to provide for general expenses of the county. The revenues realized from this 15¢ general fund levy have, however, become increasingly inadequate to finance the general expenses of the counties and an amendment to increase the general fund tax levy limitation from 15¢ to 25¢ on the $100.00 valuation is proposed. If the amendment should be adopted, the State would still be limited to a levy not in excess of 5¢ on the $100.00 valuation, leaving to the counties a general fund levy of at least 20¢ but not more than 25¢ on the $100.00 valuation.

1947 LEGISLATIVE SUMMARY

CONSTITUTIONAL AMENDMENTS

3. Total State and County Levy--Article V, Section 6

[Popular Government, May 1947, page 44.]

Since 1920, the Constitution has contained the following provision (Article V, Section 6): "The total of the State and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property, except where the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act; Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the State for the term required by article nine, section three, of the Constitution: Provided, further, the State tax shall not exceed five cents on the one hundred dollars value of property."

The General Assembly proposes in Chapter 421 (SB 254) that the people decide at the next general election whether to raise the fifteen cent limitation in this section of the Constitution to twenty-five cents.

Since 1920, when the section was amended to read as it stands today, the State has refrained from levying any property tax for general purposes allowed to it under this section, leaving the whole fifteen cents to the counties. Thus the proposed amendment would operate chiefly to the benefit of the counties.

PROPOSED CONSTITUTIONAL AMENDMENTS

Property Tax Limitation

By Albert Coates

/Popular Government, October 1948, page 4.7

. . .

The proposed amendment would lift this constitutional limitation from fifteen to twenty-five cents on the $100 value of property. It would not lift the tax; it would simply authorize county authorities to lift it--if, as, and when county needs require it for general operating purposes.

The Constitution authorizes the county authorities to exceed the fifteen cent property tax limitation for special purposes. And this explains the difference between the present fifteen cent limitation on taxes levied for general county purposes and present county tax rates ranging from fifty-five cents in one of the richer counties to two dollars and twenty cents in one of the poorer counties, representing general and special purposes combined. This fifteen cent limitation for general purposes appeared to give the counties plenty of operating leeway when it was imposed in 1920, coupled with the special purpose exceptions which had been in force since 1868.

If the fifteen cent limitation on property taxes for general operating purposes was fixed and static, the special purpose loophole with equal constitutional recognition was flexible and dynamic, and could be expanded to cover expanding county needs. "It was inserted in the Constitution of 1868," said the Supreme Court of North Carolina, "for the purpose of providing for an emergency that could not be reasonably anticipated, and as a safegaurd against increasing taxation hastily and without due consideration. When the sum raised by the ordinary rate is not enough to pay the current expenses, the only relief is to apply to the Legislature for authority to exceed the limit. . . .And this has been the course pursued ever since the Constitution of 1868 was adopted whenever the current receipts of a county have not been sufficient to pay its current expenses.

This flexibility began to fade as the legislative practice of permitting special taxes for special purposes yielded to the Court's authority to say what a special purpose is. "If the General Assembly can authorize the levy of a tax in excess of the Constitutional limitation for the ordinary expenses of a county," said the Court, "Article V, Section 1 which was intended to protect the people against excessive taxation, would be a 'dead letter' and of no effect." Accordingly the court, on

taxpayers' protests, has pronounced against the practice of absorbing "floating indebtedness", incurred in ordinary operating expenses of the county, as a special purpose for which taxes may be levied in excess of the fifteen cent limitation; against the practice of budgeting the maintenance of jails and the care of prisoners, county commissioners' pay, expense, and board, county courthouse and grounds, and county attorney's fees, etc. as special purposes instead of general operating expenses. The General Assembly imposed a five cent limitation on the levy of taxes for "county aid and poor relief" even though the Court had held this to be a special purpose and thus forced this expenditure back into the general purpose fund. A suit now in the courts questioning the power of Mecklenburg County Commissioners to set up $200,000 for the rural police as a special purpose beyond the fifteen cent limitation can play havoc with the county budget.

This fading flexibility has left the counties under growing pressures from expanding needs, in a strait jacket between the fifteen cent limitation--fixed and static in the Constitution--and the ever tightening limitation of the special purpose doctrine crystallizing in the Court's decisions. Local biddies hatched out in first Monday sittings of county commissioners are being driven from the sheltering wing of "special purpose" to seek standing room in the "general county fund", and find no room for sanctuary there. The counties are seeking to raise the general fund property tax limitation in the Constitution from fifteen to twenty-five cents on the hundred dollars value of property as one way out of this dilemma.

In many counties commissioners with heads butting against revenue ceilings are forced to choose between cutting to the quick, and sometimes to the core, of local services they feel are worthwhile and which the people want, and beating the devil around the stump by levying general fund taxes under a special purpose guise, or by transferring funds from the special purpose ledger to the general fund, or by openly dispensing with the special purpose law in the effort to administer justice as they see it in their localities.

Reasons cited for and against the proposed amendment. Some officials seek to avoid the necessity of this increase: by insisting that "the State assume its full school obligations as it should and that counties be allowed the fines and forfeitures to be added to the general fund. . .by cutting expenses down, and out, if necessary, in view of the fact that the more services rendered by a governing body to its people the more services are demanded." Others write: "If this ceiling were raised to 25¢ within ten years there would be a clamor that it be raised still higher" . . . "We have got to stop somewhere and let's stop where we are" . . . "If you raise the constitutional limit most of the counties will go the limit and assess the whole rate" . . . "I realize that in small Counties this works a very great hardship and it is almost impossible for them to get along but the danger in this is that if you elect an extravagant board of Commissioners they are liable to abuse this privilege and make it hard on the taxpayers" . . . "This amendment is not necessary if counties will reasonably follow the law with respect to revaluation. We are in a period of inflation with real estate alone being exempted by the County Commissioners from inflation insofar as tax valuation is concerned" . . ."[1] find that all over the State, cities

and towns are making improvements and using money to purchase materials at inflated prices upon the assumption that there will be no downward adjustment of prices ever. In the past generation, we experienced a somewhat different situation in an attempt to extricate our cities and towns from an apparent bankrupt financial status. It is easy with low interest rates and a seemingly permanent inflated income to make improvements which appear almost essential. Later, when there is an abundance of material and the labor cost is more reasonable, our governmental departments are fighting with every resource to maintain a solvent position and are unable to do any public improvement. Frankly, I think that the fifteen cent limitation is a brake in inflationary tendency and should be continued."

Other officials favor lifting the rate: "The present cost of every expenditure is practically double what it was four or five years ago". . . . "Since the present limitation was written into the constitution, the Counties have been forced to take on and furnish services to the people of the Counties on a far broader scale than they were called upon to render back in those days". . . . "I know it to be a fact that the majority of the counties with lower property valuations can't possibly operate within the fifteen cent limitation. Various and sundry means are resorted to to get around this limitation but I think it would be better to face the issue squarely and permit counties to levy a rate sufficient to take care of necessary expenses." . . . "Only the richer counties can operate on the 15¢ levy" . . . ."It is practically impossible to operate the departments and functions which come under the general fund on a 15¢ tax rate unless counties have A.B.C. store profits or other sources of revenue". . .

One official spells out the following case for lifting the limitation: "There have been many new offices created in many of the counties of our state in the past few years, Tax Collector, Veteran Service officers, along with other personnel added to the various offices of the counties as time has demanded it. Board of prisoners, lights and fuel, repairs and replacements and general upkeep of jails have almost doubled since 1920. The expenses of the Old Age Assistance, Aid to Dependent Children, Health Department, Aid to Blind have gone up. In some instances, the personnel has almost doubled since 1920 when an amendment to this section of the constitution was made. The salaries of all the personnel have been raised, either by legislation, or by the governing body, and such was demanded in order to keep competent employees."

Another writes: "Having experienced the difficulty of the county operating on the 15¢ Constitutional limitation, and knowing that it is impossible to run a county as desired on this rate, I naturally hate the subterfuges that are resorted to in order to give the people what they desire. It is a question of higher valuation which the taxpayers seem to despise and do not understand, or a raise in the county purpose rate which they can understand. Taxes go up faster than the county's valuation. I have seen the county tax rate rise from 90¢ to $2.00 since the state took over the schools and there has been remarkably little complaint, but recently a raise of 10 per cent in the real estate valuation brought on quite a furore.

"The failure to adopt this amendment in my opinion would throw many counties practically into bankruptcy, unless the various subter-

fuges are upheld whereby additional taxes are placed in the general fund. I think that this amendment is essential to the proper legal functioning of county government. I think the voters should honestly realize that conditions require a larger expenditure for county purposes and that these are the foundations of our democratic system."

GENERAL TAX LIMITED TO 15¢, BUT WHAT ABOUT SPECIAL PURPOSES?

By William S. Mitchell

/Popular Government, July-August 1940, page 5.7

"The total of the State and county tax on property," says the Constitution of North Carolina, "shall not exceed fifteen cents on the one hundred dollars value of property. . . .Provided further, the State tax shall not exceed five cents on the one hundred dollars value of property." A glance at the tax rate of New Hanover County as indicated in the accompanying chart, or of any average county in this state, will show, however, that the total tax rate almost always exceeds seventy-five cents on the $100 value of property, and often goes as high as two dollars, with apparently no limitation in the offing. In view of the above constitutional provision, where do counties get the power to fix tax rates frequently at ten times fifteen cents? Does the constitution impose a limit at all? If so, to what extent, and how effective?

Three Reasons for Higher Rates

Counties are able to fix a higher rate for three reasons: (1) the State does not levy any property tax under this provision; (2) the 15¢ limit does not apply to taxes for school purposes; (3) the 15¢ limit does not apply to taxes for "special purposes."

State has left the whole of the 15¢ levy to the counties. In 1920 by shifting the sources from which it obtained revenue the State discontinued levying a property tax. Since that time it has levied no property tax at all, except for a special levy of 15¢ for schools during one biennium under authority of a proviso in the constitution excepting the public schools from the 15¢ limit.

Exception as to schools applies to counties also. From the chart below, it may be seen that the county in question has levied for various school purposes a total of 41.9¢ on the $100 of property, or over half the total county tax rate. Such a levy is permissible, however, for the exception as to the public schools applies as well to counties as to the State. As early as 1907, in the case of Collie v. Commissioners, our court excepted the public schools from the constitutional limitation to the extent of the constitutional term on the authority of Article IX, Section 3, and this preferred status was preserved in the constitutional amendment of 1920.

The constitution also allows the 15¢ limit to be exceeded "for a special purpose and with the special approval of the General Assembly, which may be done by general or special act." It is under this provision that county officials seek to find authority for the many special tax levies needed to support ever increasing demands for expanding services.

Thus it is to be noted in the chart above that the county has special levies for the health fund, the hospital fund, the community hospital fund, for dependent children's assistance, old age assistance, port development, welfare department, county home bonds, county courthouse bonds, and ferry bonds. Excluding schools, out of a levy of about 38¢, all except 11.35¢, or 26.75¢, are for special purposes; only the 11.35¢ are levied under the 15¢ limit and may be used for any general county purpose without specific allocation.

What is a special purpose for which the counties may exceed the 15 cents tax limit? In answer to this question the Supreme Court has said the following were special purposes: building and repair of roads, bridges, and ferries; building, repair and upkeep of courthouses, jails, county homes and farms and other county buildings; county aid and poor relief generally, and hospital care of indigent sick and afflicted poor; county health activities; pensions to widows of Confederate soldiers; farm agent's salary; county accountant's salary; and apparently "floating indebtedness incurred for necessary expenses."

Since 1868 the court has specifically held the following not to be special purposes: schools, "current operating expenses", and "floating indebtedness" incurred for "current operating expenses" or for "deficiencies in the general fund." The following particular expenditures have been held to be "current expenses" of a county and not "special purposes" for which the 15¢ limit might be exceeded, even though the special approval of the legislature was obtained: commissioner's pay, expense and board, "running the county courthouse", "care of courthouse grounds", county Attorney's fees, tax listing expense, expense of holding elections, expense of holding courts, and "caring for and feeding jail prisoners."

Guiding Considerations

"Current operating expenses" and "floating indebtedness." From the beginning, the court seems to have been consistent in its holdings that taxes levied for such blanket purposes as "to supplement the general fund", "meeting other current expenses", "to provide for any deficiency in the necessary county expenses", or "to meet current and necessary expenses" were not for "special purposes" within the meaning of Article V, Section 6, for which the 15¢ limit could be exceeded, even with special legislative approval. Yet when a county has first incurred a "floating indebtedness" for any purpose, whether for current expenses or otherwise, and then seeks to levy a special tax in excess of the 15¢ limit to pay same, the court apparently assumes that such floating indebtedness was incurred for special purposes when there was no proof to that effect--only an absence of proof to the contrary. "The record does not disclose," said Justice Clarkson in Commissioners v. Assell, Goetz & Moerlein, Inc.,"that the $50,000 indebtedness was for current or general county expenses. If it did the bonds to fund same would be invalid, as the levy for such purpose could not exceed, under the constitutional limitation, 15 cents . . . .The subject or subjects of the necessary expense or expenses for special county purposes are not set forth, and nothing else appearing, it is taken for granted that they were for one or more special necessary purposes and funding permissible under Constitution, Art. V, sec. 6, and the County Finance Act."

But "Is the county tax to be deemed levied for a special purpose where the debt to be funded may have been incurred for ordinary current expenses?" was the next question county officials asked. This seems to have been answered in part by the court in Glenn v. Commissioners. There the county commissioners, pursuant to the County Finance Act, sought to issue $65,000 of county bonds, "for the purpose of funding . . . .a like amount of indebtedness created by said county for its current necessary expenses" constituting a deficit in the "county operating expense fund." But the Court would not allow an unlimited tax to pay such bonds. "When a debt is originally created for a purpose properly denominated special, which is also a necessary expense of the county, its funding. . . may be declared a special purpose because of its initial character . . . ." it said, "but when the debt arises from a deficiency in the general county fund, its funding. . .would not be 'for a special purpose' in the constitutional sense."

What is a "current operating expense"? While the court has been consistent in holding taxes levied for purposes included under such descriptive phrases as "current operating expenses", "deficiency in general funds", "other current expenses", "to supplement the general fund", etc., not to be for a "special purpose" within the meaning of Article V, Section 6, it has not always seemed consistent in its view as to the specific items coming within the meaning of the term. To illustrate: In Nantahala Power & Light Company v. Clay County, the court indicated by way of dictum that the "expense of running" a courthouse and the "care of courthouse grounds" were general county expenses and not special purposes, yet it had previously held that the "upkeep of the courthouse and other county buildings" was a "special purpose." It may be, however, that while the court, in different decisions, has used similar terms, it has had in mind substantially different types of expenditures.

Expenses regularly recurring and necessary in the orderly operation of county government held to be "current expenses"-- From the first case decided under the 1868 constitution to the last case decided under the 1920 amendment, the court has often said that certain things were or were not special purposes without saying why. The recent case of Nantahala Power & Light Company v. Clay County throws some light on the guiding considerations. In speaking of item 1, including: County commissioners' pay, expense, and board, county courthouse and grounds, and county attorney's fees", the court said: ". . .all the expenses set forth therein are general. The board of county commissioners is the governing and tax levying authority. Its functions are general in every aspect, and the expenses of the board are constantly recurring. While the purchase of the courthouse may be special, the expense of running it after it is built is general. While the purchase of the courthouse grounds may be special, the care of the grounds is a general expense. Therefore, each of the purposes included in this item is a general expense and comes within the limitation of Article V, section 6, of the Constitution." The court continued: ". . .the listing of taxes, holding of elections and holding of courts are general expenses recurring regularly in the ordinary course of and as necessary steps in the orderly operation of county government. Caring for and feeding jail prisoners is a general expense continuous and ever present. Under the well established principles hereinbefore stated, these are not special purposes. Taxes therefor may be levied only within the constitutional limitation. There may be circumstances under which these items would be expenses for special purposes, but such

circumstances do not arise in the present case." In these expressions, the court apparently thinks of special purposes as distinguished from general purposes, with the line of demarcation being whether the expenditures are "recurring regularly in the ordinary course of and as necessary steps in the orderly operation of county government."

Though regularly recurring, expenses in a "special field" may be for a "special purpose." But the court then holds that the levy for the county farm agent's salary is for a special purpose: "The character of the work is in a special field. . .we see no reason why it should not be classified as a special purpose." The court also holds the levy for the county accountant's salary to be for a special purpose: "The position and duties of county accountant were created under the County Fiscal Control Act . . .The declared purpose of this act is 'to provide a uniform system for all the counties of the State by which the fiscal affairs of the county and subdivisions thereof may be regulated. . .to the end that every county in the State may balance its budget and carry out its function without incurring deficits.' The office of county accountant with prescribed duties was created with this special purpose in view. The duties of a county accountant constitute a 'governor' by which the speed of the spending motor of county government is regulated. The duties are special in character, and are in addition to the functions of other offices pertaining to the ordinary operation of county government." In these expressions the court apparently thinks of special purposes as "work in a special field", or as work with "a special purpose in view", and of functions of recent origin as compared to traditional county functions.

Many Questions Left Unanswered

This decision of the court is a distinct advance in this field in that it undertakes to formulate standards to guide officials in determining what is and what is not a "special purpose." It is breaking new ground; and the fact that the court leaves many questions unanswered does not mean that it does not answer the questions raised in the case before it. It adds to the list of things that are and are not special purposes; and its touchstones for the future are tentatives. To illustrate: "There may be circumstances," said the court, referring to items it held not to be for "a special purpose", "under which these items would be expenses for special purposes, but such circumstances do not arise in the present case."

What is the line of demarcation between the salaries of the farm agent and county accountant, and the salaries of other county officers? Are they not all alike "recurring regularly in the ordinary course of and as necessary steps in the orderly operation of county government"? Are they not all alike "work in a special field" and with "a special purpose in view"?

What if a county takes on a new function? Continues it from year to year? Expands it? Builds a building to house it? Adds to the building? If new functions, new buildings, new grounds are special purposes, but their regularly recurring maintenance falls within the 15¢ limit, may not a county by this process create a load too heavy to carry?

The third of the three proposed amendments of 1947 which were rejected would have rewritten Article V, Section 4, as follows:

REJECTED REJECTED REJECTED Sec. 4. Power to contract debts. The General Assembly shall have the power to contract debts and to pledge the faith and credit of the State and to authorize counties and municipalities to contract debts and pledge their faith and credit.

The present form of Article V, Section 4, was proposed by the General Assembly in 1935:

> Sec. 4. Limitations upon the increase of public debts. The General Assembly shall have the power to contract debts and to pledge the faith and credit of the State and to authorize counties and municipalities to contract debts and pledge their faith and credit, for the following purposes: To fund or refund a valid existing debt; to borrow in anticipation of the collection of taxes due and payable within the fiscal year to an amount not exceeding fifty per centum of such taxes; to supply a casual deficit; to suppress riots or insurrections, or to repel invasions. For any purpose other than these enumerated, the General Assembly shall have no power, during any biennium, to contract new debts on behalf of the State to an amount in excess of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding biennium, unless the subject be submitted to a vote of the people of the State; and for any purpose other than these enumerated the General Assembly shall have no power to authorize counties or municipalities to contract debts, and counties and municipalities shall not contract debts, during any fiscal year, to an amount exceeding two-thirds of the amount by which the outstanding indebtedness of the particular county or municipality shall have been reduced during the next preceding fiscal year, unless the subject be submitted to a vote of the people of the particular county or municipality. In any election held in the State or in any county or municipality under the provisions of this section, the proposed indebtedness must be approved by a majority of those who shall vote thereon. And the General Assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this Constitution, or in which the State has a direct pecuniary interest, unless the subject be submitted to a direct vote of the people of the State, and be approved by a majority of those who shall vote thereon.

[This amendment was proposed in Chapter 784, 1947 Session Laws of North Carolina. It was REJECTED by a vote of the people on November 2, 1948.]

Commentary:

See Survey of Statutory Changes, 1947, 25 N.C.L. Rev. 376, 395-96 (1947).

The basis for the current debt limitation provision was contained in Article V, Section 2, of the proposed constitution of 1933; see Gardner, "The Proposed Constitution for North Carolina, Popular Government, June 1934 /pages 101-08 of the mimeographed reprint recently issued in connection with this study/. Article V, Section 2, as proposed by the North Carolina Constitutional Commission established in 1931 is printed in Report of the Constitutional Commission, 11 N.C.L. Rev. 1, 28-29 (1932); this provision was kept intact in the proposed constitution of 1933, Chapter 383, Public Laws of North Carolina, Session 1933, page 563.

The present debt limitation provision was adopted by a vote of the people in November 1936; it was one of the five amendments proposed in 1935 which grew out of the proposed constitution of 1933. The prior part of this study, Commentaries on Proposals in 1933 and 1935 for Revision of the Constitution of North Carolina, has various references to the 1935 proposed amendment as well as citations to other works treating the proposed constitution of 1933 and the amendments proposed in 1935. Of particular interest are Brandis, "Proposed Changes in the State Constitution: No. 1-- Debt Limitations," Popular Government, January 1936 /page 44-51 of the Commentaries on Proposals cited above/, and Hoyt and Fordham, Constitutional Restrictions upon Public Debt in North Carolina, 16 N.C.L. Rev. 329 (1938).

The official explanation of the proposed amendment issued by the Secretary of State read as follows:

The principal change which would be affected /sic/ by the proposed amendment would be the elimination of the "two-thirds rule" limitation,

which presently prohibits the State, the counties and the municipalities from creating any new debt in any fiscal period (the biennium as to the State and the fiscal year as to counties and municipalities) in excess of two-thirds of the amount by which they have reduced their respective debts during the preceding fiscal period, without the approval of a vote of the people, except to fund or refund a valid existing debt, to borrow in anticipation of the collection of taxes up to fifty per cent of the amount of taxes to become due and payable during the fiscal year, to supply a "casual deficit," and to suppress riots or insurrections or to repel invasions.

The proposed amendment would also eliminate the present provision which prohibits the General Assembly from giving or lending the credit of the State in aid of any person, association or corporation, without approval by popular vote, "except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this Constitution, or in which the state has a direct pecuniary interest." This provision has been a part of the section since 1868.

Up until 1936, when the section was rewritten, there was no limitation upon the amount of debt which a county or municipality might contract. Before that, from 1924 to 1936, the State was limited to a total net debt not in excess of 7 1/2% of the assessed value of taxable property within the State. From 1868 to 1924, the State had no power to contract new debts "until the bonds of the State shall be at par," except to supply a casual deficit, or for suppressing invasions or insurrections, "unless /the General Assembly/ shall in the same bill levy a special tax to pay the interest annually."

If the proposed amendment is adopted, there will be no constitutional limit upon the amount of indebtedness which the State or any counties or municipalities of the State may legally create. Counties and municipalities, however, will still be unable to contract debt, pledge their faith, loan their credit or levy taxes for other than necessary expenses without the approval of a vote of the people--by a majority of the qualified voters, if the amendment to Article VII, Section 7, discussed above, is rejected, or by a majority of those actually voting on the proposition, if the amendment is adopted.

1947 LEGISLATIVE SUMMARY

CONSTITUTIONAL AMENDMENTS

1. Debt Limitation--Article V, Section 4

/Popular Government, May 1947, page 42./

History

The Constitution of 1868 left the General Assembly with no power to contract new debt "until the bonds of the State shall be at par," except to supply a casual deficit or suppress an invasion or insurrection, "unless it shall in the same bill levy a tax to pay the interest annually." The amendment of 1924 rewrote this provision, leaving the General Assembly no power to contract a total net indebtedness exceeding 7 1/2 per

cent of the assessed value of taxable property within the State, except for refunding of valid bonded debt, for supplying a casual deficit, or for suppressing invasions or insurrections.

Present Limitation

The amendment of 1936 rewrote this provision again, in the form in which it stands today, making it apply for the first time to counties and municipalities as well as to the State. It eliminated the 7 1/2 per cent limitation on State debt, substituting a new formula which forbids any new State debt in any biennium, and any new local unit debt in any fiscal year, in excess of two-thirds of the amount by which the State or local unit reduced its outstanding debt during the biennium or fiscal year next preceding--unless the proposed new debt is approved by the voters. It allows four exceptions to this rule, giving the General Assembly power to contract new State debt, and to authorize local units to contract new debt, without a vote of the people, for the following purposes: To fund or refund an existing debt, to borrow in anticipation of taxes up to 50 per cent of taxes due and payable within the fiscal year, to supply a casual deficit, and to suppress riots or insurrections or repel invasions.

Untouched by the 1924 and 1936 amendments, and still in force today, is the debt limitation provision of the 1868 Constitution which forbids the General Assembly to "give or lend the credit of the State in aid of any person, association or corporation, except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this Constitution, orin which the State has a direct pecuniary interest, unless the subject. . ." be approved by the voters. This provision, along with the two-thirds limitation imposed in 1936, is in the present Section 4 of Article V of the Constitution.

Proposal for 1948 General Election

The General Assembly of 1947 has asked the voters to consider the debt limitation provisions again. Chapter 784 (SB 196) provides for a vote at the 1948 General election on the question of rewriting Section 4 of Article V as follows: "Section 4. Power to contract debts. The General Assembly shall have the power to contract debts and to pledge the faith and credit of the State, and to authorize counties and municipalities to contract debts and pledge their faith and credit."

This proposed amendment would free the General Assembly from State debt limitations which have been in the Constitution in one form or another since 1868, and would free county and municipal governing boards from local debt limitations which have been in the Constitution since 1936.

In the changing versions of the debt limitation section since 1868, varying formulas of limitation on creation of new debt were enunciated--"until the bonds of the State shall be at par. . . " in 1868; the 7 1/2 per cent rule, in 1924; and the two-thirds rule, applying to local units as well as to the State, in 1936. The proposed amendment would abandon the 1936 limitation formula, and would create no new yardstick to take its place.

PROPOSED CONSTITUTIONAL AMENDMENTS

Debt Limitation

By Albert Coates

/Popular Government, October 1948, page 2./

. . .

The First Debt Limitations. For two hundred years and more--from the Crown Charter in 1663 to the Constitution of 1868, there was no Constitutional limitation on the power of the General Assembly in North Carolina to incur debt or to authorize counties and municipalities to incur debt. A program of internal improvements inaugurated during the 1830's, 40's and 50's invited state aid through subscriptions to railroad stock and endorsements of railroad obligations, supplemented by county and city aid authorized by the General Assembly. This program was wrecked by Civil War and reconstruction and the Constitutional Convention of 1868 brought in the first debt limitations as part of its efforts to deal with the combined problems of debts, deficits and depression.

It repudiated all debts incurred in aid of the rebellion. It acknowledged "the public debt regularly contracted before and since the rebellion.". . .It placed certain limitations on the power of the state and local units to incur debt in the future.

It stopped the legislative practice of incurring debt without levying a special tax to pay the annual interest, until the bonds of the state should be at par. It took away the legislative power "to give or lend the credit of the state in aid of any person, association or corporation" without a vote of the people, except for those railroads begun and not finished or those in which the state had a direct pecuniary interest. It left the legislature free to incur debt without limit or restriction: "to supply a casual deficit," or to suppress "invasion or insurrection" without a vote of the people.

Evolution of State Debt Limit. The Constitution of 1868 placed no limit on the power of the General Assembly to incur state debt "to supply a casual deficit, or for suppressing invasion or insurrection." To these two items, for which the General Assembly could incur debt without limit, constitutional amendment in 1924 added a third--"the refunding of valid bonded debt;" and a constitutional amendment in 1936 added a fourth: "to borrow in anticipation of the collection of taxes due and payable within the fiscal year to an amount not exceeding fifty percentum of such taxes;" and rephrased another: "to suppress riots or insurrections, or to repel invasions."

With State bonds following the Civil War selling at fifty cents on the dollar it is easy to understand the opening sentence of the debt limitation provision of the Constitution of 1868--that except in case of the emergencies mentioned above, "the General Assembly shall have no power to contract any new debt or pecuniary obligation in behalf of the state. . . unless it shall in the same bill levy a special tax to pay the interest annually. . .until the bonds of the state shall be at par." After the bonds

of the state began to sell at par this requirement became obsolete and gave way to a new constitutional limitation in 1924 limiting the state's power to incur indebtedness to "seven and one-half per cent of the assessed valuation of taxable property within the State as last fixed for taxation."

By 1935 the state was fast approaching this limit: its net debt was around $152,000,000, and 7 1/2 per cent of its total assessed valuation was around $161,000,000. And in 1936 the 7 1/2 per cent limit gave way to a new limit: "For any purpose other than these enumerated /above/ the General Assembly shall have no power, during any biennium, to contract new debts on behalf of the State to an amount in excess of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding biennium, unless the subject be submitted to a vote of the people of the State."

Evolution of Local Debt Limit. The Constitution of 1868 took away the power of any "County, City, Town or other municipal corporation" to "contract any debt, pledge its faith, or loan its credit" without a vote of the people, "except for the necessary expenses thereof." This turned out to be an ineffective limitation on the local abuse of public credit as the term "necessary expenses" was by degrees extended to cover a multiplicity of undertakings. By 1935 the tide of defaults ran high. On January 1, 1936, around 130 cities and towns, 45 counties, and 75 other local units were in default, and in some instances bonded debt was in the neighborhood of 50 per cent of taxable values. To the existing local debt limitation a constitutional amendment in 1936 added another: "for any purpose other than these enumerated /above/ the General Assembly shall have no power to authorize counties or municipalities to contract debts, and counties and municipalities shall not contract debts, during any fiscal year, to an amount exceeding two-thirds of the amount by which the outstanding indebtedness of the particular county or municipality shall have been reduced during the next preceding fiscal year, unless the subject be submitted to a vote of the people of the particular county or municipality."

Proposed Removal of State and Local Debt Limitations. The proposed amendment to the Constitution provides: "That Section 4 of Article V of the Constitution of North Carolina imposing a limitation upon the increase of public debt of the State, counties and municipalities, be repealed in its entirety; and that said Section 4 of Article V be rewritten to provide as follows:

"The General Assembly shall have the power to contract debts and to pledge the faith and credit of the State and to authorize counties and municipalities to contract debts and pledge their faith and credit."

This proposal removes the 1936 debt limitations on state and local units, together with the 1868 limitation on the power of the General Assembly "to give or lend the credit of the State in aid of any person, association, or corporation, except to aid in the completion of such railroads as may be unfinished at the time of the adoption of this Constitution, or in which the State has a direct pecuniary interest, unless the subject be submitted to a direct vote of the people of the State, and be approved by a majority of those who shall vote thereon."

Reasons cited for and against removal of state and local debt limitations. Opposing the removal some officials write: "I am opposed to this amendment. The sentiment of the majority of the most progressive people in my county is in favor of 'paying as you go'." . . ."It is one of the best laws on the books for the protection of the people of the various counties wherein a board might get elected, because of pressure groups pushing pet projects for particular sections of the county, and plunge the county in debt.". . ."I am opposed to removing the debt limitation so as to permit the issuance of bonds for necessary expenses without a vote of the people. My reasons are that it was the lack of this restriction that got us into such difficulties in the 1930's. My county crippled itself by an excessive debt load so that it will not be out of it in this generation. I am now Attorney for a county and it has an indebtedness of more than $800,000.00 with a population of only slightly over 20,000, and a county wide tax rate of one-eighty-two. When hard times hit again that will be a staggering tax load, yet if left to the discretion of the boards without a vote of the people, a small group would pressure them into issuing a million dollars of bonds right now for new school buildings. These are needed, but it would mean a tax rate of more than three-sixty and would be, in my opinion, ruinous." . . ."I am opposed to the amendment which would remove the limitation upon the power of the General Assembly and the governing bodies of counties and towns to incur debts for necessary expenses without a vote of the people. I consider the present limitation a desirable one, particularly in times of inflation such as confront us now."

Favoring the removal some officials write: "The adoption of this proposal is absolutely necessary in order to be prepared for a time that must come sooner or later when the Legislature will have to authorize the raising of funds now prohibited by Section 4 of Article 5. Since the State no longer owes any debts, or at least funds have been provided for the payment of all of the general fund debts, Section 4, as it now stands, means that the State can not borrow any money or contract any new debts except to refund their existing debt, or in anticipation of the collection of taxes due, or to supply a casual deficit, or for police purposes. This may result in a serious situation at any time that the State's revenue failed to come up to expectation. I know of no serious argument that can be offered against this proposal.". . ."As you recall, this debt limitation was established about the same time that the local government commission was set up as a means of helping governmental units to reduce their indebtedness. The situation is entirely different now and I feel confident that the local government commission can control the indebtedness of cities and counties without the benefit of the present limitation.". . ."I am in favor of removing the present debt limitation forbidding the state or local units to borrow in any biennium in excess of two-thirds of the amount by which the state or local unit reduced its outstanding debt during the biennium or fiscal year next preceding, for the reason that this is a crazy law. A city or county heavily in debt may sell quite a sizeable bond issue without a vote of the people, while on the other hand a county or city that owes nothing can borrow nothing without a vote of the people.". . ."This section imposes unfair restrictions upon municipalities best able financially to incur debts. Cities and towns that have the largest debt requirements can now issue the largest amount of bonds. Under it, municipalities that are completely free of debt cannot issue

any bonds without a vote of the people. Since such a vote requires from 60 to 90 days, the municipalities have no safety factor for emergencies. This section has in 13 years failed to accomplish the purpose for which it was adopted. Its objective was to place municipalities on a pay-as-you-go basis, but because under our general laws North Carolina municipalities are not permitted (in the true sense of the word) to adopt capital outlay budgets this has not been realized. The present financial crisis of municipalities, caused by restricted sources of revenue and the increased citizen demand for services of all sorts at inflationary costs, forces them to issue bonds for all capital improvement projects, there being insufficient revenue for general operations and capital improvements. Also, present municipal finance laws do not permit the accumulation of funds for any purpose, and municipalities cannot adopt capital outlay budgets extending over a period of years." . . ."The practical operation of the two-thirds limitation provision is defeating its own purposes—in many localities it is actually increasing the debt. Suppose a school building is badly needed in one end of a county. People in the other parts of the county are not going to vote for a bond issue unless they get something out of it for their particular sections. County authorities are thus put in a position where they have to cook up a comprehensive program of local improvements not so badly needed in other sections in order to carry the election and get through improvements for that end of the county where they are badly needed. Or, suppose a particular street in a heavily congested area of the city is badly in need of paving. City authorities too often have to cook up a comprehensive program of street or other improvements not so badly needed in other sectors of the city in order to put across the bond issue for the badly needed paving in a particular sector. To put it bluntly, the public credit is sometimes being used to bribe the general public to vote improvements badly needed only by a small portion of the public in a small part of the particular governmental unit. The result is that the two-thirds debt limitation provision is increasing debt in many places rather than reducing it. It is lulling people into a false sense of security from which they are likely to have a rude awakening to find the very provision they were counting on to save them has caused local unit debts to skyrocket upward instead of plummet downward."

AMENDMENTS PROPOSED IN 1949

Of the Five Submitted, All Were ADOPTED:

The first amendment proposed in 1949 rewrote Article IV, Section 10, to permit the election of more than one superior court judge in any single judicial district:

> Sec. 10. Judicial districts for Superior Courts. The General Assembly shall divide the State into a number of judicial districts which number may be increased or reduced and shall provide for the election of one or more Superior Court

judges for each district. There shall be a Superior Court in each county at least twice in each year to continue for such time in each county as may be prescribed by law.

This section had previously read:

Sec. 10. Judicial districts for Superior Courts. The State shall be divided into nine judicial districts, for each of which a judge shall be chosen; and there shall be held a Superior Court in each county at least twice in each year, to continue for such time in each county as may be prescribed by law. But the General Assembly may reduce or increase the number of districts. (Changed by acts of General Assembly to twenty-one districts.)

/This amendment was proposed in Chapter 393, 1949 Session Laws of North Carolina. It was ADOPTED by a vote of the people on November 7, 1950./

Commentary:

See Survey of Statutory Changes, 1949, 27 N.C.L. Rev. 405, 444-46 (1949).

The official explanation of the proposed amendment issued by the Secretary of State read as follows:

Section 10 of Article IV of the Constitution provides for the division of the state into a number of judicial districts which may be increased or reduced and provides for the election of one superior court judge for each district. It provides further that there shall be a superior court in each county at least twice each year.

The proposed amendment would make only one substantive change. It would permit the General Assembly to provide for the election of more than one judge in a judicial district. In some districts there is now, and has been for some time in the past a shortage of "judicial manpower," as it was termed by the Commission for the Improvement of the Administration of Justice which recommended this amendment. Under the present Constitution, only two remedies are available: (1) To increase the number of judicial districts thereby automatically increasing the number of elected resident judges; (2) To utilize special judges. The first is not always practical, quite aside from any political obstacles as when a large city would require more than a single judge could do; the second does not furnish a completely satisfactory solution inasmuch as the elected resident judge has a heavy burden of work in chambers in addition to trial work.

The sole purpose of this amendment, then, would be to authorize the General Assembly to provide for the election of more than one judge in such judicial districts as it might determine to be desirable.

JUDICIAL COUNCIL RECOMMENDS COURT AMENDMENTS

By Francis Paschal

/Popular Government, July-August 1950, page 9./

. . .

Number of Judges

The purpose of the . . .proposal is to provide a simple method for securing additional manpower when and where it is needed. To do this it was found that Art. IV, Sec. 10 of the Constitution must be rewritten. Under present arrangements, there are two ways of adding judges in North Carolina, neither of which is entirely satisfactory. The General Assembly may increase the number of special judges or it may increase the number of judicial districts, each of which has a single regular judge. The difficulties of redistricting the entire State are so great, however, that it is seldom attempted. Yet, it is obvious that there are some districts where a single judge cannot possibly do all the work that must be done. In the Fourteenth Judicial District (Mecklenburg and Gaston Counties), for example, there are regularly over 100 weeks of court a year. This is possible now because special judges are sent in for a week or two at a time to assist the regular judge riding the district. But there are serious faults in this arrangement, the principal one being that the special judges can assist the regular judge only in the actual trial work. By law, they cannot relieve the regular judge of many pressing matters which must be disposed of when court is not in session. Even if the law were otherwise, it would not be practical for the special judges to handle some of these matters as they cannot be in any one district in any regular schedule or, ordinarily, for any extended period. The problem can be fully met only by permitting the election of an additional regular judge in the most crowded districts.

The proposed amendment makes this possible. It does not make mandatory the election of an additional judge in any district. When that is desirable and when it shall be done are questions left entirely to the General Assembly. Once the decision is made, it can be put into effect with a minimum of friction. An extra judge can be added at the exact spot he is needed and the entire State will not be forced to undergo the pains of redistricting, which, at present, is the only available method for obtaining additional regular superior court judges. Surely, an amendment at once so practical and so simple will commend itself to the voters.

REPORT OF THE SPECIAL COMMISSION

FOR THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE

/Popular Government, January 1949, page 1, at 2-3./

. . .

. . .Section 10, as it presently stands, empowers the General Assembly to divide the State into Judicial Districts, authorizes the election

of "a judge" for each district, and guarantees to each county at least two terms of Superior Court each year. Section 11 provides that judges shall reside in the district for which they are elected, for the present rotation system, for the assignment by the Governor of judges to hold terms of court in certain instances, and for our present system of Special and Emergency Judges. In addition, this section defines the jurisdiction of such Special and Emergency Judges.

Additional Judicial Manpower

The new draft of Section 10 proposed by us offers a simple solution of a problem which has often given the General Assembly much difficulty--the problem of securing sufficient judicial manpower. We propose that Section 10 be so rewritten as to permit the General Assembly, whenever it thinks such action wise, to provide for the "election of one or more Superior Court judges for each district." The other features of this Section are retained. The General Assembly is left with power over judicial districts and the guarantee of two terms of Superior Court a year to each county is repeated. The entire substance of the change we propose is found in the words "one or more."

As indicated before, our object here is to make easily available additional judicial manpower when and where it is needed. Under the Constitution as it now stands there are two ways, neither entirely satisfactory, of meeting this problem. The state may be redistricted or the appointment by the Governor of Special Judges may be authorized. The difficulties of redistricting are well-known. Inevitably, it involves, for a time at least, great inconvenience and confusion. Moreover, any redistricting bill is almost certain to collide with serious political obstacles. These considerations aside, redistricting can never solve the problem when a single city requires two judges--a possibility perhaps not too remote in North Carolina. The Special Judge solution has much to recommend it in some situations. However, so long as it stands alone and is not utilized simply as a part of a broader solution, it leaves much to be desired. It does not relieve the regularly elected resident judges of any of the burdens of the chambers work in their districts. In our more heavily populated areas, this type of work is making increasingly heavy demands on the time of the judges. Yet, regardless of the number of Special Judges, the regularly elected judges can not share with them many responsibilities which are enormously burdensome.

The desirability of the change we propose becomes apparent when the situation in the 14th Judicial District is considered. In this District, there are regularly over 100 weeks of court a year. This means that there are practically always two judges holding court in this District at one time, and sometimes, three. Of course, this is possible only because of the relief afforded by the Special Judge system. But this system affords little relief to the resident judge in the discharge of his out-of-court duties although these duties are correspondingly as heavy as the court schedule. In such a situation, it seems apparent to us that the proper remedy is not to throw the whole State into turmoil by redistricting or to add Special Judges. What is needed is another regularly elected judge from the 14th District. Quite plainly, there is more than enough work for two judges in that district. Under our proposal, the General Assembly could provide for this second judge, or a third if he should ever be needed. Relief could be directed to the exact locality in which it was needed.

Two questions will arise about the workings of such a plan. First, how will it fit into the rotation system? Our thought is that in any district which has two regular judges, a judge rotating into that district will remain a year rather than six months as at present. The Courts of the district would be divided into two schedules. Six months would be spent on each schedule, and, at the expiration of every six months period, one judge would leave the district. Perhaps a simple way of stating the result would be to say that a judge would take two steps in passing through a district rather than one.

The second question is: How will the plan affect the existing Special Judge system? Our answer is that there will still be need for the Special Judges. We are justified, we believe, in thinking that the General Assembly will not authorize the election of an additional judge in a district unless there is clearly enough work for two judges to do. But there will be many districts, as now, where there is not such an amount of work but still more than a single judge can meet. So long as such a situation prevails, we must have Special Judges. Our plan only leads to a situation where this number might be reduced, but it in no way contemplates the abandonment of the system. The plan has the merit of simplicity and we support it unanimously.

The second amendment proposed in 1949 added a new sentence at the end of Article I, Section 12:

> Sec. 12. Answers to criminal charges. No person shall be put to answer any criminal charge except as hereinafter allowed, but by indictment, presentment, or impeachment. But any person, when represented by counsel, may under such regulations as the Legislature shall prescribe, waive indictment in all except capital cases. /Emphasis added./

/This amendment was proposed in Chapter 579, 1949 Session Laws of North Carolina. It was ADOPTED by a vote of the people on November 7, 1950./

Commentary:

Cf. "Report of the Special Commission for the Improvement of the Administration of Justice," Popular Government, January 1949, page 1, at 12, for a recommended amendment not proposed by the General Assembly, concerning the waiver of a jury trial in all but capital criminal cases.

The official explanation of the proposed amendment issued by the Secretary of State read as follows:

This section requires, . . .indictment by a grand jury in all felony cases. An accused person cannot waive this requirement even though he is represented by an attorney and even though, as a result thereof, he may be required in some instances to remain in jail for a considerable period of time awaiting action by the grand jury.

. . .

Under the proposed amendment, the General Assembly would prescribe regulations for waiving indictment. An indictment could not be waived in a capital case under any circumstances, and could be waived in other cases only when the accused is represented by counsel.

JUDICIAL COUNCIL RECOMMENDS COURT AMENDMENTS

By Francis Paschal

/Popular Government, July-August 1950, page 9./

. . .

Waiver of Indictment

. . ./This/ amendment represents an attempt to expedite the business of our criminal courts. It provides simply that a person may, under such regulations as the General Assembly shall prescribe and when represented by counsel, waive indictment in all except capital cases. An indictment can come only from a grand jury. But there are situations where a grand jury is not in session and cannot immediately be assembled and where the accused wishes to plead guilty and begin serving his sentence. But this is not presently possible because the accused cannot waive action by the grand jury, even though it would be to his own benefit.

The requirement of a valid indictment in felony cases is, of course, for the protection of the accused. It protects him in two ways, --first, against unreasonable prosecution and second, by informing him of the charge against him. These protections must be continued but we now know that the time-consuming proceedings of a grand jury are only one way of securing them. If an accused person is represented by counsel, he can be trusted to waive the action of the grand jury only when there is a reasonable basis for prosecution. And as for being informed of the charge against him, that will still be necessary. The only change in this respect is that the accused need not necessarily be informed by an indictment. A warrant or information could be used with the prisoner's consent.

It can readily be seen that, on occasion, this will expedite the disposition of criminal cases to the advantage of both the State and the accused. A person may now be arrested and wish immediately to plead guilty to the offense charged. Under present procedure, however, if the offense is a felony, he must wait until the grand jury acts. Sometimes this involves a delay of several months, whereas, if indictment could be waived, the matter could be quickly disposed of.

The amendment discussed must stand or fall on their individual merits but important as they are in themselves, they are more important when taken together and when considered as integral parts of a larger program for the improvement of the administration of justice in North Carolina. No public cause can be of more vital concern to all the people. For many years now, there have been incessant demands that the waste of time and money in our courts be eliminated. At long last, the people of the State have been offered a coordinated program designed to achieve this. This program represents the composite thought of many of our ablest judges, lawyers, and laymen. It has been approved not only by the Commission and the General Assembly but also by the Judicial Council, and by many Bar Associations. The constitutional amendments discussed here have been approved by the Clerks of the Superior Court in their annual convention. The amendments have been before the public for nearly two years. In all that time, no substantial cirticism of them has appeared. The need for some changes is almost universally recognized. It is also coming to be recognized that the only present hope for improvement lies in the program of the Commission. That program requires for its success the support of the people of North Carolina. That support can best be demonstrated by going to the polls on election day and voting for the constitutional amendments proposed.

REPORT OF THE SPECIAL COMMISSION

FOR THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE

/Popular Government, January 1949, page 1, at 11./

. . .

Waiver of Indictment

The first /criminal procedure recommendation/ is an amendment which would allow an accused when represented by counsel to waive indictment in all except capital felonies. At the present time, of course, indictment by a grand jury is required in all felonies. Among students of criminal procedure, there has been a vigorous dispute as to whether or not action by the grand jury serves any useful purpose. We are of the opinion that it does and we would not countenance a suggestion that it be abolished. The Grand Jury renders many valuable services. One of these services is the protection it offers from unreasonable prosecutions. But when there is another protection available which accomplishes this same purpose we believe it should be utilized--especially where it promises advantages to both the State and the accused.

Such, we believe, is the case of allowing waiver of indictment when the accused is represented by counsel. His own self interest, informed by the assistance of his counsel, is an ample guarantee that he will not sacrifice any right vital to him by waiving the formal accusation of the grand jury. By doing so, he will frequently be able to advance substantially the date of his trial. A simple illustration will make the point clear. A term of court will begin on Monday. The Grand Jury will meet that day, complete all outstanding business, and adjourn. An offense is committed on Tuesday for which the offender is promptly arrested. Although he may be willing and anxious for trail at the term of court then in

progress, and although the State might be just as ready for trial, the case must be put off to the next term when the Grand Jury will again be in session. This is true even if the accused wishes to plead guilty and begin serving his sentence. The result is that justice is delayed against the wishes of all concerned, to say nothing of the county frequently having to bear the expense of a prisoner for a period which may run to several months. We see no reason why our Constitution should prevent defendants, when well advised of their rights, from seeking to hasten the final determination of their cases. Under our proposal, a clear statement of the charges against a defendant would still be required in spite of his waiver of the more formal type of accusation. In these circumstances, we believe that the amendment we propose permitting waiver of indictment will be of substantial benefit without, at the same time, lessening the rights of any one.

The third amendment proposed in 1949 rewrote Article IV, Section 11, as follows:

> Sec. 11. Judicial districts; rotation; Special Superior Court Judges; assignment of Superior Court Judges by Chief Justice. Each Judge of the Superior Court shall reside in the district for which he is elected. The General Assembly may divide the State into a number of judicial divisions. The judges shall preside in the courts of the different districts within a division successively; but no judge shall hold all the courts in the same district oftener than once in four years. The General Assembly may provide by general laws for the selection or appointment of Special or Emergency Superior Court Judges not assigned to any judicial district, who may be designated from time to time by the Chief Justice to hold court in any district or districts within the State; and the General Assembly shall define their jurisdiction and shall provide for their reasonable compensation. The Chief Justice, when in his opinion the public interest so requires, may assign any Superior Court Judge to hold one or more terms of Superior Court in any district.

This section had previously read:

> Sec. 11. Residences of judges, rotation in judicial districts,

and special terms. Every judge of the Superior Court shall reside in the district for which he is elected. The judges shall preside in the courts of the different districts successively, but no judge shall hold the courts in the same district oftener than once in four years; but in case of the protracted illness of the judge assigned to preside in any district, or of any other unavoidable accident to him, by reason of which he shall be unable to preside, the Governor may require any judge to hold one or more specified terms in said district, in lieu of the judge assigned to hold the courts of the said district; and the General Assembly may by general laws provide for the selection of special or emergency judges to hold the Superior Courts of any county, or district, when the judge assigned thereto, by reason of sickness, disability, or other cause, is unable to attend and hold said court, and when no other judge is available to hold the same. Such special or emergency judges shall have the power and authority of regular judges of the Superior Courts, in the courts which they are so appointed to hold; and the General Assembly shall provide for their reasonable compensation.

/This amendment was proposed in Chapter 775, 1949 Session Laws of North Carolina. (Chapter 1194 of the same Session which amended the above Chapter concerned the mechanics of presenting the amendment to the people and did not affect the text of the proposal.) The amendment was ADOPTED by a vote of the people on November 7, 1950./

Commentary:

See Survey of Statutory Changes, 1949, 27 N.C.L. Rev. 405, 446-48 (1949).

The official explanation of the proposed amendment issued by the Secretary of State read as follows:

. . .

The proposed amendment to be submitted to the voters on November 7, 1950, would make two major changes:

(1) Transfer to the Chief Justice of the Supreme Court the authority now exercised by the Governor in respect to the assignment of judges; and

(2) Grant authority to the General Assembly to define the jurisdiction of the Special and Emergency Superior Court judges.

. . .

The second change which the proposed amendment would effect is that which would leave the General Assembly free to define the jurisdiction of Special and Emergency judges whereas their jurisdiction is at present limited by the Constitutional strait jacket which gives them the power and authority of regular judges only "in the courts which they are so appointed to hold." A Special or Emergency judge not only has no out-of-court

jurisdiction, but there is a twilight zone even when he is holding court, all of which has resulted at times in confusion and inconvenience. The proposed amendment would authorize the General Assembly to define the jurisdiction of such judges.

JUDICIAL COUNCIL RECOMMENDS COURT AMENDMENTS

By Francis Paschal

/Popular Government, July-August 1950, page 9./

. . .

Assignment of Judges

The . . .amendment involves a rewriting of Art. IV, Sec. 11 of the Constitution. One purpose of the amendment is to give to the General Assembly the authority to define the jurisdiction of special judges. At present, this jurisdiction is limited by the Constitution in a manner that has caused considerable doubt as to what the powers of a special judge are. This has, of course, caused much needless confusion which could easily be eliminated with the adoption of the proposed amendment. Furthermore, the usefulness of the special judges could be greatly enhanced as they could be given authority to act in many situations where their present inability to do so causes serious inconvenience to all concerned. Plainly, if the special judges are to contribute as much as they might to the successful operation of our courts, they must have a jurisdiction substantially equal to that of the regularly elected judges. This is made possible by the proposed amendment.

This amendment also provides that the power now exercised by the Governor in the assignment of judges be transferred to the Chief Justice of the Supreme Court. The report of the Commission makes clear that its purpose here is to bring to an end the situation in which no one department has either the authority or the responsibility for the efficient administration of justice in North Carolina.

REPORT OF THE SPECIAL COMMISSION

FOR THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE

/Popular Government, January 1949, page 1, at 3-5./

. . .

The redraft of Section 11 which we are presenting has three principal objects. They are: (1) The transfer to the Chief Justice of the Supreme Court of the authority now exercised by the Governor in respect to the assignment of judges. (2) A grant of authority to the General Assembly to define the jurisdiction of the Special and Emergency Superior Court judges. (3) The elimination from the Constitution of the requirement that judges rotate and making such rotation a matter of legislative discretion.

The Power to Assign Judges

Without intending any criticism of the manner in which our Governors have exercised the authority vested in them to assign judges, we believe that in our form of government such authority properly belongs to the judicial department. The problem of which judge to assign to hold a particular term of court may involve a keen appreciation of judicial skills. It seems to us reasonable to suppose that the Chief Justice of the Supreme Court is the officer in our government likely, year in and year out, to discharge these functions most successfully. By training and experience, he will be able readily to assess the needs of a particular county and to know the judge best fitted to meet those needs.

We urge that the Chief Justice be given these powers for another reason. It is our belief that the successful administration of justice, like any great labor, requires unified direction. Obviously, the Chief Justice of our Supreme Court is the public officer who can best be expected to supply this unity. But he can not do so if the administrative direction of the judicial system is in other hands. Our proposal is a beginning towards making the office of Chief Justice the decisive one in the administration of justice in this State. We contemplate that through this and other measures, the Chief Justice will be not only the presiding officer of our highest court but the chief judicial officer of the entire State to whom all others in the judicial department will be responsible. He would inform himself of the needs of the various sections of the State, of how the task of administering justice is being performed and of the proper measures to take or recommend to others for improvement. And the people of the state could hold him responsible for the performance of such duties. When difficulties arose, the people would know to whom to turn for remedial action.

Of course, we do not expect the Chief Justice to assume the administrative responsibility of the entire judicial system unless he is furnished the necessary assistance. But for the fact that any such recommendation would be premature before our amendment is accepted, we would in this report urge the establishment of the Office of Administrative Assistant to the Chief Justice. Such an office would perform for the judicial system of North Carolina a work comparable to that now done for the United States Courts by the federal Administrative Office in Washington. It would collect and publish quarterly a set of judicial statistics which would enable one to know the status of the administration of justice anywhere in the State. If such statistics should demonstrate the need for more courts in a particular locality, they could be provided. If they revealed in certain areas a marked prevalence of particular types of cases, the Chief Justice could assign to those areas the judges most skillful in the trial of such cases. In short, such an office would make possible an administration of justice based on valid information rather than conjecture. The business of our courts is much too enormous and affects the lives of our people in too many ways for us not to supply it with the most excellent administrative supervision at our command. It seems to us that the Chief Justice is the one whom we may expect to discharge this task most successfully. We therefore unanimously urge that this beginning be made in giving him the authority to do the job.

The Jurisdiction of Special Judges

The part of our redraft of Section 11 which proposes that the General Assembly be given authority to define the jurisdiction of the Special and Emergency Judges is a much less complex question. The Constitution as it now stands says that such judges "shall have the power and authority of regular judges of the Superior Courts, in the courts which they are . . . appointed to hold." Our Supreme Court has interpreted this language to mean that a Special or Emergency Judge has no out-of-court jurisdiction. His powers are wholly dependent on his commission from the Governor to hold a term of court. This results in some confusion and much inconvenience. Special Judges are unable to act in many matters which they could settle to the satisfaction of all parties concerned.

To remedy this situation, we propose simply that the General Assembly be given authority to define the jurisdiction of the Special Judges. The desirability of such an amendment can hardly be questioned and we endorse it without reservations.

Rotation of Judges

The final major change involved in our redraft of Section 11 is that part of it which would eliminate from the Constitution the provision which requires the rotation of judges and substitute in its place a provision which would allow the General Assembly to retain the rotation system as it now exists, or modify it, or, if it should see fit to do so, abolish it altogether. This proposal is the only one on which we have disagreed. A minority of seven believes that the present provision in the Constitution concerning rotation should be retained. /The proposal adopted by the General Assembly was the minority draft./

In the view of the majority of us, the proposal we offer does not entail a discussion of the merits or demerits of the principle of rotation. From all the discussions which this question has provoked, one thing stands out sharply to us. It is that the question of what to do with rotation is clearly one which demands, at a minimum, that the General Assembly be empowered to take action concerning it. If the controversy which has raged over this question for over forty years has any meaning, it is that rotation is one of our most serious problems. To us, it appears futile to expect any solution of the difficulty until there is power somewhere to act. It is equally apparent to us that the proper repository of such power is our General Assembly. It can be trusted, through its own efforts and through such assistance as it might solicit, to come to a wise decision. In this conviction join men who believe in rotation, men who oppose it, and men who seek only to modify the present system. Here, it seems, is the one bit of common ground available upon which men of every shade of belief can meet. We believe that a majority of our people will wish to take advantage of it.

/The text recommended by the majority of the Commission but rejected by the General Assembly had read:/

Sec. 11. [Caption omitted.] The General Assembly may divide the state into a number of judicial divisions and provide for the judges within a division to hold successively the courts of the different districts within that division. [Emphasis added.] The General Assembly may provide by general laws for the selection or appointment of Special or Emergency Superior Court Judges . . . . [As the remainder of the section is identical in both drafts, it is not set out.]

The fourth amendment proposed in 1949 added Article II, Section 31, to the constitution:

> Sec. 31. [Use of funds of Teachers' and State Employees' Retirement System restricted.] The General Assembly shall not use, or authorize to be used, the funds, or any part of the funds, of the Teachers' and State Employees' Retirement System except for retirement system purposes. The funds of the Teachers' and State Employees' Retirement System shall not be applied, diverted, loaned to or used by the State, any State agency, State officer, public officer or employee except for purposes of the Retirement System: Provided, that nothing in this Section shall prohibit the use of said funds for the payment of benefits, administrative expenses and refunds as authorized by the Teachers' and State Employees' Retirement Law, nor shall anything in this provision prohibit the proper investment of said funds as may be authorized by law."

[This amendment was proposed in Chapter 821, 1949 Session Laws of North Carolina. It was ADOPTED by a vote of the people on November 7, 1950.]

Commentary:

The official explanation of the proposed amendment issued by the Secretary of State read as follows:

> Since July 1, 1941, there has been in operation a Teachers' and

State Employees' Retirement System. Funds for the system are derived from contributions by teachers and employees and by matching funds supplied by the State. At present there is no constitutional prohibition against appropriation by the General Assembly of the funds of the Retirement System for purposes other than payment of retirement benefits. The proposed amendment would add a new section 31 at the end of Article II which would prohibit the use of the funds of the Retirement System except for Retirement System purposes.

The fifth amendment proposed in 1949 rewrote Article II, Section 28, to provide greater compensation for the members of the General Assembly:

> Sec. 28. Pay of members and presiding officers of the General Assembly. The members of the General Assembly for the term for which they have been elected shall receive as a compensation for their services the sum of fifteen dollars ($15.00) per day for each day of their session, for a period not exceeding ninety days; and should they remain longer in session they shall serve without compensation. The compensation of the presiding officers of the two houses shall be twenty dollars ($20.00) per day for a period not exceeding ninety days. Should an extra session of the General Assembly be called, the members and presiding officers shall receive a like rate of compensation for a period not exceeding twenty-five days."

The text of Article II, Section 28, existing as of 1949 is printed above in connection with the proposed amendment of 1945 [in brackets] which was rejected. See the discussion of the proposed amendments of 1955 for a later change.

[This amendment was proposed in Chapter 1267, 1949 Session Laws of North Carolina. It was ADOPTED by a vote of the people on November 7, 1950.]

Commentary:

See the Commentary section under the first proposed amendment of 1947 which was rejected.

The official explanation issued by the Secretary of State read in part as follows:

. . . Under the proposed amendment, a legislator would receive less compensation than at present if a regular session lasted less than 40 days, the same compensation if it lasted 40 days, and more compensation if it lasted more than 40 days. In recent years, sessions have ranged from 64 to 132 days. The maximum compensation legislators would receive under the amendment would be $1,350 for a regular session and $375 for an extra session.

At the present time, forty states and four territories pay their legislators more than members of the North Carolina General Assembly receive, and even if the proposed amendment is adopted, they will receive less than is paid in twenty states and two territories. North Carolina is, and will continue to be, the only state that makes no provision for compensation allowance to legislators for transportation.

. . .

AMENDMENTS PROPOSED IN 1951

Of the Three Submitted, All were ADOPTED:

The first amendment proposed in 1951 rewrote Article V, Section 6, to raise the limit on the property tax levy from fifteen (15¢) to twenty cents (20¢) per one hundred dollars ($100.00) valuation:

> Sec. 6. Taxes levied for counties. The total of the State and county tax on property shall not exceed twenty [Emphasis added.] cents (20¢) on the one hundred dollars ($100.00) value of property, except when the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act: Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the State for the term required by Article 9, Section 3 of the Constitution: Provided, further, the State tax shall not exceed five cents (5¢) on the one hundred dollars ($100.00) value of property."

The change noted by the underlining above was the only substantive one effected by the amendment.

[This amendment was proposed in Chapter 142, 1951 Session Laws of North Carolina. It was ADOPTED by a vote of the people on November 4, 1952.]

Commentary:

For more extensive references than given here, see the previous treatment of the similar 1947 proposed amendment which was rejected by the people.

The official explanation of the proposed amendment issued by the Secretary of State read as follows:

. . .

Under the present limit of fifteen cents on the $100 property value which counties may levy for the general fund many counties have found themselves in financial difficulties and unable to meet their general fund operating expenses. Some of the representative items which must be paid out of this fund include the salaries of all county officers and the cost of operating the offices of Sheriff, Tax Collector, County Accountant, Register of Deeds, the Coroner, etc., expenses of tax listing, holding elections, holding courts, expense of county jail, county commissioners' pay, courthouse maintenance, etc. All of these regular operating expenses of a county must be paid out of the general fund. Taxes for special purposes may be levied with the approval of the General Assembly. These special taxes for special purposes make up the greater part of county tax levies.

THE PROPOSED CONSTITUTIONAL AMENDMENTS

By Henry W. Lewis

/Popular Government, October 1952, page 7./

. . .

Property Tax Limitation

. . .

. . . This is not a proposal to authorize raising tax rates; it is a proposal to give county commissioners authority to impose a maximum rate of 20¢ rather than 15¢ for financing the general operating expenses of the county government. The provisions for exceeding the limitation for special purposes already allowed by the Constitution will not be disturbed in any way.

The Pros and Cons.--In 1948 the people of the state were asked to approve an amendment to the same section of the Constitution raising the limit from 15¢ to 25¢ and the proposed amendment was defeated. The background and the arguments are the same today as they were in 1948; the only difference lies in the fact that the new proposal would set the maximum levy at 20¢ rather than at 25¢. Those in favor of this proposal emphasize the fact that county government's services, general operating expenses, and number of employees have all seen great expansion since 1920 when the 15¢ limitation was inserted in the Constitution. Many counties find it impossible to finance general operating expenses on the yield from a 15¢ levy, and especially is this true at present price levels. This has forced many of them to adopt "various and sundry means--to get around this limitation," and a number of officials take the position that "it would be better to face the issue squarely and permit counties to levy a rate sufficient to take care of necessary expenses." One official has written, "I naturally hate the subterfuges that are resorted to in order to give the people what they desire. It is a question of higher valuation which the taxpayers seem to despise and do not understand." Those opposed to the amendment cite the fact that if the counties would adhere strictly to the revaluation statutes, property assessments would rise and make the rate increase unnecessary. They maintain that too much expenditure and expansion in a period of inflation is unsound and that the present limitation is a healthy check on the tendency. Others seem to think that a raise from 15¢ to 20¢ now would only be an opening wedge, that within a few years an effort would be made to raise the limit to a still higher figure. Before the 1948 referendum the Institute of Government

made a detailed survey of the whole subject and collected opinions from officials all over North Carolina. The results of that study can be found in Popular Government for October, 1948.

The second amendment proposed in 1951 rewrote Article II, Section 13, to read:

> Sec. 13. Vacancies. If a vacancy shall occur in the General Assembly by death, resignation or otherwise, the said vacancy shall be filled immediately by the Governor appointing the person recommended by the executive committee of the county in which the deceased or resigned member was resident, being the executive committee of the political party with which the deceased or resigned member was affiliated at the time of his election."

This section had previously read:

> Sec. 13. Vacancies. If vacancies shall occur in the General Assembly by death, resignation, or otherwise, writs of election shall be issued by the Governor under such regulations as may be prescribed by law.

[This amendment was proposed in Chapter 1003, 1951 Session Laws of North Carolina. It was ADOPTED by a vote of the people on November 4, 1952.]

Commentary:

The official explanation of the proposed amendment issued by the Secretary of State read as follows:

. . .

The proposed amendment would change the foregoing section to provide for appointment by the Governor of the person recommended by the Executive Committee of the county of residence of such deceased or resigned member, and being the Executive Committee of the political party with which the deceased or resigned member was affiliated.

. . .

This amendment is designed to provide a method for the filling of vacancies in the General Assembly which would preserve the political representation in the General Assembly prior to the vacancy, and which

would enable immediate filling of a vacancy in the General Assembly without the delay and expense implicit in holding an election.

THE PROPOSED CONSTITUTIONAL AMENDMENTS

By Henry W. Lewis

/ Popular Government, October 1952, page 7. /

. . .

Filling Vacancies in the General Assembly

. . .

. . . [W]henever a vacancy occurs the Governor must call a special election to fill the vacancy [under the then present law].

The Proposed Change.— If the proposed amendment is adopted, when a vacancy occurs in the membership of the legislature, instead of calling a special election to fill the position, the Governor would be required to appoint a person to fill the vacant seat. The Governor, however, would not be free to appoint any individual he might care to name; instead he would be required to appoint the person recommended to him by the executive committee of the deceased or resigned member's political party in the county of his residence.

How the Two Systems Work.--By keeping in mind the factual situations in which the provision of the Constitution came into play it is possible to appreciate the arguments for the proposed change. Suppose, for example, that Mr. X, a registered Democrat, wins election to the State House of Representatives in County A at the general election on November 4, 1952. Three possible events would bring the Constitutional section into action: (1) Mr. X might die or resign his office on December 4, 1952; (2) he might die or resign on January 30, 1953; or (3) he might die or resign on February 1, 1954. Bear in mind that Mr. X is elected for a two-year term. During that term the General Assembly will hold only one regular session, that beginning in January, 1953. It is possible, of course, that special sessions may be called at any time between adjournment of the regular 1953 session and the general election for new members in November, 1954. In the third factual situation mentioned above, where Mr. X's seat becomes vacant long after the regular 1953 session, the situation under the present Constituional provision is not likely to present any serious practical difficulties. But the first two situations suggested might cause considerable confusion and possibly some hardship. Under the present system, upon official notification of the vacancy, the Governor must call a special election in County A to fill Mr. X's seat. When the election date has been set, executive committees of both political parties in the county must make nominations and certify them to the county board of elections. The elections board must have ballots printed, set the normal election machinery in process, and conduct a special election. The candidates, in either case mentioned, would have little or no time to present their views to the public; the public would have little information about issues. The mechanics of the election process would be crowded into a very short period of time, because the need for filling the vacancy as soon as possible would be obvious. If the vacancy did not occur until after the 1953 legislature were already in session, it is clear that under the best of

circumstances the county would be without representation for several weeks. Under the proposed amendment no special election would be held. Instead, in the illustration used here, the Democratic party executive committee in County A would meet and agree on a person to replace Mr. X and recommend his name to the Governor. The Governor would be required to name that person to fill the vacancy. In this illustration a vacancy in the House of Representatives has been used to demonstrate the procedure. If Mr. X had been elected to the State Senate from a district composed of only County A, the situation both under the present provision and under the proposed amendment would be exactly as they have been described in the case of vacancies in the House. On the other hand, if Mr. X had been elected to represent a senatorial district composed of more than one county, while the system under the proposed amendment would be the same as that described for filling a House vacancy, under the existing section the system would be quite different. If the district had no rotation agreement, the nominations for the special election would be made by the parties' district executive committees. If the district were operating under a rotation agreement, the nominations would be made by the party executive committee or committees of the county or counties entitled to make the nomination that year under the plan of rotation. In both cases, under the present constitutional provision, an election throughout the district would be required.

Opponents of the proposed amendment raise questions about the advisability of inserting a provision in the Constitution making officers of voluntary agencies (political party executive committees) necessary agents in the important process of selecting members of the General Assembly. They see dangers in any provision removing from the people their right to vote directly for the individuals who are to represent them in the General Assembly, and especially when that provision places the appointive power in the executive branch of the government.

The third of the three amendments proposed in 1951 rewrote the first sentence [in brackets] of Article IV, Section 25:

> Sec. 25. Vacancies. [All vacancies occurring in the offices provided for by this Article of the Constitution shall be filled by the appointment of the Governor, unless otherwise provided for, and the appointees shall hold their places until the next regular election for members of the General Assembly that is held more than 30 days after such vacancy occurs, when elections shall be held to fill such offices.] If any person, elected or appointed to any of said offices, shall neglect and fail to qualify, such offices shall be appointed to, held and filled as provided in case of vacancies occurring therein. All incumbents of said offices shall hold until their successors are qualified.

The first sentence of the section had previously read:

> Sec. 25. Vacancies. All vacancies occurring in the offices provided for by this article of the Constitution shall be filled by the appointment of the Governor, unless otherwise provided for, and the appointees shall hold their places until the next regular election for members of the General Assembly, when elections shall be held to fill such offices. . . .

/ This amendment was proposed in Chapter 1082, 1951 Session Laws of North Carolina. It was ADOPTED by a vote of the people on November 4, 1952. /

Commentary:

See the discussion of amendments proposed in 1953 for a further change of this section.

The official explanation of the proposed amendment issued by the Secretary of State read as follows:

. . .

Under the present provision a vacancy may occur so close to the general election it would be impossible or impractical to nominate candidates, print ballots and provide for the details of filling such vacancy by an election. In such a case there would be no way to fill such a vacancy. The failure to include the "thirty day" provision was doubtless an oversight in drafting this provision, which this amendment is intended to correct.

THE PROPOSED CONSTITUTIONAL AMENDMENTS

By Henry W. Lewis

/ Popular Government, October 1952, page 7./

. . .

[Filling Vacancies in Certain State Offices]

. . .

The Law Today.--The proposition to appear on the November ballot . . . gives no indication of which state officers are to be covered by the uniform provision for filling vacancies, nor does it indicate what that uniform method is. The offices covered are those of Supreme Court justice, superior court judge, and superior court solicitor. . . .

. . .

How the Two Systems Work.--The difference in the methods for filling vacancies in the Supreme Court, the superior courts, and the solicitorial office can be illustrated by an actual case. On October 14, 1950, Mr. Justice Seawell of the Supreme Court died, thereby creating a vacancy on that Court. Under the existing constitutional provision it was clear that the power to appoint a successor lay in the Governor's hands, but there was some question about how long the Governor's appointee would be entitled to fill the position. The regular election for members of the General Assembly was coming up on November 7, less than a month after Mr. Justice Seawell's death. Would the Governor's appointee serve only until a person elected on November 7, 1950, could qualify, or would he serve until a person elected on November 4, 1952, could qualify? In an advisory opinion the Supreme Court stated that under the language of the Constitution, it was clear that the Governor's appointee would serve only "until the next regular election for members of the General Assembly [i.e., November 7, 1950]" and that on that day an election would have to be held to fill the office. On October 19, 1950, the Governor appointed Murray G. James to fill the Seawell vacancy. The primary date having long passed, the party executive committees proceeded to make nominations of persons to run in the general election on November 7, 1950. At that election the Democratic nominee, Jeff D. Johnson, Jr., was elected to fill the vacancy and to serve out Mr. Justice Seawell's unexpired term. Upon Mr. Justice Johnson's qualifications, Mr. Justice James stepped down from the Court.

If the proposed amendment is passed, the situation outlined in the case of the Seawell vacancy would have been as follows: Since the vacancy occurred less than thirty days before the next general election, the Governor's appointee would have served until the 1952 general election instead of merely to the 1950 general election. The proposed amendment would not, however, make any change in those cases where the vacancy occurs more than thirty days before the regular election. The arguments for the proposal are much the same as those used for the proposed amendment in the procedure for filling vacancies in the General Assembly. The Johnson-James case illustrates the possibility of having one man serve in one of these judicial offices for only an extremely brief period, often hardly enough time to warrant the appointment. To obtain nominations and have ballots printed and distributed in time for the imminent general election, all within thirty days' time, places a considerable burden on the election machinery of the state. Campaigns in which candidates can present their views and develop issues are almost impossible. The proposed change would eliminate this problem in the unusual cases in which the vacancy occurs less than thirty days before the election; it would not come into effect if the vacancy occurred more than thirty days before the election.

Citing another section of the Constitution to the effect that "elections should be often held," opponents of the proposed amendment take the position that the mere practical and mechanical difficulties of the election process possible under the present provision are preferable to any proposal depriving the people of the right to vote as soon as possible to fill judicial office vacancies.

AMENDMENTS PROPOSED IN 1953

Of the Five Submitted, Four Were ADOPTED:

The first proposed amendment of 1953 added a new sentence at the end of Article IV, Section 6:

> Sec. 6. Supreme Court. The Supreme Court shall consist of a Chief Justice and four Associate Justices. The General Assembly may increase the number of Associate Justices to not more than six, when the work of the Court so requires. The Court shall have power to sit in divisions, when in its judgment this is necessary for the proper dispatch of business, and to make rules for the distribution of business between the divisions and for the hearing of cases by the full Court. No decision of any division shall become the judgment of the Court unless concurred in by a majority of all the justices; and no case involving a construction of the Constitution of the State or of the United States shall be decided except by the Court in banc. All sessions of the Court shall be held in the city of Raleigh. This amendment made to the Constitution of North Carolina shall not have the effect to vacate any office or term of office now existing under the Constitution of the State, and filled or held by virtue of any election or appointment under the said Constitution, and the laws of the State made in pursuance thereof. The General Assembly is vested with authority to provide for the retirement of members of the Supreme Court and for the recall of such retired members to serve on said Court in lieu of any active member thereof who is, for any cause, temporarily incapacitated. [Emphasis added.]

[This amendment was proposed in Chapter 611, 1953 Session Laws of North Carolina. It was ADOPTED by a vote of the people on November 2, 1954.]

Commentary:

Article IV, Section 6, existing as of 1953 stemmed from a change suggested by the proposed constitution of 1933; rewriting of this section was one of the five amendments proposed in 1935 which were adopted by the people in 1936. Cf. Gardner, "The Proposed Constitution for North Carolina," Popular Government, June 1934, page 1 at [42-46 of the mimeographed reprint recently issued in connection with this study]; Commentaries on Proposals in 1933 and 1935 for Revision of the Constitution, passim.

The official explanation of the proposed amendment issued by the Secretary of State read as follows:

. . .

By provisions of the General Statutes 7-50 and 7-51, the Chief Justice and Associate Justices of the Supreme Court are allowed to retire after serving prescribed lengths of time and under certain other conditions. Upon retirement, such Justices become Emergency Superior Court Judges and are subject to being assigned to hold various terms of the Superior Court. There is now no provision in the Constitution by which such retired Supreme Court Justices may be authorized by Act of the Legislature to serve as Emergency Justices of the Supreme Court, to take the place of any Justice who is temporarily incapacitated. The object of this amendment is to permit the Legislature to make such a provision.

The second proposed amendment of 1953 added three new sentences at the end of Article III, Section 6:

> Sec. 6. Reprieves, commutations, and pardons. The Governor shall have power to grant reprieves, commutations, and pardons, after conviction, for all offenses, (except in cases of impeachment), upon such conditions as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. He shall biennially

communicate to the General Assembly each case of reprieve, commutation or pardon granted, stating the name of each convict, the crime for which he was convicted, the sentence and its date, the date of commutation, pardon, or reprieve, and the reasons therefor. The terms reprieves, commutations and pardons shall not include paroles. The General Assembly is authorized and empowered to create a Board of Paroles, provide for the appointment of the members thereof, and enact suitable laws defining the duties and authority of such board to grant, revoke and terminate paroles. The Governor's power of paroles shall continue until July 1, 1955, at which time said power shall cease and shall be vested in such Board of Paroles as may be created by the General Assembly. [Emphasis added.]

[This amendment was proposed in Chapter 621, 1953 Session Laws of North Carolina. It was ADOPTED by a vote of the people on November 2, 1954.]

Commentary:

See Survey of Statutory Changes, 1953, 31 N. C.L. Rev. 375, 432-33 (1953).

The official explanation of the proposed amendment issued by the Secretary of State read as follows:

. . .

Under the decision of the Supreme Court of North Carolina in State v. Lewis, 226 N.C. 249, it seems clear that the parole of persons convicted of a crime is vested exclusively in the Governor under this section of the Constitution. The present Board of Paroles functions in an advisory capacity to the Governor in parole matters.

. . .

The effect of this amendment would be to permit the General Assembly to create a Board of Paroles and confer upon that Board the authority to grant, revoke, and terminate paroles which is now exercised by the Governor.

The third proposed amendment of 1953 rewrote the first sentence [in brackets] of Article VI, Section 2:

> Sec.2. Qualifications of voters. [Any person who shall have resided in the State of North Carolina for one year, and in the precinct, ward or other election district in which such person offers to vote for thirty days next preceding an election, and possessing the other qualifications set out in this Article, shall be entitled to vote at any election held in this State; provided, that removal from one precinct, ward or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward or other election district from which such person has removed until thirty days after such removal] No person who has been convicted, or who has confessed his guilt in open court upon indictment, of any crime the punishment of which now is, or may hereafter be, imprisonment in the State's Prison, shall be permitted to vote unless the said person shall be first restored to citizenship in the manner prescribed by law.

The first sentence of the section had previously read:

> Sec. 2. Qualifications of voters. He shall reside in the State of North Carolina for one year, and in the precinct, ward, or other election district in which he offers to vote four months next preceding the election: Provided, that removal from one precinct, ward, or other election district to another in the same county shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which he has removed until four months after such removal. . . .

[This amendment was proposed in Chapter 972, 1953 Session Laws of North Carolina. It was ADOPTED by a vote of the people on November 2, 1954.]

Commentary:

The official explanation of the proposed amendment issued by the Secretary of State read as follows:

. . .

The effect of this amendment would be to allow a person to vote if he has resided for thirty days next preceding an election in the precinct, ward, or other election district in which he offers to vote. Under the present language of this section a person, to be eligible to vote in an election, must have been a resident of the precinct, ward or other election district for four months next preceding the election in which he desires to vote.

The fourth of the four proposed amendments of 1953 which were adopted added provisos to two sections:

Article III, Section 13, was amended by the addition of a new sentence at the end of the section:

> Sec. 13. Duties of other executive officers. The respective duties of the Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney-General, Commissioner of Agriculture, Commissioner of Labor and Commissioner of Insurance shall be prescribed by law. If the office of any of said officers shall be vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another until the disability be removed or his successor be elected and qualified. Every such vacancy shall be filled by election at the first general election that occurs more than thirty days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in the first section of this article. Provided, that when the unexpired term of any of the offices named in this Section in which such vacancy has occurred expires on the first day of January succeeding the next General Election, the Governor shall appoint to fill said vacancy for the unexpired term of

said office. [Emphasis added.]

Article IV, Section 25, was amended by the addition of a proviso clause to the end of the first sentence:

> Sec. 25. Vacancies. All vacancies occuring in the offices provided for by this Article of the Constitution shall be filled by the appointment of the Governor, unless otherwise provided for, and the appointees shall hold their places until the next regular election for members of the General Assembly that is held more than 30 days after such vacancy occurs, when elections shall be held to fill such offices [:] Provided, that when the unexpired term of any of the offices named in this Article of the Constitution in which such vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next General Election, the Governor shall appoint to fill said vacancy for the unexpired term of said office. [Emphasis added.] If any person, elected or appointed to any of said offices, shall neglect and fail to qualify, such offices shall be appointed to, held and filled as provided in case of vacancies occurring therein. All incumbents of said offices shall hold until their successors are qualified.

[This amendment was proposed in Chapter 1033, 1953 Session Laws of North Carolina. It was ADOPTED by a vote of the people on November 2, 1954.]

Commentary:

See the treatment above of the third proposed amendment of 1951 for discussion of a previous amendment to the first sentence of Article IV, Section 25.

The official explanation of the proposed amendment issued by the Secretary of State read as follows:

. . .

Under the present constitutional provisions when a vacancy occurs in an office in the executive department or judicial department of the government of the State, the Governor's appointee to fill this vacancy can hold office under the appointment only until the next regular election. At this next regular election any person seeking to be elected to the office in question must run for election for the period of time between the election and the end of the term to which the person vacating the office was originally elected and must also run for a regular term to commence at the end of that short term.

. . .

The effect of this amendment would be to permit the Governor, in filling a vacancy occurring in the executive department or judicial department, to appoint a person to serve the balance of the unexpired term if that term is to expire on the first day of January after the next General Election.

The Proposed Amendment Which Was REJECTED:

The proposed amendment of 1953 which was rejected by the people would have rewritten Article II, Section 4, to read as follows:

REJECTED Sec. 4. Regulations in relation to districting the State
REJECTED for Senators. The senate districts shall be so altered by the
REJECTED General Assembly, at the first session after the return of every
REJECTED enumeration by order of Congress, that each senate district shall
REJECTED contain, as near as may be, an equal number of inhabitants, ex-
REJECTED cluding aliens and Indians not taxed, and shall remain unaltered
REJECTED until the return of another enumeration, and shall at all times
REJECTED consist of contiguous territory; and where any senatorial district
REJECTED consists of one county, such county shall only be entitled to one
REJECTED senator in the General Assembly of North Carolina; provided that
REJECTED in no event shall any one county be entitled to more than one
REJECTED senator at any one time.

Article II, Section 4, reads:

> Sec. 4. Regulations in relation to districting the State for Senators. The Senate district shall be so altered by the General Assembly, at the first session after the return of every enumeration by order of Congress, that each Senate district shall contain, as near as may be, an equal number of inhabitants, excluding aliens and Indians not taxed, and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory; and no county shall be divided in the formation of a Senate district, unless such county shall be equitably entitled to two or more Senators.

/This amendment was proposed in Chapter 803, 1953 Session Laws of North Carolina. It was REJECTED by a vote of the people on November 2, 1954./

Commentary:

The official explanation of the proposed amendment issued by the Secretary of State read as follows:

. . .

Under the language of this section as now written it would be permissible for one county to have two or more senators in the General Assembly.

. . .

The effect of this amendment would be to prevent any one county from having more than one senator in the General Assembly of North Carolina at any given time whether the county alone composes a senatorial district or whether it is combined with other counties in such a district.

AMENDMENTS PROPOSED IN 1955

Of the Three Submitted, All Were ADOPTED:

The first amendment proposed in 1955 rewrote Article II, Section 28, to increase the possible total compensation of members and presiding officers of the General Assembly:

> Sec. 28. Pay of members and presiding officers of the General Assembly. The members of the General Assembly for the term for which they have been elected shall receive as a compensation for their services the sum of fifteen dollars ($15.00) per day for each day of their Session for a period not exceeding 120 days. [Emphasis added.] The compensation of the Presiding Officers of the two houses shall be twenty dollars ($20.00) per day for a period not exceeding 120 days. [Emphasis added.] Should an Extra session of the General Assembly be called, the members and Presiding Officers shall receive a like rate of compensation for a period not exceeding 25 days. The members and Presiding Officers shall also receive, while engaged in legislative duties, such subsistence and travel allowance as shall be established by law; provided, such allowances shall not exceed those established for members of State boards and commissions generally." [Emphasis added.]

The 120 day limit had previously been 90 days. The last sentence of the proposed amendment (underlined above) was new; otherwise there was no substantial change effected by the amendment except for the deletion of a redundant phrase. The exact text of the section existing as of 1955 is set out above in connection with the amendments proposed in 1949.

[This amendment was proposed in Chapter 1169, 1955 Session Laws of

North Carolina. It was ADOPTED by a vote of the people on September 8, 1956. See the Commentary section under the amendment proposed in 1956 Extra Session for a discussion of the date of this election. /

Commentary:

For discussion of a proposed amendment that did not pass in the General Assembly, see McMahon, "County Home Rule and Local Legislation," Popular Government, March 1957, page 3.

See previous treatment of amendments proposed to this section in 1945, 1947, and 1949.

The official explanation of the proposed amendment issued by the Secretary of State read as follows:

The effect of this amendment would be to make possible two changes in compensation to be received by members of the General Assembly. One change effected by the amendment would be that members might be compensated for a maximum of 120 days instead of 90.

The other change which would be brought about by this amendment is that a constitutionally acceptable law could be enacted providing for the payment of subsistence and travel allowance to members of the General Assembly while engaged in legislative duties. The allowances could not exceed those established for members of State boards and commissions generally. These amounts are set by each Legislature in its Appropriations Bill. As an example, the Appropriations Bill of the 1955 General Assembly provided for State board and commission members, for subsistence, actual amount expended not in excess of $8.00 per day, and for transportation by personally owned automobile, seven cents per mile, and for bus, rail, or other public conveyance, the actual fare.

[LEGISLATION:] STATE GOVERNMENT

By Robert E. Giles

/Popular Government, Legislative Issue (June 1955), page 3, at 7./

. . .

Legislators' Pay. The state constitution sets the pay for members of the General Assembly at $15 per day, with $20 for the presiding officer of each house, but such pay is allowable for not more than 90 days during a regular session. There is no provision under the present law for reimbursing members of the General Aseembly for travel, hotel, and meal expenses

while attending a legislative session. The growing length of legislative sessions, together with the greatly increased cost of living during the past decade, have combined to impose an increasing, personal financial burden on the individual legislator. Although the compensation allowed North Carolina legislators has probably never been sufficient, or intended, to cover all out-of-pocket expenses incurred in attending the average session, the disparity has markedly grown during the past few sessions. The members of the 1955 General Assembly received compensation for only 90 days of a session which lasted almost five months. Against this background it was only natural that considerable sentiment should develop to increase the amount of compensation or expense reimbursement which legislators could obtain.

The second amendment proposed in 1955 added a sentence to the end of Article X, Section 6:

> Sec. 6. Property of married women secured to them. The real and personal property of any female in this State acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, and shall not be liable for any debts, obligations or engagements of her husband, and may be devised, and bequeathed, and, with the written assent of her husband, conveyed by her as if she were unmarried. Every married woman may exercise powers of attorney conferred upon her by her husband, including the power to execute and acknowledge deeds to property owned by her or by herself and her husband or by her husband. [Emphasis added.]

[This amendment was proposed in Chapter 1245, 1955 Session Laws of North Carolina. It was ADOPTED by a vote of the people on September 8, 1956.]

Commentary:

See Note, 31 N.C.L.Rev. 228 (1953); Survey of Statutory Changes, 1955, 33 N.C.L. Rev. 513, 545 (1955).

The official explanation of the proposed amendment issued by the Secretary of State read as follows:

The effect of this amendment would be that where the husband is required to be away from home or where he might be unavailable to execute a deed for various reasons, he could give to his wife a written instrument authorizing her to sign and acknowledge deeds for him. He would be able to authorize his wife to sign his name not only to deeds of land belonging to her, but also to land owned by them jointly or by the husband alone. Stated simply, the amendment would allow in this State a common business practice that is now allowed in every state of the Union with one exception.

[LEGISLATION:] DOMESTIC RELATIONS

By Roddy Ligon

/ Popular Government, Legislative Issue (June 1955), page 30, at 31-33. /

. . .

Married Women

Article X, Section 6 of the North Carolina Constitution provides that a married woman may convey her separate estate provided she has the written assent of her husband. No mention is made of the form which the husband's written assent must take. Chapter 1245 (SB 468) calls for the submission to the qualified voters of the state at the next general election a proposed amendment to the above cited section of the Constitution which would make it clear that the married woman could execute powers of attorney conferred upon her by her husband, including the power to execute and acknowledge deeds to property owned by her, by her and her husband, or by her husband. All powers of attorney heretofore executed by a husband to his wife and the execution of all documents thereunder are validated.

The third amendment proposed in 1955 rewrote Article II, Section 2, to provide that the General Assembly meet biennially in February instead of January and to add the clause underscored below:

> Sec. 2. Time of assembling. The Senate and House of Representatives shall meet biennially on the first Wednesday after the first Monday in February / Emphasis added. / next after their election, unless a different day shall be provided by law / Emphasis added. /; and when assembled, shall be denominated the General Assembly. Neither house shall

proceed upon public business unless a majority of all the members are actually present.

The amendment effected no changes other than the ones indicated above.

/ This amendment was proposed in Chapter 1253, 1955 Session Laws of North Carolina. It was ADOPTED by a vote of the people on September 8, 1956. /

Commentary:

The official explanation of the proposed amendment issued by the Secretary of State read as follows:

The effect of this amendment would be that the General Assembly could convene approximately one month later than usual. The 1955 General Assembly passed a law which extendéd the final date for the filing of income tax returns from March 15 to April 15. As a result of that change, the General Assembly cannot have until a month later an estimate of anticipated revenues to guide it in planning appropriations. By convening a month later, the Assembly can be in session long enough to consider this vital matter after the estimates are in, without having to continue in session for an unnecessary length of time. This amendment would also authorize the General Assembly to fix the most appropriate day for its meeting.

AMENDMENT PROPOSED IN 1956 EXTRA SESSION

The Proposed Amendment was ADOPTED:

The amendment proposed in the 1956 Extra Session added a new section to the Constitution, Article IX, Section 12:

> Sec. 12. Education expense grants and local option. Notwithstanding any other provision of this Constitution, the General Assembly may provide for payment of education expense grants from any State or local public funds for the private education of any child for whom no public school is available or for the private education of a child who is assigned against the wishes of his parents, or the person having control of such child, to a public school attended by a child of another race. A grant shall be available only for education in a nonsectarian school, and in the case of a child assigned to a public school attended by a child of another race, a grant shall, in addition, be available only when it is not reasonable and practicable to reassign such child to a public school not attended by a child of another race.
>
> Notwithstanding any other provision of this Constitution, the General Assembly may provide for a uniform system of local option whereby any local option unit, as defined by the General Assembly, may choose by a majority vote of the qualified voters in the unit who vote on the question to suspend or to authorize the suspension of the operation of one or more or all of the public schools in that unit.
>
> No action taken pursuant to the authority of this Section shall in any manner affect the obligation of the State or any political subdivision or agency thereof with respect to any indebtedness heretofore or hereafter created.

/This amendment was proposed in Chapter 1 of the Session Laws of North Carolina, Extra Session 1956. It was ADOPTED by a vote of the people on

Commentary:

See Green, "General Assembly Adopts Pearsall Plan in Special Session," Popular Government, September 1956, page 4, for a general treatment of the special session; only a small portion of the article dealing specifically with the constitutional amendment is reprinted below. See also, Wettach, North Carolina School Legislation--1956, 35 N.C.L. Rev. 1 (1956).

One of the features of the "Pearsall Plan" was to submit the above proposed amendment to the voters at a different time from the regular November general election. Mindful of the trap (or deus ex machina?) encountered by the proposed constitution of 1933, the authors of Chapter 2 of the Session Laws of North Carolina, Extra Session 1956, provided that at the "general election" to be held September 8, 1956, the three amendments proposed in 1955 would be submitted to the people as well as the 1956 school amendment. For an account of the fate of the proposed constitution of 1933, see Edgall, The Advisory Opinion in North Carolina, 27 N.C.L. Rev. 297, 319-24 (1949). Interestingly enough, despite the clear answer of the 1934 advisory opinions, 207 N. C. 880, that a "general election" in the constitutional sense of Article XIII, Sections 1 and 2, was merely a statewide election, the Governor in 1956 prior to the opening of the special session felt constrained to ask for advisory opinions from the Justices of the Supreme Court, 244 N. C. 748.

The official explanation of the proposed amendment issued by the Secretary of State read as follows:

The effect of this amendment would be to permit the General Assembly to enact legislation which would: (1) Permit a child to receive an expense grant for attendance at a private nonsectarian school if the child were assigned, against the wishes of his parent or guardian, to a public school attended by a child of another race, and if the child could not be assigned to a different public school in which the races were not mixed; and (2) Permit a local community to suspend operation of any one or all of the public schools in that community by a vote of those voting on the question of suspension. Under the proposed amendment, the present constitutional re-

quirement of a general and uniform system of public schools is retained, and the operation of schools may be suspended only by vote of the people; and if the operation of a school is suspended, the pupils affected thereby would be entitled to an education expense grant to pay expenses in attending a private, nonsectarian school.

At Present:

Article IX of the Constitution of North Carolina now directs the General Assembly to provide for a general and uniform system of public schools, and further directs that each county of the State is to be divided into a convenient number of school districts in which one or more public schools must be maintained.

GENERAL ASSEMBLY ADOPTS PEARSALL PLAN IN SPECIAL SESSION

By Philip P. Green, Jr.

/Popular Government, September 1956, page 4./

. . .

It was a package plan, to be submitted to the voters as such. The acts providing for education expense grants and for local option closing of schools, amending the compulsory school attendance law, and providing funds for education expense grants were all made effective only as of the date that the proposed constitutional amendment becomes effective. If that amendment fails in the September election, none of these acts will go into effect.

Constitutional Amendment

Chapter 1 of the Session Laws of 1956 (H.B. 1) submits to the voters at the next general election a proposed amendment of Article IX of the North Carolina Constitution. This amendment would add provisions authorizing the General Assembly to do two things. First, it could provide for payment of educational expense grants from state or local funds for private education in a non-sectarian school of any child (a) for whom no public school is available or (b) who is assigned against the wishes of his parent or guardian to a school attended by a child of another race, where it is not reasonable or practicable to reassign such child to a school not attended by a child of another race. Secondly, it could provide for a uniform system of local option under which a local option unit may elect, by majority vote, to suspend or authorize the suspension of one, more, or all of the public schools of the unit. However, such action could not affect the obligation of the state or its political subdivisions or agencies with respect to any indebtedness.

AMENDMENT PROPOSED IN 1957

This Amendment Has Not Yet Been Submitted to the People:

The amendment proposed in 1957 rewrote Article IV, Section 27, dealing with the jurisdiction of justices of the peace to permit the General Assembly to extend the jurisdictional limit on the amount in controversy from $50.00 to $200.00 in "other civil actions" than those "founded on contract" (J.P.'s "Tort jurisdiction"):

PENDING Sec. 27. Jurisdiction of justices of the peace. The
PENDING several justices of the peace shall have jurisdiction, under
PENDING such regulations as the General Assembly shall prescribe, of
PENDING civil actions, founded on contract, wherein the sum demanded
PENDING shall not exceed two hundred dollars ($200.00), and wherein
PENDING the title to real estate shall not be in controversy; and of
PENDING all criminal matters arising within their counties where the
PENDING punishment cannot exceed a fine of fifty dollars ($50.00) or
PENDING imprisonment for thirty days. And the General Assembly may
PENDING give to the justices of the peace jurisdiction of other civil
PENDING actions wherein the value of the property in controversy does
PENDING not exceed two hundred dollars ($200.00). [Emphasis added.]
PENDING When an issue of fact shall be joined before a justice, on de-
PENDING mand of either party thereto he shall cause a jury of six men
PENDING to be summoned, who shall try the same. The party against whom
PENDING the judgment shall be rendered in any civil action may appeal
PENDING to the Superior Court from the same. In all cases of a criminal
PENDING nature the party against whom the judgment is given may
PENDING appeal to the Superior Court, where the matter shall be heard
PENDING anew. In all cases brought before a justice, he shall make a
PENDING record of the proceedings, and file the same with the Clerk of
PENDING the Superior Court for his county.

The change of the jurisdictional limit on amount underscored above was the only substantial one effected by the proposed amendment.

/This amendment was proposed in Chapter 903, 1957 Session Laws of North Carolina. It will be submitted to the people at the next general election following its ratification by the General Assembly, May 30, 1957. This election presumably will be the regular November 1958 general election./

APPENDIX A

TABLE OF NORTH CAROLINA LAW REVIEW COMMENTARIES

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