

2-1-1967

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Recommended Citation

Joseph S. Ferrell, *Local Legislation in the North Carolina General Assembly*, 45 N.C. L. REV. 340 (1967).Available at: <http://scholarship.law.unc.edu/nclr/vol45/iss2/2>

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LOCAL LEGISLATION IN THE NORTH CAROLINA GENERAL ASSEMBLY

JOSEPH S. FERRELL*

Legislation minutely regulating the affairs of individual local governments is a long-established tradition in North Carolina. From one-half to three-quarters of the laws enacted by a typical General Assembly apply to only one or a few counties, cities or other political subdivisions and public corporations of the state. From time to time reform of the local legislation tradition has been attempted, but all efforts have met with little success due largely to the lack of support for them from either members of the General Assembly or local government officials.

The first of these movements to restrict local legislation culminated in 1917 in the adoption of art. II, § 29, and amendment of art. VIII, §§ 1, 4 of the North Carolina Constitution. The major portion of this article will be devoted to an investigation of the legislative and judicial history of these sections of the constitution. Since 1917 sporadic attempts to deal with the problem have met with mixed success. The 1947 General Assembly created a study commission "to make a thorough and complete study of the whole problem of Public-Local and Private Legislation."¹ The commission's report, supported by exhaustive studies prepared by the Institute of Government under the direction of Professor Albert Coates,² recommended constitutional home rule for both counties and cities, revision of existing general laws, and a substantial tightening of the constitutional prohibitions against local acts. Its proposals were reported unfavorably by committee in the 1949 General Assembly.³ In 1955 bills were introduced proposing legislative home rule.⁴ They were reported favorably by committee and promptly defeated by voice vote in the House of Representatives.

The proposals of the North Carolina Bar Association relating

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¹ N.C. Sess. Laws 1947, Res. 24.

² See Popular Government, Feb.-Mar. 1949 (entire issue).

³ N.C. SEN. J. 1949, 479; N.C. HOUSE J. 1949, 842.

⁴ See McMahon, *County Home Rule and Local Legislation*, Popular Government Mar. 1957, p. 3.

to reform of the lower court system were more fortunate.⁵ In 1962 the people ratified extensive amendments to the constitution designed primarily to create a uniform system of lower courts and to prohibit local modification of the more essential features of the court system.⁶ At the present time, with the single exception of the court system, there appears to be no significant discontent in North Carolina with ultimate legislative control over all phases of each local decision-making process. There are constitutional restraints on the power of the General Assembly to enact local legislation, but they have been nibbled away by judicial interpretation and largely ignored by the General Assembly. Occasionally the courts have held a local act unconstitutional, but the general attitude of the North Carolina Supreme Court and legislative practice have fostered the widespread belief that art. II, § 29, of the constitution is moribund.

How accurate this assessment of art. II, § 29, may have been

⁵ In 1959 a committee of the bar association, commonly known as the Bell Committee from its chairman and most fervid advocate, J. Spencer Bell, now United States Circuit Judge for the Fourth Circuit, proposed major reforms of the state court system. Its proposals were defeated in 1959, but compromised and enacted in 1961. N.C. Sess. Laws 1961, c. 313.

⁶ Public discontent with the archaic, confusing and inequitable lower court system was the major impetus for the reforms. Thus, a uniform system of lower courts is the most significant feature of N.C. CONST. art. IV as revised by the 1961 amendments. To insure continued uniformity, the General Assembly is forbidden to enact local modifications on the following aspects of the court system: the jurisdiction and powers of Clerks of Superior Court (art. IV, § 10(2)); the jurisdiction and powers of District Courts and Magistrates (art. IV, § 10(3)); provisions for waiver of jurisdictional limits in civil cases (art. IV, § 10(4)); provisions for appeals within the General Court of Justice (art. IV, § 10(5)); provisions for removal of District Judges, Magistrates, and Clerks of Superior Court (art. IV, §§ 15(2), (3)); provisions for prosecution of criminal actions in the District Court, (art. IV, § 16(2)); and the schedule of court costs and fees for all courts (art. IV, § 18).

There is some question as to when these restrictions take effect. In order to allow for transition to the new system, art. IV, § 21, provides that the article is not to become fully effective until January 1, 1971, or upon the establishment of the District Court system in a particular county by the General Assembly, whichever occurs first. As a part of the 1961 revisions those sections of art. II, § 29, prohibiting local acts "relating to the establishment of courts inferior to the Superior Court," and "relating to the appointment of Justices of the Peace" were repealed. Thus, until article IV becomes effective for a given county, it can be argued that there is no constitutional restraint on the power of the General Assembly to enact local modifications of its lower court system. On the other hand, the language of art. IV, § 21, seems to assume that those local arrangements existing as of 1961 will continue unchanged until replaced by the new District Court system.

before 1961 is debatable, but legislators, local government officials, and the legal profession do not seem to have yet grasped the full significance of a line of cases which began with *McIntyre v. Clarkson* in 1961.⁷ These cases have invalidated several local acts on grounds that they were based on an unreasonable classification. The concept of classification of localities for the purpose of legislation general in form but local in fact has long been in use throughout the nation,⁸ but before 1961 it was unfamiliar in North Carolina.⁹ As the court has developed this new line of decisions, it has rendered obsolete most if its former precedents on the subject and raised by implication a question as to whether constitutional restraints on local legislation serve any useful function at all.¹⁰ To evaluate this broader question, attention to several subsidiary questions is necessary: (1) what policy did the 1917 local legislation amendments intend to embody from the point of view of their sponsors and advocates; (2) how has that policy been perceived through time by the North Carolina Supreme Court; (3) what impact is the concept of classification now being developed by the court likely to have on current legislative practices with respect to local legislation; and (4) are there feasible alternatives to constitutional regulation of the process of local legislation? Limitations of time and space prevented consideration of the involvement of local legislation in questions of due process and equal protection.¹¹

I. LEGISLATIVE HISTORY OF ARTICLE II, SEC. 29.

Limitations on the authority of the legislature to enact laws pertaining to only one or a few individuals, corporations, counties, cities, or other political subdivisions of the state, are found in the

⁷ 254 N.C. 510, 119 S.E.2d 888 (1961).

⁸ See generally, authorities cited note 235 *infra*.

⁹ There are a few examples. N.C. GEN. STAT. §§ 153-251 to -266 (1964) relates to planning and zoning areas for "counties having two or more cities each having population in excess of thirty-five thousand (35,000) people. . . ." The act was drawn to include only Guilford County which alone meets such a description. N.C. GEN. STAT. § 130-128(18) (1964) applies only to "sanitary districts which adjoin and are contiguous to any incorporated town and are located within three miles or less of the boundaries of two other cities or towns." It was drawn to apply to the Green Meadows Sanitary District in Rockingham County. See also note 91 *infra*.

¹⁰ See generally, authorities cited note 307 *infra*.

¹¹ See, e.g., *State v. Carolina Racing Ass'n, Inc.*, 241 N.C. 80, 84 S.E.2d 390 (1954); *State v. Felton*, 239 N.C. 575, 80 S.E.2d 625 (1954); *Brumley v. Baxter*, 225 N.C. 691, 36 S.E.2d 281 (1945); *Edgerton v. Hood*, 205 N.C. 816, 172 S.E. 481 (1934).

constitutions of all but a handful of the states.¹² They range from such broad provisions as a prohibition of special acts on any subject which can be covered by a general law¹³ to long lists of narrow categories within which "private, local or special" acts are not permitted.¹⁴ These constitutional restraints on legislative power were the result of a national movement for legislative reform which began in the 1840's in reaction to widespread corruption of the legislative process in many of the states.¹⁵ North Carolina was the first state to prohibit certain kinds of acts for the benefit or relief of individuals, and, with the exception of Alaska and Hawaii, the last to restrict local government acts. Those portions of the North Carolina Constitution denying legislative authority over local government laws were first effective for the General Assembly of 1917. This section will discuss the circumstances of their adoption.

The first indication in North Carolina that procedures for enacting local government laws called for reform is a statute of 1796.¹⁶ In that year the General Assembly provided that prior notice had to be given of intention to present a petition¹⁷ to the General Assembly for the enactment of local laws

¹² See generally, ANTIEAU, *MUNICIPAL CORPORATION LAW* § 2.12 (1966); CHAMBERLAIN, *LEGISLATIVE PROCESSES: NATIONAL AND STATE* 237-42 (1936); GRAVES, *AMERICAN STATE GOVERNMENT* 283-89 (4th ed. 1953); LUCE, *LEGISLATIVE ASSEMBLIES* 368-69 (1924); LUCE, *LEGISLATIVE PROBLEMS* 538-48 (1935); REINSCH, *AMERICAN LEGISLATURES AND LEGISLATIVE METHODS* 304-07 (1907); WALKER, *THE LEGISLATIVE PROCESS* 341 (1948).

¹³ *E.g.*, ARK. CONST. art. V, § 25; KAN. CONST. art. II, § 17.

¹⁴ *E.g.*, ALA. CONST. art. IV, § 104.

¹⁵ LUCE, *LEGISLATIVE PROBLEMS* 532-48 (1935).

¹⁶ N.C. Laws 1796, ch. 466, § 2; MARTIN, *PUBLIC ACTS OF THE GENERAL ASSEMBLY OF N.C.* 97 (1804). *Cf.* The instructions of the Board of Trade to Governor William Tryon of New York in 1771, LUCE, *LEGISLATIVE PROBLEMS* 540 (1935).

¹⁷ Introduction of bills by petition from private citizens for redress of grievances was common in colonial times and during the first half of the nineteenth century. The petition would be referred to a standing committee whose task was to determine whether a bill granting the prayer of the petition would be laid before the full assembly. The petition procedure was largely responsible for the development of the committee system in American legislative bodies. HARLOW, *THE HISTORY OF LEGISLATIVE METHODS IN THE PERIOD BEFORE 1825* 1-23 (1917).

In North Carolina the committee primarily responsible for sifting petitions was the Committee on Propositions and Grievances. HARLOW, *THE HISTORY OF LEGISLATIVE METHODS IN THE PERIOD BEFORE 1825* 17 (1917). This committee still survives but now considers alcoholic beverage control bills almost exclusively. The petition procedure is preserved by implication in N.C. HOUSE REP. R. 5 (1965) which designates "the receiving of petitions, memorials and papers addressed to the General Assembly or to the House" as the first general. Petitions to the General Assembly have been exceedingly rare in modern times.

for the establishing a place or places of separate elections or general musters, or for removal of the seat of the courts of justice in any of the several counties in the state, or for the erecting of a toll-road, ferry or bridge, or of any other public matter wherein the county at large is concerned. . . .¹⁸

This statute was evidently intended to insure that residents of a county potentially affected by a petition for legislative action would be familiar with the proposal in order that they might make their views known to their representatives. There is no evidence that it was regularly observed.¹⁹

Even had the act of 1796 been enforced, it in no way impaired the authority of the General Assembly to legislate individually for each county and city. Restriction of this legislative power was not even seriously considered in the constitutional convention of 1835, which abrogated legislative power over certain types of "private" matters.

The 1835 convention was called by popular vote to settle the legislative representation controversy which had divided the state into two factions, East and West, for half a century.²⁰ One of the topics assigned to the convention by the convention act²¹ was whether some limits should be placed on the enactment of "private" laws. The debates of the convention show clearly that the delegates were not about to alter the prevailing practice of legislating individually for local governments—these were "public" matters, not "private" ones.²² Rather, the variety of "private" law condemned

¹⁸ See note 16 *supra*.

¹⁹ A random examination of the journals of the Senate and House of Commons for the sessions of the 1820's and 30's disclosed no indication that affidavits of publication were produced for bills coming within the categories of the act of 1796.

²⁰ See generally, London, *The Representation Controversy in Colonial North Carolina*, 11 N.C. HIST. REV. 255 (1934); LEFLER & NEWSOME, *NORTH CAROLINA: THE HISTORY OF A SOUTHERN STATE* 333-41 (1954). Before the Revolution the factions pitted the Albemarle section against the later-settled southern seaboard and piedmont sections.

²¹ N.C. Laws 1834-35, ch. 1, 2. The Constitution of 1776 contained no amendment procedures. The convention of 1835 was called by vote of the people under an act of the General Assembly which specified the manner of organizing the convention and the subjects it was authorized to consider. To insure that the convention would not consider matters other than those thought necessary by the General Assembly, the delegates were required to take an oath that they would not exceed the limits of authority prescribed by the act.

²² It is difficult to be precise in distinguishing between "public" and "private" acts of a legislative assembly. The terms have never been satis-

factorily defined, and may connote different things in different contexts. For example, in seventeenth century usage in both England and the colonies the term "private act" could have meant nothing more than that the bill was introduced by petition rather than on motion of a member of the legislature. In modern English parliamentary usage a "private" bill may mean either one introduced without party backing, or a bill presenting a money claim against the crown. CAMPION, *AN INTRODUCTION TO THE PROCEDURE OF THE HOUSE OF COMMONS* 115-16, 199-201 (2d ed. 1947); HARLOW, *THE HISTORY OF LEGISLATIVE METHODS IN THE PERIOD BEFORE 1825* 64-67 (1917). Later, as introductions came to be accomplished almost exclusively by bill, the term "private" was used to describe the types of legislation most often resulting from petitions in the past. The rules of the two houses of the North Carolina General Assembly at first recognized private bills by implication in requiring prior notice of intention to call up a public bill on second reading, N.C. SEN. R. 13, 1842-43 N.C. LEG. DOC. 57, or providing that no public bill should pass two readings on the same day without the concurrence of 2/3 of the members, N.C. HOUSE OF COMMONS R. 50, 1842-43 N.C. LEG. DOC. 66. From 1858 to 1868 each house required separate calendars to be kept for public and private bills, and that Saturday should be reserved for consideration of private bills. See, *e.g.*, N.C. SEN. R. 27, 1858-59 N.C. LEG. DOC. 4, p. 5; N.C. HOUSE OF COMMONS R. 53, 1860-61 N.C. LEG. DOC. 4, p. 14. All references to private bills disappeared from the Senate rules after 1868 but the House continued to specify that separate calendars be kept for public and private bills. N.C. HOUSE R. 49, 1876-77 N.C. LEG. DOC. 11, p. 18. The current rules of the House of Representatives draw a distinction between public and local bills in three instances: the number of copies required for introduction of a bill, N.C. HOUSE R. 34 (1965); the requirement that separate public and local calendars be kept, N.C. HOUSE R. 41 (1965); and an exception for local bills from the rule that a measure once defeated may not be revived except by 2/3 vote, N.C. HOUSE R. 43(b) (1965). The current Senate rules distinguish between public and local bills in the order of business, N.C. SEN. R. 6 (1965); the number of required copies for introduction, N.C. SEN. R. 38 (1965); a deadline date for introduction of local bills, N.C. SEN. R. 40 (1965); and the requirement of separate public and local calendars, N.C. SEN. R. 47 (1965). The rules have never offered any definition of "private" or "local" bills, and the decisions necessary for legislative procedures distinguishing between local or private bills and public bills have been made by the principal clerks and presiding officers according to unwritten, traditional criteria.

Quite distinct from the conception of private or local bills for internal procedural purposes was the classification of acts for the purpose of publishing the laws enacted by the General Assembly. From the beginning this has been done under the direction of the Secretary of State. As early as N.C. Laws 1785, ch. 27, the Secretary of State was directed to have the acts of the General Assembly published in two separately numbered series, public and private. Beginning with N.C. Pub. Laws 1854, ch. 36, public and private laws were directed to be published in two volumes, primarily as an economy measure since only the public laws were to be distributed free of charge to sheriffs, registers of deeds, county solicitors and Justices of the Peace. The Secretary of State's classification of a law as "public" would have been made primarily on the basis of which laws would be essential for the administration of state and county government. Much of the confusion over what constitutes a "public" act stems from the failure to recognize that the classification of acts as "public" and "local, special or private" began and continues to be made on traditional criteria which vary with who makes the decision and for what purpose.

was that for the benefit or relief of named individuals, with heavy emphasis on ending legislative divorce.²³ A proposal that "the General Assembly shall have no power to pass any private law to effect any object, that could be effected by a general law on the same subject" was rejected,²⁴ as were proposals to require all laws relating to the administration of justice to be uniform throughout the state and to levy a tax of ten dollars on the introduction of each private bill.²⁵ Nowhere in the debates is there a suggestion that local government legislation should be curtailed, although some delegates expressed the hope that biennial sessions would reduce the number of such acts and serve to remedy the confusion resulting from frequent repeals and amendments in annual sessions.²⁶

The convention proposed three amendments relating to "private" acts. Two of these prohibited acts granting divorce and alimony, changing names, legitimating bastards, and restoring convicted felons to citizenship.²⁷ The General Assembly was to have power to enact general laws on these subjects. The third amendment required 30 days' notice of intention to introduce any private bill, under regulations to be promulgated by the General Assembly.²⁸

²³ PROCEEDINGS & DEBATES OF THE CONVENTION OF NORTH CAROLINA [1835] 377-82 (1836).

William Gaston, a Justice of the North Carolina Supreme Court and a delegate to the convention, was particularly eloquent in his remonstrance against legislative divorce. Opponents of divorce may well have believed that the courts would be more conservative than the legislature in this regard. The opinions of the Supreme Court and a comparison of the number of legislative and judicial divorces prior to 1865 tend to bear out that expectation. See *Scroggins v. Scroggins*, 14 N.C. 535, 542 (1832); JOHNSON, ANTE-BELLUM NORTH CAROLINA 217-23 (1937); Note, 41 N.C.L. REV. 604 (1963).

²⁴ PROCEEDINGS & DEBATES OF THE CONVENTION OF NORTH CAROLINA [1835] 379 (1836).

²⁵ *Id.* at 163, 377.

²⁶ *Id.* at 172, 176, 194. One of the delegates suggested that a primary cause of so much private legislation was that annual sessions of the General Assembly did not have enough public business to keep the members occupied. Another thought that members introduced private bills largely in an effort to show their constituents that they were earning their keep in Raleigh.

²⁷ N.C. CONST., amend. art. I, § 4, ¶¶ 3-5 (1835). These sections of the old Constitution were incorporated into the Constitution of 1868 with only minor changes in punctuation as N.C. CONST. art. II, §§ 10-12. Sections 10 and 11, which specify the prohibited categories of private legislation, have never been construed by the North Carolina Supreme Court.

²⁸ This amendment, now N.C. CONST. art. II, § 12, provides:

The General Assembly shall not pass any private law, unless it shall be made to appear that thirty days' notice of application to pass such a law shall have been given, under such direction and in such manner as shall be provided by law.

The 1835 amendments had only a momentary impact on the gross volume of legislation,²⁹ even though they did relieve the General Assembly of some of the more vexatious categories of private acts. By 1868 the largest single category of legislation, in terms of number and length, included corporate charters—municipal, private business, and public institution. The constitutional convention of 1868 took up this problem, but again there was no desire to limit legislative power over local government. The framers of the new constitution were content to admonish the legislature not to create private business corporations by special act, but municipal corporations and public corporations under the control of the state were specifically excepted.³⁰

It was not until 1911 that local government acts were identified as a significant impediment to the effectiveness of the legislative process, due largely to the precipitous rise in the number of them after 1879.³¹ During the forty-seven years between 1788 and 1835,

It is not clear whether this section of the Constitution was intended to apply to local government bills. The debates of the convention are of little help on the question. The section was not included in the original proposal brought to the convention floor by the committee charged with drafting the private bill amendments, but was offered as a floor amendment for the committee's recommendation that a tax be imposed on the introduction of private bills. The few remarks on the proposed section referred only to legislative divorce, and expressed a preference for a notice requirement as a deterrent to the introduction of these bills rather than a tax, which was attacked as an infringement on the right of petition for redress of grievances. See PROCEEDINGS & DEBATES OF THE CONVENTION OF NORTH CAROLINA [1835] 377-78 (1936).

The 1835 General Assembly enacted a procedure for giving the required notice, now codified as N.C. GEN. STAT. § 120-21 (1964), but the statute was not invoked in the Supreme Court until 1908. All the cases construing the statute have involved local government acts, and the court has consistently refused to interpret or apply it. The Court holds that it will not look behind the ratification of the act to determine if the prescribed notice has been given or not. Thus art. II, § 12, is non-justiciable, and the General Assembly ignores it in practice. *Matthews v. Town of Blowing Rock*, 207 N.C. 450, 177 S.E. 429 (1934); *Gallimore v. Town of Thomasville*, 191 N.C. 648, 132 S.E. 657 (1926); *Cox v. Comm'rs*, 146 N.C. 584, 60 S.E. 516 (1908).

²⁹ See Appendix I.

³⁰ N.C. CONST. art. VIII, § 1 (1868) provided that the General Assembly should not create corporations by special act "except for municipal purposes and in cases where, in the judgment of the Legislature, the object of the corporation cannot be attained under general laws." Between 1868 and 1917 the General Assembly chartered over 2,600 private business corporations under the savings clause. Coates, *The Problem of Private, Local and Special Legislation and City and County Home Rule in North Carolina*, Popular Government, Feb.-Mar. 1949, p. 6.

³¹ The statistics which follow are summarized graphically in the Ap-

annual sessions of the General Assembly enacted an average of 120 bills each session, or a total of 240 for a biennium. Biennial sessions from 1836 to 1860 enacted an average of 194 bills each. After the Civil War the number of biennial enactments increased sharply. From 1870 to 1885 the average was 425. This more than doubled to 902 per session in the next eighteen years, and by 1915 the General Assembly was enacting an average of 1,404 bills in each regular session, not to mention the 702 acts of special sessions in 1908 and 1913. By 1901 the General Assembly was enacting over three times as many bills as it had in 1875. But this increase in legislative business was not accompanied by longer sessions. The constitution had been amended in 1875 to provide that members of the General Assembly should receive their per diem compensation for sixty days only, and if they sat longer they were to serve without pay.³² As a result, no session after 1875 lasted much beyond the sixty-day limit on compensation. As more and more legislation was enacted in the same short sixty-day period, the high proportion of local government laws, corporate charters and private acts became a significant impediment to the efficiency of the legislative process. The time was ripe for another move toward legislative reform.

Since the Governor of North Carolina has no veto, a bill becomes law upon enactment of the same bill in identical form by both houses of the General Assembly and ratification by the presiding officer of each house. Under this arrangement, unique to North Carolina, it is quite possible for the entire legislative process from beginning to end to be performed by the members of the General Assembly and their staff alone without the intervention of any other officer of State. Until 1903 the General Assembly did just that. At the end of the 1901 session the enrollment process, *i.e.*, the preparation of the final, official copy of each act for ratification,

pendices and were derived from Coates, *The Problem of Private, Local and Special Legislation and City and County Home Rule in North Carolina*, Popular Government, Feb.-Mar. 1949, p. 6.

³² N.C. CONST. art. II, § 28 (1876). According to Chief Justice Walter Clark, before the adoption of this section as much as a week of each session was consumed in determining how much the members were to be paid. *Kendall v. Stafford*, 178 N.C. 461, 468, 101 S.E. 15, 18 (1919) (concurring opinion). Art. II, § 28, has been frequently amended to increase the allowable per diem, to lengthen the pay period, and to permit subsistence and travel allowances. At present, members receive fifteen dollars per day for a maximum of 120 calendar days, plus subsistence and travel allowances. N.C. CONST. art. II, § 28; N.C. GEN. STAT. §§ 120-3, (1964), 138-5 (Supp. 1965).

was entrusted to the Secretary of State.³³ J. Bryan Grimes, then Secretary of State, immediately reformed the enrolling office, among other things substituting typewriting for manuscript.³⁴

Grimes soon became deeply concerned over the effect of the large number of enactments near the end of the session on the accuracy of the ratified acts.³⁵ By legislative custom, action on most major bills was delayed until late in the session. The closing days of the General Assembly were characterized by marathon sessions, mountainous calendars, and an atmosphere of frenzy. If the session lasted much beyond the sixty-day compensation period, many legislators simply went home, leaving a rump session to complete the work.³⁶

In his 1907 Report to the General Assembly, Secretary of State Grimes noted that more than half of the acts of the 1905 session were sent to the enrolling office in the last ten days.³⁷ The 1907 rush was even worse. Out of 1,535 acts in 1907, 1,245 were ratified in the last twenty days, 901 in the last ten days, and 237 on the last day of the session. "In such rush work it is almost impossible to have it properly done," Grimes complained.³⁸

Probably at Grimes' suggestion, Governor W. W. Kitchin made legislative reform a major part of his legislative program for 1911.³⁹ In his message to the 1911 General Assembly, Governor

³³ N.C. Pub. Laws 1901, ch. 631. This act was revised and reenacted by N.C. Pub. Laws 1903, ch. 5 which is now codified as amended in N.C. GEN. STAT. § 120-22 (1964).

³⁴ 1903 N.C. SEC'Y OF STATE BIENNIAL REP. 9-10.

³⁵ In each of his biennial reports from 1903 to 1915, the Secretary of State called attention to the intolerable situation in the enrolling office during the latter weeks of the session.

³⁶ Raleigh News & Observer, Mar. 10, 1915, p. 4, col. 2.

³⁷ 1907 N.C. SEC'Y OF STATE BIENNIAL REP. 6-7.

³⁸ 1909 N.C. SEC'Y OF STATE BIENNIAL REP. 8.

³⁹ Unless the handling of local bills was substantially different in 1911 than it is today, it is difficult to believe that the governor could have been too serious in his suggestion that a reduction in the local bill load would leave the General Assembly with more time to devote to public matters. The legislative practice of postponing action on major bills until late in the session stems from other roots, among which are the period of time required for legislators to become acquainted with each other, the necessity in many instances of awaiting passage of the revenue and appropriations acts, and the advantage of allowing public opinion to crystallize around controversial issues. That these considerations are not new revelations by latter-day political scientists is strikingly brought out by the debates of the 1835 Convention over whether to adopt biennial rather than annual sessions. See PROCEEDINGS & DEBATES OF THE CONVENTION OF NORTH CAROLINA [1835] 165-78, 184-201 *passim* (1836).

On the other hand, Grimes and his staff were immediately affected by

Kitchin had this to say about the ninety per cent of the legislative product which could be characterized as "special legislation:"

Special legislation is the greatest curse of government and our General Assemblies under the present system have fallen a prey to this evil. Happily with us the evils of special legislation have usually been negative rather than positive. Special and local interests have usually been content with taking the time and attention of the General Assembly to the great hindrance and often to the exclusion of public questions and general legislation. But even the negative feature of this evil has become a menace to the public welfare. The enormous number of local and special acts, often of the most trivial nature, which are thrust upon the General Assembly is appalling, taking the time and consuming the energy of the members and greatly depriving the important public matters during the short sixty days sessions, of that study, deliberation, and action, which the people's interest demands.

The General Assembly is for general legislation. Special legislation is contrary to the genius of our institutions and local relief should be administered by the localities interested under general laws. It is useless to expect the General Assembly to remedy the evil. It cannot adopt any permanent rule. . . . To lengthen the sessions or make them less frequent would only increase the evil. The only remedy lies in amendments to the constitution. By proper constitutional limitations the General Assembly can be relieved of a great burden and be left with ample power to pass general laws which will provide for special and local relief, more justly and speedily through the courts, the different departments of State, the boards of aldermen of the cities and towns, the county commissioners, and by vote of the people in the localities affected.⁴⁰

the large volume of relatively minor legislation, particularly late in the session, and Grimes had been calling the matter to public attention at least since 1905. His appearance before the 1913 Constitutional Commission to give information on constitutional limitations on local legislation in other states indicates he was sufficiently interested in the subject to have undertaken an extensive research job. After the final adoption of the amendments intended to curtail local legislation, Grimes had nothing more to say about the subject in his biennial reports, even though the amendments had little noticeable effect either on the total volume of legislation or the adjournment rush.

The absence of documents in the official papers of Grimes and Kitchin deposited in the State Archives tending to corroborate the contention that Grimes was the prime mover of the Kitchin proposals is not surprising. Both men occupied offices on the same floor of the Capitol and would probably have discussed such matters in conversation rather than writing.

⁴⁰ 1911 BIENNIAL MESSAGE OF GOV. W. W. KITCHIN TO THE GENERAL ASSEMBLY 22-25.

To implement his policy that "the General Assembly is for general legislation," the Governor advocated amending the constitution to prohibit legislation on twenty-two subjects, including: charters of cities and private business corporations; county, town, township and school district affairs; change of place names; establishment and maintenance of streets and roads; ferries and bridges, or ferry or bridge corporations; vacation of roads, plats and streets; cemeteries and public grounds not owned by the State; local courts; salaries of jurors and county commissioners; erection of new townships and school districts; creation of offices or prescription of the compensation, powers or duties of officers of counties, towns and school districts; regulation of salaries and powers of city aldermen, justices of the peace and constables; regulating the public schools, the building of school houses, or the raising of revenue for these purposes; remission of fines, forfeitures or taxes legally paid into the public treasury; exempting property from taxation; regulating labor and trade; granting exclusive rights, privileges or immunities to any individual or corporation; extending the time for tax assessment and collection; validating informal wills and deeds; and validating unauthorized or invalid acts of public officers.⁴¹

Secretary of State Grimes heartily endorsed the Governor's proposals for legislative reform. "It is probably safe to say," he wrote, "that two-thirds of the laws enacted by the General Assembly relate to matters which the attention of the legislature should not be distracted with." The adjournment rush he characterized as "an injustice to the State and a menace to safe legislation."⁴²

Nothing came of Governor Kitchin's proposals in the General Assembly of 1911. But added urgency was given to the reform movement by the new system devised in 1909 for publication of the acts of the General Assembly.⁴³ For the first time the acts were published in three categories: public, public-local, and private.⁴⁴ "All laws of State-wide application" were included in the public laws; "laws of a public nature but of only local application" were classified as public-local; and "all charters and laws in relation to cities and towns" were published as the private laws.⁴⁵ This system

⁴¹ *Id.* at 23-24.

⁴² 1911 N.C. SEC'Y OF STATE BIENNIAL REP. 20.

⁴³ N.C. Pub. Laws 1909, ch. 473.

⁴⁴ See note 22, *supra*.

⁴⁵ N.C. Pub. Laws 1911 at 387 (explanatory note by the Secretary of State).

brought out clearly what had been the fact for at least 120 years: well over three quarters of the acts of each session of the General Assembly was devoted to public-local and private matters.⁴⁶ In 1911 nearly ninety per cent of the acts were in these categories.

Governor Kitchin renewed his requests for reform to the General Assembly of 1913.⁴⁷ A bill was introduced at that session which embodied all of the categories suggested by Kitchin in 1911 except those relating to city charters and local courts, and including two not mentioned by the Governor: bills relating to wildlife protection, and regulating the cleaning or use of streams.⁴⁸ However, the large number of bills proposing other major revisions to the constitution soon made it clear that a regular session of the General Assembly could not cope with the pressures for constitutional amendment unless it was to neglect all else.⁴⁹ Rather than call a convention, the 1913 General Assembly created a study commission charged with the duty of considering and making recommendations concerning those bills introduced at that session proposing constitutional amendments.⁵⁰ The Governor was requested to call a special session upon completion of the commission's work for the express purpose of considering constitutional amendments.

Most of the deliberations of the Constitutional Commission of 1913 were concerned with revision of the state's tax structure, but

⁴⁶ In 1911, 270 public laws and resolutions occupied 347 pages of print, 733 public-local laws took 1,263 pages, and 472 private laws 1,086 pages. By contrast, the 1965 session laws, consisting of 1,302 laws and resolutions, were printed in 1,707 pages.

⁴⁷ 1913 BIENNIAL MESSAGE OF GOVERNOR W. W. KITCHIN TO THE GENERAL ASSEMBLY 11. The Governor concluded; "Your body is able and patriotic, but you are overwhelmed with local and private bills which should not consume your energy and time. Many reforms are needed through the Legislature, and these will be quickened if you will provide for genuine legislative reform, so that the General Assembly can give its time and ability to general public legislation." *Ibid.* (At that time the out-going governor delivered the executive message to the legislature rather than the newly elected governor because the legislature usually convened within less than a week of inauguration day.)

⁴⁸ S.B. 183, N.C. General Assembly 1913.

⁴⁹ Taken together, the proposals were enough to occupy a convention. Among them were bills to give the governor the veto power, make major revisions in the constitutional limitations on state and local taxation, and to institute the initiative and referendum. Copies of the bills are included in the typescript copy of the Minutes of the 1913 Commission on Constitutional Amendments deposited in the State Archives.

⁵⁰ N.C. Pub. Laws 1913, Res. 17. The Commission was composed of eight members appointed by the Speaker of the House, five appointed by the President of the Senate, and five appointed by the Governor.

legislative reform received a good measure of attention.⁵¹ The 1913 bill for restriction of legislative power over the subjects proposed by Governor Kitchin in 1911 was referred to a committee of the Commission, along with proposals to increase legislative pay, establish initiative and referendum, and give the governor the veto power.⁵² The bill emerged from committee shorn of most of its significance. As proposed to the Constitutional Commission of 1913, a new art. II, § 29, would have prohibited "local, private or special legislation:"

changing the names of cities, towns, and townships;
authorizing the laying out, opening, altering, maintaining, or discontinuing highways, streets or alleys;
relating to ferries or bridges;
relating to game or hunting;
relating to non-navigable streams;
relating to cemeteries;
relating to the pay of jurors;
erecting new townships, or changing township lines, or the lines of school districts;
remitting fines, penalties, and forfeitures, or refunding moneys legally paid into the public treasury;
exempting property from taxation;
regulating labor, trade, mining or manufacturing;
extending the time for the assessment or collection of taxes or otherwise relieving any collector of taxes from the due performance of his official duties, or his sureties from liability;
giving effect to informal wills and deeds.⁵³

In the full Commission, unsuccessful efforts were made to strike out the clauses relating to streets and wildlife protection.⁵⁴ A new clause "relating to health, sanitation and abatement of nuisances"

⁵¹ N.C. COMM'N ON CONSTITUTIONAL AMENDMENTS 1913, MINUTES OF THE SESSIONS (1913) [hereinafter cited as 1913 COMMISSION MINUTES]. Page references given here are to the printed version of the minutes, but the best source is the original typescript which contains the bills referred to the commission and the tally sheets of votes taken on each proposal, neither of which were included in the printed version.

⁵² Among the members of this sub-committee was W. A. Devin, later to become Chief Justice of the North Carolina Supreme Court. Since the committee report was signed by Devin, he probably drafted the final text of art. II, § 29, as proposed by the Commission. Unfortunately, Chief Justice Devin never discussed the intent of the Commission or the General Assembly in an opinion of the Court although he had several opportunities to do so.

⁵³ 1913 COMMISSION MINUTES 37-38.

⁵⁴ *Id.* at 52-53.

was added, and the proposed section was unanimously adopted by the Commission.⁵⁵

Another committee of the Commission proposed a revision of art. VIII, § 1, designed to prohibit corporate charters by special act, but city charters would have been excepted.⁵⁶ After an amendment had been offered to strike the language making an exception for city charters,⁵⁷ Secretary of State Grimes was invited to address the Commission to give "certain information . . . showing the number of states in the Union which have this provision."⁵⁸ The amendment was adopted, and the revised art. VIII, § 1, prohibited the General Assembly from enacting any corporate charter by special act.⁵⁹

The Commission's recommendations were introduced in both houses of the General Assembly at the extra session of 1913, called especially to consider its proposals.⁶⁰ The amendments to art. VIII, §§ 1, 4, were adopted as proposed by the Commission,⁶¹ but slight modifications were made in the new art. II, § 29, which was to restrict legislative power over "local, special and private" acts. The House struck out the clause relating to tax exemptions, and limited the road and ferry and bridge clauses to cases where the proposed improvement lay entirely within one county.⁶² The Senate struck out the wildlife protection clause and added clauses "relating to the establishment of Recorder's Courts; relating to dog tax; relating to salaries of county officers; and relating to appointment of Justices

⁵⁵ *Id.* at 53-54, 71.

⁵⁶ *Id.* at 61. The section would have read:

"No corporation shall be created or its charter extended, altered, or amended by special acts, except municipal and those for charitable, educational, penal or reformatory purposes that are to be and remain under the patronage and control of the State . . ."

⁵⁷ *Id.* at 76. The previous day, Governor Locke Craig had addressed the Commission, giving his views on the proposals before it. *Id.* at 66. I have not found any text or report of the contents of the Governor's remarks.

⁵⁸ *Id.* at 78.

⁵⁹ The amendment simply struck out the words "municipal and," see note 56 *supra*, and carried by a vote of 12-3. Art. VIII, § 1, as amended, carried by a vote of 14-1. *Id.* at 79.

⁶⁰ N.C.S. JOUR. EX. SESS. 1913, 9; N.C.H. JOUR. EX. SESS. 1913, 14.

⁶¹ N.C. Pub. Laws Ex. Sess. 1913, ch. 81.

⁶² H.B. 43, N.C. Gen. Assembly Ex. Sess. 1913. The street and bridge clause read as follows:

Authorizing the laying out, opening, altering, maintaining, or discontinuing highways, streets or alleys, unless the said highways shall extend into two or more counties;

Relating to ferries or bridges, unless said ferries or bridges shall connect or effect [sic] two or more counties.

of the Peace."⁶³ The House refused to concur in the Senate amendment and a conference committee was appointed.⁶⁴

The conferees recommended that the House recede from its amendments and accept the Senate clauses relating to local courts and Justices of the Peace. The Senate was to recede from its position on the wildlife protection, dog tax, and county salaries clauses.⁶⁵ The conference report was adopted by both houses, and the amendments on local and private legislation were submitted to the people along with several others.⁶⁶

The entire package of amendments proposed in 1913 was defeated at the polls due to general dissatisfaction with the revisions proposed for the state and local tax structure.⁶⁷ In 1915 the local legislation amendments were again submitted along with a proposal to allow the appointment of emergency superior court judges.⁶⁸ The bill passed both houses easily.⁶⁹ The only change which the 1915

⁶³ S.B. 601, N.C. Gen. Assembly Ex. Sess. 1913. This was a committee substitute for the bill as originally introduced. (At that time, committee substitutes were given a new bill number. Today, a committee substitute retains the number of the original bill.)

⁶⁴ N.C.S. JOUR. EX. SESS. 1913, at 244-47.

⁶⁵ *Ibid.*

⁶⁶ N.C. Pub. Laws Ex. Sess. 1913, ch. 81. Ten separate propositions were submitted to the voters. The official ballot described them as follows:

- I. Substituting the phrase, "War Between the States," for the words "insurrection or rebellion against the United States," in Article I, section 6, and the word "rebellion" in Article VII, section 13.
- II. Increasing compensation of members of the General Assembly and decreasing mileage.
- III. Restricting local, private and special legislation.
- IV. Fixing the day of inauguration of the Governor.
- V. To prevent delays in trials by providing emergency judges.
- VI. Removing obsolete sections from the Constitution.
- VII. Striking out Article V, and Section 9 of Article VII, and substituting therefor an Article to Revise and Reform the System of Revenue and Taxation.
- VIII. To prevent special charters to corporations by the General Assembly.
- IX. To prevent special charters to towns, cities, and incorporated villages.
- X. To require six months Public School term.

⁶⁷ Raleigh News & Observer, March 8, 1915, p. 4, col. 3.

⁶⁸ N.C. Pub. Laws 1915, ch. 99.

⁶⁹ The amendments passed the Senate by a vote of 43-1, N.C.S. JOUR. 1915, at 591, but encountered some difficulty in the House of Representatives where they passed by a vote of 60-11, N.C.H. JOUR. 1915, at 914. This vote may raise an issue of whether the amendments ever became a valid part of the constitution, for the bill did not pass by three-fifths of the entire membership of the House but by only three-fifths of those present and voting.

session made in the 1913 proposals was the omission of the wild-life protection clause from art. II, § 29. The amendments were ratified at the polls in 1916 and became effective on January 10, 1917.⁷⁰

As finally proposed by the General Assembly and ratified by the people, three sections of the constitution modify the power of the General Assembly to enact local government laws. Art. II, § 29, until 1962,⁷¹ provided:

The General Assembly shall not pass any local, private or special act or resolution:

Relating to the establishment of courts inferior to the superior court;

Relating to the appointment of justices of the peace;

Relating to health, sanitation and abatement of nuisances;

Changing the names of cities, towns and townships;

Authorizing the laying out, opening, altering, maintaining or discontinuing highways, streets or alleys;

Relating to ferries or bridges;

Relating to non-navigable streams;

Relating to cemeteries;

Relating to the pay of jurors;

Erecting new townships, or changing township lines, or establishing or changing the lines of school districts;

Remitting fines, penalties and forfeitures, or refunding moneys legally paid into the public treasury;

N.C. CONST. art. XIII, § 2, provides that constitutional amendments may be submitted to the people by the General Assembly after "the same shall have been agreed to by three-fifths of each house of the General Assembly." The Supreme Court has never had occasion to decide whether this language requires three-fifths of those present and voting or three-fifths of the entire membership. If the latter interpretation is proper, seventy-two votes are required in the House of Representatives. In modern times the Speaker of the House has invariably ruled that seventy-two votes are required for the passage of a bill for amending the constitution, and several such bills have been declared lost after receiving more votes than did the 1915 amendments.

⁷⁰ N.C. Pub. Laws 1915, ch. 99, § 8. The authority of the General Assembly to fix the effective date of constitutional amendments under N.C. CONST. art. XIII, § 2, was upheld in *Reade v. City of Durham*, 173 N.C. 668, 92 S.E. 712 (1917).

Selection of January 10 as the effective date for the prohibition of local, special and private bills was not arbitrary. The 1917 General Assembly convened on January 6, 1917. It enacted 400 local bills before the 10th. To complete the enrolling and ratification process before the deadline, all clerks and typists working for the State in Raleigh were needed. N.C. Pub. Laws 1917, Res. 7.

⁷¹ See note 6 *supra*. N.C. CONST. art. II, § 29, is set out here as it read before the 1961 amendment because several of the major cases construing it involved the court clauses.

Regulating labor, trade, mining or manufacturing;

Extending the time for the assessment or collection of taxes or otherwise relieving any collector of taxes from the due performance of his official duties or his sureties from liability;

Giving effect to informal wills and deeds;

Nor shall the General Assembly enact any such local, private or special act by the partial repeal of a general law, but the General Assembly may at any time repeal local, private or special laws enacted by it.

Any private or special act or resolution passed in violation of the provisions of this section shall be void.

The General Assembly shall have power to pass general laws regulating matters set out in this section.⁷²

Art. VIII, § 1, directs that:

No corporation shall be created nor shall its charter be extended, altered, or amended by special act, except corporations for charitable, educational, penal, or reformatory purposes that are to be and remain under the patronage and control of the State; but the General Assembly shall provide by general laws for the chartering and organization of all corporations and for amending, extending, and forfeiture of all charters, except those above permitted by special act. All such general laws and special acts may be altered from time to time or repealed; and the General Assembly may at any time by special act repeal the charter of any corporation.⁷³

Art. VIII, § 4, further provides:

It shall be the duty of the Legislature to provide by general laws for the organization of cities, towns, and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessment and in contracting debts by such municipal corporations.

What can be gathered about the policies given constitutional sanction by the adoption or amendment of these sections from their legislative history and surrounding circumstances? First, it is clear that the 1917 amendments were directed primarily toward local government legislation. Private legislation, in the sense of acts for the

⁷² The text has been conformed to the enrolled copy of N.C. Pub. Laws 1915, ch. 99, on file in the office of the Secretary of State. It differs somewhat in paragraphing, capitalization and punctuation from versions found in various codifications of the Constitution.

⁷³ This section and art. VIII, § 4, have not been subsequently amended. Both sections as set out here have been conformed to the enrolled copy.

benefit or relief of named individuals, had been partially forbidden by the 1835 amendments and there was no longer great pressure for enactment of bills of this type. While acts chartering private business corporations were far from uncommon, the large majority of private corporations were already being chartered by the Secretary of State under general laws.⁷⁴ Nearly all of the General Assembly's non-general legislation related to local governments.

Of the local government acts to be prohibited, the intention to eliminate city legislation was perhaps the clearest of all. Language making a specific exception for municipal corporations was stricken from the proposed revision of art. VIII, § 1, early in the deliberations of the 1913 Constitutional Commission. In 1915, this intent was made even clearer by the proposed amendment to art. VIII, § 4, directing the General Assembly "to provide *by general laws* for the organization of cities. . . ." Furthermore, the ballot on which the proposed amendment to art. VIII, § 4, was submitted to the people directed the voters to vote for or against an amendment "to prevent special charters to towns, cities, and incorporated villages."⁷⁵

Second, the General Assembly was not disposed to invoke significant limitations on its control over county government. The original twenty-two categories proposed by Governor Kitchin for inclusion in what eventually became art. II, § 29, would have eliminated virtually every common variety of county government act. Of those eventually adopted, only restrictions on local acts relating to roads, schools, and courts could have had major significance. The crucial powers of fixing salaries and fees, prescribing duties, and creating and abolishing county governments and offices at will were all left within legislative control by local act.

Third, the primary purpose of the amendments was to relieve the legislature of the burden of local bills. That the amendments would have the incidental effect of strengthening local self-government was recognized, but given little attention. A pamphlet published in 1913 asking the people to endorse the local legislation amendments submitted in that year stated that their objectives were two: "(1) having many of these matters referred to boards of county commissioners and the governing bodies of our towns; (2) . . . affording the General Assembly liberty to engage in the

⁷⁴ From 1893 through 1917 the Secretary of State chartered over 15,000 corporations. 1919 N.C. SEC'Y OF STATE BIENNIAL REP. 4-5.

⁷⁵ See note 66 *supra*.

consideration of matters of State-wide importance."⁷⁶ The local self-government justification was left with a bare statement as the writer passed directly into an explanation of the second objective:

Every session of the General Assembly is congested with thousands of bills of no general importance; matters that should be the subject of uniform legislation, on the one hand, or local self-government on the other. If this amendment shall be ratified by the people they will emancipate the General Assembly from its present bondage of local and special legislation and endow it with liberty to attend to matters of interest to all the people.⁷⁷

Let the reader consider what it will mean to the commonwealth to have its General Assembly rid of the thousands of little bills of no general value in order that it may treat the matters of great concern to all the people.

Professor J. G. deRoulhac Hamilton justified the amendments as a means of getting rid of local legislation rather than a great victory for local self-government. In a series of articles appearing in the *News and Observer* in 1912-13⁷⁸ he discussed all of the matters which would eventually be submitted to the people, and came to the conclusion that the prohibition of local legislation was the most important of them:

Restriction of local legislation will tend to standardize our law. It will save large sums of money and a great deal of time, which after all in this case amounts to money. It will remove from our statute books a mass of useless and confused law. It may readily give to our people a large measure of local self-government, in itself an important step. And above all, and immeasurable more important, it will emancipate the legislature and make the position of legislator one of far more honor and importance by giving him an opportunity for the careful, thoughtful, and deliberate consideration of State problems and State issues.⁷⁹

Finally, there was to be no constitutional home rule in North Carolina. While the legislature was to be prevented from enacting

⁷⁶ THE PROPOSED AMENDMENTS TO THE CONSTITUTION OF NORTH CAROLINA: AN ADDRESS TO THE VOTERS [1913].

⁷⁷ *Id.* at 3. The amendments to article V, relating to the State and local revenue system, and the amendments prohibiting local, special and private legislation were considered the two most important proposals.

⁷⁸ HAMILTON, A PLEA FOR A CONSTITUTIONAL CONVENTION (1913). (Pamphlet reprinted from articles appearing in the *Raleigh News & Observer* Dec. 15, 22, 29, 1912; Jan. 5, 12, 19, 1913.)

⁷⁹ *Id.* at 18.

local laws on an individual basis, it was to accomplish the same ends by "general laws." There were no guarantees of the right of local self-government, no constitutionally protected home rule powers, no initiative and referendum.⁸⁰ Local government in North Carolina would continue to be primarily the concern of the state. Only the level of generality was to be raised.

II. LOCAL LEGISLATION IN THE COURTS

While the American judiciary was succeeded brilliantly in using its power of judicial review in the protection of individual rights against invasion by legislative and executive decisions, the judges have been most reluctant to oversee the organization and procedure of other branches of the government when individual litigants have not been substantially injured by allegedly irregular action. The case or controversy and political question doctrines were developed to avoid judicial involvement in foreign policy and political quarrels. Only recently has the appointment and composition of legislative bodies become a justiciable question. Legislative procedure, with but few exceptions, cannot be questioned in the North Carolina courts.⁸¹ When a cause is justiciable, there is always the power of interpretation. Generally, American courts tend to interpret constitutional restrictions on legislative power as narrowly as possible where individual rights are not immediately involved. Reform of the legislative process has had to come from pressures outside the court system.

As Governor Kitchin observed in his 1911 message to the North Carolina General Assembly, internal legislative reform is difficult to achieve except through the power of proposing constitutional amendments.⁸² One session of the legislature cannot bind its successors by rule or statute. One long-standing dilemma of legislative reform, then, has been that it is usually attempted in the states by constitutional provisions which are only reluctantly enforceable in the courts, if at all.

⁸⁰ Home rule was not even proposed. The initiative and referendum was endorsed by the 1913 Constitutional Commission but rejected by the General Assembly. See REPORT OF [THE] COMMISSION ON CONSTITUTIONAL AMENDMENTS 7-8 (1913).

⁸¹ *E.g.*, *Frazier v. Board of Comm'rs*, 194 N.C. 49, 138 S.E. 433 (1927); *Gallimore v. Town of Thomasville*, 191 N.C. 648, 132 S.E. 657 (1926); *Commissioners v. DeRosset*, 129 N.C. 275, 40 S.E. 43 (1901).

⁸² See note 40 *supra* and accompanying text.

The North Carolina Supreme Court has had, on numerous occasions, the duty of construing those sections of the constitution limiting legislative power over local, special and private legislation. It has not been a friend to those who would restrict legislative power in this area. As might be expected of a series of decisions extending over fifty years, the cases display a gradual but distinctive shift in judicial attitude toward the local legislation amendments. Initially, the court was openly antagonistic to claims that the 1917 amendments significantly restricted legislative power over the structure and powers of local government. Subsequently, a marked relaxation of this attitude developed, and recently the court has shown signs of breathing new life into constitutional provisions long thought to be a dead letter. Because its recent decisions depart radically from the attitude and doctrines displayed in cases decided before *McIntyre v. Clarkson* (1961),⁸³ the case law construing art. II, § 29, and art. VIII, §§ 1, 4, is best comprehended as following a three-stage chronological development rather than a single line of decisions from which a single set of principles is abstracted. This section will discuss these cases in three periods: 1917-1938, the period of strict construction; 1939-1961, the period of reappraisal; and 1961 to the present, the period of *McIntyre v. Clarkson*.

A. Strict Construction—1917-1938

1. *The Road Cases*.—The first North Carolina case interpreting art. II, § 29, concerned a local act authorizing the issuance of township bonds and the levy of a special tax "for road purposes." The plaintiff in *Brown v. Road Comm'rs*⁸⁴ contended that the act offended against the clause of art. II, § 29, which forbids local acts "authorizing the laying out, opening, altering, maintaining, or discontinuing [of] highways, streets, or alleys," and asked for an injunction against the bond issue and tax referendum. The court held that since the act in question did not relate directly to road construction or maintenance but only to the financial arrangements to be made for this purpose, it did not violate art. II, § 29.⁸⁵

⁸³ See note 232 *infra* and accompanying text.

⁸⁴ 173 N.C. 598, 92 S.E. 502 (1917).

⁸⁵ While the 1917 General Assembly had set up general law procedures for the administration of road improvement programs by counties, townships and special districts, it had made no special arrangements for financing these projects. See N.C. Pub. Laws 1917, ch. 284.

Brown left open the question of whether financial arrangements for specific road projects were unconstitutional since it dealt with a bond issue and taxes for general road purposes. *Mills v. Board of Comm'rs*⁸⁶ and *Martin County v. Wachovia Bank & Trust Co.*⁸⁷ settled this question in favor of a complete removal of bond and tax legislation from the purview of art. II, § 29, insofar as road construction is concerned. *Mills* upheld a local act authorizing a bond issue for the purpose of "rebuilding bridges over the Catawba River between Iredell and Catawaba Counties." While the court did not say so, the act contemplated the reconstruction of specific bridges which had been swept away by an unprecedented flood.⁸⁸ The *Martin County* case upheld an act authorizing the issuance of bonds for and apportionment of the expense of building a bridge across the Roanoke River between Martin and Bertie Counties. The general law would have required the two counties to bear the expense of the bridge in proportion to the number of taxable polls in each although most of the benefit of its construction would accrue to the citizens of Williamston in Martin County. Except for the western approach, all of the construction lay in Bertie County. The local act provided that Martin County would pay three-fourths of the cost and Bertie County one-fourth.

Thus, in the space of but two years the court all but removed from art. II, § 29, the single most numerous category of local acts—those relating to road construction. The court would require a direct connection between road construction and the act under challenge, and financial arrangements were held to be indirect.

Mills and *Brown* were primarily concerned with financial matters. *Road Comm'rs v. Bank of Ashe*⁸⁹ involved a local act creating a special road commission⁹⁰ for Ashe County and also authorizing a bond issue. A strict interpretation of *Mills* and *Brown* could have upheld the bond issue without validating the creation of special machinery for local road administration, but the court upheld the entire act. The court found that the local act contained no provision

⁸⁶ 175 N.C. 215, 95 S.E. 481 (1918).

⁸⁷ 178 N.C. 26, 100 S.E. 134 (1919).

⁸⁸ See *State v. Kelly*, 186 N.C. 365, 119 S.E. 755 (1923).

⁸⁹ 181 N.C. 347, 107 S.E. 245 (1921).

⁹⁰ N.C. Pub.-Loc. Laws 1919, ch. 467. In the same year the general road laws were substantially revised. N.C. Pub. Laws 1919, ch. 68, 232, 279, 312, 329.

for laying out any specific road but merely provided the funds and administrative apparatus for doing so.⁹¹

In *State v. Kelly*⁹² the defendant was convicted for refusing to work on the public roads as required by a local act.⁹³ He challenged his conviction on grounds that the local act related to road maintenance and was therefore void under art. II, § 29. In a long opinion the court candidly expressed its antagonism toward further suits challenging local road acts. Long passages are devoted to extolling the beneficence of local road acts to which the court attributed the success of the state road program. As for local legislation in general, the court stated:

The discussion in the [*Brown*] opinion seems to limit the prohibition of special legislation only to those matters which, under the general law, could be as well done by local authorities as by the Legislature itself. Where, then, the general authority of a local governmental agency was defective in a particular case, and what is to be done could be done only with the authority of the Legislature, then the prohibition of section 29 . . . does not apply.⁹⁴

This amounts to saying that local acts are permissible on any subject forbidden by art. II, § 29, if the General Assembly does not see fit to enact adequate general laws to accomplish any objective desired by local authorities. The court has not subsequently applied or discussed this rule of interpretation.

What, then, was left of the road clause of art. II, § 29, after these initial cases? In *Day v. Commissioners*⁹⁵ the Court invalidated a local act directing the county commissioners of Surry and Yadkin

⁹¹ *Accord*: *Huneycutt v. Board of Comm'rs*, 182 N.C. 319, 109 S.E. 4 (1921). This doctrine was foreshadowed in *Parvin v. Board of Comm'rs*, 177 N.C. 508, 99 S.E. 432 (1919). At the same term the court upheld an act authorizing co-operative action with counties in adjoining states for the construction of bridges over rivers forming the state boundary. Since only the Catawba River, forming the boundary between Mecklenburg County and South Carolina, fits this description, the act was in fact a local act. *Emery v. Commissioners*, 181 N.C. 420, 107 S.E. 443 (1921); N.C. Pub. Laws 1919, ch. 103; N.C. Pub. Laws Ex. Sess. 1920, ch. 11.

⁹² 186 N.C. 365, 119 S.E. 755 (1923).

⁹³ Road maintenance laws under which all able-bodied men of the county were obligated to work on the public roads a certain number of days each year or to pay for a substitute, had long been in use in this state. The system was held constitutional under both the federal and state constitutions in *State v. Wheeler*, 141 N.C. 773, 53 S.E. 358 (1906).

⁹⁴ 186 N.C. at 373, 119 S.E. at 760.

⁹⁵ 191 N.C. 780, 133 S.E. 164 (1926).

Counties to construct one bridge across the Yadkin River at a place described in the act. *Glenn v. Board of Educ.*⁹⁶ struck down a local act closing a specifically described street. Other cases upheld acts ratifying municipal street assessment rolls,⁹⁷ transferring jurisdiction over roads formerly administered by the county to a newly incorporated municipality,⁹⁸ authorizing the levy of special assessments for street improvement without petition,⁹⁹ and enlarging the jurisdiction of a town over maintenance of streets to include sidewalks and alleys.¹⁰⁰ By 1936 it was well settled that the road clause of art. II, § 29, applied only to acts relating to the laying out, opening, altering or discontinuing of "a *given particular and designated* highway street, or alley."¹⁰¹

2. *The School Cases.*—Next to the road cases, suits challenging local acts relating to the school system constitute the most numerous categories of cases construing art. II, § 29, in the period from 1917 to 1938. The first of these invalidated a local act, forecasting a somewhat more liberal attitude toward the school clause of art. II, § 29, than was to be the case with the road clause. *Board of Trustees v. Mutual Loan & Trust Co.*¹⁰² was an action for specific performance to compel the defendant bank to honor its contract to purchase school bonds issued by a school district pursuant to authority granted by a local act. The bank resisted on grounds that the act undertook to create the school district and define its boundaries and was therefore an act "establishing or changing the lines of school districts." The plaintiffs, trustees of the school district, sought to uphold the act under the *Brown-Mills* rule since the pri-

⁹⁶ 210 N.C. 525, 187 S.E. 781 (1936).

⁹⁷ *Gallimore v. Town of Thomasville*, 191 N.C. 648, 132 S.E. 657 (1926).

⁹⁸ *Matthews v. Town of Blowing Rock*, 207 N.C. 450, 177 S.E. 429 (1934).

⁹⁹ *Deese v. Town of Lumberton*, 211 N.C. 31, 188 S.E. 857 (1936). This case contains the fullest exposition of the court's position on the road clause of art. II, § 29.

¹⁰⁰ *Holton v. Town of Mocksville*, 189 N.C. 144, 126 S.E. 326 (1925).

¹⁰¹ *Deese v. Town of Lumberton*, 211 N.C. 31, 188 S.E. 857, 858 (1936). *But cf.*, *Hill v. Board of Comm'rs*, 190 N.C. 123, 129 S.E. 154 (1925). This case construed an act "to take over the highway leading from Mitchell's Fork via Gatesville, Buckland and Gates to the Virginia State line. . . ." and to relieve the townships through which it ran from the duty of maintaining it. The court upheld the act. It is impossible to reconcile this case with *Deese* except, as suggested by the court, on grounds that it was merely declaratory of what the county could have done under the general law, and therefore a decision that the local act was unconstitutional would not affect the validity of the action taken.

¹⁰² 181 N.C. 306, 107 S.E. 130 (1921).

mary purpose of the act was to raise revenue. The court distinguished *Brown* and *Mills* on grounds that those cases concerned roads that had already been validly established under general law procedures, or local acts passed before the effective date of art. II, § 29. In this case, however, the school district was established by the same act which authorized the bond issue. Since the General Assembly had no authority to create the district, there was no legal entity in existence which could issue the bonds in question. Therefore the defendant need not honor the contract.¹⁰³

*Woosley v. Comm'rs*¹⁰⁴ extended the *Mutual Loan* doctrine to acts confirming invalid local action. In *Woosley* the county commissioners had attempted to create a special high school district under the general law. The General Assembly subsequently authorized the district to issue bonds, incorporated it and provided it with a special governing board. The court found that there were technical defects in the procedures taken by the local authorities in creating the district, and that since no district had been validly created the legislature was without authority to confirm or validate the defective local action without violating the school clause of art. II, § 29.¹⁰⁵

Both *Woosley* and *Mutual Loan* were insignificant in their potential impact on school policy in general. There was ample authority under the general law for local authorities to create school districts, and these cases implied that the General Assembly had full power to regulate school finances so long as it did not attempt to create special school districts. *Coble v. Comm'rs*¹⁰⁶ was a more difficult case. In 1921 there were 113 local school districts in Guilford County outside the Greensboro and High Point areas. The school tax structure of the county was a welter of confusion. Some districts levied no special taxes at all, others levied a wide range of rates and were indebted in varying amounts. The county secured a local act in 1921 authorizing a county-wide referendum (outside Greensboro and High Point) on whether the county should levy a uniform special school tax and assume the indebtedness of the existing districts. While no district boundaries were affected, the act did

¹⁰³ *Accord*, *Sechrist v. Board of Comm'rs*, 181 N.C. 511, 107 S.E. 503 (1921). See also, *Galloway v. Board of Educ.*, 184 N.C. 245, 114 S.E. 165 (1922).

¹⁰⁴ 182 N.C. 429, 109 S.E. 368 (1921).

¹⁰⁵ See also, *Robinson v. Board of Comm'rs*, 182 N.C. 590, 109 S.E. 855 (1921).

¹⁰⁶ 184 N.C. 342, 114 S.E. 487 (1922).

have the effect of erecting the entire county outside Greensboro and High Point into a special taxing district for school purposes. Arguing by analogy to *Sechrist v. Commissioners*,¹⁰⁷ which had held that the creation of a school district coterminous with the boundaries of a designated township violated art. II, § 29, the plaintiff contended that the act created a school district by implication. The court rejected this argument, holding that the General Assembly was not prevented from creating "taxing districts" by the constitution.

[S]ince the school districts are retained with their former boundaries, and since the powers of the school committee in each district are unchanged, and the organization of the schools is not affected, we conclude that the act under which the election was held is not in conflict with Art. II, sec. 29, of the Constitution.¹⁰⁸

In response to the court's suggestion, the General Assembly provided by general law in 1923 for the creation of special school taxing districts by the county commissioners.¹⁰⁹

Following the doctrines developed in the road cases, the court held in other school cases during this period that the school clause of art. II, § 29, did not prohibit acts increasing the limit of bonded indebtedness of school districts¹¹⁰ or authorizing bond issues and special taxes.¹¹¹

Since the decision in *Brown v. Road Comm'rs*,¹¹² the court had seemed to be leaning toward a rule of interpretation which might be stated thus: where the primary objective of an act is not related to any of the categories of art. II, § 29, the fact that an "incidental purpose" falls within the constitutional prohibitions does not invalidate the act. Two school cases made the rule explicit. *Duffy v. City of Greensboro*¹¹³ challenged an act revising and consolidating the Greensboro city charter. The act provided that the territory embraced within the old city limits should continue to be an independent school district while territory newly annexed to the city should remain in its county district. The court held that the primary purpose of the act was to extend the city limits of Greensboro and that

¹⁰⁷ See *Sechrist v. Board of Comm'rs*, 181 N.C. 511, 107 S.E. 503 (1921).

¹⁰⁸ 184 N.C. at 351-52, 114 S.E. at 491.

¹⁰⁹ N.C. Pub. Laws 1923, ch. 136.

¹¹⁰ *Roebuck v. Board of Trustees*, 184 N.C. 144, 113 S.E. 676 (1922).

¹¹¹ *Burney v. Commissioners*, 184 N.C. 274, 114 S.E. 298 (1922).

¹¹² 173 N.C. 598, 92 S.E. 502 (1917).

¹¹³ 186 N.C. 470, 120 S.E. 53 (1923).

the recital that the annexation would not add territory to the existing city school district was only a necessary adjunct to the unquestioned authority of the General Assembly to revise municipal boundaries.

*Hailey v. City of Winston-Salem*¹¹⁴ carried *Duffy* one step further by holding that an annexation act which had the effect of enlarging a school district defined by the city charter as being co-terminous with the city limits was not prohibited by art. II, § 29. Enlargement of the school district was "a mere incident in the accomplishment of the primary purpose of the Legislature,"¹¹⁵ which was to annex territory to the city.

3. *The Sanitary District Cases*.—Two cases involving sanitary districts contributed a peculiar doctrine to the interpretation of art. II, § 29, which seemed to hold that when a local act applied generally to an entire county, it was not a local act. Prior to 1927 sanitary districts had only rule making powers—they were not authorized to provide water and sewer services.¹¹⁶ By a local act in 1923 the General Assembly set up a procedure for the creation of sanitary districts in Buncombe County which would be authorized to provide water and sewer service in rural areas.¹¹⁷ When this act was challenged in *Reed v. Howerton Eng'r Co.* as a local act "relating to health, sanitation and the abatement of nuisances," the court held that the act did not relate to health or sanitation, but that its only purpose was "to provide districts in Buncombe County wherein sanitary sewers or sanitary measures may be provided in rural districts."¹¹⁸ Standing alone, this case is remarkable only in the court's propensity to avoid interpretation by flat negation, but *Drysdale v. Prudden*,¹¹⁹ decided four years later, interpreted it in a most singular fashion.

The 1927 General Assembly prescribed a general law procedure for the creation of sanitary districts with power to provide water and sewer services.¹²⁰ At the same session the Druid Hills Sanitary District was created by local act.¹²¹ The general law contained no

¹¹⁴ 196 N.C. 17, 144 S.E. 377 (1928).

¹¹⁵ *Id.* at 23, 144 S.E. at 380.

¹¹⁶ See N.C. Pub. Laws 1913, ch. 154, §§ 4-5.

¹¹⁷ N.C. Pub.-Loc. Laws 1923, ch. 341.

¹¹⁸ 188 N.C. 39, 44, 123 S.E. 479, 481 (1924).

¹¹⁹ 195 N.C. 722, 143 S.E. 530 (1928).

¹²⁰ N.C. Pub. Laws 1927, ch. 100.

¹²¹ N.C. Priv. Laws 1927, ch. 229.

limitation on the amount of bonds which could be issued by sanitary districts or the rate of tax which could be levied. The Druid Hills act contained limitations on both powers. Rather than proceed under their local act, the residents of the Druid Hills district complied with the general law procedures for the creation of a sanitary district and held a referendum to authorize the issuance of bonds in excess of the limit allowed by the local act. The prospective purchasers of the bonds refused to honor their contracts since there was serious doubt as to which law governed the transaction. The court held the local act invalid and upheld the bond issue under the general law. To reach this result they held that a local act creating a sanitary district is an act relating to health and sanitation, a holding squarely contrary to *Reed v. Howerton Eng'r Co.*,¹²² but refused to overrule *Reed*. The court held that *Reed* was actually decided on grounds that it "*applied generally to the entire county of Buncombe*,"¹²³ and was not a local act. Therefore, the statements in *Reed* contrary to the holding in *Drysdale* were dictum. This rationale also begs the question, but the bond issue was upheld and the rural residents of Druid Hills had their water and sewer system.

4. *The Local Court Cases.*—Relatively few cases challenging local acts "relating to the establishment of courts inferior to the Superior Court" reached the supreme court between 1917 and 1938, but the first of them, *In re Harris*,¹²⁴ represented the court's first attempt to determine whether the act in question was "local" or "general," conceding that it fell within one of the categories of local acts prohibited by art. II, § 29. Harris had been convicted in the recorder's court for Iredell County of selling spiritous liquors in violation of the prohibition laws. After the time for appeal to the superior court had expired, Harris filed his petition for habeas corpus, alleging that the court in which he had been convicted had no jurisdiction either of his person or of the offense since it had been unconstitutionally established. The superior court denied his application for the writ and Harris brought certiorari to the supreme court.

The Iredell County recorder's court had been established by the county commissioners under authority conferred on them by the

¹²² 188 N.C. 39, 123 S.E. 479 (1924).

¹²³ 195 N.C. at 728, 143 S.E. at 533.

¹²⁴ 183 N.C. 633, 112 S.E. 425 (1922).

Recorder's Court Act of 1919.¹²⁵ At the time of the defendant's trial, the act applied to only fifty-six of the one hundred counties.¹²⁶ Harris contended that the exemption of forty-four counties made the act local. It was already clear that it related to the "establishment of courts inferior to the Superior Court." Therefore, Harris argued, the act was void, the Iredell County recorder's court had never been in legal existence, and his conviction was illegal.

The supreme court rejected Harris' contentions and held that the act was a general law, not a local act. After discussing and quoting from its former decisions, all of which construed acts involving two counties at the most, the court said:

Under these decisions and the construction they uphold as to the true intent and meaning of these amendments, the statute in question would seem to be a valid law, and this, in our opinion, is undoubtedly true when it is considered that the statute is designed and intended to provide for as many as 56 out of the 100 counties of the State, and could in no sense be regarded as a local or special law within any usual or ordinary meaning of these terms.¹²⁷

The court did not elaborate on its test for determining whether an act was local or general, but it appeared to be holding that if at least one-half, fifty or more, of the counties were subject to a given act it could not be "local."

In other cases the court established the important principle that local acts expanding the jurisdiction of courts established under general law procedures did not have the effect of "establishing" a court.¹²⁸ In this manner it became possible to provide for any variety of local court desired by having it established as a "recorder's court" under the general laws and subsequently enlarging or con-

¹²⁵ N.C. Pub. Laws 1919, ch. 277. This act is now codified, as amended in N.C. GEN. STAT. §§ 7-185 to -264 (1953). It has already been superseded in six judicial districts by the Court Reform Act of 1965, N.C. Sess. Laws 1965, ch. 310. On January 1, 1971 it will become unconstitutional by virtue of N.C. CONST. art. IV, § 21 (1961) if not totally superceded by that time.

¹²⁶ It originally exempted four judicial districts, most of a fifth, and ten additional counties. Three counties were brought under the act in 1921. N.C. Pub. Laws 1921, ch. 110.

¹²⁷ 183 N.C. at 636, 112 S.E. at 426.

¹²⁸ *State v. Horne*, 191 N.C. 375, 131 S.E. 753 (1926); *Durham Provision Co. v. Daves*, 190 N.C. 7, 128 S.E. 593 (1925). Cf. *Albertson v. Albertson*, 207 N.C. 547, 178 S.E. 352 (1935) (semble).

The court also held that a local act establishing a court could be repealed, as expressly stated in art. II, § 29. *Queen v. Board of Comm'rs*, 193 N.C. 821, 138 S.E. 310 (1927).

tracting its jurisdiction by local act. Thus, the court clause of art. II, § 29, became a dead letter.

5. *Justices of the Peace: The Omnibus Bill.*—In 1899 the General Assembly began to exercise the power it had acquired in 1875 to appoint justices of the peace for each county.¹²⁹ From the first it was customary to include appointments for many counties in one bill, called an "omnibus bill."¹³⁰ Yet there were always many additional acts appointing one or two persons to the office, or a number of persons for a single county.¹³¹

After the adoption of art. II, § 29, the General Assembly had doubts as to the validity of the omnibus bill appointing justices of the peace¹³² and in 1919 the supreme court was asked for an advisory opinion on whether such a bill violated the clause of art. II, § 29, prohibiting local acts "relating to the appointment of Justices of the Peace."¹³³ The court replied without elaboration that the omnibus bill did not violate the constitution.¹³⁴

6. *City Charters: The Demise of Art. VIII, § 4.*—Few aspects of the legislative intent of the 1915 proposals for restricting local legislation are clearer than the intent to prohibit special acts granting or amending city charters.¹³⁵ But the prohibition against special act city laws lasted for only three sessions of the General Assembly—1917, 1919 and the Extra Session of 1920. On December 1, 1920, the supreme court nullified the 1915 amendment to art. VIII, § 4, in the case of *Kornegay v. City of Goldsboro*.¹³⁶

The City of Goldsboro proposed to issue bonds in 1920 under the Municipal Finance Act of 1917 in order to fund its existing indebtedness. The proper procedures were followed but no purchasers could be found who would buy the bonds at par as required

¹²⁹ N.C. CONST. art. VII, § 13, gives the legislature the authority to "modify, change or abrogate" art. VII, § 5, (providing for local election of justices of the peace) in addition to other sections of art. VII relating to local government.

¹³⁰ *E.g.*, N.C. Pub. Laws 1913, ch. 184 (97 counties).

¹³¹ There were about sixteen per session.

¹³² In 1917 the omnibus bill was rushed through before the January 10 effective date of art. II, § 29.

¹³³ N.C. Pub. Laws 1919, Res. 34.

¹³⁴ N.C.S. JOUR. 1919 at 327. This opinion, along with several others not previously published in the official reports of the supreme court, was collected by Dr. Preston Edsall of N.C. State University at Raleigh and printed as an Appendix in 227 N.C. 715-26 (1947).

¹³⁵ See note 59 *supra* and accompanying text.

¹³⁶ 180 N.C. 441, 105 S.E. 187 (1920).

by the general laws. The city obtained a local act at the extra session of 1920 authorizing it to sell its bonds to the highest bidder even though the bid might be less than par. Suit was then brought against the city seeking an injunction against sale of the bonds on grounds that the enabling act was unconstitutional under art. VIII, § 4. The court divided three to two, Justice Allen for the majority upholding the validity of the local act and construing art. VIII, § 4, as placing only a *duty* on the General Assembly to enact general laws for the governance of cities, not a prohibition against local acts. This was precisely the interpretation given to art. VIII, §§ 1, 4 before the 1915 amendments.¹³⁷ Chief Justice Clark and Justice Brown dissented in separate opinions, the Chief Justice asking that if the 1915 amendment to art. VIII, § 4, did not make any change, "for what purpose was it solemnly enacted by the General Assembly, and for what purpose did the the people ratify it at the polls?"¹³⁸ After this decision the only restraint on local legislation for cities was that contained in art. II, § 29.

7. *Judicial Attitudes Toward Local Legislation: 1917-1938.*—By its own admission the supreme court was most unfavorably disposed to suits seeking to invalidate local legislation under art. II, § 29, of the constitution during the first two decades after the adoption of this section. After the great hopes expressed by Governor Kitchin, Secretary of State Grimes and others, it seems somewhat peculiar that the Justices of the supreme court should take such a dim view of the 1915 efforts at legislative reform. It appears, however, that the Justices were not being truculent. Judicial attitudes toward art. II, § 29, from 1917 to 1938 can be explained in terms of the fact that most of the cases being brought before them concerned the financing of local government.

In the second case construing art. II, § 29, *Mills v. Board of Comm'rs*,¹³⁹ the court laid great stress on the argument that this section of the constitution was intended to conserve legislative time, not to impair the authority of the General Assembly to regulate the

¹³⁷ Apparently this interpretation was so settled in practice that the issue was never raised in the supreme court. Many of the cases interpreting art. VIII, § 4, before the 1915 amendment involved local acts, and while the court did not specifically address itself to the question of whether the constitutional duty to provide for municipal incorporations prevented special acts, the general tenor of the opinions assumed that it did not.

¹³⁸ 180 N.C. at 456, 105 S.E. at 194.

¹³⁹ 175 N.C. 215, 95 S.E. 481 (1918).

financial affairs of local government. In response to the suggestion that local acts authorizing road bonds and taxes were unconstitutional, the court observed:

It is now very well known that the limit of taxation allowable by the Constitution for ordinary State and county purposes has been very generally reached by the different counties in the State, and for any additional demands or unexpected emergency authority to exceed these limits can only be conferred by legislative enactment. . . .

An interpretation of these recent amendments which would destroy or impair the legislative power to the extent suggested would be of such serious and threatening consequence that it should not be sanctioned except by provisions so plain of meaning that no room for a different construction is allowable.¹⁴⁰

Again, in *Kornegay v. City of Goldsboro*¹⁴¹ the court noted that when the Municipal Finance Act was passed, requiring bonds to be sold at par, "there was a ready market for bonds, while now it is impossible to find a purchaser except at a discount. . . ."¹⁴² *Martin County v. Wachovia Bank & Trust Co.*,¹⁴³ which reaffirmed the *Brown-Mills* rule, stated that:

More than 150 statutes, authorizing the issuance of bonds for constructing roads or bridges in certain counties, townships or road districts therein named were passed at the last session in reliance upon the *Brown and Mills* cases. Under the authority of these statutes many hundreds of thousands of bonds have been issued or are about to be issued, and contracts have been let or are about to be let for the construction of roads and bridges in all parts of the State. It is of the highest importance therefore that the authority of those cases shall be sustained.¹⁴⁴

What was the financial situation of North Carolina local government in the first third of this century? Restrictions on local legislation in North Carolina came at an inopportune time. Just two years after the ratification of the amendments restricting local legislation, the state embarked on a period of rapid expansion in education and internal improvement.¹⁴⁵ Public education as a major objective of state government was revived by Aycock and the Demo-

¹⁴⁰ *Id.* at 218, 95 S.E. at 482.

¹⁴¹ 180 N.C. 441, 105 S.E. 187 (1920).

¹⁴² 180 N.C. at 450, 105 S.E. at 191.

¹⁴³ 178 N.C. 26, 100 S.E. 134 (1919).

¹⁴⁴ 178 N.C. at 35, 100 S.E. at 139-40.

¹⁴⁵ See generally, LEFLER & NEWSOME, *NORTH CAROLINA: THE HISTORY OF A SOUTHERN STATE* 561-72 (1954).

crats in 1900. The increasing sale of automobiles was creating a rapidly accelerating public demand for maintenance and paving of roads. The end of the World War in 1918 enabled the people to direct their primary attention toward internal improvement, and the General Assembly was not long in reflecting the demand.

The role of local legislation in the expansion of the road and school systems was paramount. Without it, progress would have been much slower because of two major factors: (1) state policy had always been to encourage and stimulate the counties to build and maintain road and school systems, not to undertake primary responsibility for these programs by state agencies; (2) both the state and local revenue systems were cast in archaic constitutional concrete which imposed unworkable limitations on the revenue base and the tax rates. It was against a background of continuous efforts to revise the state's revenue structure that the supreme court was being asked to pass on the validity of local acts which were essential stop-gap measures for bailing the counties out of an impossible financial situation.

The taxation article of the Constitution of 1868 assumed that the major source of state and local revenue would be an *ad valorem* tax on property of all kinds, real, personal and intangible.¹⁴⁶ The property tax had to be uniform, which meant that real estate, personalty and intangibles were all subject to the same rate.¹⁴⁷ In line with its general policy of using county government as the primary agency for administration of state policy, the entire tax assessment, levy and collection processes were administered by county officials under procedures prescribed by state law.¹⁴⁸ Supposedly, all tax-

¹⁴⁶ See N.C. CONST. art. V. Since 1868, amendments to the North Carolina Constitution have been incorporated into the text rather than added separately at the end of the document, as with the United States Constitution and the North Carolina Constitution of 1776. This practice makes it difficult to ascertain the wording of the constitution at a given point in time by reading the current version codified in the General Statutes, although the codifiers append carefully prepared historical notes to each section. The most convenient source for the North Carolina Constitution is the version printed at the front of each volume of the Session Laws (the Public Laws before 1943). These versions are those in force at the beginning of that particular session of the General Assembly.

¹⁴⁷ N.C. CONST. art. V, § 3 (1868); *Redmond v. Commissioners*, 106 N.C. 122, 10 S.E. 845 (1890).

¹⁴⁸ The statutory procedures for administration of the property tax were known as the Machinery Act and were re-enacted each biennium until made permanent in 1939. The Machinery Act is now codified as N.C. GEN. STAT. §§ 105-271 to -398 (1965).

able property in the state, real, personal and intangible, was listed on local tax books at its true market value. On the basis of the total valuation of all counties, the state levied its property tax, and the counties theirs. But there were two problems: the constitutional limit on the tax rate and the valuation process.

Through a peculiar equation of the property and poll taxes, the constitution limited the combined total of the state and county tax rates to sixty-six and two-thirds cents per one hundred dollars value.¹⁴⁹ Another section provided that the county tax rate could never exceed twice the state rate.¹⁵⁰ Thus, the maximum county rate was forty-four and four-ninths cents, which would be reduced pro tanto whenever the state rate exceeded twenty-two and two-ninths cents. In this system the crucial decision soon came to be, not the rate of tax to be levied, but how much to value each individual piece of real estate, item of personal property, or intangible on the tax books.

Listing and evaluation of property was done locally. With expanded demand for schools and roads, by 1920 nearly all the counties were levying their maximum rate, which was determined by what the state rate was for that year. Tax relief was possible, therefore, only in the form of lower values for property. This was simpler for real estate and tangible personal property than for intangibles.¹⁵¹ Many local officials yielded to pressure for tax relief and systematically reduced real estate and personal property values below their true market value. The effect of these horizontal reductions in value for realty and personalty was to drive intangible property into hiding. Shares of stock, promissory notes, cash, and similar items of property were simply not on the tax lists and were paying neither

¹⁴⁹ N.C. CONST. art. V, § 1 (1915) provided that the poll tax should be equal to the tax on property valued at \$300, but should never exceed \$2.00. The tax rate which will yield \$2.00 on property valued at \$300 is 66 2/3¢.

¹⁵⁰ N.C. CONST. art. V, § 6 (1915).

¹⁵¹ There can be reasonable doubt as to the value of a tract of land or a chattel, but no doubt as to the value of a certificate of stock traded on a national exchange, a bank note, or commercial paper in general. Until 1936 the Constitution did not allow special treatment for intangible property; all property had to be taxed by "uniform rule." While tax relief for intangibles was attempted in the form of allowing of credits and deductions against the tax, the effort to tax intangible property by the same rules as real estate and personal property was not successful. From 1920 to 1937 the total amount of intangible property listed in the State declined steadily. See generally, NORTH CAROLINA CLASSIFICATION AMENDMENT COMMISSION, REPORT 47-55 (1938). N.C. CONST. art. V, § 3, now allows the General Assembly to classify property and prescribe uniform rules for each class.

state nor local taxes even though intangible property was becoming in fact the major evidence of wealth. A vicious circle had set in. Real estate and tangible personal property were bearing an inequitable share of the tax burden because of the flight of intangibles and were being valued below market because of this, but intangibles were not being listed because the lowered values placed on realty and tangible personalty would have caused intangibles to bear an inequitable tax burden.¹⁵²

The first major effort at reform came in 1913 from the same study commission which recommended amendments restricting local legislation. As proposed by the Constitutional Commission of 1913, article V of the constitution would have been revised to allow the separation of sources of revenue between the counties and the state.¹⁵³ The state would have taxed intangible property to the exclusion of the counties, and the counties would have taxed realty and tangible personalty to the exclusion of the state. But a limit of sixty-six and two-thirds cents was still placed on the combined state and local tax rates. The amendments failed at the polls.

The 1919 General Assembly tried once more.¹⁵⁴ Under the 1919 proposals the state would have been allowed to levy a general income tax which would allow it to abandon the property tax entirely to the counties. Intangible property would have been exempt from the property tax but income from intangible property would have been taxed at a higher rate than other income. The total of state and county ad valorem taxes would have been limited to sixty-six and two-thirds cents with the expectation that all of this amount would be available to the counties. At the same time, state-supervised revaluation of property undertook to get all realty listed at its true market value, discover non-listed personalty and taxable polls, and ferret out intangibles.¹⁵⁵

The state revaluation was so successful that the constitutional amendments proposed by the 1919 General Assembly were never submitted to the people. Revaluation had tripled the value of property listed for taxes in the state.¹⁵⁶ A special session was called in

¹⁵² See generally, BETTERS, *STATE CENTRALIZATION IN NORTH CAROLINA* 26-31 (1932).

¹⁵³ N.C. Pub. Laws Ex. Sess. 1913, ch. 81; REPORT OF [THE] COMMISSION ON CONSTITUTIONAL AMENDMENTS (1913).

¹⁵⁴ N.C. Pub. Laws 1919, ch. 129.

¹⁵⁵ N.C. Pub. Laws 1919, ch. 84.

¹⁵⁶ BETTERS, *STATE CENTRALIZATION IN NORTH CAROLINA* 31 (1932).

1920 to approve the revaluation. It did so and revised the 1920 revenue act to reflect the new tax base.¹⁵⁷ At the same time, the proposed constitutional amendments enacted in 1919 were amended to delete the special treatment for income tax on intangibles and to reduce the maximum county tax rate from sixty-six and two-thirds cents to fifteen cents.¹⁵⁸ These amendments were submitted and ratified by the people.

As envisioned by the 1920 amendments¹⁵⁹ and the 1919 state revaluation act, the counties would have enjoyed sole access to the property tax guaranteed by a state-supervised valuation process. Valuation of all property at true market value would insure that the tax base would be sufficient to meet local demand for services within a maximum tax rate of fifteen cents. But the entire plan was wrecked by the business recession of 1920-21. State revaluation broke down completely. Most of the counties systematically reduced property values, and the pre-1919 cycle set in again.¹⁶⁰ The net effect was to leave the counties worse off than they had been under the old system, for now they were limited to a maximum rate of fifteen cents rather than forty-four and four-ninths cents as previously.

Contemporaneously with its handling of art II, § 29, the supreme court was moving on other fronts to alleviate some of the plight of local government in financial matters. Article VII, § 7, of the constitution forbids local governments to contract debts or levy taxes without a vote of the people, except for "necessary expenses." An early case construing this section of the constitution adopted a restrictive interpretation of "necessary expenses" which did not include the public schools.¹⁶¹ The impact of this ruling on local finance was considerable since the two usual methods of evading the constitutional limit on the tax rate were to finance capital improvements by bonds and to provide current expenses by deficit spending secured by bonds or notes. If schools were not a "necessary expense," either of these methods used in relation to the school system would require the approval of an absolute majority of all registered voters in the

¹⁵⁷ N.C. Pub. Laws Ex. Sess. 1920, ch. 1.

¹⁵⁸ N.C. Pub. Laws Ex. Sess. 1920, ch. 93.

¹⁵⁹ N.C. CONST. art. V, §§ 1, 3, 6 (1920). See generally, Coates & Mitchell, *Property and Poll Tax Limitations Under the North Carolina Constitution, Article V, Sections 1 and 6*, 18 N.C.L. REV. 275 (1940).

¹⁶⁰ BETTERS, *STATE CENTRALIZATION IN NORTH CAROLINA* 31-33 (1932).

¹⁶¹ *Barksdale v. Commissioners*, 93 N.C. 472 (1885).

county or school district in a special referendum.¹⁶² Even when it was possible to muster a majority of those voting, it was quite difficult to obtain an absolute majority of all registered voters. As a result, the quality of the schools varied greatly from county to county, depending largely on the county's relative wealth and its ability to finance all county activities within the constitutional tax limit.

Some relief was afforded by the court's reversal of position on whether schools were a necessary expense. This was accomplished by overruling its former decision and reconciling the taxation limitations of article V with the requirement of art. IX, § 3, that

Each county of the State shall be divided into a convenient number of districts, in which one or more public schools shall be maintained at least six months in every year; and if the commissioners of any county shall fail to comply with the aforesaid requirements of this section, they shall be liable to indictment.¹⁶³

What could be done if the total revenue available upon levy of the maximum constitutional rate was not sufficient to maintain a six-month school term with teachers paid a minimum salary prescribed by the state? In *Collie v. Commissioners*¹⁶⁴ the court held that art. IX, § 3, and art. V, § 6, construed together, allowed counties to exceed the constitutional limit on local taxation to the extent necessary to maintain a six-months school term but no further. Thus, all other local activities had to be financed within the constitutional limit, which after 1920 was fifteen cents. By that time it was rapidly becoming impossible to satisfy local demand even under this liberalized rule.

In this labyrinthine constitutional structure the two alternatives open to local governments unable to meet demand for roads and schools within the constitutional limits were bond issues and special taxes. The constitution allowed counties to exceed the tax limit "for a special purpose, and with the special approval of the General Assembly."¹⁶⁵

The General Assembly had long authorized the levy of special

¹⁶² N.C. CONST. art. VII, § 7 (1915); *Sprague v. Commissioners*, 165 N.C. 603, 81 S.E. 915 (1914). This section was amended by N.C. Sess. Laws 1947, ch. 34, to allow approval by a majority of those voting.

¹⁶³ N.C. CONST. art. IX, § 3 (1917). Before 1917 the required term was four months.

¹⁶⁴ 145 N.C. 170, 59 S.E. 44 (1907). The rule of *Collie* was written into art. V, § 6, by the 1920 amendments.

¹⁶⁵ N.C. CONST. art. V, § 6 (1920).

taxes for roads, courthouses, county homes and a few other expenses, but only to the extent of a five cent rate.¹⁶⁶ Issuance of bonds was subject to a statutory limitation that bonds could not be issued in excess of five per cent of the assessed valuation of the county.¹⁶⁷ These limits were so low that many counties could not make effective use of them. Rather than amend the general law to liberalize the limits, a task which would have been difficult due to the widely varying financial status of the 100 counties, the General Assembly enacted hundreds of local acts authorizing bond issues in excess of the five per cent limit, and special taxes in excess of the five cent limit or for purposes not allowed by the general law.

In this context, then, the supreme court was being asked to invalidate local acts funding existing road debt, authorizing road bonds, authorizing the levy of special taxes for road construction and maintenance, and authorizing special taxes and bonds for schools. If the court had adopted a broad construction of art. II, § 29, and prevented the General Assembly from enacting local legislation providing for the financing of roads and schools, one of two things would have happened: either the General Assembly would have been forced to re-examine state road and school policy, or many counties would have been unable to provide these services at the level demanded by their citizens. The court chose not to force either result. Whatever may have been the merits of state policy, it was firmly established that the financial arrangements to be made for roads and schools were primarily of local concern.¹⁶⁸

B. The Era of Reappraisal: 1938-1961

1. *The Reforms of 1931-33.*—The General Assemblies of 1931 and 1933 revolutionized the relationship between the state and its local governments.¹⁶⁹ The state began strict supervision of local government finance,¹⁷⁰ assumed almost total responsibility for the highway system,¹⁷¹ and took over most of the operating cost of the public

¹⁶⁶ N.C. Pub. Laws 1923, ch. 7.

¹⁶⁷ N.C. Pub. Laws 1927, ch. 81, § 17.

¹⁶⁸ See, e.g., N.C. COMM'N ON COUNTY GOVERNMENT, REPORT (1927); McMahon, *The North Carolina Local Government Commission*, 1960 N.C. ASS'N OF COUNTY COMM'RS COUNTY YEARBOOK 93-97.

¹⁶⁹ See generally, BETTERS, STATE CENTRALIZATION IN NORTH CAROLINA (1932).

¹⁷⁰ N.C. Pub. Laws 1931, ch. 60, 99.

¹⁷¹ N.C. Pub. Laws 1933, ch. 172; N.C. Pub. Laws 1931, ch. 145.

school system.¹⁷² The fiscal arrangements of the 1920's which had cast almost the entire burden of maintaining roads and schools on county government and the property tax were swept away. In their place were prescribed state systems financed by an increased income tax,¹⁷³ a sales tax¹⁷⁴ and a gasoline tax.¹⁷⁵ All special road districts¹⁷⁶ and all but a few of the special school districts were abolished.¹⁷⁷ Only school capital outlay and local option supplementary funds for schools were to remain with county government.

Initially, it seemed as if these reforms had cut the ground from under the supreme court's permissive attitude toward local legislation. Local legislation seemed no longer essential for adequate minimum financial support of roads and schools, and in fact bore a large share of the blame for the near-bankrupt state of many of the counties. Underlying these reforms was the basic policy that road, school and debt policy for local government should be uniform throughout the state. The old system had met public demand in a piece-meal fashion and the sanguine hope of the reformers was that state support and control would remedy inequities inherent in a system tying the financial support of the two major activities of state government to geographic subdivisions bearing no logical relation whatever to the distribution of wealth. But implicit in the principle of state support is compromise. If there were wide disparities in the ability of local governments to support roads and schools, there were also wide disparities in the level of services demanded by the citizenry. Any general state program, through the inevitable operation of the political process, would be offered at a level below that demanded by some areas and above that otherwise possible or desired in others.

The supreme court was caught up in this major policy shift via cases challenging local acts under art. II, § 29. Those involving individual school districts immediately challenged the uniformity of

¹⁷² N.C. Pub. Laws 1931, ch. 10, 371, 430 (state takes over 6 months school term); 99, 100, 378 (regulating finances of existing school districts); 180, 186 (funding debt of existing school districts); N.C. Pub. Laws 1933, ch. 143, 205, 257, 258, 299, 374, 376, 436, 500 (readjusting local government debt); 562 (School Machinery Act of 1933).

¹⁷³ Revenue Act of 1931, § 310, N.C. Pub. Laws 1931, ch. 427.

¹⁷⁴ Emergency Revenue Act of 1933, §§ 400-27, N.C. Pub. Laws 1933, ch. 445.

¹⁷⁵ N.C. Pub. Laws 1931, ch. 145, § 24.

¹⁷⁶ N.C. Pub. Laws 1931, ch. 145, § 7.

¹⁷⁷ N.C. Pub. Laws 1933, ch. 562, § 4.

the school system. The 1931-33 school reform acts had provided for variation in local demand through locally approved supplementary school taxes, but only at the county level. It was soon to become apparent that in many areas of the state variations in demand within the county were too great to be satisfied effectively within the framework of the general laws. To a minority of the court, any local modification of the general school laws was not favored. To the majority, the policy of uniformity was subsidiary to the general policy of state-local cooperation in providing for public education. This conflict on the court was to cause a re-examination and modification of its attitude toward art. II, § 29. However, the first indication of a change in position of the court came not in a case involving local finance, but one concerning the regulation of trade. Before turning to the school district cases of 1939-40, close attention to *State v. Dixon*¹⁷⁸ is necessary.

In 1937 the General Assembly attempted to regulate real estate brokers through an occupational licensing board.¹⁷⁹ Although originally intended to be state-wide in application, the act was amended during its course through the General Assembly to exempt sixty-four of the one hundred counties. Dixon was convicted of practicing the profession of real estate brokerage without a license. Upon return of a verdict of guilty, he moved in arrest of judgment on grounds that the licensing act was unconstitutional as an act "regulating labor, trade, mining or manufacturing." The trial judge allowed his motion and the state appealed. The supreme court affirmed in a four to three decision with three separate opinions. Three justices concurred in the opinion of the court, Justice Barnhill concurred in the affirmance for different reasons, and three justices dissented. The three opinions reveal the court's uncertainty and dissatisfaction with its own precedents construing art. II, § 29, and its unwillingness to go outside them to the well-developed body of case law construing similar constitutional provisions in other states.

Justice Clarkson for the court condemned the licensing act on two grounds: it violated art. II, § 29, as a regulation of trade, and was in derogation of the Revenue Act, a state policy of general ap-

¹⁷⁸ 215 N.C. 161, 1 S.E.2d 521 (1939).

¹⁷⁹ N.C. Pub. Laws 1937, ch. 292. An earlier act on the same subject had been declared unconstitutional in *State v. Warren*, 211 N.C. 75, 189 S.E. 108 (1937).

plication.¹⁸⁰ In his discussion of the act's conformity to the requirements of art. II, § 29, Justice Clarkson was on relatively firm ground. There can be little argument with his conclusion that the act regulated trade within the meaning of the constitution. Nor can there be serious criticism of his conclusion that the rule of *In re Harris*¹⁸¹ held the act to be local since it applied to less than one-half of the counties. Had he gone no further, the opinion would have contributed little to the law beyond the characterization of occupational licensing as a regulation of trade. But Justice Clarkson also seemed anxious to demonstrate that the act was invalid on non-constitutional grounds.

For many years the state had levied a privilege license tax on real estate brokers under the Revenue Act.¹⁸² This was purely a revenue-raising device, not intended to regulate the manner in which the trade was carried on. Yet Justice Clarkson concluded that the issuance of a privilege license to the defendant Dixon, which was nothing more than evidence that he had paid the required tax, amounted to a legislative determination that he should be allowed to engage in his profession throughout the length and breadth of the state. The occupational licensing act under attack, on the other hand, purported to lay down different standards for determining whether Dixon should be allowed to engage in his profession in thirty-six counties. By applying the rule that a local act in conflict with or derogation of a general law is invalid, the occupational licensing act was declared repealed by the general law. Justice Clarkson expressed the rule as follows:

Whenever the General Assembly has, by a general act of State-wide application, adopted a specific licensing policy to be applied uniformly throughout the State with respect to a particular occupation, a local act in derogation of the general act must fail. The reason for this rule is apparent; all acts of the same session of the General Assembly on the same subject are to be considered as one act . . . and effect given to all provisions if this can be done upon any fair hypothesis . . . with the use of all reasonable means to arrive at the legislative intent . . . , but subordinate aims where inconsistent must yield to primary intent and local wishes must yield to general, State-wide policies.¹⁸³

¹⁸⁰ A real estate brokers' licensing act was not re-enacted until 1957. N.C. GEN. STAT. ch. 93A. (1965).

¹⁸¹ 183 N.C. 633, 112 S.E. 425 (1922).

¹⁸² Now codified as N.C. GEN. STAT. § 105-41 (1965).

¹⁸³ 215 N.C. at 167, 1 S.E.2d at 524.

This doctrine is a rather peculiar twist to the traditional maxim that statutes are to be construed *in pari materia*.¹⁸⁴ It runs counter to the general rule in North Carolina that general laws do not repeal special acts by implication.¹⁸⁵ While Justice Clarkson's second ground for invalidating the 1937 real estate brokers licensing act might be questionable law, it reflects a judicial policy which was to become a major factor in the court's subsequent attitude toward local legislation: where the state adopts a state-wide policy in regard to a given subject, local acts in conflict with that policy will not be favored by the court.

The dissenting opinion of Justice Devin¹⁸⁶ would probably have had little impact on subsequent developments were it not for his classification arguments. After disagreeing with the majority as to the application of the rule of *In re Harris*, Justice Devin proceeded to cite abundant authority to the effect that a "public law of general obligation" need not be uniformly applicable throughout the territorial extent of the state. It need only "apply equally to all persons within the territorial limits described in the act."¹⁸⁷ Justice Devin's authorities and reasoning would have been appropriate had the case challenged the act under the equal protection clause of the United States Constitution¹⁸⁸ or the "law of the land" clause¹⁸⁹ of the North Carolina Constitution, but they have no place in the construction of art. II, § 29, as was pointed out by the concurring opinion of Justice Barnhill.

¹⁸⁴ See 2 SUTHERLAND, STATUTORY CONSTRUCTION § 5202 (3d ed. Horack 1943).

¹⁸⁵ *E.g.*, *Duke Power Co. v. Bowles*, 229 N.C. 143, 48 S.E.2d 287 (1948); *Hammond v. City of Charlotte*, 205 N.C. 469, 171 S.E. 612 (1933); *Monteith v. Board of County Comm'rs*, 195 N.C. 71, 141 S.E. 481 (1928); *State v. Johnson*, 170 N.C. 685, 86 S.E. 788 (1915); *McRae v. Wessell*, 28 N.C. 153 (1845). *Accord*, 2 SUTHERLAND, STATUTORY CONSTRUCTION § 5204 (3d ed. Horack 1943).

¹⁸⁶ 215 N.C. at 173, 1 S.E.2d at 527.

¹⁸⁷ *Id.* at 176-77, 1 S.E.2d at 530.

¹⁸⁸ This has long been the rule with respect to the effect of U.S. CONST. amend. XIV on local legislation. *McGowan v. Maryland*, 366 U.S. 420, 427 (1961); *Salsburg v. Maryland*, 346 U.S. 545, 551 (1954); *Fort Smith Light & Traction Co. v. Board of Improvement*, 274 U.S. 387, 391 (1927); *Ocampo v. United States*, 234 U.S. 91 (1914); *Mallett v. North Carolina*, 181 U.S. 589 (1901); *Missouri v. Lewis*, 101 U.S. 22 (1879).

¹⁸⁹ N.C. CONST. art. I, § 17: "No person ought to be taken, imprisoned, or disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner deprive of his life, liberty or property, but by the law of the land." The North Carolina Supreme Court generally holds that this section is equivalent to the fourteenth amendment to the United States Constitution. See, *e.g.*, *Eason v. Spence*, 232 N.C. 579, 61 S.E.2d 717 (1950).

Justice Barnhill's opinion¹⁹⁰ shed the first ray of light on the dark convolutions of the North Carolina case law construing art. II, § 29. He agreed that the real estate licensing act of 1937 regulated trade, but sought to point out the court's confusion by offering a distinction between the concept of a "local" law and a "special" law. Whatever may be the merits of attempting to distinguish among public, local, private, or special acts, Barnhill's was the first sensible effort of the North Carolina Supreme Court to rationalize art. II, § 29. The term "special law," he wrote, "means laws imposing particular burdens or conferring special rights, privileges or immunities upon a portion of the people of the State without including therein and being applicable to all of the class throughout the State."¹⁹¹ This, of course, is familiar learning under the fourteenth amendment to the United States Constitution. A "local" law on the other hand, is one which does not apply uniformly throughout the territory of the state to the same class of persons subject to it but only to those of that class within the geographical limits of its application. Justice Barnhill continued:

Thus, it appears that the purpose of the act is to regulate the trade of real estate brokers and salesmen, and that the legislature grouped the real estate brokers of the State as a whole into a class sufficiently distinguished by characteristics to make it the subject of legislation. However, notwithstanding the declared intent of the Legislature to deal with real estate brokers and salesmen as a class throughout the State, the act by sec. 17 1/2 exempts from the operation thereof 64 counties. It appears, therefore, that the act does not apply to real estate brokers and salesmen throughout the State as a class, notwithstanding the declared purpose of the Legislature. The lawmaking body made a reasonable classification of citizens and then, by the express terms of the act, excluded from its operation a large portion of the class. To my mind, this alone stamps the legislation as special, brings it within the prohibitive provisions of Art. II, sec. 29, of the Constitution, and makes it invalid.¹⁹²

Even Justice Barnhill's opinion is less than lucid. Having identified the proper concept for dealing with local legislation, he failed to keep it separate from the equal protection clause. But despite its limitations, *State v. Dixon* was to become the watershed of local legislation cases in North Carolina, with Justice Barnhill's concur-

¹⁹⁰ 215 N.C. at 171, 1 S.E.2d at 526.

¹⁹¹ *Id.* at 171, 1 S.E.2d at 527.

¹⁹² *Id.* at 172, 1 S.E.2d at 527.

ring opinion eventually to become the rule of the court. Meanwhile, the court remained sorely divided on the proper scope to be allowed to art. II, § 29, as would be abundantly clear in the school district cases decided in 1939 and 1940.

2. *The School District Cases.*—The 1933 School Machinery Act¹⁹³ provided that school capital outlay was to be undertaken by local administrative units and financed by taxes levied throughout the unit. The system of special districts which characterized local school programs in the 1920's was abolished.¹⁹⁴ Yet it soon became apparent that support for capital improvements in many units could not be mustered throughout the unit. Many school districts had constructed their buildings in the recent past by special district taxes and were still paying off the bonds. The residents of these areas did not look with favor on the prospect of having to assist in the construction of schools for other areas within the county which had not been quite so progressive as they in the past. As a result county-wide taxes could not be voted in many counties for the construction of any new buildings.¹⁹⁵ Local acts began to be enacted in 1937 to remedy the problem. Under these acts the county board of commissioners would be authorized to establish special taxing districts for school purposes upon petition, and to authorize bond elections within these districts for the construction of school buildings.¹⁹⁶ The first test of such an act to reach the supreme court was *Hinson v. Board of Comm'rs.*¹⁹⁷ The plaintiffs in *Hinson* alleged that the local act under which the Yadkin County commissioners had established the Jonesville school district¹⁹⁸ violated the school clause of art. II, § 29. The trial judge, Sam J. Ervin, Jr., later to become an associate justice of the supreme court, agreed with the plaintiffs and enjoined the bond issue.¹⁹⁹ This injunction was affirmed by an equally divided court without opinion. At the next term the issue came up again, this time from Buncombe County, in *Fletcher v. Board of County Comm'rs.*²⁰⁰

¹⁹³ N.C. Pub. Laws 1933, ch. 562.

¹⁹⁴ N.C. Pub. Laws 1933, ch. 562, § 4.

¹⁹⁵ See *Fletcher v. Board of County Comm'rs*, 218 N.C. 1, 9 S.E.2d 606 (1940).

¹⁹⁶ *E.g.*, N.C. Pub.-Loc. Laws 1937, ch. 220.

¹⁹⁷ 216 N.C. 806, 6 S.E.2d 504 (1940).

¹⁹⁸ N.C. Pub.-Loc. Laws 1939, ch. 525.

¹⁹⁹ *Record, Hinson v. Board of Comm'rs*, 216 N.C. 806, 6 S.E.2d 504 (1940).

²⁰⁰ 218 N.C. 1, 9 S.E.2d 606 (1940).

The local act challenged in *Fletcher* was similar to the Yadkin County act invalidated by *Hinson*.²⁰¹ While *Hinson* did not show the alignment of the court, *Fletcher* supports the conclusion that Chief Justice Stacy, who was not sitting when *Hinson* was decided, cast the decisive vote. Justice Seawell wrote the opinion for the court and upheld the Buncombe County act. Justice Barnhill dissented, joined by Justices Devin and Winborne. In a well-written opinion, Justice Seawell brought the school special tax districts under the rule of *Reed v. Howerton Eng'r Co.*²⁰² without citing that case.

It will be observed that the act in question prescribes a method whereby school districts or special bond tax units may be uniformly established throughout the county. The act itself deals only with the mechanics of establishing or changing the lines of school districts or special bond tax units, and does not, *ex proprio vigore*, undertake to establish or change any such lines. These are matters which, in terms, are committed to the sound discretion of the county board of education. The constitutional prohibition as respects the matter now in hand is against direct action on the part of the General Assembly and not against the establishment of machinery for the accomplishment of these ends.²⁰³

Seawell then turned to a refutation of the state policy rationale urged by Justice Devin in *State v. Dixon*. He pointed out that

Questions of policy derived solely from statutes can be of little avail in determining the priority or potency of separate statutes upon the same subject where there is a suggested conflict. Certainly the same power which creates a policy may destroy it, or modify it, or make exceptions, or do with it as it will; and frequently the stronger indication of policy lies in the exception rather than in the rule.²⁰⁴

In addition, he noted that the interpretive rule urged by Devin in *Dixon* was contrary to the normal rule applied by the court.²⁰⁵ However, Seawell was not blind to the policy implications of his decision. Rather, it appears that these were uppermost in his mind. The opinion concludes with these words:

It has been said that the policy of the State is epitomized in the expression, 'An equal educational opportunity for every boy

²⁰¹ N.C. Pub.-Loc. Laws 1937, ch. 279.

²⁰² 188 N.C. 39, 123 S.E. 479 (1924).

²⁰³ 218 N.C. at 5, 9 S.E.2d at 609 (1940).

²⁰⁴ *Id.* at 6, 9 S.E.2d at 609.

²⁰⁵ *Id.* at 6-7, 9 S.E.2d at 610.

and girl in the State.' Equality in educational opportunity must not be achieved by a leveling down process. . . .

When the State took over the maintenance of the public schools, it did not take over the business of building school-houses. The law simply abolished all taxing districts, including special charter districts, to which the great advance in the building program had been largely due. . . . There are one hundred counties in the State, each with its own difficulties and problems, some of which seem to be almost unsolvable. There are one hundred governing boards, composed of men who have widely different ideas upon this subject and with a discretion which may be exercised and reflected in widely divergent standards throughout the State. Under such conditions the recognition of community initiative seems to be as imperative as it has ever been.²⁰⁶

Justice Barnhill's opinion²⁰⁷ for the dissenters confused the statutory construction arguments of Justice Devin in *Dixon* with the majority's constitutional arguments and exalted them into a rule of constitutional law. This novel doctrine has not been perpetuated in any subsequent opinion.

On the same day, the court took up *Hinson v. Commissioners*²⁰⁸ on rehearing and reversed Judge Ervin's decision below on authority of *Fletcher*. Justice Barnhill again dissented²⁰⁹ on the basis of his dissent in *Fletcher*, but with the added observation that he no longer considered *Brown v. Commissioners*²¹⁰ authoritative. "At the time that decision was rendered," Barnhill noted, "the State had not assumed control of the State Highways or the maintenance of county roads. The Act under consideration in that case was not in conflict with any State policy. . . ."²¹¹

The school district cases of 1939-40 made no immediate change in the case law construing art. II, § 29, but they showed that three of the seven justices were quite willing to scrap all of their former precedents, at least insofar as local school acts were concerned. Even the majority was concerned to justify their decision at some length. The court had come around from its former position by ninety degrees, a harbinger of later developments.

3. *The Health Cases*.—The broad constructionists were not able

²⁰⁶ *Id.* at 7, 9 S.E.2d at 610.

²⁰⁷ *Id.* at 7, 9 S.E.2d at 610.

²⁰⁸ 218 N.C. 13, 9 S.E.2d 614 (1940).

²⁰⁹ *Id.* at 14, 9 S.E.2d at 615.

²¹⁰ 173 N.C. 598, 92 S.E. 502 (1917).

²¹¹ 218 N.C. at 15, 9 S.E.2d at 615.

to win a majority of the court in the school district cases, but they reigned supreme in a new class of cases being brought to the court invoking the hitherto neglected clause of art. II, § 29, "relating to health, sanitation and the abatement of nuisances." Without the deadening weight of outmoded precedent, and confronted with subject matter of much less popular concern, the court invalidated every local act brought before it which remotely involved health matters.

The first two cases concerned local acts relating to county boards of health. In *Sams v. Board of County Comm'rs*²¹² the plaintiff sued to recover his salary as county physician. He had been appointed by a county board of health organized under a local act. In a short opinion limited to declaratory statements the court held the local act void. "It is apparent that the act is local and that it relates to health and sanitation. . . ."²¹³

*Board of Health v. Board of Comm'rs*²¹⁴ invalidated a local act requiring that the appointment by a local board of health of a county health officer be confirmed by the county commissioners. After summarily holding that the act was local and related to health, Justice Seawell introduced a new version of the legislative intent underlying art. II, § 29, to replace the statutory construction doctrines advocated by Justice Devin in *State v. Dixon*. Seawell stated that

We have become increasingly conscious of the fact that many of the problems which heretofore we have considered purely local are so related to the welfare of the whole state as to demand uniform and coordinated action under general laws. We believe that the section of the Constitution which the plaintiffs have invoked was not intended merely as a device to free the Legislature from the enormous amount of petty detail that had theretofore occupied every session, but we think it was also framed upon the principle that we have just stated, and therefore it should not be so construed as to minimize the provision it has made looking to this result. It is remedial in nature, and its application should not be denied on an unsubstantial distinction which would defeat its purpose. It especially mentions general laws 'relating to health' as being within its protective purview, recognizing that the alleviation of suffering and disease, the eradication or reduction of communicable disease in its humanitarian, social, and eco-

²¹² 217 N.C. 284, 7 S.E.2d 540 (1940).

²¹³ *Id.* at 285, 7 S.E.2d at 541. Justice Devin, writing for the majority, still held to his uniform state policy rationale for art. II, § 29, first advanced in *State v. Dixon*.

²¹⁴ 220 N.C. 140, 16 S.E.2d 677 (1941).

conomic aspect, is a State-wide problem which ought not to be interfered with by local dilatory laws which are so frequently the outcome of local indifference, or factional and political disagreements.²¹⁵

This conception of art. II, § 29, as a directive for general laws rather than a time-saver for the legislature, was further elaborated by Justice Ervin in *Idol v. Street*.²¹⁶ This case sought a declaratory judgment that an ordinance of the city-county board of health for Forsyth County and Winston-Salem which sought to regulate the sale of milk within its jurisdiction was invalid on grounds that the board of health had been organized under a local act in contravention of art. II, § 29. The court held the act invalid. After paying his respects to the traditional rationale that art. II, § 29, was designed solely to conserve legislative time, Justice Ervin attributed quite a different intent to the amendment.

In thus amending their organic law, the people were motivated by the desire that the General Assembly should legislate for North Carolina in respect to the subjects specified as a single united commonwealth rather than as a conglomeration of innumerable discordant communities. To prevent this laudable desire from degenerating into a mere pious hope, they decreed in emphatic and express terms that 'any local, private, or special act or resolution passed in violation of the provisions of this section shall be void,' no matter how praise-worthy or wise such local, private, or special act or resolution may be.²¹⁷

The extent to which the court had changed directions comes out strikingly in two cases involving financial matters—the type of case which had been the model for judicial restraint in the 1920's. *Lamb v. Board of Educ.*²¹⁸ invalidated an act which had forbidden a local board of education from spending "in excess of \$2,000 under any one project or contract for the purpose of extending any public or private water or sewer system so that such extended system will serve any public school"²¹⁹ in the county. The court held the act related to health "since its sole purpose is to prescribe provisions with respect to sewer and water service. . . ."²²⁰ In fact, the act was

²¹⁵ *Id.* at 143, 16 S.E.2d at 679.

²¹⁶ 233 N.C. 730, 65 S.E.2d 313 (1951).

²¹⁷ *Id.* at 732-33, 65 S.E.2d at 315.

²¹⁸ 235 N.C. 377, 70 S.E.2d 201 (1952).

²¹⁹ N.C. Sess. Laws 1951, ch. 1075.

²²⁰ 235 N.C. at 379, 70 S.E.2d at 203.

probably one more example of the use of local legislation to transfer local political disputes to Raleigh and had only minimal connections with health matters.

*Board of Managers v. City of Wilmington*²²¹ had more significant implications. This case held void a local act authorizing contracts between a city, the county, and the local hospital for hospitalization of the "indigent sick and afflicted poor," an arrangement not adequately provided for by general law. While the court discussed a great many old cases construing art. II, § 29, resurrecting many of them for the first time in years, it added little to the body of the law beyond an illustration of the court's willingness to upset local financial arrangements established by local act.

4. *Streets and Courts.*—Only one innovation was introduced into the cases construing the street clause of art. II, § 29, in the period between 1935 and 1961. *Carolina-Virginia Coastal Highway v. Coastal Turnpike Authority*²²² involved the act of the 1949 General Assembly authorizing the creation of a corporation for the purpose of building toll roads and toll bridges in five named coastal counties.²²³ The act was held invalid primarily on grounds other than art. II, § 29, but the court expressed the opinion that it came within the rule of *In re Harris*²²⁴ and related to streets, ferries and bridges. Significantly, the act did not purport to locate any specific highway but merely set up the administrative apparatus for doing so. The holding is therefore at odds with the court's previous decisions in street cases.²²⁵

In other cases the court reaffirmed its earlier ruling that an act increasing the jurisdiction of a local court did not violate art. II, § 29,²²⁶ upheld an act increasing the authority of a city chartered before 1917 to levy street assessments,²²⁷ and held that neither the establishment of a claims docket in a local court²²⁸ nor an act au-

²²¹ 237 N.C. 179, 74 S.E.2d 749 (1953).

²²² 237 N.C. 52, 74 S.E.2d 310 (1953).

²²³ N.C. Sess. Laws 1949, ch. 1024, as amended, N.C. Sess. Laws 1951, ch. 993.

²²⁴ 183 N.C. 633, 112 S.E. 425 (1922).

²²⁵ See note 101 *supra* and accompanying text.

²²⁶ *State v. Norman*, 237 N.C. 205, 74 S.E.2d 602 (1953); *Williams v. Cooper*, 222 N.C. 589, 24 S.E.2d 484 (1943).

²²⁷ *City of Goldsboro v. Atlantic Coast Line RR.*, 241 N.C. 216, 85 S.E.2d 125 (1954). See also, *In re Resolutions*, 243 N.C. 494, 91 S.E.2d 171 (1956).

²²⁸ *Better Home Furniture Co. v. Baron*, 243 N.C. 502, 91 S.E.2d 236 (1956).

thorizing police to issue warrants²²⁹ amounted to the "establishment" of a court.²³⁰

C. The Era of Broad Construction: McIntyre v. Clarkson (1961).

In 1949 the General Assembly enacted an alternative method for selecting justices of the peace.²³¹ Under this act, the boards of county commissioners were authorized to fix by resolution the number of justices of the peace to be appointed for their counties, to fix the salaries of the justices, and to define their jurisdiction. Upon adoption of such a resolution, the resident judge of the superior court was to appoint the requisite number of justices of the peace. The Mecklenburg County board of commissioners elected to use this new procedure, adopted the necessary resolution, and appropriated funds for payments of the justices' salaries. The plaintiff in *McIntyre v. Clarkson*²³² brought a taxpayer's suit to enjoin the resident superior court judge from appointing justices of the peace under the 1949 act and to restrain the county commissioners from paying their salaries from public funds. The basis of the suit was that the 1949 act applied to only twenty-eight counties²³³ and was therefore a local act "relating to the appointment of justices of the peace," void under art. II, § 29.

The supreme court could have easily declared the Justice of the Peace Act of 1949 void under the rule of *In re Harris*, since not even a near-majority of the state's 100 counties were subject to the act. The court did not choose to do so but held the act unconstitu-

²²⁹ *State v. St. Clair*, 246 N.C. 183, 97 S.E.2d 840 (1957).

²³⁰ See also, *State v. Ballenger*, 247 N.C. 216, 100 S.E.2d 351 (1957). In this case the court considered whether the addition or deletion of a county from the list of counties exempted from a general law valid under the rule of *In re Harris* (applicable to more than one-half of the 100 counties) amounted to the passage of an act applicable to the added or deleted county alone and thus violated art. II, § 29. The court held that addition or deletion of a single county amounts to a re-enactment of the entire act, thus invoking the rule of *In re Harris* and saving the validity of the act. *Id.* at 217-18, 100 S.E.2d at 353. This holding seems to ignore the clause of art. III, § 29, concerning enactment of local acts by the "partial repeal" of a general law.

²³¹ N.C. Sess. Laws 1949, ch. 1091; N.C. GEN. STAT. §§ 7-120.1 to -120.11 (1953). Under the usual procedure justices of the peace are appointed by the General Assembly and receive only fees as compensation. There are numerous local modifications, all of which will be rendered obsolete by the Court Reform Act of 1965 under N.C. CONST. art. IV.

²³² 254 N.C. 510, 119 S.E.2d 888 (1961).

²³³ N.C. GEN. STAT. § 7-120.10 (1953).

tional under art. II, § 29, for an entirely different reason. The court held that

Within the meaning of constitutional prohibitions against local laws, a law is local where, by force of an inherent limitation, it arbitrarily separates some places from others upon which, but for such limitation, it would operate, where it embraces less than the entire class of places to which such legislation would be necessary or appropriate having regard to the purpose for which the legislation was designed, and where the classification does not rest on circumstances distinguishing the places included from those excluded.²³⁴

Under this test the number of local units included or excluded from the operation of an act is immaterial. Rather, the test is whether any rational basis reasonably related to the objective of the legislation can be identified which justifies the separation of units of local government into included and excluded categories. Thus, it is possible that an act applying to ninety-nine out of the one hundred counties might be held a "local" act while another applying to only one county might be "general."

The reasonable classification test of *McIntyre v. Clarkson* was an innovation in the law of North Carolina but has long been the rule in nearly all the states having constitutional prohibitions against the enactment of local, special or private legislation.²³⁵ Discussion of the case law on classification from other jurisdictions is abundant elsewhere and need not be repeated here. In barest outline, a statutory classification is held to be "reasonable" if it satisfies the following five tests: (1) the classification must be based upon substantial distinctions which make one class really different from another; (2) the classification adopted must be germane to the purpose of the law; (3) the classification must not be based upon existing circum-

²³⁴ 254 N.C. at 518, 119 S.E.2d at 893-94. The court quoted this passage from 50 AM. JUR. STATUTES § 8 (1944).

²³⁵ See, e.g., ANTIEAU, MUNICIPAL CORPORATION LAW § 2.12 (1966); 2 SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION §§ 2102-09 (3d ed. Horack 1943); Binney, *Restrictions Upon Local and Special Legislation in the United States*, 48 AM. L. REGISTER 613, 721, 816, 922, 1019, 1109 (1893); Cloe & Marcus, *Special and Local Legislation*, 24 KY. L.J. 351 (1936); Horack & Welsh, *Special Legislation: Another Twilight Zone*, 12 IND. L.J. 109, 183 (1936-37); Hubbard, *Special Legislation for Municipalities*, 18 HARV. L. REV. 588 (1905); Winters, *Classification of Municipalities*, 57 NW. U.L. REV. 279 (1962). The case law on classification is so vast and so old it is surprising that it took the court over forty years to discover it.

stances only; (4) to whatever class a law may apply, it must apply equally to each member thereof;²³⁶ and (5) if the classification meets these requirements, the number of members in a class is wholly immaterial.²³⁷

McIntyre v. Clarkson, though a complete departure from the court's prior rulings on whether a given act is local or general, did not expressly overrule any of the North Carolina precedents. Instead, Justice Moore for the majority went to some length to develop a rationale for the "apparent inconsistencies" in these cases. The reasonable classification test adopted in *McIntyre* was justified as the actual basis for decision in *In re Harris*²³⁸ and much reliance was placed on Justice Barnhill's concurring opinion in *State v. Dixon*.²³⁹ The great majority of the former decisions, those involving the road and school district acts, were adroitly explained as being acts "supplementary" to general laws.

In those situations in which the county is the established and designated unit for the administration of a general, statewide law or policy, a statute, having application to one or more counties, which merely supplements the general law or policy, or aids in the administration according to local needs, or is primarily designed to finance the operation, is not unconstitutional if it does not directly or specifically violate a constitutional prohibition against local, private or special legislation; and this is true even if the statute incidentally or indirectly relates to the prohibited subject.²⁴⁰

²³⁶ At first glance this requirement seems to be merely a restatement of the normal requirements of U.S. CONST. amend. XIV. However, the fourteenth amendment is held to apply only to persons as such and not to political subdivisions. *Salsburg v. Maryland*, 346 U.S. 545, 551 (1954) and authorities cited note 188 *supra*. The requirement that all members of a class of local governments must be treated equally does not spring from the fourteenth amendment but is properly an independent criterion of constitutional provisions requiring the enactment of general laws on specified subjects.

²³⁷ *Winters, Classification of Municipalities*, 57 NW. U.L. REV. 279, 287 (1962).

²³⁸ 254 N.C. at 520, 119 S.E.2d at 895. The court said that the basis of classification of the Recorder's Court Act of 1919 was "need."

²³⁹ See note 190 *supra* and accompanying text. The court found that the majority opinion in *State v. Dixon* "does not discuss classification, but the general tenor of the opinion is consistent with that principle stated in the concurring opinion." 254 N.C. at 521, 119 S.E.2d at 896.

²⁴⁰ 254 N.C. at 522, 119 S.E.2d at 896. The court added, "Most of the cases relating to roads and bridges arose during the period when roads and bridges were, for the most part, the responsibility of the counties and the counties were the units for administration purposes." *Ibid*.

This statement cannot be taken as having much force outside the context of road and school matters for it describes virtually all local legislation relating to counties. It would be difficult to imagine a local act regulating the affairs of any county, city, or other political subdivision of the state which would be unrelated to any statewide law or policy and did not in some manner supplement or aid in the administration of that law or policy.²⁴¹ Nevertheless, this rationale neatly ties up the cases decided in the court's strict construction era and allows the court to follow these precedents, now long established.²⁴²

1. *Regulation of Trade*.—The clause of art. II, § 29, prohibiting local acts "regulating labor, trade, mining or manufacturing," first construed in *State v. Dixon*, began to assume major importance in the supreme court in the late 1950's. Two cases, preceding *McIntyre*, involved the prohibition and regulation of stock car racing. *State v. Chestnutt*²⁴³ upheld a local act making it unlawful "for any person . . . to engage in, promote, or in anywise participate in any motorcycle or other motor vehicle race or races on Sunday in Wake County, North Carolina."²⁴⁴ By the paper thin distinction that the statute did not affirmatively disclose an intent to regulate *commercial* motor vehicle racing, the court found no intent to regulate trade. *Orange Speedway, Inc. v. Clayton*,²⁴⁵ on the other hand, required all persons promoting or participating in motor vehicle racing in Orange County to purchase public liability insurance in stated amounts.²⁴⁶ Even though this local act nowhere indicated that it was directed toward commercial activities, the court thought "it would seem to be unreasonable to suppose that any person, firm or corporation would

²⁴¹ In fact, the court's standard definition of counties is that they are "simply agencies of the State, constituted for the convenience of local administration in certain portions of the state's territory," *Martin v. Board of Comm'rs*, 208 N.C. 354, 365, 180 S.E. 777, 783 (1935). In another place the court has stated that "all the powers and functions of a county bear reference to the general policy of the state, and are in fact an integral portion of the general administration of state policy." *O'Berry v. Mecklenburg County*, 198 N.C. 357, 360, 151 S.E. 880, 882 (1930). See LEWIS, AN INTRODUCTION TO COUNTY GOVERNMENT 4-9 (1963).

²⁴² See *Peacock v. County of Scotland*, 262 N.C. 199, 136 S.E.2d 612 (1964). This case, decided three years after *McIntyre*, upheld a local act providing for an election on the merger of two local school administrative units. The court cited its old school district precedents but not *McIntyre*.

²⁴³ 241 N.C. 401, 85 S.E.2d 297 (1955).

²⁴⁴ N.C. Sess. Laws 1949, ch. 177.

²⁴⁵ 247 N.C. 528, 101 S.E.2d 406 (1958).

²⁴⁶ N.C. Sess. Laws 1957, ch. 588.

construct and maintain a race track in Orange County and procure the insurance coverage required . . . unless such person, firm or corporation was engaged in the business of racing for profit."²⁴⁷

Following closely on *McIntyre* were two major cases involving Sunday-closing laws: *Treasure City v. Clark*²⁴⁸ and *High Point Surplus Co. v. Pleasants*.²⁴⁹ The act of the 1961 General Assembly which made it a misdemeanor to sell certain merchandise and services on Sunday²⁵⁰ was declared unconstitutionally vague by the supreme court in 1962.²⁵¹ Responding to the court's objection of vagueness and also to a suggestion that the statute might violate art. II, § 29, because it exempted several counties,²⁵² the 1963 General Assembly rewrote the act.²⁵³ The revised statute specifically exempted by name several counties and portions of others. It then recited that "the areas that are exempted from this act . . . are so exempted upon the classification of such areas as resort or tourist areas. . . ."²⁵⁴ *Treasure City v. Clark*²⁵⁵ reaffirmed the classification test of *McIntyre* and concluded that the 1963 revision did not meet the test. The list of merchandise prohibited for sale on Sunday did not include the kinds of goods and services normally sought by tourists but rather those of primary interest to permanent residents. Nor did the act include all of the state's well known resort areas. The court found the legislative classification to be a sham and held the act void under art. II, § 29. *High Point Surplus Co. v. Pleasants*²⁵⁶ construed General Statute 153-9(55) which differs from the act construed by *Treasure City* in that it authorizes the

²⁴⁷ 247 N.C. at 532-33, 101 S.E.2d at 409. In *State v. Smith*, 265 N.C. 173, 143 S.E.2d 293 (1965). Justice Sharp reconciled these two cases with the "incidental purpose" doctrine. *State v. Chestnut* was explained as holding that that statute there challenged regulated all motor vehicle racing on Sundays, not just commercial races. N.C. GEN. STAT. § 20-141.3 (Supp. 1965), which prescribes heavy penalties for motor vehicle racing on streets and highways, was enacted in 1955, subsequent to the local act under consideration in *State v. Chestnut*.

²⁴⁸ 261 N.C. 130, 134 S.E.2d 97 (1964).

²⁴⁹ 264 N.C. 650, 142 S.E.2d 697 (1965).

²⁵⁰ N.C. Sess. Laws 1961, ch. 1156.

²⁵¹ *GI Surplus Store, Inc. v. Hunter*, 257 N.C. 206, 125 S.E.2d 764 (1962).

²⁵² *Id.* at 211, 125 S.E.2d at 768.

²⁵³ N.C. GEN. STAT. § 14-346.2 (Supp. 1965).

²⁵⁴ N.C. Sess. Laws 1963, ch. 488. The quoted language and exemptions were not codified by the Revisor of Statutes, but are noted in an annotation to N.C. GEN. STAT. § 14-346.2 (Supp. 1965).

²⁵⁵ 261 N.C. 130, 134 S.E.2d 97 (1964).

²⁵⁶ 264 N.C. 650, 142 S.E.2d 697 (1965).

board of county commissioners to make Sunday sales of certain merchandise and services unlawful.²⁵⁷ This statute, which exempted forty-eight counties from its provisions,²⁵⁸ made no attempt to define the criteria by which the General Assembly had determined which counties should be included and which excluded. Nevertheless, the court sought to discover some common characteristic shared by the included counties which could sustain the statute under the reasonable classification test by *McIntyre*. Finding none, the court held the statute void under art. II, § 29, since "it is clear that the General Assembly did not intend that the statute have uniform state-wide application to all similarly situated and conditioned in relation to the purposes of the law."²⁵⁹

The most recent case, *State v. Smith*,²⁶⁰ invalidated a local act authorizing the Forsyth County commissioners to regulate the closing hours of any "club" located within 300 feet of church or school property.

2. *Health Matters*.—Before 1961 only cities of 5,000 or more population could create housing authorities under the Housing Authorities Law of 1935.²⁶¹ In 1959 the act was amended to provide that in fourteen named counties, any city or town of a population of 500 or more might proceed under its authority.²⁶² The town of Murphy took advantage of the 1959 amendment and created a housing authority. The plaintiff in *State ex rel. Carringer v. Alverston*²⁶³ sought a declaratory judgment that the 1959 amendment was in violation of art. II, § 29, and that therefore Murphy's action in creating a housing authority was void.

The court stated that the Housing Authorities Law was within the health clause of art. II, § 29, since "G.S. 157-2 declares the pur-

²⁵⁷ N.C. GEN. STAT. § 153-9(55) (Supp. 1965) is a general grant of ordinance making power to boards of county commissioners. *State v. Smith*, 265 N.C. 173, 143 S.E.2d 293 (1965) made clear that the court held invalid only that portion of the statute authorizing the enactment of blue law ordinances.

²⁵⁸ It now exempts forty-four counties. Four separate amendments in 1965 deleted four counties from the list of exempted counties. N.C. Sess. Laws 1965, ch. 388, 567, 1083, 1158.

²⁵⁹ 264 N.C. at 657, 142 S.E.2d at 703.

²⁶⁰ 265 N.C. 173, 143 S.E.2d 293 (1965).

²⁶¹ N.C. Sess. Laws 1935, ch. 456, as amended, N.C. Sess. Laws 1938 Ex. Sess. ch. 2, § 14.

²⁶² N.C. Sess. Laws 1959, ch. 321. The act was amended in 1961 to make the population requirement of 500 generally applicable throughout the state. N.C. GEN. STAT. § 157-3(3) (1964).

²⁶³ 254 N.C. 204, 118 S.E.2d 408 (1961).

pose to be the removal of conditions which 'cause an increase in and spread of disease and crime and constitute a menace to health, safety, morals and welfare of the citizens. . . .'²⁶⁴ But the court declined to hold whether the 1959 amendment met the test of *McIntyre v. Clarkson* and dismissed the plaintiff's suit for failure to allege that public funds had been or were about to be spent, that taxes had been levied or debts incurred, or that his rights had in any way been infringed. *Carringer* is therefore chiefly remarkable for the lengths to which it went to bring an act within the ambit of art. II, § 29. The recital of legislative intent in the Housing Authorities Law is standard boiler plate language used to invoke the exercise of the police power of the state in the protection of the public health, safety and morals. An extension of *Carringer* would cast doubt on the validity of any exercise of the police power in less than all the counties should the General Assembly employ the word "health" in the usual descriptive formula.

3. *Streets*.—In *North Carolina Turnpike Authority v. Pine Island, Inc.*²⁶⁵ the court held that a proviso in the Turnpike Authority Act²⁶⁶ that the authority "shall not construct more than one turnpike project, which project shall not exceed one hundred (100) miles in length . . ."²⁶⁷ did not amount to laying out a specific highway in violation of the street clause of art. II, § 29. Of major interest in this case is the court's willingness to consider facts outside the statute itself in determining whether the reasonable classification test of *McIntyre v. Clarkson* has been satisfied. The court noted that the primary purpose of the act was to construct a toll road down the outer banks from the Virginia state line to the eastern terminus of the Wright Memorial Bridge, thus connecting "an isolated and a unique geographical asset of the State, a rare tourist attraction," with the Hampton Roads region of Virginia. While these facts were common knowledge, they appeared nowhere in the act itself. The court also looked to facts outside the statute in *Treasure City* and *Pleasants*²⁶⁸ in applying the reasonable classifi-

²⁶⁴ *Id.* at 207, 118 S.E.2d at 410.

²⁶⁵ 265 N.C. 109, 143 S.E.2d 319 (1965).

²⁶⁶ N.C. GEN. STAT. §§ 136-89.59 to -89.76 (1964).

²⁶⁷ N.C. Sess. Laws 1963, ch. 757, § 18.1, formerly codified as N.C. GEN. STAT. § 136-89.77 (1964). This section was repealed by N.C. Sess. Laws 1965, ch. 1077.

²⁶⁸ *Treasure City v. Clark*, 261 N.C. 130, 134 S.E.2d 97 (1964); *High Point Surplus Co. v. Pleasants*, 264 N.C. 650, 142 S.E.2d 697 (1965).

cation test of *McIntyre*. Thus, it appears that the court will not be quick to invalidate legislation under *McIntyre* even though they may have to search for unexpressed criteria of classification.

4. *Extending the time for the assessment or collection of taxes.*—It is somewhat surprising that no cases construing the tax clause of art. II, § 29, reached the supreme court until 1964. In that year two cases construed the tax clause, but neither actually ruled on whether the statute under challenge violated art. II, § 29. The two cases are important, however, for their intimation that the court is ready to extend the rule of *McIntyre* to taxation matters in a proper case.

*Spiers v. Davenport*²⁶⁹ involved a local act aiding in the administration of the octennial revaluation of real property for taxation purposes.²⁷⁰ In order to facilitate the work of the Mecklenburg County board of equalization and review, the act authorized the board to "continue its sessions for the year 1963 to hear all appeals which may be brought before it upon the assessed valuations of property, and to make any adjustments, whensoever it shall hear the appeal, as of January 1, 1963."²⁷¹ Under the general law in effect at that time the board had to complete its duties not later than the third Monday following its first meeting on the first Monday in January.²⁷² The Mecklenburg County board of equalization and review adjusted the valuation of *Spiers*' property upward after the local tax rate had been set, and after *Spiers* had received and paid his tax notice, under authority granted to it for extended sitting by the 1963 local act. The defendant contended that this action of the Board was taken under a local act extending the time for the assessment of taxes and was therefore unconstitutional. The court construed the local act to grant the board authority to hear "appeals by property owners" after the expiration of the normal time limit; it did not authorize the board to increase valuations on its own motion. As concerns art. II, § 29, the court said

²⁶⁹ 263 N.C. 56, 138 S.E.2d 762 (1964).

²⁷⁰ See N.C. GEN. STAT. § 105-278 (1965).

²⁷¹ N.C. Sess. Laws 1963, ch. 281. By an earlier act, N.C. Sess. Laws 1961, ch. 916, the Mecklenburg County board had been authorized to continue meeting until ten days before the time provided by law for fixing the tax rate for the current year.

²⁷² N.C. GEN. STAT. § 105-327(e) (1965). This section was amended in 1965 as the direct result of *Spiers* to authorize the Board to sit until July 1. N.C. GEN. STAT. § 105-327(e) (Supp. 1965).

If defendants' interpretation of c. 281, S.L. 1963, is correct, the statute would do violence to [art. II, § 29]. Everywhere in North Carolina, except in Mecklenburg County, the power of the Board of Equalization and Review to increase the value assigned by the assessors to the taxpayer's property terminated prior to the time the commissioners were required to levy taxes. Defendants' contention would authorize the Legislature to enact a special statute extending the time for the assessment of taxes in Mecklenburg County. The statute ought not to receive a construction which would bring it into direct conflict with constitutional prohibitions.²⁷³

*Iredell County v. Crawford*²⁷⁴ was an action to foreclose tax liens on real estate. The defendant owed taxes for the years 1945-55 to the county and for 1937-55 to the city. Under the general law, tax liens are barred after the lapse of ten years.²⁷⁵ Since the action was brought in 1962, defendant would not have been liable under the general law for taxes due before 1952. However, Iredell and thirty-four other counties were exempted from the general statute of limitations. The defendant contended that the exemption clause was unconstitutional under art. II, § 29, as an act in effect extending the time for the collection of taxes. If the exemption clause were declared invalid, defendant would be able to plead the general ten year statute of limitations. The court did not rule on defendant's contention because he had raised it by a plea in bar rather than by answer, which is the proper method of pleading a constitutional defense.

5. *Abatement of Nuisances*.—The most peculiar case in the literature on art. II, § 29, is *Chadwick v. Salter*,²⁷⁶ decided at the same term as *McIntyre*. In 1957 the General Assembly enacted legislation for the protection of the sand dunes along the outer banks

²⁷³ 263 N.C. at 61, 138 S.E.2d at 765. The court evidently construed the phrase "assessment or collection of taxes" in art. III, § 29, as meaning, or at least including, the process of assigning a value to land for taxation purposes. The phrase probably was intended to mean the process of applying the tax rate selected by the county commissioners to the property value assigned and arriving at the amount of tax due. See Letter from Henry W. Lewis to Hamlin L. Wade, Dec. 21, 1964, on file at the Institute of Government, University of North Carolina at Chapel Hill.

²⁷⁴ 262 N.C. 720, 138 S.E.2d 539 (1964).

²⁷⁵ N.C. GEN. STAT. § 105-422 (1965). Iredell was removed from the list of exempted counties by N.C. Sess. Laws 1961, ch. 885.

²⁷⁶ 254 N.C. 389, 119 S.E.2d 158 (1961).

of North Carolina.²⁷⁷ One of these acts makes it unlawful to permit livestock to run at large on the banks because they destroy natural vegetation protecting the dunes. In 1959 a local act recited that large numbers of livestock still remained on Shakleford Banks in Carteret County in violation of the 1957 act, provided that this livestock be confiscated by Carteret County, and directed the sheriff to remove and sell the livestock.²⁷⁸ The plaintiff, owner of the livestock concerned, challenged the 1959 local act primarily on grounds that it amounted to taking his property without due process of law. The court skirted the due process argument and found that the act provided for the abatement of a nuisance and was therefore void under art. II, § 29. *Chadwick*, while of limited utility as precedent, does illustrate the unexpected twists which the court can make in using art. II, § 29, to invalidate local acts thought to be objectionable on principle.

6. *Other cases.*—The court has entertained appeals in two cases which challenged local zoning acts as regulations of trade or abatement of nuisances in violation of art. II, § 29.²⁷⁹ In each case the court declined to discuss the issue raised under art. II, § 29. Of more immediate interest is the possible application of the regulation of trade clause of art. II, § 29, to local acts authorizing referenda on whether the sale of alcoholic beverages will be allowed within a particular county or city. This question was raised in *Fulton v. City of Morganton*²⁸⁰ where the plaintiffs requested an injunction against the holding of such a referendum, but the issue was mooted when the voters rejected the proposition before decision was reached in the supreme court.

D. The Present Vitality of Article II, Section 29.

Compared with similar provisions in the constitutions of other states, art. II, § 29, of the North Carolina Constitution could never have had more than a moderate effect on the whole range of possible local legislation, even in the face of liberal construction in the supreme court. It never touched the formal structure of counties or

²⁷⁷ N.C. GEN. STAT. §§ 104B-3 to -7 (1965), as amended, N.C. GEN. STAT. §§ 104B-3 to -15 (Supp. 1965); N.C. GEN. STAT. §§ 68-42 to -46 (1965).

²⁷⁸ N. C. Sess. Laws 1959, ch. 782.

²⁷⁹ *Fox v. Board of Comm'rs*, 244 N.C. 497, 94 S.E.2d 482 (1956); *Harrington & Co. v. Renner*, 236 N.C. 321, 72 S.E.2d 838 (1952).

²⁸⁰ 260 N.C. 345, 132 S.E.2d 687 (1963).

cities, and purported to limit legislative regulation of their functions, powers and procedures only in a few particulars. Three of the clauses could have been so construed as to require general legislation in school, road and inferior court matters. They were not, but these clauses are no longer of great moment because roads and inferior courts have become the subject of almost total state control and responsibility, and the state is the dominant partner in the school system. Local road legislation has disappeared entirely, and local court legislation has at most two more legislative sessions of life.²⁸¹ Local school legislation is largely confined to referenda on consolidation of local administrative units and adjustment of maximum special district tax rates.²⁸² Four of the clauses of art. II, § 29, those relating to non-navigable streams, cemeteries, will and deed validations, and changing the names of cities and townships, have never been litigated and the General Assembly is seldom asked to legislate on these matters.²⁸³ The clause forbidding refunds of monies legally paid into the public treasury also has never been tested in the courts, but no private tax refund bill has passed the General Assembly for the past two sessions, a trend which seems likely to continue.²⁸⁴

There remain three viable clauses of art. II, § 29: (1) regulation of trade, (2) health, sanitation and the abatement of nuisances, and (3) prohibiting extensions of the time for "assessment and collection of taxes." Leaving the question of classification aside for the moment, what is the probable present impact of these clauses?

In view of the legislative history of art. II, § 29,²⁸⁵ it is ironic that it has come to regulate not the trivial and inconsequential, but acts having some significance from both state and local points of

²⁸¹ See note 6 *supra*.

²⁸² These acts are not prohibited by art. II, § 29. *Peacock v. Scotland Co.*, 262 N.C. 199, 136 S.E.2d 612 (1964).

²⁸³ Note a slight exception for acts relating to cemeteries. There have been no acts validating wills or deeds or relating to non-navigable streams within the past several sessions. The 1965 General Assembly was asked to "confirm" the original spelling of the Town of Hillsborough. N.C. Sess. Laws 1965, ch. 401.

²⁸⁴ Prior to 1963 the General Assembly routinely authorized refunds of gasoline taxes to exempt organizations and local governments which had failed to file their refund applications in time. When the 1961 General Assembly made local governments subject to the sales tax with provision for refund on application, the Appropriations Committee decided not to honor any private bills requesting refunds lost through failure to file on time. This policy was continued in 1965.

²⁸⁵ See notes 12-18 *supra* and accompanying text.

view. The trade and health clauses have been so interpreted as to lay open to attack many measures invoking the police power to regulate matters only remotely connected with health and commerce. We have seen how the standard recital that action is necessary to protect the public "health, safety and welfare" can bring an act authorizing public housing authorities within the health clause,²⁸⁶ and how the regulation or prohibition of stock car racing regulates trade.²⁸⁷ One need only peruse the vast body of federal precedent expanding the commerce clause of the United States Constitution as a basis for exercise of the police power by Congress to grasp the potential scope of the trade clause of art. II, § 29.

Many cases must be decided by the North Carolina Supreme Court before any clear conception of the scope of the trade clause of art. II, § 29, can be formed. So far the court has only twice rejected a claim that a local act regulated trade or health,²⁸⁸ and those cases have been all but overruled.²⁸⁹ Thus, the existing precedents contain no guidance for determining what is *not* a regulation of trade or health or an abatement of a nuisance by legislative act. Neither has the court offered definitions of "trade," "health," or "nuisance" sufficient to form the basis for extension by analogy, nor articulated policies sufficient for analysis to determine what objectives of government must be implemented uniformly throughout the territorial extent of the state.

Much the same situation exists with regard to the clause prohibiting local acts "extending the time for the assessment or collection of taxes." By apparently giving a double meaning to the word "assessment,"²⁹⁰ the court has cast doubt on the validity of any local act relating to the administration of the property tax which varies the complicated general law time schedules by extension.

The lesson of *McIntyre v. Clarkson* is that classification can save the validity of a local act which falls squarely within one of the

²⁸⁶ State *ex rel.* Carringer v. Alverson, 254 N.C. 204, 118 S.E.2d 408 (1961).

²⁸⁷ Orange Speedway, Inc. v. Clayton, 247 N.C. 528, 101 S.E.2d 406 (1958).

²⁸⁸ State v. Chestnutt, 241 N.C. 401, 85 S.E.2d 297 (1955) (trade); Reed v. Howerton Eng'r Co., 188 N.C. 39, 123 S.E. 479 (1924) (health).

²⁸⁹ Orange Speedway, Inc. v. Clayton, 247 N.C. 528, 101 S.E.2d 406 (1958) (trade); Drysdale v. Prudden, 195 N.C. 722, 143 S.E. 530 (1928) (health).

²⁹⁰ Spiers v. Davenport, 263 N.C. 56, 138 S.E.2d 762 (1964). See also note 273 *supra*.

prohibited categories. If the act can be drafted so as to be general in form, though local or special in fact, it is not a local act for purposes of the constitution. For example, there are one hundred counties in North Carolina ranging in population from 272,111 to 4,520, according to the 1960 census. It would be a relatively simple matter to construct population categories in such a way as to include each of the five or six largest counties within its own exclusive class. By adding criteria other than population the possibilities become almost unlimited in the hands of a skillful and ingenious draftsman. What effect would extensive use of classification for local government legislation have on existing practices in the North Carolina General Assembly? To suggest an answer to this question we must first identify and examine the existing practice.

III. LEGISLATIVE PRACTICES AND PROCEDURES FOR THE HANDLING OF LOCAL BILLS

A. The Local Bill System.

A typical session of the North Carolina General Assembly will enact from twelve to fourteen hundred pieces of legislation²⁹¹ in a session lasting a little over four months.²⁹² Actually only four days of a normal week are fully devoted to the work of the General Assembly, leaving around seventy-two sessions for the consideration of major legislation.²⁹³ If each bill enacted in 1965 had been allotted twenty minutes for explanation and debate, each house would have remained in session for eight hours on its normal working days, leaving no time for committee meetings or other matters. As a matter of fact, from eight to nine hundred of the enactments of each General Assembly are considered "local acts" and are passed without explana-

²⁹¹ See Appendix III.

²⁹² The Constitution fixes no absolute limit on the length of the session, but N.C. CONST. art. II, § 28, does set a 120-day limit on the period for which per diem compensation is paid. By long-standing custom compensation is paid for 120 calendar days, not legislative days. After the expiration of the pay period, pressure for adjournment becomes intense. See FERRELL, REPORT TO THE LEGISLATIVE RESEARCH COMM'N ON LEGISLATIVE SESSION DAYS IN THE GENERAL ASSEMBLY OF N.C. (1966), on file at the Institute of Government, University of North Carolina at Chapel Hill.

²⁹³ No business of any nature is normally transacted on Saturdays or Sundays. Each house convenes at 8:30 p.m. on Mondays for a short session but major business is rarely taken up. Most of the work of the General Assembly is done from Tuesday through Friday.

tion or debate in assembly-line fashion.²⁹⁴ As fast as the reading clerk can proceed,²⁹⁵ local bills are unanimously enacted by the assembly, many of whose members may be busily pre-occupied with other things. The system has worked fairly well, in terms both of effective use of legislative time and of state-local relations, because of certain well-understood customs pertaining to the handling of local bills.

1. *All local bills are normally referred to a committee specializing in the consideration of local bills, and are explained and debated there. Members ask for immediate passage of local bills under suspended rules only in emergency situations.*—The keystone of the local bill system is committee study and deliberation. The rules of each house require that all bills must be referred to committee upon passing first reading.²⁹⁶ Each house appoints at least four committees which are concerned exclusively or primarily with local legislation. In the House of Representatives these committees are Counties, Cities and Towns, Justices of the Peace,²⁹⁷ Local Government, Propositions and Grievances, and Salaries and Fees. Committees with the same name and function are appointed in the Senate except for the House committee on Justices of the Peace, which has no Senate counterpart. Occasionally other committees receive local bills, especially those relating to courts, elections, finance²⁹⁸ or education.

In both houses the Committees on Counties, Cities and Towns and Local Government receive the bulk of the local bill load. No distinction is observed as to the type of bill referred to one or the other of these committees. Normally Local Government acts as a supplementary committee when the load on Counties, Cities and

²⁹⁴ See Appendix III. N.C. SEN. R. 6 (1965) specifically provides that local bills be taken up as the first items on the calendar each day in this order: local bills on third reading roll call, local bills on second reading roll call, and local bills on second and third readings voice vote. The same orders of the day are followed in the House of Representatives though its rules do not specifically so require.

²⁹⁵ An accomplished reading clerk and presiding officer can complete passage of a local bill in fifteen to twenty seconds, depending on the length of its title.

²⁹⁶ N.C. SEN. R. 42 (1965); N.C. HOUSE R. 36 (1965).

²⁹⁷ This committee's sole task is the preparation of the biennial omnibus bill appointing justices of the peace throughout the State. This function will become obsolete upon statewide activation of the District Court system under N.C. CONST. art. IV.

²⁹⁸ The rules of both houses require all bills in any way affecting the taxing power of the State or any subdivision thereof to be referred to the Finance Committee. N.C. SEN. R. 41 (1965); N.C. HOUSE R. 39 (1965).

Towns becomes heavy. The other committees consider bills relating to subjects indicated by their titles, except that Propositions and Grievances considers primarily alcoholic beverage control legislation, including public bills on this subject.²⁹⁹ It is customary to re-refer local bills which impinge on the subject matter assigned to other legislative committees after an initial study in one of the local bill committees. Re-referral insures that important state-wide policies will not be adversely affected by seemingly innocuous local legislation.

Local bills altering the governmental structure of counties and cities are the most numerous and provoke the least legislative study. It is assumed, almost always correctly, that they have been introduced at the request of the county or city governing board. Others relate to broad areas in which there are state-wide statutes and well-defined State policies. In these areas, such as education, health and welfare, courts and alcoholic beverage control, local modifications of the general laws will often be permitted for good cause shown. When a local bill seems contrary to a policy administered by one of the state departments, the department concerned will often suggest amendments in committee or actively oppose the bill.³⁰⁰ Legislators soon develop a "sixth sense" about which types of local bills will pass without question or objection and which types must be explained and defended. In general, bills which either propose something heretofore unknown in North Carolina or affect state-administered policies and programs will require explanation and justification.

An important, but unofficial, aspect of the local bill system is the role of the Institute of Government's Legislative Reporting Service.³⁰¹ Members do not routinely receive copies of all local bills,³⁰² but each morning they receive a mimeographed digest of all bills introduced on the previous day, public and local alike, together with a summary of the prior day's calendar action. The same digest is

²⁹⁹ The antique name of this committee dates from the time when legislation was occasionally initiated by petition. See note 17 *supra*.

³⁰⁰ *E.g.*, authorization is often sought for the use of public school busses to transport students to some extra-curricular event. The State Department of Public Instruction has developed a standard form of act for such authorization. See N.C. Sess. Laws 1965, ch. 47.

³⁰¹ See Ball, *The Legislative Service of the Institute of Government* (1964), staff paper on file at the Institute of Government, University of North Carolina at Chapel Hill.

³⁰² N.C. SEN. R. 38(d) (1965); N.C. HOUSE R. 35 (1965).

also sent to all State department heads, and the chief officers and key employees of all local government agencies throughout the state. Because of this daily digest of bills, it is difficult to secure the passage of local legislation obnoxious to the state administration or local officials without their knowledge. The local bill committees therefore assume that interested persons will request a hearing on undesirable local legislation, or at least register their objections with some member of the committee or their representative in the other house. As an added protection, the Legislative Reporting Service distributes a weekly digest of calendar action on and introductions of all local bills relating to each county to every elected or appointed official of the county and all its cities.

Occasions do arise in which bills must be rushed through the General Assembly in order to meet some impending deadline. The most common type of bill in this category relates to local elections. The General Assembly will usually accede to a request to pass such bills under suspended rules without committee study, but the introducer must be prepared to explain the bill on the floor and to justify his request for a suspension of the rules. Caution unusual for local bills is exercised when immediate passage is requested because this procedure short-circuits the normal institutional arrangements designed to insure that local legislation has the support of the local governments it affects and is innocuous from a state-wide point of view. A member who procures, under suspended rules, the passage of legislation he knows to be controversial from a state-wide viewpoint runs a serious risk of injuring his political effectiveness among his colleagues.

2. *A local bill is introduced only after consultation with every legislator representing the counties or cities affected by it.*—Legislative courtesy decrees that every member shall be consulted on legislation affecting his constituents unless the bill is a public bill of state-wide application. On rare occasions local bills will be introduced and passed over the objection of a member whose constituents are affected, but these exceptions almost always fall into one of two narrow categories: (a) the bill has the support of the majority party in the General Assembly³⁰³ and the representative or senator

³⁰³ This situation most often arises in the House of Representatives. Usually the senator representing the county is a member of the majority party and assumes the role in respect to local legislation which would normally be performed by the representative. Thus, local bills, supported by the

is a member of the minority party, or (b) the bill has the support of a majority of a multi-member delegation from the county or district.

When there is no strong policy among the supporters of a public bill that all counties and cities should be included within its terms, legislators will usually be permitted to exempt their counties from the bill without question.³⁰⁴ Sometimes a blank amendment form is left with the Principal Clerk and members who wish to exempt their counties come forward and write the names of their counties into the amendment. This custom prevails primarily in the House of Representatives.

3. *A member introducing a local bill normally takes full responsibility for it.*—One of the assumptions of the local bill system is that local bills are non-controversial in the sense that they are of little or no concern to anyone outside the county or city affected. This does not mean that the bill is non-controversial at the local level, but that the introducer has consulted those persons who are interested in or affected by the bill and has made his own independent judgment that it is in the best interests of the county or city concerned. Furthermore, the great majority of local bills do not originate with the legislators themselves; they are drafted by and introduced at the request of the county or city governing board or some other local agency such as the board of education. Thus, while the members of the General Assembly in theory possess virtually absolute power over the local governments within their constituency, this power is seldom used against the determined efforts of those local governments. When exercised at all, it is far more common for a legislator to refuse to introduce or support measures or to exempt his county from public bills, rather than to positively advocate bills repugnant to local officials. In very rare instances a legislator has appeared in Raleigh with a burning zeal to reform local government at all costs. Legislative courtesy will assuage his passion in the house in which he sits and then quietly consign his bills to oblivion in the other house.

local Democratic Party of a county whose representative is a Republican will originate in the Senate. This bill will pass the House without regard to the opposition of the Republican representative. Where party disagreements are not involved, the House will usually accord a Republican representative the same courtesies as to his local bills as it would were he a Democrat.

³⁰⁴ This practice is the one situation in which a representative or senator often exercises his power of local legislation without consulting his constituents.

Occasionally a member will procure the passage of a local bill that he does not personally support. He may agree to introduce it, or at least not to oppose its passage, without lending it his personal support. This may be done in one of three ways: (a) the bill may be introduced "by request"; (b) another member may be asked to introduce the bill (usually the chairman of the committee to which it would normally be referred); or (c) it may be introduced in the other house.

4. *Local bills which are reported favorably by committee are ordinarily passed unanimously without debate or explanation.*—Normally the debate on local legislation occurs, if at all, in committee when the bill is explained. In this manner only those members serving on one of the local bill committees become directly involved in the process of local legislation except as introducers and in the daily routine of enactment. Even local roll-call bills are expedited.³⁰⁵ Sometimes full floor debate on a local bill will occur when partisan politics are involved, or when there is a clash between the supporters of a state-wide policy and members who are determined to obtain modifications for their county or city.

5. *Introduction of local bills near adjournment time is not favored.*—As the time for adjournment nears, the General Assembly usually finds itself unable to deal as extensively and leisurely with local matters as it could early in the session. When the situation becomes critical, non-essential local bills are the first items to be trimmed from the agenda. The slightest hint of controversy spells the doom of a local measure introduced after the Calendar Committees have been appointed. Beginning in 1953 there have been attempts to regulate by rule the introduction of local bills late in the session. Senate Rule 40, first adopted in 1953, requires that all local bills must be introduced not later than April 1. The rule has not proved effective since the vast majority of local bills are intro-

³⁰⁵ N.C. CONST. art. II, § 14, requires passage on three separate days with roll call votes on second and third readings of all bills to "raise money on the credit of the State, or to pledge the faith of the State, directly or indirectly, for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities or towns to do so. . . ." Local bills in this category are grouped as the first items on the calendar. The full roll is called only for the first bill, after which the "short roll call" is used. In this procedure, the reading clerk calls the first and last names on the roll, all members present vote in unison, and the roll call tally for the first bill is recorded for all subsequent bills. A local roll call bill thus takes no more time than a voice vote bill, except that it must be brought up again on the next legislative day.

duced in the House, and the Senate has usually suspended Rule 40 on request. The 1965 regular session, however, made a concerted effort to pass and enforce a deadline binding on both houses. A joint resolution was adopted which ruled all local bills out of order after April 15 unless the consent of the Rules Committee was obtained for introduction.³⁰⁶ The resolution had the noticeable effect of precipitating over 200 local bill introductions in the last few days before the deadline. While local introductions continued after the deadline with permission of the Rules Committees, the deadline did alleviate adjournment congestion to some extent and may have set a precedent for future sessions.

B. The Effect of Classification on the Local Bill System.

At the outset we should bear in mind that classification for local legislation purposes will not have a major effect on legislative customs in North Carolina, even should it be carried to extremes. Because of the very limited scope of art. II, § 29, the great majority of local bills do not fall within any of the restricted categories of legislation. Only fifty to one hundred bills in each session, by rather liberal estimate, would even remotely invoke art. II, § 29, should present trends continue.

Use of classification for those bills subject to art. II, § 29, would have three primary effects on the local bill system. Such bills would be placed on the public calendar, the current procedures for exemption of counties from public bills relating to trade, health, and property tax procedures would be altered, and some bills which would have been enacted but for a classification scheme will be defeated.

1. *The Public Calendar.*—For the purposes of this discussion the major distinction between public and local bills is the attention they receive on the floor of the General Assembly. Each public bill, upon receiving a favorable report from committee, is assigned a floor manager in each house whose duty it is to explain the bill on the floor, to answer questions about it, and to defend it in debate. When the bill is reached on the calendar, the floor manager is recognized by prearrangement and briefly explains what the bill intends to accomplish. The floor manager then customarily yields for questions from other members, or may immediately begin debate. Even the most non-controversial public bills thus consume a fair amount

³⁰⁶ N.C. Sess. Laws 1965, res. 47.

of time. If the measure is the least bit complicated, the time consumed by desultory questioning of the floor manager may often disrupt the presiding officer's work plan for the day.

2. *Exemption from Public Bills.*—Where there is no strong policy among the supporters of a public bill that all local government units in the state shall be subject to it, wholesale exemptions often occur. Sometimes the confusion is so great that action on the bill must be postponed until the Principal Clerk can determine which counties are in and which are out. When the measure is novel or complicated, legislators often exempt their counties on nothing more than suspicion or misunderstanding. At other times, bills which otherwise would have failed by large majorities are allowed to pass with most of the counties exempted. Also, a local bill sometimes becomes public by the addition of counties through floor amendments. If these bills fall within the categories of art. II, § 29, exemption or inclusion of local government units by name alone will no longer be sufficient. If exemption or inclusion is desired, a carefully drafted classification scheme will have to be devised. Since this would be almost impossible to do on the floor, the bill would have to be put over for another day while someone attempted to ascertain which counties wish to come in or out of the bill and how to devise a proper classification scheme.

3. *Defeat through Classification.*—While ingenuity is seldom unable to hit upon a "reasonable" classification scheme for widely disparate units, the bill may not be worth the time and effort. Particularly where legislators want exemption of their counties from public bills, classification may often mean defeat for the bill. If the objectors are adamant and no reasonable classification is apparent, supporters of the bill must choose between a lengthy floor fight or defeat. Also, there is always the risk that an involved classification scheme may not meet the court's conception of "reasonableness." In either event beneficial measures may be lost, an inordinate amount of time consumed, and more important matters displaced.

Given the potential scope of art. II, § 29, as construed by the courts, the practices and procedures for enactment of local bills which have been slowly perfected over many years, and the probable effect of classification on these practices and procedures, and assuming that some regulation of local legislation is desirable, what features of the present system should be strengthened, what features should be eliminated, and what innovations could improve it?

IV. EVALUATION AND RECOMMENDATIONS

Scholars commenting on the problem of local legislation in the United States agree on at least two things: undisciplined use of the power to legislate individually for local governments is harmful to both the central legislative body and local governments, and attempts to restrict the practice by constitutional amendment have been either unsuccessful or more harmful than beneficial.³⁰⁷ It is easy to make an exaggerated case against local legislation: it drains the energies of the legislators from more important matters;³⁰⁸ it violates fundamental principles of democracy by denying local people control over local matters; it encourages provincialism among legislators;³⁰⁹ it is susceptible to corruption through the lobby;³¹⁰ and it clutters the statute books and makes discovery of applicable law difficult.³¹¹

Whatever may have been the experience of other states or other times, only one of these objections rings true in modern North Carolina experience. Despite the number and length of local enactments by a typical General Assembly, local legislation does not pre-occupy the members or the daily sessions of the two houses. While

³⁰⁷ ADRIAN, *STATE AND LOCAL GOVERNMENTS* 120 (1960); COUNCIL OF STATE GOVERNMENTS, *REPORT OF THE COMMITTEE ON STATE-LOCAL RELATIONS* 146-47, 152 (1946); FORDHAM, *LOCAL GOVERNMENT LAW* 60 (1949); GRAVES, *AMERICAN STATE GOVERNMENT* 283-89 (4th ed. 1953); HORACK, *CASES AND MATERIALS ON LEGISLATION* 452-53 (2d ed. 1954); LUCE, *LEGISLATIVE PROBLEMS* 540-48, 570 (1935); WALKER, *THE LEGISLATIVE PROCESS* 341 (1948).

³⁰⁸ See LUCE, *LEGISLATIVE PROBLEMS* 540-47 (1935). Writing in 1935, Luce identified this as the major evil of local and special legislation. He quotes at length from the message of Governor Grover Cleveland to the New York legislature of 1884. Governor Kitchin's 1911 message to the North Carolina General Assembly bears a striking resemblance to the Cleveland message. Luce notes that the Cleveland-Kitchin attitude toward local legislation was not so much an opposition to it per se, but more a rallying point for the indifference many legislators exhibited toward pressing public issues. Governors could not get their legislatures to share their concern for broad social problems, and evidently believed that if the legislature could be prevented from considering local matters they would be more free to give needed attention to public matters.

³⁰⁹ Van Hecke, *Four Suggested Improvements in the North Carolina Legislative Process*, 9 N.C.L. REV. 1, 11 (1930). Dean Van Hecke wrote: "with almost every member of the two houses primarily interested in getting through a number of bills relating only to his home community, the whole General Assembly is locally minded. Only a few of the outstanding leaders are state-conscious."

³¹⁰ CHAMBERLAIN, *LEGISLATIVE PROCESSES: NATIONAL AND STATE* 237-38 (1936); LUCE, *LEGISLATIVE ASSEMBLIES* 368-69 (1924).

³¹¹ LUCE, *LEGISLATIVE PROBLEMS* 546-47 (1935).

formal decision-making power is lodged in the General Assembly rather than in local governments, in the majority of instances the actual decision is made locally. Examples of abuse of power or actual corruption could probably be identified, but they have been quite rare. And to attribute provincial attitudes to the tradition of local legislation is to put the cart before the horse. It is quite true, however, that the North Carolina system of local legislation makes it difficult to determine what law applies where.

Although it was intended to remedy or forestall some of these problems, art. II, § 29, of the North Carolina Constitution has actually contributed little toward regulating the process of local legislation. It has encouraged the enactment of several comprehensive general laws, but for the most part its influence has been minimal. Rather than acting as a strong deterrent to local legislation, art. II, § 29, has been largely ignored.

Dean Fordham observes that the question of whether a given act violates a constitutional prohibition against local legislation is not suited to the judicial process.³¹² Whether one phrases this objection in terms of the judicial process or in terms of constitutional standards for legislation, the point is that the courts are not the proper forum for testing the ultimate wisdom of local government acts where individual rights are not immediately involved. Constitutions and judges cannot insure wisdom in the legislative process; they can insure that individual liberties are not endangered by the lack of it. In this context constitutional limitations on the authority of legislatures to regulate local government make little practical sense. Individual liberties are seldom involved in litigation involving these provisions, and when they are, other more developed and useful constitutional concepts are close at hand. The two groups that local legislation amendments were intended to protect, local governments and members of the legislature, have no occasion to invoke them in court. Rather, they are invoked by individuals opposed to specific local acts on political grounds, by bond attorneys, and by litigants who find them useful supplementary weapons in suits with objectives quite collateral to the process of local legislation.

Alternatively to ineffective constitutional provisions, legislatures themselves can and should clarify and observe the principles of wise and efficient local legislation. Though the skeptic may scoff at the notion of internal legislative reform, experience tends to support the

³¹² FORDHAM, *LOCAL GOVERNMENT LAW* 60 (1949).

proposition that lasting reform is possible when it has the support of legislative leaders and an informed public. The remainder of this section will discuss, without attempting to be exhaustive, a few basic principles which, when clarified, understood and applied to the process of local legislation in North Carolina, could tend to improve the process without unduly hampering the ultimate authority of the General Assembly to regulate local government—an authority it must have to create coherent state policy.

It bears emphasis that these principles are statements of policy preference, not inviolable rules. In some contexts any one or several of them should and will yield to over-riding considerations. No one of them deserves the dignity of constitutional or statutory sanction. Rather, they might be thought of as beacons marking the channel toward intelligent and efficient use of legislative power.³¹³ If formally expressed in any manner, some of them might be incorporated into the rules of the two houses of the General Assembly. Rules can be suspended when necessary; constitutions cannot.

1. *Prefer general laws to local acts.*—This is the basic policy expressed by constitutional amendments restricting the power of local legislation, and it is valid despite the failure of the courts to enforce it. It calls for deference to inclusive interests in preference to exclusive interests, except where indulgence of the latter is in the common interest.³¹⁴ In less abstract terms, local government policy should be state-wide in scope and expressed through general laws except where local modifications can be justified as furthering the long-range goals of the state, or allowing innovative experimentation in local government. With the major exceptions of roads, schools, courts, and fiscal control, it is not an overstatement to observe that in recent years North Carolina has

³¹³ Professor Adrian observes:

There is no reason why legislators would necessarily choose to abuse their potential powers of supervision over local government, and they have by no means always done so. . . . The degree of legislative activity in dealing with minute details of local government seems to depend more upon tradition in the individual state than upon any other factor.

ADRIAN, *STATE AND LOCAL GOVERNMENTS* 120 (1960).

³¹⁴ I owe this formulation in particular and the approach to these principles in general to Professors McDougal and Lasswell of the Yale Law School. See *e.g.*, MCDUGAL, LASSWELL & BURKE, *PUBLIC ORDER OF THE OCEANS* (1963).

preferred local acts in structuring its local governments without clearly thinking out general law alternatives. This has not always been the case, as it amply illustrated by the initial movement toward uniformity which culminated in the adoption of art. II, § 29, and the resurgence of uniformity policies in the North Carolina Supreme Court in the two decades following the depression.

In the words of the North Carolina Constitution's Declaration of Rights, "a frequent recurrence to fundamental principles" is one of the marks of good government.³¹⁵ With respect to local legislation, the time may be ripe for yet another recurrence to the fundamental principle that state policy for local government should be uniform where practicable. The first step in this direction must be a shift in legislative perspectives of local legislation away from permissiveness and toward restrictiveness. Unless this shift takes place, there is small hope for significant improvement over the present situation.

Turning from perspectives to actions, potentially the single most effective measure to alleviate the burden of unnecessary local acts and indulging the basic preference for general laws would be a thorough and comprehensive revision of the existing general laws relating to local government. One side-effect of the recent preference for local acts has been gradual obsolescence of much of the general law.³¹⁶ Particularly with regard to cities, the general laws have not been revised because it has been so much simpler to obtain local modifications for each individual city. To gain some idea of how a modern city operates in North Carolina, one turns not to the general statutes but to recent charter revisions. Similarly, a researcher attempting to draw a picture of county government in North Carolina in 1966 would be misled in many respects by the general laws. If he were diligent enough to search for patterns among the thousands of local acts, he would discover that a surprising degree of uniformity in fact exists in both city and county government. But it is a uniformity which has developed piece-meal through local legislation. It is doubtful that a modern local government code for the North Carolina of the 1960's would propose drastic innovations of the order precipitated by the financial crisis of the 1930's, but it could become the starting point for renewed

³¹⁵ N.C. CONST. art. I, § 29.

³¹⁶ Esser, *Local Legislation in the 1951 General Assembly—II*, Popular Government, Sept. 1951, p. 12.

assessment of the state-local partnership in an increasingly complex federal system.

2. *Discourage local acts affecting the access of individuals to the courts and the franchise.*—Conceding the need for flexibility in the structure and powers of local government, there appear to be few valid and pressing reasons for wide variations in the laws regulating the manner in which individuals may invoke the judicial power of the state or exercise the franchise. Yet local acts commonly vary procedures for condemnation of land, for challenging special benefit assessments, and for appealing these and similar local administrative decisions to the courts. Statutes of limitations may be varied by local act, tort immunity may be granted, waived or modified, or special conditions prescribed for bringing suit against local governments. The ease and freedom with which the citizen may vote in state and national elections may depend on local variations in the election laws, such as “anti-single-shot” acts.³¹⁷ Local governing boards may be so apportioned as to deny equal representation to all citizens in the unit. While good and sufficient reasons may exist in special circumstances to justify any of these types of local acts, the burden should be on the advocate of them to show why they are desirable.

3. *Discourage local acts varying punishment for crime.*—Here again it is difficult to justify variations in the maximum punishment for the same criminal act when committed in county *A* rather than county *B*. Flexibility may well be necessary in defining criminal acts in different portions of the state—a principle recognized by the grant of ordinance-making power to municipalities—but this proposition does not necessarily imply a need for flexibility in the limits of judicial authority to impose maximum and minimum penalties. Where such a need does exist it should be clearly demonstrated.

4. *Presume against local acts introduced without the support of the governing board of the local government affected.*—Most local acts originate with the local governing boards concerned, but this practice often breaks down where party or factional controversy is involved, or where acts are sought from personal and private motives. Thus, this principle may be further analyzed into a

³¹⁷ These acts provide that where the voter is directed to vote for more than one person in a group of candidates, he must vote for all vacancies to be filled or the ballot will not be counted.

presumption against local acts intended to give a local political advantage to one party or faction over its opponents, and a presumption against local acts intended to further purely private interests.

In terms of the effective use of legislative resources, the local acts most wasteful of time and energy are those prompted by party and factional disputes at the local level. It has not been unknown for legislative committees to hold extensive public hearings on the most trivial matters, or for acts relatively inconsequential from a state-wide point of view to occupy more time on the floor of the legislature than such major pieces of legislation as the Uniform Commercial Code.³¹⁸ Heretofore this type of local legislation, though comparatively rare, has been tolerated by the General Assembly partly as a variety of patronage, but largely because of the political complexion of the two houses. Through the 1965 General Assembly, each county had at least one member of the House of Representatives, and the Republican opposition in each house was too small to effectively oppose anything. Two recent developments may have a significant influence on the willingness of the legislature to act as the arbitrator of local controversy. First, the reapportioned House of Representatives no longer contains one Representative from each county. Even a good number of those counties with the requisite population ratio have been combined into House districts with smaller counties, with the result that only twenty of the one hundred counties constitute single-county districts. It remains to be seen whether the House of Representatives will feel less inclined to become deeply involved in local disputes when most of its members must run in more than one county. Second, the Republican Party made significant inroads into Democratic control of state and local government in the 1966 elections. Republican strength in each house is at the highest peak since 1929, and many counties have elected Republicans to local office for the first time since 1896. Should the 1966 elections be the harbinger of a trend toward a two-party system in North Carolina, the effect on local legislation will be immediate and obvious insofar as Democratic control of local government through the General Assembly is concerned.

Should the two factors just discussed actually develop a change

³¹⁸ This occurred in 1965 when the House of Representatives undertook extended debate on N.C. Sess. Laws 1965, c. 723, a bill extending the terms of the incumbent county commissioners of Carteret County past the next regular election. The matter was cast as a Democratic-Republican controversy, though both party and factional dispute was involved.

in legislative perspectives toward local legislation, the presumption suggested against local acts introduced without the consent of the local governing board might be somewhat softened. Legislators less inclined to become deeply involved in local disputes probably will be less inclined to introduce such bills in the first place. It would then be reasonable to assume that the simple fact of introduction implies a serious consideration of the matter by the legislator himself, and a final decision that the bill is in the best interests of the local government. Nevertheless, the introduction of bills of this nature, should still call for explanation and justification. The procedures for implementing this general policy preference might be embodied in a rule of each house of the General Assembly similar to the requirements of the New Jersey Constitution.³¹⁹ In that state formal certification that a local bill has been requested or approved by the governing board of the unit affected is necessary for passage of local bills. If similar certificates or oral assurances by the introducer were required by legislative rule in North Carolina, the normal practice of requiring explanation and justification for a request to suspend the rules should adequately serve the purpose of insuring that serious consideration is given to locally-opposed bills.

Another aspect of the general policy under discussion is legislation sought by private persons from personal motives. This facet of the legislator's task is one he usually neither seeks nor relishes. The most common example is a request to vary the fish and game laws. While individual pressure for local legislation never can or should be entirely ended in a representative democracy, public understanding that favorable consideration of a proposal by a local governing board is ordinarily essential for success could do much to alleviate the annoyance of trivial, frivolous or unreasonable demands.

5. *Insure that all local legislation has been adequately studied by committee for substance, form, necessity, style, and conformity to general law patterns.*—The casual manner in which local acts are typically passed by the North Carolina General Assembly has generally encouraged inattention to the finer points of legislative drafting. From a lawyer's point of view, much of the legislative product is perplexing and frustrating, often leading to fresh local acts in-

³¹⁹ N.J. CONST. art. IV, § VII, ¶ 10.

tended to dispel the confusion produced by poorly drafted or ill-conceived bills. The constitutions of all the states but North Carolina allow the executive veto, partially at least to prevent just this state of affairs. North Carolina alone has no institutional arrangements in its legislative process designed to prevent hasty, poorly drafted, or unnecessary acts.

In 1952 Professor Henry Lewis noted that:

Any extended practical experience in the North Carolina General Assembly is sufficient to bring home the unfortunate truth that a need exists for some form of revision agency. The rules of the two houses, however, make no provision for handling the problem. The committees are left completely responsible. Since their interest will necessarily center around the substantive merits of a proposal they have little time left to consider the formal and technical aspects of the particular bill, nor, for that matter, whether it is a duplication of existing laws.³²⁰

The situation was again identified as a major defect in the local bill system by Professor Alexander McMahon in 1957. He thought that:

If a procedure were established to screen and weed out unnecessary local legislation . . . and if general legislation were recurrently examined to make certain that it left in local hands as much discretion as legislative policy would allow, the amount of local legislation would be drastically reduced and legislators' time could be devoted to state-wide matters.³²¹

Lewis' recommendations, directed to public and local bills alike, called for the creation of a standing committee in each house to which all bills would be referred before reference to one of the other committees.³²² This new committee would review all bills, committee substitutes, and committee and floor amendments from the standpoint of style, necessity and effect. The committee would make no report on the merits of the bill, but would recommend re-drafting where necessary and call attention to duplication of existing law. Whether a single committee could adequately discharge all the tasks Lewis foresaw for it is doubtful, but the basic idea is sound. If performance of these tasks by legislative committee is not found feasible for whatever reason, other possibilities include dele-

³²⁰ LEWIS, *LEGISLATIVE COMMITTEES IN NORTH CAROLINA* 46-47 (1952).

³²¹ McMahon, *County Home Rule and Local Legislation*, Popular Government, March 1957, p. 7.

³²² LEWIS, *LEGISLATIVE COMMITTEES IN NORTH CAROLINA* 47 (1952).

gating these duties to a permanent law revision commission, the Attorney General's legislative drafting service, the Legislative Research Commission, or the Local Government Commission, all of which could be staffed for the purpose.

Along with the creation of a revision agency, the existing practices with respect to committee study of local bills need to be strengthened. In theory, committee study is the foundation of the present local bill system, but in practice committee study of local bills is minimal or non-existent. This state of affairs is due partly to a lack of concern, but also to the fact that only two committees in each house receive the large majority of all local bills, while many of the public bill committees have almost no work to do. Re-referral of local bills touching matters supervised by other standing committees is only sporadically observed. While it may not be practicable for local bills to receive the same close scrutiny that public bills customarily receive, they deserve more attention than they have been receiving.

6. *Presume against local bills introduced late in the session.*—The 1965 General Assembly attempted to restrict the introduction of local bills late in the session, with qualified success.³²³ This effort should be continued, and consideration given to a rule providing that no local bills will be brought to a vote after a given date. Generally, if a local matter is important enough to require an act of the General Assembly, it is important enough to receive adequate attention. This is not possible late in the session because of the adjournment rush. Another more stringent possibility is to require the introduction of all local bills within the first thirty days of the session.

V. EPILOGUE

It has not been possible to investigate in this article the probable effect in other states of constitutional restraint on the power of the legislature to regulate local government and its corollary, constitutional home rule, on the ability of state government to fulfill its potential as a full working partner with the federal government in what is often called the new federalism. Since the creation of the United States Advisory Commission on Intergovernmental Relations in 1959, the attention of scholars, politicians and interested citizens has been increasingly directed toward re-assessing the role of state and local government in the federal system

³²³ See note 306 *supra* and accompanying text.

with special emphasis on self-imposed constitutional barriers to the fulfillment of their full potential by the states.³²⁴ Professors Keefe and Ogul conclude

It is not true, of course, that the shortcomings of state government today are attributable solely to the constitutional fetters placed on the legislature. . . . [But] the root-cause of the immobilization of state government is the constitution. Under the circumstances, when the states seem unable (or unwilling) to find answers to the hard problems, the 'states' rights' doctrine which is invoked appears to be no more than a handy myth to resist federal action. The dilemma of the states involves their capacity to act. It is unlikely that an awakening will take place in the states, or the flight of power to Washington be reversed, until state constitutions are reshaped to provide an appropriate legal framework for effective state action.³²⁵

The 1966 American Assembly found that

In many states, legislatures operate under severe constitutional limitations on their powers. Provisions safeguarding the rights of individual citizens and basic procedural protections to insure the integrity of legislative processes should be preserved. Constitutions should, however, leave legislatures as unhampered as possible, encouraging the development of their own self-reliance. . . .³²⁶

A provocative report issued in July of 1966 by the Research and Policy Committee of the Committee for Economic Development found that local government in the United States in general is not adequate to the challenge offered by expanding federal responsibility for the economic and social development of the nation.³²⁷ The Committee recommended major surgery for local government, especially

³²⁴ See these Commission reports: APPORTIONMENT OF STATE LEGISLATURES (1962); IMPACT OF FEDERAL URBAN DEVELOPMENT PROGRAMS ON LOCAL GOVERNMENT ORGANIZATION AND PLANNING (1964); INTERGOVERNMENTAL RELATIONS IN THE POVERTY PROGRAM (1966); STATE CONSTITUTIONAL AND STATUTORY RESTRICTIONS ON LOCAL GOVERNMENT DEBT (1962); STATE CONSTITUTIONAL AND STATUTORY RESTRICTIONS ON LOCAL TAXING POWERS (1962); STATE CONSTITUTIONAL AND STATUTORY RESTRICTIONS UPON THE STRUCTURAL, FUNCTIONAL AND PERSONNEL POWERS OF LOCAL GOVERNMENT (1962).

³²⁵ KEEFE & OGUL, *THE AMERICAN LEGISLATIVE PROCESS* 38 (1964).

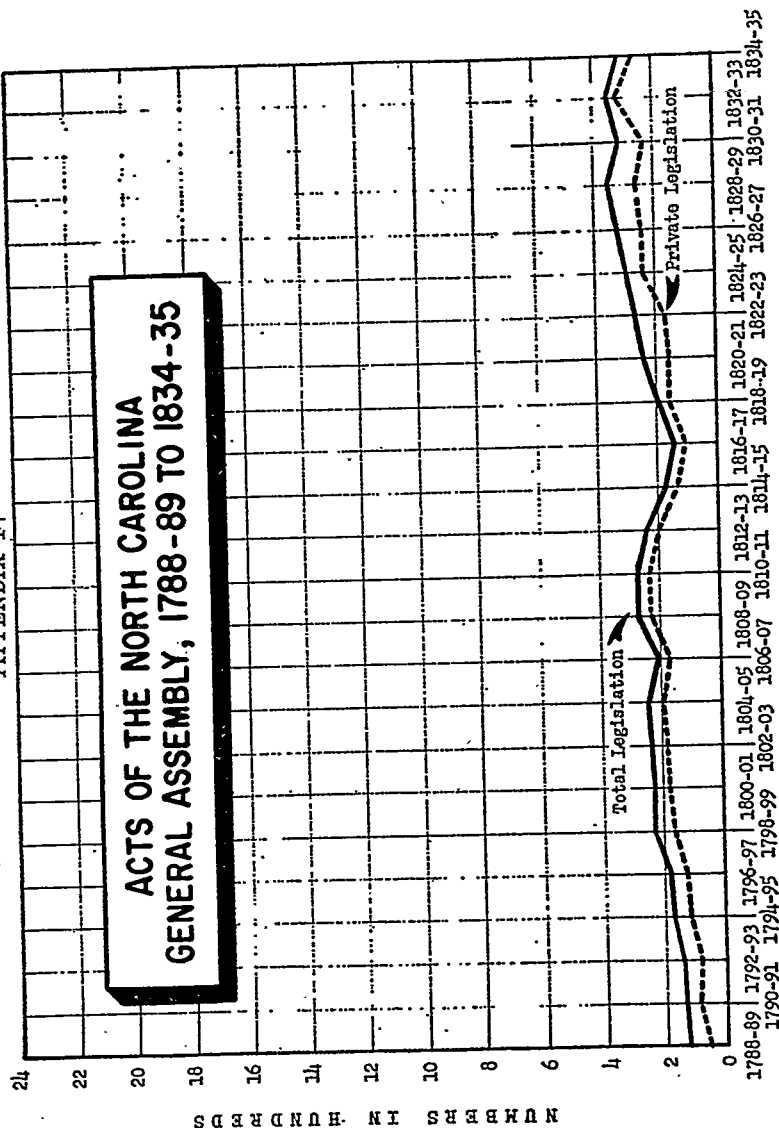
³²⁶ THE AMERICAN ASSEMBLY, *REPORT OF THE TWENTY-NINTH ASSEMBLY* (1966); Keefe, *The Functions and Powers of the State Legislatures*, and Wahlke, *Organization and Procedure*, in *THE AMERICAN ASSEMBLY, STATE LEGISLATURES IN AMERICAN POLITICS* (ed. Heard 1966).

³²⁷ COMMITTEE FOR ECONOMIC DEVELOPMENT, *MODERNIZING LOCAL GOVERNMENT* (1966).

a reduction in the number of units, an end to extensive overlapping jurisdictions of general and special purpose units, contraction of the number of elected officials, and expansion of local authority to deal with local problems, among others.³²⁸ It is doubtful that effective modernization of local government can be achieved where state legislatures are tied to constitutional home rule and limits on their power to provide for the structure, powers, machinery, and territorial jurisdiction of individual local governments. Unless carried to ridiculous extremes, class legislation has not proved adequate to the task heretofore. While the North Carolina tradition of local legislation probably could not be transplanted to other states with differing attitudes toward local responsibility or with a strong two-party system, it does demonstrate that institutional arrangements can be devised which leave the legislature free to tailor local governments to the circumstances of the individual case and at the same time entrust a large measure of power and responsibility to them. The nation has lived long enough under nineteenth century attitudes toward the role of the state legislature in the ordering of local government. It is time that these attitudes were objectively re-examined.

³²⁸ *Id.* at 17-19.

ACTS OF THE NORTH CAROLINA GENERAL ASSEMBLY, 1788-89 TO 1834-35

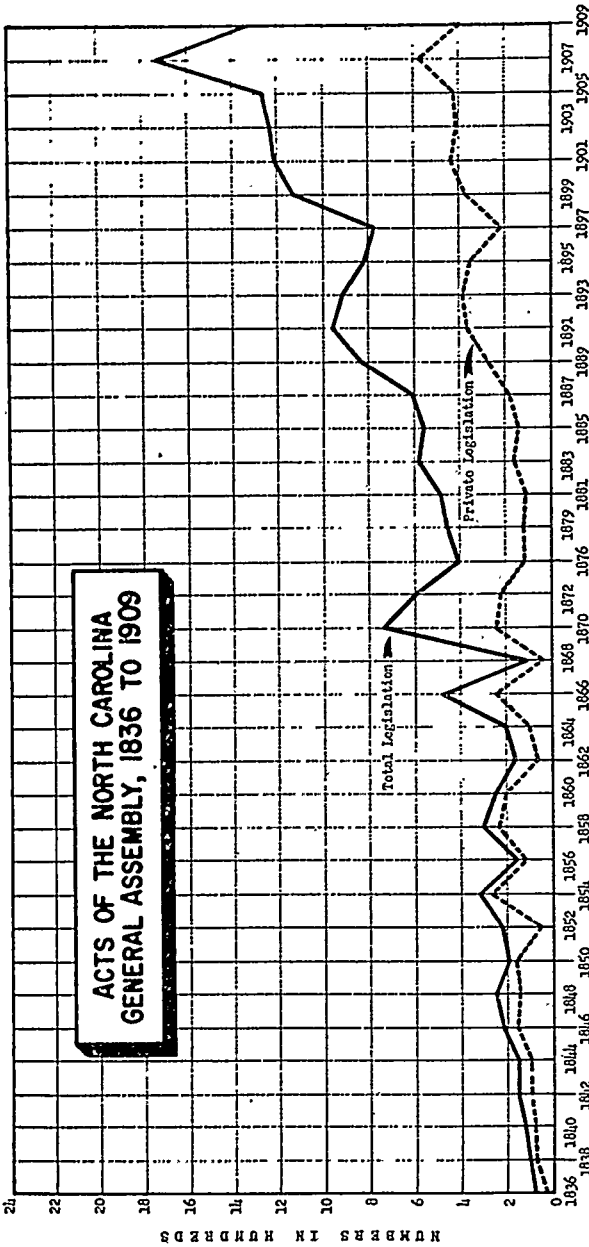


BIENNIIUM

* Statistics in these Appendices through 1947 were derived from Coates, *The Problem of Private, Local, and Special Legislation and City and County Home Rule in North Carolina*, Popular Government Feb.-Mar. 1949, p. 3. Statistics from 1949 through 1965 were compiled by the author. Evidently Coates did not include Resolutions in his compilations, many of which were of a private nature, but the error thus introduced is not sufficiently great to disturb the general trends identifiable from graphic representation.

† From 1788 to 1835 the General Assembly met annually. In order to compare the volume of legislation

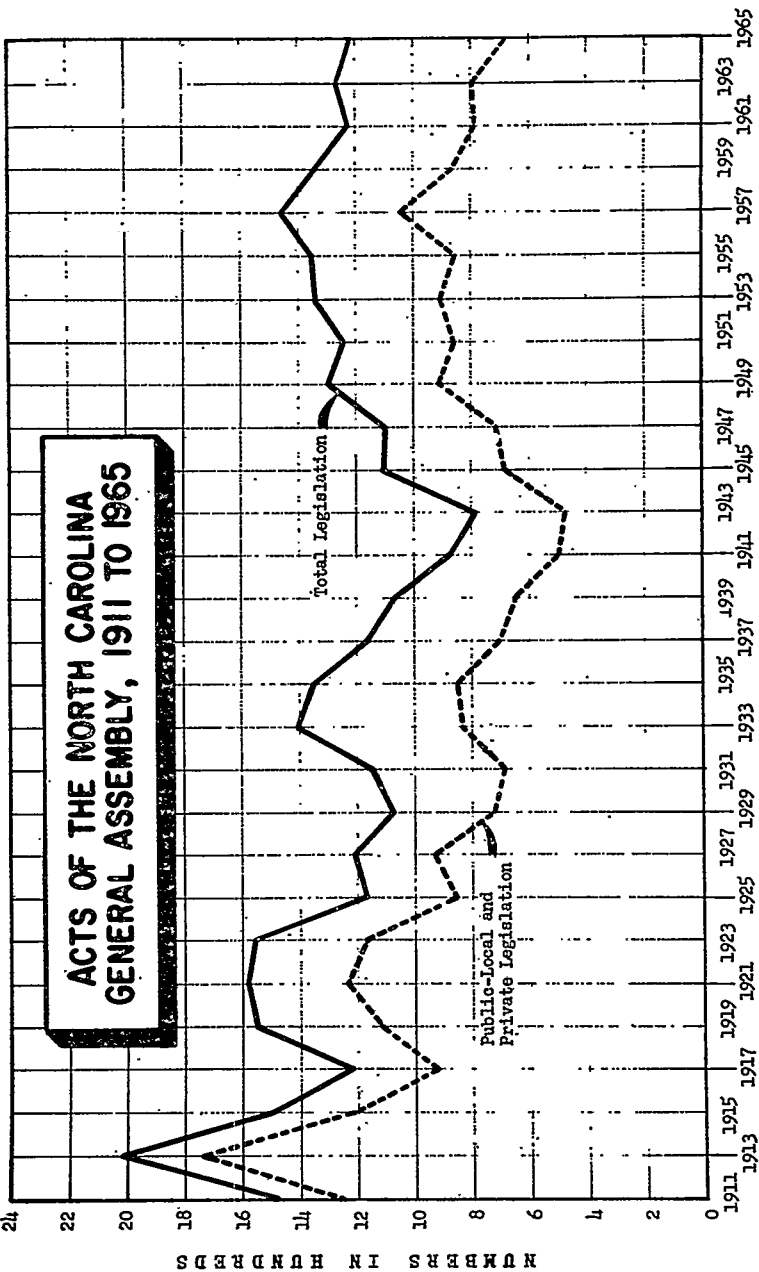
APPENDIX II†



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† From 1860 to 1909 the regular biennial progression of sessions of the General Assembly was disrupted by several special sessions, a temporary reversion to annual sessions from 1870-71 to 1873-74 and a change in the convening date of the General Assembly from December to January, first effective in 1879. Special or adjourned sessions were held in 1862, 1863, 1864, 1865, 1866, 1900, and 1908. In each case figures for special or adjourned sessions were added to the last preceding regular biennial session. The 1870 and 1872 figures included two annual sessions each. Because of the change in convening date there appears to be a gap of three years between the 1876-77 and 1879 sessions; actually the gap is two years and one month. No annual session was held in 1874-75 due to the calling of the Convention of 1875 which returned the state to biennial sessions, the first of which was held in 1876-77.

APPENDIX III††



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†† These biennial figures include special sessions in 1913, 1920, 1921, 1924, 1936, 1938, 1956, 1963, 1965, and 1966. In each case the figures for special sessions were added to the last preceding regular biennial session.