REPORT OF THE TRAFFIC CODE COMMISSION

to the Governor and the
North Carolina General Assembly
1965

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and the General Assembly

of North Carolina

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THE TRAFFIC CODE COMMISSION

Raleigh, North Carolina

February 1, 1965

His Excellency

The Governor of North Carolina

Raleigh

Your Excellency:

The Traffic Code Commission submits herewith its report, with the request that it be transmitted to the General Assembly of 1965.

This Commission was created by Chapter 1183 of the Session Laws of 1963 and directed (a) to study the motor vehicle laws of this State and to evaluate their effectiveness in promoting traffic safety, and (b) to consider the feasibility of removing minor traffic violations from the criminal code.

Due to the fact that the membership of this Commission was not completed until late summer of 1964, there has been only limited time available to us for carrying out our assignments. We have had several meetings of the Commission and have received and considered the recommendations of the North Carolina Department of Motor Vehicles and the North Carolina Traffic Safety Council, Inc. We have obtained staff assistance from the Institute of Government. Staff reports of two studies conducted by the Institute of Government are included as appendices to this report.

With respect to our first assignment, we have included in our report several recommendations for legislative changes which we believe will tend to improve the effectiveness of our motor vehicle laws in promoting highway safety.

With respect to our second assignment, while we have received and discussed various proposals and reports, and while we agree that there probably are good reasons for removing certain minor traffic violations from the criminal code and devising more effective means of dealing with such cases, we have not had time to formulate the rather extensive set of recommendations that would be necessary to carry such a plan into effect. We therefore recommend that this proposal be given further study by such means as the General Assembly of 1965 deems appropriate, looking to the development of a complete plan for subsequent legislative consideration.

Respectfully submitted,

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Claude M. Hamrick

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J. Russell Kirby, Chairman

INTRODUCTION

The economic and social order of the United States has come to depend, to an almost immeasureable degree, upon the mobility which the motor vehicle affords. Yet the advantages of the motor vehicle have been gained at a high and rising price in life and treasure.

In the United States, we annually kill 43,400 people, injure 3,200,000 more, and inflict injuries to person and property valued at $7,700,000,000.

North Carolina follows the national pattern, for the year 1963 saw traffic deaths in the State total 1,386, injuries total 42,662, and attendant costs of $210 million. While the statistics for 1964 are incomplete, those for the first half of the year forecast that in this State, we killed and injured each other on the highways at a rate at least 10 per cent above that of 1963.

It is not within the scope of this report to probe into the ultimate reasons for this mounting waste of life and property. The design of motor vehicles and roadways is doubtless a factor. But to a very large degree, this wasteage is the product of human error, carelessness, and incompetence, and it is essentially with these human faults that we must deal in shaping our governmental policies to cope with the problem of traffic accidents.

Many approaches have been tried by this State and others in pursuit of the ideal of making our roadways safer, even as they become more heavily and rapidly travelled. The formal and informal education of more drivers in the proper handling of the automobile and the dangerous consequences of its mishandling is one means. More stringent requirements for obtaining and keeping drivers' licenses are another. Higher motor vehicle design and equipment standards are yet another.

But we still rely most heavily, for lack of any better means, on the enactment and enforcement of laws governing the operation of motor vehicles and the movement of pedestrians on the streets and highways. Yet the adequacy of this approach is increasingly being called into question. Do we have the most comprehensive and effective set of motor vehicle laws that can be devised? Are the laws we have fairly and effectively enforced? Do we have the most appropriate means of hearing and determining alleged violations? Are the penalties levied upon violators the most effective available in reducing future violations?

This Commission was established by the General Assembly of 1963 to try to find for North Carolina some of the answers to two of those questions: What changes in the motor vehicle laws of the State would most effectively promote traffic safety? And would removing minor traffic violations from the category of crimes and dealing with them in some other manner tend to reduce traffic accidents and thus save lives and avoid injuries?

Part One of this report recommends several amendments to the motor vehicle laws of North Carolina, largely adapted from the Uniform Vehicle Code, which we believe would provide more effective regulation of traffic on today's streets and highways.

Part Two of this report discusses our inquiry into the second question assigned to us and sets forth recommendations for its further exploration.

PART ONE

AMENDMENTS TO THE RULES OF THE ROAD

Introduction

The act establishing this Commission directed us to study the motor vehicle laws of North Carolina and evaluate their effectiveness in promoting traffic safety. The Commission first reviewed the motor vehicle laws of the State to determine which body of laws is most directly aimed at promoting traffic safety. Since the rules of the road are designed to govern the actions of drivers and pedestrians on the public highways and thereby to prevent collisions, it was decided that this body of laws should be carefully scrutinized by the Commission.

Realizing the desirability of nationwide uniformity of state laws in this area, the Commission looked for some standard or guide to use in evaluating North Carolina's laws. The Uniform Vehicle Code was selected.

The Uniform Vehicle Code is a set of motor vehicle laws designed as a comprehensive guide or standard for state motor vehicle laws. It was first published in 1926 by a Committee of the National Conference on Street and Highway Safety in cooperation with the National Conference of Commissioners on Uniform State Laws, and is based upon experience under various state laws throughout the nation.

Since 1926 the Code has been reviewed periodically and changes have been made where justified by new developments in state laws and by experience. The latest edition of the Code, published in 1962, was used in making our evaluation. A staff report was prepared to facilitate compar-

ison of our laws and the Code.[1]

The Study

In conducting our study, North Carolina's rules of the road were compared with those set out in the Uniform Vehicle Code. The objectives of this comparison were to determine, first, whether there are major differences between our laws in this area and the Code, and second, whether in case of major differences it appears that the Code provision would be more effective in promoting traffic safety than is our current law.

Although our study covered all provisions of the Code and North Carolina's laws on rules of the road, only those which the Commission believes are in need of legislative attention will be mentioned in this report.

Findings and Recommendations

In certain areas, North Carolina's rules of the road were found to differ substantially from those of the Code. The Commission believes that in some of these areas, the Code provision would be more effective in promoting traffic safety and therefore recommends amendment of the North Carolina laws to conform to the provisions of the Code. In a few other instances, improvements which are not contained in the Code are recommended.

1. Right of way Provisions - Turning

One substantial deficiency was noted in our laws in this area. If two vehicles approach an intersection from opposite directions, G.S. 20-155 provides that the vehicle first entering the intersection has the right of way to proceed straight ahead or turn right or left, provided its driver gives the proper signal. This may tend to encourage a race to the

[1]Robert L. Gunn, Report on Differences Between North Carolina's Rules of the Road and Those Contained in the Uniform Vehicle Code. Chapel Hill: Institute of Government, 1964

intersection and thereby promote accidents; at a minimum it makes for uncertainty as to which driver has the right of way at a critical point.

In this situation, the Code provides that the driver of a vehicle who intends to turn left within an intersection must yield the right of way to any vehicle which (a) is approaching from the opposite direction and (b) is within the intersection or so close thereto as to constitute an immediate hazard to the turning vehicle.

The Code provision seems to be the more practical solution to this right-of-way problem at intersections. Since the driver about to turn usually must slow down prior to turning, if either car must stop, he will normally be in the better position to do so.

Recommendation No. 1:

We recommend that G. S. 20-155 be amended to require the driver of a vehicle who intends to turn left within an intersection or into an alley, private road, or driveway to yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard to the turning vehicle.

2. Right of way Provisions - Stopping

G.S. 20-158 requires the driver of a vehicle to stop in obedience to a properly erected stop sign at an intersection. It does not specify at what point in relation to the intersection the stop must be made.

The Code requires the driver at such an intersection to stop before entering the crosswalk on the near side of the intersection, or if there is no crosswalk, then at a clearly marked stop line if there is one. If there is neither a crosswalk nor a stop line, then the stop must be made at the

point nearest the intersecting roadway that the driver has a view of approaching traffic on the intersecting roadway before entering the intersection.

Recommendation No. 2:

We recommend that G.S. 20-158 be amended to specify that, except when directed to proceed by a police officer or traffic control signal, every driver of a vehicle approaching a stop sign shall, before entering the intersection, stop (a) before entering the crosswalk on the near side of the intersection, or (b) in the event there is no crosswalk, shall stop at a clearly marked stop line, but (c) if there is neither crosswalk nor stop line, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway.

3. Regulation of Turning Movements

Our Statutes on this subject were adopted in 1937 and are out of date with respect to many of our streets and highways. They do not cover adequately the making of left turns on other than two-way roadways.

In addition to prescribing in considerable detail how turns are to be made at the different types of intersections, the Code also prohibits a driver from turning a vehicle around upon a road near the crest of a hill or near a curve unless his vehicle may be seen for at least 500 feet in each direction.

The Commission also observes that G.S. 20-154 and the Uniform Vehicle Code require that a signal of intention to turn be given for a distance of 100 feet from the intended turning point. This distance is insufficient in a great number of cases.

Recommendation No. 3:

We recommend that:

(a) G.S. 20-153 be amended to specify in more detail the method to be followed in making right and left turns on two-way roadways, as well as on other than two-way roadways;

(b) A law be enacted to provide that no vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to or near the crest of a grade, where such vehicle cannot be seen by the driver of a vehicle approaching from either direction within 500 feet;

(c) G.S. 20-154 be amended to require that in all areas where the speed limit is 45 miles per hour or higher, a signal of intention to stop or to turn from a direct line be given continuously during the last 200 feet travelled before stopping or turning.

4. Regulation of Speed

G.S. 20-141, which regulates maximum speed limits, is far more complicated than it need be. It specifies business, residential, and open country as three different types of area, each of which justifies a different statutory speed limit. Unless signs are posted indicating the contrary, the limit in a business district is 20 miles per hour, in a residential district it is 35 miles per hour, and in open country it is 55 miles per hour. Business and residential areas are defined according to a fairly complicated formula which is unfamiliar to the average driver. The State Highway Commission (and local authorities with respect to certain streets) have authority to vary these statutory limits on the basis of an engineering and traffic investigation.

Our laws in this area are far more complicated than the Code and could

be simplified without loss in effectiveness.

Minimum speed limits fixed by G.S. 20-141 only apply to interstate and primary highway systems. The State Highway Commission (and local authorities within their jurisdictions) may fix minimum speed limits upon other highways after conducting an engineering and traffic investigation.

Our minimum speed laws are sound, but should not be limited to the interstate and primary highway system.

A special limitation is placed by the Code on the speed of a motorcycle unless it is equipped with lights sufficient to reveal a person at a distance of 300 feet. Unless so equipped, it is limited to a speed of 35 miles per hour. Our laws contain no such provision, but such a provision seems desirable.

Recommendation No. 4:

We recommend that G.S. 20-141 be amended:

(a) To simplify the maximum speed limits by providing that the maximum speed for vehicles shall be 55 miles per hour in the open country and 30 miles per hour within the corporate limits of a municipality, unless those speed limits are changed by the State Highway Commission or local authorities and appropriate signs are posted.

(b) To fix the minimum speed limit at 40 miles per hour on all roads having a maximum speed limit of 55 miles per hour.

(c) To provide that no person shall operate a motor-driven cycle at any time between one-half hour after sunset and one-half hour before sunrise at a speed greater than 35 miles per hour, unless such motor-driven cycle is equipped with a head lamp or lamps which are adequate to reveal a person or vehicle at a distance of 300 feet ahead.

5. Driving While Under the Influence of Intoxicating Liquors

A deficiency noted in this area is that our law only prohibits driving while under the influence. A person may sit under the steering wheel of an automobile upon a highway with the motor running, but unless there is some movement of the vehicle, the person has not "driven" the vehicle. The vehicle must actually move before he is deemed to have driven it. The Code covers this situation by prohibiting a person from driving or being in actual physical control of a vehicle while under the influence of intoxicating liquors. In both situations the potential danger is very great and both should be covered.

Recommendation No. 5:

We recommend that G.S. 20-138 and 20-139 be amended to prohibit a person from driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor.

6. Driving While Under the Influence of Drugs

Our laws prohibit driving while under the influence of narcotic drugs, but do not mention non-narcotic drugs. Some drugs not properly classifiable as narcotics - for example, amphetamines, antihistamines, and barbiturates - have an effect upon the use which is as detrimental from a traffic safety standpoint as is alcohol or narcotics. Therefore the law prohibiting driving while under the influence of narcotics should be extended to include other drugs.

The Code prohibits driving while under the influence of narcotics or any other drug to a degree which renders him incapable of safely driving a vehicle, and thus achieves a desirable comprehensiveness.

Recommendation No. 6:

We recommend that it be made unlawful for any person to drive a vehicle within this State while he is under the influence of any drug to a

degree which renders him incapable of safely driving a vehicle.

7. Chemical Tests for Intoxication

Since our law on this subject only became effective January 1, 1964, we hardly have sufficient experience upon which to base a sound evaluation of its effectiveness. Our statute does vary substantially from the Code in that:

(a) It only provides for the breath test, while the Code provides for blood, breath, and urine tests;

(b) It merely provides for the admission in evidence of the fact of refusal to undergo the test, while the Code requires suspension of the driver's license for such refusal; and

(c) It provides that a blood-alcohol level of .10% or higher raises a presumption that the subject was under the influence, but is silent as to blood-alcohol levels below that point; however, the Code provides that a level of .05% or lower raises a presumption the subject was not under the influence, while a level over .05% but less than .10% raises no presumption, but may be admitted and considered along with other evidence.

The differences listed in (a) and (c) probably do not weaken the law substantially and no change is recommended as to either. The differences as to the consequences of refusal to undergo a test for intoxication is more important and is another instance in which the Code provision is superior to ours.

Recommendation No. 7:

We recommend that G.S. 20-16.2 be amended to provide for suspension of a person's driver's license, after a hearing on the question of refusal, for refusal to undergo a chemical test for intoxication after being arrested for drunken driving.

8. Driving on Right Side of Roadway

There is some question as to whether our laws presently require vehicles, except when overtaking and passing or turning left, to be driven in the right-hand lane on four-lane highways. Such a requirement is desirable from a safety standpoint, since it would reduce the incidence of passing on the right by making the left lane available for passing and for emergency vehicles.

Recommendation No. 8:

We recommend that G.S. 20-146 be amended to provide that upon all roadways, any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic proceeding in the same direction, except when overtaking and passing another vehicle or when preparing for a left turn at an intersection or into a private road or driveway.

9. Obedience to and Requirements of Traffic Control Devices

Our law provides that, when a stop light has been erected at an intersection outside city limits, a vehicle shall not enter the intersection while the stop light is emitting a red or stop signal for traffic which is moving in the direction the vehicle is travelling. No mention is made of stop lights within municipalities.

The Code spells out the effects of stop lights, pedestrian control signals, and red and amber flashing lights located within and without municipalities.

For purposes of statewide uniformity and for better driver understanding, a state-wide law covering this subject is highly desirable.

Recommendation No. 9:

We recommend that the statutes be amended to specify the meaning to be accorded the various traffic control signals, including stop lights and flashing red and amber lights, both inside and outside municipalities.

10. Backing Upon the Highway

North Carolina has no law which specifically prohibits backing upon a highway, although this may, under certain circumstances, be a very dangerous practice. There should be a state-wide statute regulating backing, at least upon interstate and controlled access roads.

Recommendation No. 10:

We recommend that the statutes be amended to provide that it shall be unlawful for the driver of a vehicle to back his vehicle:

(a) Unless such movement can be made with safety and without interfering with other traffic; or

(b) Upon any shoulder or roadway of any controlled access highway.

11. Stopping or Parking on the Highway

Our laws prohibit parking on the paved or main-travelled portion of the highway (except in business and residential areas) when it is practicable to park off the paved or main-travelled portion. We do not prohibit the rather dangerous but not uncommon practice of stopping on the highway for such purposes as receiving or discharging passengers.

Recommendation No. 11:

We recommend that G.S. 20-161 be amended to provide that it shall be unlawful for the driver of a vehicle to stop, park, or leave his vehicle standing upon the paved or main-travelled part of a highway outside of a business or residential district when it is practicable to stop, park, or leave such vehicle standing off that part of the highway.

12. School Buses

G.S. 20-217, with certain exceptions, requires vehicles to stop upon approaching on the same highway from any direction any school bus, church bus, or Sunday school bus which is stopped and receiving or discharging passengers. Vehicles must remain stopped until the bus passengers have been received or discharged and the stop signal has been withdrawn or the bus moved on.

Our statutes do not specify the use to be made of the bus stop signal. At times it is used to indicate when the bus is about to turn, as well as to indicate a stop. Since the law places upon other motorists a duty to stop in one situation but not in the other, it is important that the motorist know as early as possible whether the bus is about to stop. This situation would be improved if school bus drivers used the stop sign only to indicate a stop.

Recommendation No. 12:

We recommend that the statutes be amended to require that drivers of school, church, and Sunday school buses use the mechanical stop signal only for the purpose of indicating that the bus has stopped or is about to stop for the purpose of receiving or discharging passengers.

13. Stopping at Railroad Crossings

In some instances, our statutes governing stopping at railroad crossings require drivers of vehicles to stop between 10 and 50 feet from the rail nearest the vehicle; other statutes only require the vehicle to stop before crossing the railroad. The Code requires that in all cases where a vehicle is required to stop before crossing a railroad, the stop must be made between 15 and 50 feet from the nearest rail. Such a provision seems desirable from a safety standpoint.

Recommendation No. 13:

We recommend that the statutes be amended to provide that in all cases where the law requires a vehicle to stop before crossing a railroad, the stop shall be made not closer than 15 feet and not further than 50 feet from the nearest rail.

14. Pedestrian Regulation

Our laws on pedestrians have not been updated since being enacted in 1937 and are in need of amendment in the following respects:

(a) G.S. 20-173 requires the driver of a vehicle to yield the right of way to a pedestrian crossing a roadway within a crosswalk, but does not prohibit a pedestrian from stepping onto the street in the path of an oncoming vehicle which is so close that it would be impossible for the driver to yield.

(b) G.S. 20-174 requires pedestrians to walk on the extreme left-hand side when walking along a highway, but does not require them to use sidewalks when available. It also prohibits pedestrians from crossing the roadway between adjacent intersections where traffic control signals are in operation unless they use marked crosswalks, but between other intersections it does not prohibit crossing diagonally or at any point along the street.

(c) G.S. 20-175 prohibits a person from standing in the travelled portion of the highway for the purpose of soliciting a ride from the driver of a private vehicle. It does not prohibit his standing upon the travelled portion to solicit a ride from the driver of a commercial vehicle or for the purpose of soliciting business from the driver of a vehicle.

Recommendation No. 14:

We recommend that the statutes be amended to provide that:

(a) No pedestrian shall suddenly leave a curb or other place of safety

and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield;

(b) Where sidewalks are provided, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway; and where sidewalks are not provided, any pedestrian walking along or upon a highway shall, when practicable, walk only on the left side of the roadway or on its shoulder facing traffic approaching from the opposite direction;

(c) No person shall stand in a roadway for the purpose of soliciting a ride, employment, or business from the occupant of any vehicle.

PART TWO

REMOVING CERTAIN TRAFFIC VIOLATIONS FROM THE CRIMINAL CODE

Introduction

The traditional approach of legislation designed to make the highways safer is through the forms of the criminal law. The General Assembly establishes certain general and specific standards of conduct for those who use the public streets and highways, declares violations of those standards to be crimes, and imposes punishments (fines, imprisonment, and/or loss of the driver's license) upon those adjudged guilty of such violations. Charges of violations of the traffic laws are heard in the criminal courts of the State, where the defendant is granted all of the rights and defenses which our system affords those accused of crime. And upon conviction, the defendant is — at least in the view of the law — branded as a criminal.

There have been growing doubts as to whether this is the most effective means of handling abuses of the privilege of driving, and proposals have been made for alternative modes of hearing and punishing violations of traffic laws which do not invoke the full processes of the criminal law. The growing rate of traffic accidents with their increasing toll of deaths and injuries is cited as evidence that our present system is not achieving the goal of making the highways safer. It is likely that few of the many thousands of citizens convicted of minor traffic offenses consider themselves criminals, or have their respect for the law and its processes enhanced

or their future conduct altered by the ways in which their cases are normally handled in the courts. And it is contended that one answer to these problems is to be found in developing a more summary method by which those who abuse the privilege of driving on the highways will be promptly and effectively punished.

Administrative Traffic Forums

To one such proposal we have given a good deal of attention. It was advanced by Paul A. Johnston in the North Carolina Law Review[2] ten years ago.

Johnston advocated that some traffic offenses now classified as misdemeanors be "de-criminalized" by legislation specifying that these infractions would no longer constitute crimes. He outlines a system whereby these infractions would be heard in a state-wide network of quasi-judicial or administrative forums by specially trained hearing officers. These forums would not be "courts" in the technical sense, but would provide a just and expeditious determination of charges of infractions without some of the procedural formalities required in a criminal trial. The more expeditious procedure, it was contended, would be conducive to the public's convenience, and would create greater respect for the processes of the law and so promote safer driving.

The administrative forums would not have power to impose criminal punishments such as monetary "fines" or imprisonment, but would be empowered to determine whether there should be imposed a legislatively-established, fixed monetary "penalty" of a non-criminal nature and, where appropriate, the

[2]Paul A. Johnston, A Plan for the Hearing and Deciding of Traffic Cases, 33 North Carolina Law Review 1 (1954).

additional penalty of deprivation of the operator's license. Some of the more serious offenses -- driving while intoxicated, for instance -- would continue to subject the violator to criminal sanctions as well as to the administrative penalty. The cost of administration of the plan was to be paid out of the monetary penalties assessed against violators.

In the decade since it was put forward, there has been no occasion for serious evaluation of the feasibility of the Johnston plan by any official agency of the State or by the General Assembly. In response to our legislative instructions, we have undertaken such an evaluation.

At our request, a study was made of whether the main features of this proposal could be legislatively achieved under the Constitution of North Carolina, especially in view of the amendment of 1962 which established the General Court of Justice.[3] The conclusion reached in that study -- and it must be admitted that many of the questions involved cannot be answered with assurance except by the North Carolina Supreme Court -- is that the proposal would be achieveable without amendment of the Constitution. In summary, the findings of the study were as follows.

Traffic law violations now designated as misdemeanors could be legislatively reclassified as non-criminal infractions, notwithstanding the fact that penalties were imposed for their commission. There is a judicially-recognized distinction between a non-criminal monetary "penalty" and a criminal "fine." Non-criminal monetary "penalties" and driver's license suspension or revocation could constitutionally be used as non-criminal sanctions for such infractions.

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[3]Donald A. Furtado, Report on Constitutional Questions Arising from a Proposal to Establish a System of Administrative Traffic Tribunals. Chapel Hill: Institute of Government, 1964

The General Assembly may create quasi-judicial bodies, such as the proposed administrative traffic tribunals. While these tribunals must assure a fair hearing, they may meet due process requirements without adhering to some of the procedural formalities of a criminal court. No jury trial would be constitutionally required, for example. If some of the more serious traffic violations were to continue to be designated as criminal offenses, criminal punishment in addition to the administrative imposition of a non-criminal penalty would not constitute double jeopardy.

The most effective means of enforcing monetary penalties imposed by the administrative traffic tribunal probably would be to suspend the driver's license of the violator until he pays the penalty -- a method which appears to be constitutional.

It does not appear that there is a constitutionally guaranteed appeal to the courts as of right from administrative determinations. In practice, however, the statutes of North Carolina have made available procedures for judicial review of all final administrative decisions. At present, appeals from driver's license suspensions are heard anew by the court. This is a statutory requirement, however, and a more limited review could be established by the General Assembly.

Non-criminal traffic infractions could be heard originally in the courts, in lieu of establishing a special system of administrative traffic forums. Such proceedings probably would be considered "civil actions" requiring a jury trial unless waived by all parties, although there is precedent for a contrary conclusion. If jury trial were required, then merely changing the name of certain traffic offenses from "crimes" to "infractions" would do little to make the handling of traffic cases more expeditious.

The establishment of the system of administrative traffic tribunals would require additional personnel, special training for them, and new hearing facilities. It is contemplated that this system would be financed from the monetary penalties collected from violators. But since all criminal "fines" collected from violators now go by constitutional requirement to the public schools, the result would be a substantial loss of revenue by the public schools.

No state has established administrative tribunals to hear and determine traffic infractions. New York apparently is the only state which has made minor traffic offenses non-criminal. There, "traffic infractions" have been made non-criminal by statute since 1929. Hearings are held in the regular courts, but without right of jury trial. Thus North Carolina would be pioneering if it were to establish a system of traffic tribunals such as that proposed.

Conclusions

The time available to this Commission has been too brief to allow for the extensive study necessary for a complete evaluation of the merits of and the best means of effectuating the proposal to take certain minor traffic offenses out of the category of crimes and provide for their hearing and determination in a more expeditious manner than is allowed by the usual procedures of the criminal courts. Nevertheless, our investigation of the matter has been such as to enable us to reach several conclusions.

First, we believe that there probably is merit in the idea of "decriminalizing" certain of the minor and most frequently occurring traffic offenses, for it serves no good purpose to brand those guilty of such offenses as "criminals" when they are so considered neither in their own eyes nor in the eyes of the public.

Second, we believe that some more prompt and effective means than we now have must be found for dealing fairly, but promptly and effectively, with those who abuse the privilege of driving upon the streets and highways of North Carolina. For those traffic offenses not serious enough to call for the imprisonment of the offender, driver license suspension or revocation would appear to be the most effective sanction, for it tends to operate with more equal severity upon all offenders than do money penalties.

Third, the fact that the Courts Commission is engaged in drafting legislation to implement the court amendment of 1962 must be taken into account in any consideration of a revised means of hearing traffic offenses. The principal feature of the new court plan will be a system of district courts which will have misdemeanor jurisdiction and thus will handle the vast majority of the traffic cases. Moreover, the State will be asked to assume for the first time the cost of financing the inferior court system. To offer the General Assembly a proposal of the size and novelty of the administrative traffic tribunal idea at the time the Courts Commission's recommendations are under legislative consideration would tend to create confusion and uncertainty which might jeopardize both sets of proposals. For this reason, any further study of the idea of changing substantially the ways in which traffic offenses are heard and determined should be conducted in close cooperation with the Courts Commission.

Recommendation No. 15:

We recommend that the General Assembly give further study, through such means as it deems most appropriate, to the proposal to remove minor traffic offenses from the criminal code and provide a more expeditious means of hearing and determining such offenses; and that such study be conducted in close cooperation with the Courts Commission.

Appendix A

CHAPTER 1183

AN ACT TO ESTABLISH THE TRAFFIC CODE COMMISSION.

The General Assembly of North Carolina do enact:

Section 1. Creation of Commission; Membership; Chairman. There is hereby created "The Traffic Code Commission," which shall consist of 11 persons appointed by the Governor from among the membership of the 1963 General Assembly. All members shall be appointed on July 1, 1963, or as soon thereafter as practicable, and shall serve until completion of duties assigned to the Commission. All vacancies occurring in the membership of the Commission shall be filled by the Governor in the same manner as the original appointments. The Chairman of the Commission shall be designated by the Governor from among the Commission membership.

Sec. 2. Duties of the Commission. The Traffic Code Commission shall have the following duties

(a) To study the motor vehicle laws of North Carolina and to evaluate their effectiveness in promoting traffic safety;

(b) To consider the feasibility of removing minor traffic violations from the criminal code.

(c) To file a report containing its findings, recommendations and plans with the Governor not later than September 1, 1964, and to present such report to the 1965 General Assembly.

Sec. 3. Per Diem and Allowances. The members of the Traffic Code Commission shall receive for their services the same per diem and allowances as are granted members of State boards and commissions generally.

Sec. 4. Expenses. All expenses of the Traffic Code Commission shall

be paid from the Contingency and Emergency Fund upon application in the manner prescribed in G.S. 143-12.

Sec. 5. Expiration. The Traffic Code Commission shall expire upon certification by the Chairman of the Commission to the Governor that, in the opinion of the Commission, it has performed all of the duties assigned to it by this Act, but in any event not later than June 30, 1965.

Sec. 6. All laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 7. This Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 25th day of June, 1963

Appendix B

REPORT ON DIFFERENCES BETWEEN NORTH CAROLINA'S RULES OF THE ROAD AND THOSE CONTAINED IN THE UNIFORM VEHICLE CODE

Prepared for the

NORTH CAROLINA TRAFFIC CODE COMMISSION

by Robert L. Gunn

Assistant Director

Institute of Government

INSTITUTE OF GOVERNMENT

The University of North Carolina

at Chapel Hill

1964

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I. INTRODUCTION

A study of North Carolina's Motor Vehicle Laws concerning Rules of the Road as compared with the Uniform Vehicle Code[1] was undertaken to determine, first, whether there are major differences between our laws and the Code and, secondly, whether in case of major differences it appears that the Code provision would be more effective in promoting traffic safety than our current law.

In each area of major variance advantages as well as disadvantages of the Code provision and the North Carolina Law are discussed. No attempt is made here to determine how many states have adopted the Code provisions from which we differ. It is anticipated that these matters will be the subject of a further investigation in the near future.

Although this study covered all provisions of the Code and North Carolina's laws on rules of the road, only those provisions which differ significantly will be discussed in this paper. In areas where wording varies but the end result of both provisions appears to be substantially the same, such variances are not discussed.

II. AREAS OF SUBSTANTIAL VARIANCE

A. Right of Way Provisions - Turning.

1. North Carolina law. Our statutes on right of way are concerned primarily with who has the right of way at an intersection and when vehicles must yield the right of way to emergency vehicles, such as police and fire vehicles and ambulances. At least one substantial deficiency is

revealed by an examination of our law on right of way. If two vehicles are approaching an intersection from opposite directions and one desires to turn right or left, the statutes[2] provide that the vehicle entering the intersection first has the right of way to proceed straight ahead or turn right or left, provided its driver gives the proper signal. This may tend to encourage a race to the intersection and thereby promote accidents.

2. The Uniform Vehicle Code. The Code provisions[3] are substantially similar to the North Carolina laws on right of way except as to who has right of way in the situation discussed above, when two vehicles are approaching an intersection from opposite directions. The Code provides that in such a situation, the driver of a vehicle who intends to turn left within an intersection shall yield the right of way to any vehicle approaching from the opposite direction and which is within the intersection or so close thereto as to constitute an immediate hazard.[4]

3. Discussion. North Carolina's laws are in substantial conformity with the Code on right of way rules, except for the differences which have been mentioned. The Code provision seems a more practical approach to the right of way problem in the case of intersection turns. Since the driver about to execute the turn must slow down in order to do so, it seems that if either car must stop, the one turning is the proper one to do so. Furthermore, the driver of the turning vehicle, since he must slow down in order to turn, is likely to be in a position to stop more readily than is the driver of the vehicle approaching from the opposite direction.

B. Right of Way Provisions - Stopping.

1. North Carolina law. Our statute[5] provides that it shall be unlawful for a driver to fail to stop in obedience to such a stop sign and

yield the right of way to vehicles on the dominant road. The statute should be more specific as to where the vehicle is to stop in relation to the intersection.

2. The Uniform Vehicle Code. The Code provides[6] that when a stop sign has been erected at an intersection notifying drivers to stop, every driver of a vehicle approaching such an intersection shall stop: (1) before entering the crosswalk on the near side of the intersection; (2) in the event there is no crosswalk, the driver shall stop at a clearly marked stop line if there is one; or, (3) if there is no marked crosswalk or stop line, then the stop must be made at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection.

3. Discussion. It is not now clear from the North Carolina statute whether the driver approaching a stop intersection must stop: (1) before entering the pedestrian crosswalk (if there is one); (2) before crossing a marked stop line on the pavement; or (3) whether the law has been satisfied if he stops at the edge of the intersecting roadway. Certainty could be added to our law by the adoption of a provision such as that contained in the Code.

C. Regulation of Turning Movements.

1. North Carolina law. Our statutes[7] on this subject vary considerably from the Code. This is perhaps because they were adopted in 1937 and have had only a slight amendment since that time. They assume that all roads are either two or three lanes wide and accomodate traffic traveling in both directions. They are therefore out of date as applied to many of our streets and highways, especially where traffic going in the same direction

in two or more lanes may turn in the same direction at an intersection. They do not cover adequately the situation where a turn is made from a one-way street to a two-way street, from a one-way street to another one-way street, or from a two-way street to a one-way street.

They do cover adequately turns at most intersections where both streets or highways are two-way and have only two lanes.

2. The Uniform Vehicle Code. The Code provisions[8] on this subject are much more comprehensive and cover the situations which North Carolina's laws do not. The Code sets out in considerable detail how right and left turns are to be made on the different types of streets and is superior to our statutes on this subject.

The Code also has a section[9] which prohibits a driver from turning a vehicle around upon the road near the crest of a hill or a curve where his vehicle may not be seen from a distance of at least 500 feet in each direction.

3. Discussion. Adoption of the Code provisions would provide adequate statutory regulation of turning at most intersections found in this State. The provision in our law which authorizes local authorities to modify methods of turning at intersections is in accordance with the Code and should be retained, since it is impracticable to cover by statute every possible situation.[10]

A further consideration which is important from a safety standpoint is the distance for which a signal of intention to turn should be given. Both the North Carolina law[11] and the Code[12] require that it shall be given for a distance of 100 feet from the intended turning point. With the modern Interstate and other high-speed roads, it is doubtful that this distance is sufficient in most cases to give adequate warning to other drivers.

D. Regulation of Speed.

1. North Carolina law. Our statutes[13] are fairly comprehensive on this subject, especially since the amendments enacted by the 1963 General Assembly delineating the authority of the State Highway Commission and of local authorities to vary the statutory speed limits in certain locations. They recognize three areas as justifying different statutory speed limits -- business, residential, and open country -- with speeds generally set at 20, 35, and 55 miles per hour, respectively.

2. The Uniform Vehicle Code. The Code does not contain as detailed provisions as do the North Carolina laws on the subject of varying statutory speed limits, especially in the vicinity of schools.[14] The Code recognizes basically two different types of areas which justify a different statutory speed limit - urban areas with a speed limit of 30 miles per hour, and open country with a limit of 60 miles per hour during the daytime and 55 miles per hour at night.

The Code has a further provision which may be considered desirable, but which is not found in our laws. It provides that "in every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care."[15] Such a provision in effect requires a driver to drive his vehicle at such a speed that he can control it at all times and stop it in time to avoid colliding with other objects.

3. Discussion. North Carolina has the same maximum speed limit for day and night, possibly modified by the requirement that no person shall drive at a speed which is faster than is reasonable and prudent under existing conditions. The Code and several of the states set the speed limit at

night either five or ten miles per hour lower than during the daytime.

A law similar to the Code provision requiring a driver to drive his vehicle at such a speed that he can control it at all times might bolster our existing law, which places a burden upon the driver to reduce speed in time to avoid a collision.[16] Even so, it is felt that North Carolina's "reasonable and prudent" rule, when coupled with the requirement of reducing speed in sufficient time to avoid a collision, is sufficient to cover all situations which would be covered by the Code provision.

The Code also places a special limitation on motorcycles.[17] Unless such a vehicle is equipped with lights sufficient to reveal a person at a distance of 300 feet ahead, it is limited to a maximum speed of 35 miles per hour at night. North Carolina does not place any special speed limitation on such vehicles. Since our equipment statutes require motorcycles[18] as well as other motor vehicles to be equipped with lights meeting specified requirements it may be argued a provision such as that of the Code is unnecessary. On the other hand, it may be argued that a person operating a motorcycle 50 miles per hour when he can see only 100 feet ahead of him should be guilty of an offense more serious than an equipment violation.[19]

E. Driving While Under the Influence of Intoxicating Liquors.

1. North Carolina law. Our statutes prohibit one from driving a vehicle upon the public highways or the driveways of certain private and public institutions if he is under the influence of intoxicating liquor.[20]

2. The Uniform Vehicle Code. The Code provides that it is unlawful for any person who is under the influence of intoxicating liquor to drive or be in actual physical control of any vehicle within this State.[21]

3. Discussion. It will be noted that the Code extends the prohibition against drunk driving to all areas of the State, while we limit it

to public highways and the driveways and grounds of certain institutions. Although our statute applies only to specified areas, it is deemed sufficient to cover a vast majority of the areas where a person drives an automobile while under the influence. It does not, however, cover areas such as a private road or driveway.

Another difference between our law and the Code exists in this area. Our law only prohibits a person from driving while in such a condition while the Code prohibits driving, or being in actual physical control of a vehicle.

F. Driving While Under the Influence of Drugs.

1. North Carolina law. Our statutes prohibit one from driving a vehicle upon the public highways or driveways of certain private and public institutions if he is an habitual user of narcotic drugs, or if he is under the influence of narcotic drugs.[22]

2. The Uniform Vehicle Code. The Code provides[23] that it is unlawful for any person who is an habitual user of or under the influence of any narcotic drug, or who is under the influence of any other drug to a degree which renders him incapable of safely driving a vehicle, to drive a vehicle within the State. It further provides that the fact that a person is entitled to use such drug under the State's laws is no defense to a charge of driving while under the influence of drugs.

3. Discussion. As in the case of driving while under the influence of intoxicating liquor, the Code extends the offense of driving while under the influence of drugs to all areas of the State while we limit it to public highways and the driveways and grounds of certain institutions.

Perhaps the single most important feature which the Code incorporates but which is not found in our laws is the prohibition of driving while under

the influence of any drug to such an extent that one is incapable of safely driving a motor vehicle. Our statutes prohibit driving while under the influence of narcotic drugs, but they do not prohibit driving while under the influence of non-narcotic drugs such as amphetamines, anti-histamines, barbiturates or tranquilizers. Some drugs not falling under the narcotic classification have a much more potent effect than alcohol and may create hazards in driving that match those of the drunken driver.

The absence of a statutory prohibition against driving while under the influence of a non-narcotic drug may allow a person whose condition makes him as dangerous as if he were intoxicated to drive upon the highways without violating the law. It may be argued that a person who takes drugs upon the advice of his physician should be allowed to drive. Such an argument may be countered, however, by the fact that he is no less dangerous merely because his physician has prescribed the drug. Furthermore, in such a case the doctor will usually advise the patient not to drive while taking the drug.

G. Chemical Tests for Intoxication.

1. North Carolina law. Our statutes[24] provide that under certain circumstances, results of chemical analyses of a person's breath shall be admissible in prosecutions arising out of the alleged operation of a vehicle while under the influence of intoxicating liquor. The individual is not required to undergo a breath test, however, and the only sanction provided for refusal is the admission of evidence of refusal in the prosecution for drunken driving.[25]

2. The Uniform Vehicle Code. The Code provides[26] for admission as evidence the results of chemical tests of blood, breath, urine, or other

bodily substances when the test is performed according to specified procedures. In addition to providing for tests of a variety of substances it also requires suspension of the driving privilege upon refusal to submit to a test at the request of an officer.

3. Discussion. Although our law provides only for admission of results of chemical breath tests, this is perhaps adequate at the present time since the breath test is reliable and easy to administer.

Our law provides for admission of evidence of refusal to undergo a chemical test at the request of a law enforcement officer while the Code requires suspension of the driving privilege for such refusal. The advantage of a provision such as that contained in the Code is that it tends to induce persons to submit to the test. Its main disadvantage is that it could be abused by law enforcement officers. Adequate safeguards could be provided to prevent this, such as a hearing before a judicial officer or an officer of the Department of Motor Vehicles on the question of refusal.

H. Driving on Right Side of Roadway.

1. North Carolina law. Our statutes[27] require the driver to drive on the right half of the highway except on one-way streets and except where the road is of insufficient width.

2. The Uniform Vehicle Code. The Code requires persons to drive on the right half of the roadway, with certain exceptions.[28]

3. Discussion. The significant difference between these two provisions is as applied to roads of more than two lanes. In effect, the Code provision requires a vehicle to be driven in the right hand lane of a two-way street, except when overtaking and passing or turning.

I. Obedience to and Requirements of Traffic Control Devices.

1. North Carolina law. Our statutes[29] in this area are not as comprehensive as they might be. Generally they require a person to stop when a light is emitting red, but this provision only applies if the light is located outside of a municipality. Our law does require that all traffic control devices installed upon the state highway system conform to the Manual on Uniform Traffic Control Devices for Streets and Highways.[30]

2. The Uniform Vehicle Code. The Code spells out the effect of traffic control devices, whether located inside or outside of a municipality.[31] It covers traffic lights, flashing red and amber lights, and pedestrian control signals.

3. Discussion. Our law does not specify the effect of a flashing red or amber light whether inside or outside a municipality. It does not specify the effect of a traffic light within a city. As a practical matter, the situation within a municipality is likely to be controlled by city ordinance or local practice, but a statute covering the situation would require uniformity of application on a statewide basis.

J. Other Provisions Which Vary.

1. Pedestrian Regulation. A provision of the Code which our laws do not contain prohibits a pedestrian from suddenly leaving a curb or other place of safety and walking or running into the path of a vehicle which is so close to him that it is impossible for the driver to yield.[32]

North Carolina's laws prohibit a person from standing on the traveled portion of the highway for the purpose of soliciting a ride from the driver of a private automobile.[33] The Code carries this further and prohibits anyone from standing in the roadway for the purpose of soliciting

a ride, employment, or business from the occupant of any vehicle. The Code provision would of course cover such situations as conduct of a vending operation while standing in the roadway, which are not covered by our statutes.[34]

2. Stopping at Railroad Crossings. Our statutes[35] do not in all cases specify within what distance from a railroad crossing a vehicle must stop. In some instances they specify that the stop must be between 10 and 50 feet from the rail nearest the vehicle. It seems that such a provision would be desirable in all cases where vehicles are required to stop before crossing a railroad.

3. Stopping or Parking on the Highway. North Carolina prohibits parking on the paved or main traveled portion of the highway (except in business or residential areas) when it is practicable to park off the paved or main traveled portion of the road.[36] The Code also prohibits stopping on the paved or main traveled portion of the highway when it is practicable to stop off the paved or main traveled portion and its provisions apply whether in open country, a business district, or a residential district.[37] A provision such as the Code offers would have the advantage of prohibiting the rather dangerous and not uncommon practice of stopping on the highway to chat with a neighbor, to discharge passengers, or for other similar purposes, when it is practicable to pull off the road in order to do so.

4. Homicide by Vehicle. North Carolina does not have a statute on this subject but prosecutes for the common law crime of manslaughter. The Code classifies manslaughter by vehicle separately from the common law crime.[38] It provides that a person unlawfully and unintentionally causing the death of another while engaged in violation of a state law

or municipal ordinance applying to the operation of or use of a vehicle or the regulation of traffic shall be guilty of the offense of homicide by vehicle. This is substantially different from the common law crime of manslaughter as it exists in North Carolina. A violation of the law proximately resulting in the death of another is sufficient to constitute the crime outlined by the Code. In North Carolina, the violation of a statute or ordinance must be accompanied by culpable negligence in order to constitute the crime of involuntary manslaughter.[39]

5. School buses. The Code has two seemingly desirable provisions which our law does not have.[40] It requires that a school bus shall be equipped with a visual signal indicating that the bus has stopped or is stopping; it also prohibits the use of this signal except to indicate that the bus has stopped or is about to stop. Our law[41] does not so limit the use of this sign, but perhaps it would avoid some accidents if it did. The next provision offered by the Code but which we do not have, prohibits the operation of a school bus on the highways for purposes other than the transportation of children to or from school, unless all markings indicating "school bus" are covered or concealed.[42] Such a law would place additional responsibility upon school bus drivers, but at the same time it would put the motorist on notice that the bus is or is not transporting children to or from school.

6. Backing. There is presently no specific law in North Carolina prohibiting backing upon a highway. As noted by our Supreme Court, it is possible that a person who backs down the road is guilty of driving on the wrong side of the road.[43] It seems there should be a statute regulating such an act, at least upon Interstate and controlled access roads. The Code prohibits backing upon controlled access roads.[44] It also

prohibits backing on other roads unless the movement can be made in safety and without interfering with other traffic.

III. CONCLUSION

While North Carolina's rules of the road are similar to those advanced by the Uniform Vehicle Code in most areas, there is substantial variance on several points. The most important variances have been pointed out and in some instances recommendations for improvement have been made.

On the basis of this study, it is suggested that a more detailed comparative study of the North Carolina rules of the road and those of the Uniform Vehicle Code might usefully be undertaken in an effort to determine how best to improve our rules of the road and thereby promote traffic safety in North Carolina.

Footnotes.

1. The Uniform Vehicle Code is a specimen set of motor vehicle laws advanced as a guide for state motor vehicle laws. It is published by the National Committee on Uniform Traffic Laws and Ordinances, 711 Fourteenth Street, N.W., Washington 5, D.C.
2. N.C. GEN. STAT. §§ 20-154, -155 (Supp. 1963).
3. UNIFORM VEHICLE CODE §§ 11-401 through 11-406 (1962).
4. UNIFORM VEHICLE CODE § 11-402 (1962).
5. N.C. GEN. STAT. § 20-158 (Supp. 1963).
6. UNIFORM VEHICLE CODE §§ 11-403, -705 (1962).
7. N.C. GEN. STAT. § 20-153, -154 (Supp. 1963).
8. UNIFORM VEHICLE CODE §§ 11-601 through 11-606 (1962).
9. UNIFORM VEHICLE CODE § 11-602 (1962).
10. N.C. GEN. STAT. § 20-153(c) (Supp. 1963); UNIFORM VEHICLE CODE § 11-601(d) (1962).
11. N.C. GEN. STAT. § 20-154(b) (Supp. 1963).
12. UNIFORM VEHICLE CODE § 11-604(b) (1962).
13. N.C. GEN. STAT. §§ 20-141, -218 (Supp. 1963).
14. UNIFORM VEHICLE CODE §§ 11-801 through 11-807 (1962).
15. UNIFORM VEHICLE CODE § 11-801(a) (1962).
16. N.C. GEN. STAT. § 20-141(c) (Supp. 1963).
17. UNIFORM VEHICLE CODE § 11-805 (1962).
18. N.C. GEN. STAT. § 20-129(c) (Supp. 1963).
19. N.C. GEN. STAT. § 20-176(b) (Supp. 1963) provides that the maximum penalty for such a violation is a fine not exceeding $50, or imprisonment for not more than 30 days.

20. N.C. GEN. STAT. §§ 20-138, -139 (Supp. 1963).

21. UNIFORM VEHICLE CODE § 11-902 (1962).

22. N.C. GEN. STAT. § 20-138, -139 (Supp. 1963).

23. UNIFORM VEHICLE CODE § 11-902.1 (1962).

24. N.C. GEN. STAT. § 20-139.1 (Supp. 1963).

25. N.C. GEN. STAT. § 20-16.2 (Supp. 1963).

26. UNIFORM VEHICLE CODE § 11-902 (1962).

27. N.C. GEN. STAT. § 20-146 (Supp. 1963).

28. UNIFORM VEHICLE CODE § 11-301 (1962).

29. N.C. GEN. STAT. § 20-158 (Supp. 1963).

30. N.C. GEN. STAT. § 20-169 (Supp. 1963).

31. UNIFORM VEHICLE CODE §§ 11-201 through 11-204 (1962)

32. UNIFORM VEHICLE CODE § 11-502(b) (1962).

33. N.C. GEN. STAT. § 20-175 (Supp. 1963).

34. UNIFORM VEHICLE CODE § 11-507 (1962).

35. N.C. GEN. STAT. §§ 20-142, -143 (Supp. 1963).

36. N.C. GEN. STAT. § 20-161 (Supp. 1963).

37. UNIFORM VEHICLE CODE §§ 11-1001 through 11-1004 (1962).

38. UNIFORM VEHICLE CODE § 11-903 (1962).

39. State v. Trott, 190 N.C. 674, 130 S.E. 627 (1925).

40. UNIFORM VEHICLE CODE § 11-707 (1962).

41. N.C. GEN. STAT. § 20-217 (Supp. 1963).

42. UNIFORM VEHICLE CODE § 11-707(c) (1962).

43. Wall v. Bain, 222 N.C. 375, 23 S.E. 2d 330 (1942).

44. UNIFORM VEHICLE CODE § 11-1102 (1962).

Appendix C

REPORT ON CONSTITUTIONAL QUESTIONS ARISING FROM A PROPOSAL TO ESTABLISH A SYSTEM OF ADMINISTRATIVE TRAFFIC TRIBUNALS

Prepared for the

NORTH CAROLINA TRAFFIC CODE COMMISSION

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FOREWORD

The General Assembly of 1963 established the Traffic Code Commission and included in its stated duties an instruction "to consider the feasibility of removing minor traffic violations from the criminal code."[1] The act creating the Commission further provided that it should report its findings and recommendations to the Governor and the General Assembly of 1965.

Pursuant to the above-quoted instruction, the Commission at its meeting on July 18, 1964, reviewed a proposal which had been advanced by Paul A. Johnston in a 1954 article in the North Carolina Law Review. The essence of that proposal was (1) that certain minor traffic offenses be removed from the misdemeanor classification and treated thereafter as non-criminal infractions, and (2) that such infractions be heard and determined in a proposed system of special administrative tribunals, rather than in the courts of the State. While members of the Commission indicated an interest in giving careful study to this proposal, it was apparent that there were at the outset several important constitutional questions raised by the proposal, especially in view of the 1962 court improvement amendments to the Constitution of North Carolina. To assist it in answering these questions, the Commission requested the Institute of Government to prepare this report.

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[1]Session Laws 1963, c. 1183, § 2(b).

Inasmuch as this report is a commentary on several aspects of the Johnston proposal and certain possible variations thereon, it can better be understood after a careful reading of that proposal, which will be found in 33 North Carolina Law Review 1 (1954).

In preparing this report in response to the request of the Traffic Code Commission, the Institute of Government has attempted to make an objective analysis and presentation of the constitutional issues and of some of the practical problems involved, and has not addressed itself to the merits of the proposal under study by the Commission.

John L. Sanders

Director

Institute of Government

I. SUMMARY

This report analyzes several constitutional questions arising from an examination of the 1954 Johnston proposal that the General Assembly reclassify certain traffic law violations as non-criminal "traffic infractions" and establish a system of administrative tribunals to hear and determine charges of such infractions. The proposal in that form does not appear to be unconstitutional.

Traffic law violations now designated as misdemeanors may be reclassified as non-criminal infractions, notwithstanding the fact that penalties are imposed for their commission. There is a judicially-recognized distinction between a criminal monetary "penalty" and a criminal "fine." Non-criminal monetary "penalties" and driver license suspension or revocation could constitutionally be used as non-criminal sanctions for such infractions.

The General Assembly may create quasi-judicial bodies, such as the proposed administrative traffic tribunals. While these tribunals must assure a fair hearing, they may meet due process requirements although not adhering to some of the procedural formalities of a criminal court. No jury trial would be constitutionally required. If some of the more serious traffic violations were to continue to be designated as criminal offenses, criminal punishment in addition to the administrative imposition of a non-criminal penalty would not constitute double jeopardy.

Payment of monetary penalties imposed by the administrative tribunal could be enforced by separate civil or criminal actions in the regular courts, but this procedure would be expensive and time-consuming. Enforcement by contempt proceedings in the administrative tribunals would be of

doubtful constitutionality. The most effective means of enforcing monetary penalties would be to suspend the driver's license of the violator until payment of the penalty -- a method which appears to be constitutional.

It does not appear that there is a constitutionally-guaranteed appeal as of right from administrative determinations. In practice, however, procedures for judicial review have been made available by statute from all final administrative decisions. At present, appeals from driver's license suspensions are heard de novo by the court. This is a statutory requirement, however, and a more limited review may be established by the legislature.

Non-criminal traffic infractions could also be heard originally in the courts. Such proceedings would probably be considered "civil actions" requiring a jury trial unless waived by all parties. Although many cases hold that a jury trial is required in all civil actions, other cases hold that jury trial is required only in those civil actions in which jury trial was required by common law or by statute at the time of the adoption of the Constitution of North Carolina. There has been no attempt to reconcile these apparently contradictory lines of precedent or to predict judicial reaction to an attempt to provide for the trial of non-criminal infractions in court without a jury.

It is possible that the court hearing could be designated by the legislature as a "special proceeding" not requiring a jury, but what constitutes a "special proceeding" is not clearly defined. The only way to assure that no jury trial would be required on original trial of non-criminal infractions in the regular courts would be so to provide by constitutional amendment.

No state has established administrative tribunals to hear and determine

traffic infractions.

New York is apparently the only state which has made minor traffic offenses non-criminal. There, "traffic infractions" have been non-criminal by statute since 1929. Hearings are held in the regular courts, however, rather than in administrative tribunals. There is no right of jury trial.

There are several practical obstacles to "de-criminalizing" traffic offenses. Doubt has been expressed as to whether the public will distinguish between a criminal and a non-criminal traffic infraction when the result of each is a loss of money or driver's license. If jury trial were required in all non-criminal hearings in the regular courts, there would be little procedural simplification. (At present, no jury trial is required in criminal trials of petty misdemeanors except on appeal.)

Establishment of the administrative traffic tribunals would require additional personnel, special training for them, and new hearing facilities. There would be no overall reduction in the workload of the judiciary if the non-criminal infraction were to be heard in the regular courts.

The proposal to finance the cost of administrative forums with monies collected as penalties for traffic infractions would be constitutional. Since the criminal "fines" now go by constitutional provision to the public schools, however, the schools would lose a substantial source of funds. If it were desired to continue to assure by constitutional provision that the school system would receive the proceeds of non-criminal penalties, a constitutional amendment would be necessary. A new source of funds for either the administrative tribunals or the courts would be necessary.

II. THE PROPOSAL

In 1954, the North Carolina Law Review published an article by Paul

A. Johnston calling for a new approach to the handling of minor traffic violations in North Carolina.[2] The article draws extensively upon an earlier study made by George Warren of New Jersey for the National Committee on Traffic Law Enforcement and the National Conference of Judicial Councils.[3] Johnston advanced the thesis that the public does not view minor traffic offenses as "crimes" and that handling of the violation as a crime does little to insure better traffic law observance.[4]

Johnston advocated that some traffic offenses now classified as misdemeanors be "de-criminalized" by legislation specifying that these infractions no longer constituted crimes. He outlined a system whereby these infractions would be heard in a State-wide network of administrative forums by specially trained hearing officers. These quasi-judicial administrative forums would not be "courts" in the technical sense, but would provide a just and expeditious determination of the charges without some of the procedural formalities required in a criminal trial. The more expeditious procedure, it was contended, would be conducive to the public's convenience and would create greater respect for the processes of the law.[5]

The administrative forums would not have power to impose criminal punishments such as monetary fines or imprisonment, but would be empowered to determine whether there should be imposed a legislatively established, fixed monetary "penalty" of a non-criminal nature and, in some cases, the

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[2]Johnston, A Plan for the Hearing and Deciding of Traffic Cases, 33 N.C.L. REV. 1 (1954).

[3]See WARREN, TRAFFIC COURTS (Boston: Little, Brown and Company, 1942).

[4]Johnston, supra note 2, at 2.

[5]Id. at 5, 6.

additional penalty of deprivation of the operator's license.[6] Some of the more serious traffic offenses - driving while intoxicated, for instance - would continue to subject the violator to criminal sanction as well as to the administrative penalty.[7] The cost of the administration of the plan was to be paid out of the monetary penalties assessed against defendants.[8]

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[6] Ibid.

[7] Id. at 8.

[8] Id. at 14.

III. THE SCOPE OF THIS REPORT

It is the purpose of this report to discuss briefly the major constitutional problems which might arise in any attempt to implement such a traffic offense program as that just summarized. In addition to a discussion of the constitutionality of hearing "de-criminalized" traffic infractions in administrative forums, some comments will be made on the constitutionality of hearing "de-criminalized" traffic infractions in the regular court system.

It is not the purpose of this report to comment on the validity of the sociological, psychological, and political premises of the concept of non-criminal traffic infractions. In order to clarify some of the potential legal and constitutional considerations which might be encountered in the implementation of such plans, however, some comments on certain practical aspects of such a program are included.

IV. THE PROBLEM OF RECLASSIFICATION OF OFFENSES: FROM CRIMINAL OFFENSE TO NON-CRIMINAL INFRACTION

A. The Criminal Action

The North Carolina Constitution provides that "every action prosecuted by the people of the State as a party against a person charged with a public offense, for the punishment of the same, shall be termed a criminal action."[9] The impression probably given by a casual reading of the provision is not quite correct, however, for there can be non-criminal actions by agencies or representatives of the State to impose certain sanctions or "punishments" for violations of statutory provisions.

Traditionally, what acts shall constitute "crimes" under state law is determined by the legislature, subject only to such restrictions as are imposed by the federal and state constitutions.[10] It is not necessary that the act be specifically designated "a crime" to be so considered.[11] If the act is forbidden by statute and a criminal punishment is imposed, the courts will regard the statute as creating a crime.

The traditional sanction for a criminal offense, save for the gravest offenses, is physical incarceration of the defendant, suspended in some instances upon terms established by the court. Imposition of a monetary fine is equally familiar, usually as an alternative or supplement to physical incarceration.

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[9] N.C. CONST. art. IV, § 11(1).

[10] Coffey v. Harlan County, 204 U.S. 659 (1906); see generally 14 AM. JUR. Criminal Law § 16 (1938); 22 C. J. S. Criminal Law § 16 (1961).

[11] State v. Brown, 221 N.C. 301, 20 S.E. 2d 286 (1942).

B. The Non-Criminal Penalty

1. Distinguishing "Fines" and "Penalties"

The mere fact that the State exacts money for failure to comply with a statute of the State does not, without further provision, make the person failing to comply guilty of a "crime." A technical distinction between a criminal "fine" and a statutory "penalty" has been recognized in North Carolina, although the terms have been used synonymously when the technical distinction was not at issue.[12] The North Carolina Supreme Court has said:

> [T]here is a clear distinction between a fine and a penalty. A "fine" is the sentence pronounced by the Court for a violation of the criminal law of the State; while a "penalty" is the amount recovered -- the penalty prescribed for a violation of the statute law of the State or the ordinance of a town. This penalty is recovered in a civil action of debt . . . .[13]

Where there has been doubt whether the Legislature intended to create a monetary criminal "fine" or a non-criminal "penalty", the courts have tended to read the statute as creating a penalty.[14]

The United States Supreme Court has also long recognized a distinction between a criminal sanction and a penalty. Speaking for the Court, Justice Brandeis said:

> Remedial sanctions may be of varying types. One which is characteristically free of the punitive criminal element is revocation of a privilege voluntarily granted. Forfeiture of goods or their value and the payment of fixed or variable sums of money are other sanctions which have been recognized as enforceable by civil proceedings since the original revenue law

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[12] See generally 28 N.C.L. REV. 84 (1949)

[13] Bd. of Educ. v. Henderson, 126 N.C. 689, 36 S.E. 158 (1900); accord, State v. Runfelt, 241 N.C. 375, 85 S.E. 2d 398 (1955); State v. Taylor, 243 N.C. 688, 91 S.E. 2d 924 (per curiam) (1956); State v. Earnhardt, 107 N.C. 789 (1890).

[14] State v. Briggs, 203 N.C. 158, 165 S.E. 339 (1932).

of 1789. (Act of July 31, 1789, chap. 5, sec. 36, 1 Stat. at L. 29, 47.) . . . . In spite of their comparative severity, such sanctions have been upheld against the contention that they are essentially criminal and subject to the procedural rules governing criminal prosecutions.[15]

2. Examples of Non-Criminal Monetary Penalties in North Carolina

Civil actions by private individual for recovery of statutory money penalties have been common in the past. For example, penalties are recoverable for usury[16] and failure to pay overtime under the Federal Fair Labor Standards Act.[17]

More pertinent to this study, however, and more common today are the statutes permitting administrative agencies to impose legislatively-fixed penalties for failure to observe statutory provisions or for the violation of statutorily authorized administrative regulations. Among these are statutes:

(1) Authorizing the North Carolina Industrial Commission to determine whether to levy a penalty for failure to comply with provisions of the Workmen's Compensation Act;[18]

(2) Authorizing taxing authorities to add a penalty of ten per cent of all tax due for submitting a worthless check in payment of a tax ("in addition to any criminal penalties provided by law for the giving of worthless checks");[19] and

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[15]Helvering v. Mitchell, 303 U.S. 391, 399-400 (1938); see Lloyd Sabaudo Societa Anonima v. Elting, 287 U.S. 329 (1932); Passavant v. United States, 148 U.S. 214 (1890).

[16]Finance Co. v. Holder, 235 N.C. 96, 68 S.E. 2d 794 (1951); see G.S. §24-2.

[17]Smoke Mountain Industries, Inc. v. Fisher, 224 N.C. 72, 29 S.E.2d (1944).

[18]G.S. §§ 97-18 (e), 92 (e).

[19]G.S. §§ 105-236, 382: see also G.S. § 20-178 imposing a similar ten per cent penalty for paying with a worthless check a tax or fee due the Commissioner of Motor Vehicles.

(3) Establishing a penalty of $100 for failure of any public official to furnish any report required by the State Board of Assessment.[20]

The amount of the penalty must be fixed by the legislature, and adequate standards for the imposition of the penalty must be outlined. As the North Carolina Supreme Court said in holding that a district board of health could not, by its own act, make a violation of an administrative regulation a crime, "while it is given power . . . to enforce penalties, it is not given the power and authority to make laws."[21]

3. License Revocation or Suspension

It is equally proper to permit a tribunal in a non-criminal action to determine whether an infraction has occurred which, by statute, warrants suspension or revocation of a license.[22] As Justice Brandeis said, "Remedial sanctions may be of varying types. One which is characteristically free of the punitive criminal element is revocation of a privilege voluntarily granted."[23] It has been held that the operation of a motor vehicle is a conditional privilege which may be suspended or revoked under the police power of the State.[24] In the same case, the North Carolina Supreme Court held that the administrative proceeding by the Department of Motor

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[20] G.S. §105-338.

[21] State v. Curtis, 230 N.C. 169, 52 S.E. 2d 364 (1949); see also United States v. Grimaud, 220 U.S. 506 (1910).

[22] See e.g. G.S. §§ 150-1 et seq.

[23] Helvering v. Mitchell, supra note 15.

[24] Honeycutt v. Scheidt, 254 N.C. 607, 119 S.E. 2d 777 (1961).

Vehicles suspending the license of a convicted speeder was "not criminal in its nature."[25]

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[25] Id. at 610, 119 S.E. 2d at 780; see also Harvell v. Scheidt, 249 N.C. 699, 107 S.E. 2d 549 (1949).

V. THE ADMINISTRATIVE TRIBUNAL AS THE FORUM FOR HEARING TRAFFIC INFRACTIONS

A. Power of the General Assembly to Create Quasi-judicial Administrative Tribunals

Prior to the amendment of 1962, the Constitution of North Carolina established the Court for the Trial of Impeachments, the Supreme Court, the Superior Courts, and Justices of the Peace, and authorized the General Assembly to create by statute "other courts inferior to the Supreme Court . . ." and to fix their jurisdiction.[26] These provisions gave the legislature ample authority to establish quasi-judicial agencies as well as inferior courts of the traditional kind. The 1962 amendment, in order to establish a uniform and unified court system and to deny the General Assembly the power to defeat the uniformity and simplicity of that system by legislatively creating a variety of courts, stated that

> The judicial power of the State shall, except as provided in Section 3 of this Article, be vested in a Court for the Trial of Impeachments and in a General Court of Justice. The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction which rightfully pertains to it as a co-ordinate department of the government, nor shall it establish or authorize any courts other than as permitted by this Article.[27] (Emphasis added.)

> The General Court of Justice . . . shall consist of an appellate division, a Superior Court division, and a District Court division.[28]

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[26] N.C. CONST. former art. IV, §§ 2, 12.

[27] N.C. CONST. art. IV, § 1.

[28] N.C. CONST. Art. IV, § 2.

The State has long conferred quasi-judicial powers on many state administrative agencies, however -- powers which it was not intended that the 1962 constitutional amendment should revoke. To counter an implication from the above-quoted language that henceforth no judicial power of any kind could be vested in any governmental organ outside the General Court of Justice and the Court for the Trial of Impeachments, Section 3 of Article IV was inserted to provide specifically that

> The General Assembly may vest in administrative agencies established pursuant to law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies were created. Appeals from the administrative agencies shall be to the General Court of Justice.

This exception would appear to give the General Assembly adequate authority to establish administrative traffic tribunals and to empower them to hear cases involving legislatively-established, non-criminal traffic infractions and to impose on those found to have committed such infractions legislative-fixed, non-criminal penalties. The North Carolina Supreme Court has held that "the General Assembly has full authority to . . . designate the agency through which, and the conditions upon which licenses . . . shall be suspended or revoked."[29]

The establishment of a system of administrative traffic tribunals separate from any existing state agency might arguably be held not to conform to the provisions of Article IV, section 3, on the ground that such tribunals would not exercise their quasi-judicial powers as "an incident to the accomplishment of the purposes for which the agencies were created . . ." but rather as their primary function (emphasis added).

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[29]Honeycutt v. Scheidt, 254 N.C. 607, 609, 119 S.E.2d 777, 779 (1961).

The risk of such a conclusion might be reduced by attaching the proposed tribunals to the Department of Motor Vehicles, which is statutorily charged with the task of "consolidat[ing] under one administrative head . . . agencies . . . dealing with the subject of the regulation of motor vehicular traffic . . . ."[30]

B. Due Process in the Administrative Hearing

The imposition of a monetary penalty or the suspension of an operator's license might be viewed as a deprivation of "property" requiring procedural due process.[31] The North Carolina Supreme Court has said, however, that "the license or permit to so operate [a motor vehicle] is not a contract or property right in a constitutional sense."[32]

Furthermore, it appears firmly established that:

> Due process of law is not necessarily judicial process, and due process of law may be afforded by administrative process as well as by judicial process even though the determination or adjudication of personal or property rights is involved.[33]

It has been said that due process is provided in an administrative hearing

> . . . in which a person has an opportunity to be heard . . . before a competent and impartial tribunal legally constituted . . ., [with] procedure at the hearing consistent

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[30] G.S. § 20-1.

[31] U.S. CONST. amend. XIV; N.C. CONST. art. I, § 17.

[32] Fox v. Scheidt, 241 N.C. 31, 34, 84 S.E.2d 259, 262 (1954).

[33] 2 AM. JUR. 2d Administrative Law § 149 (1962); see also §§ 351, 352; Barsky v. Bd. of Regents of Univ. of N. Y., 347 U.S. 442 (1953); Anderson Nat. Bank v. Luckett, 321 U.S. 233 (1943).

with the essentials of a fair trial, revelation of the evidence, and a conclusion based on the evidence and reason.[34]

> The general rule . . . is that administrative tribunals are not bound by the strict or technical rules of evidence governing jury trials or other court proceedings . . . even though the administrative agency is acting in an adjudicatory or quasi-judicial capacity.[35]

For example, the Supreme Court has held that procedure in administrative hearings of the Industrial Commission

> . . . need not necessarily conform to court procedure except where the statute so requires, or where . . . the Court of last resort, in order to preserve the essentials of justice and the principles of due process of law, shall consider rules similar to those observed in strictly judicial investigations in courts of law to be indispensable or proper.[36]

These essential elements of due process probably would be met by the Johnston proposals. He has stated that

> There must be notice of what is charged and the date fixed for the hearing . . . . A defendant will be entitled to counsel and to cross-examine witnesses . . . . Technical rules of evidence will not be applicable . . . . The hearing officer will be required to make formal findings of fact and to base his decision thereon. He will also be required to prepare a summary of the evidence . . . .[37]

Obviously, the more specific and extensive the procedural requirements and protections that were set out in the statutory provision for such a tribunal, the less reason the courts would have to be hesitant about holding the administrative traffic forum to be constitutional.

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[34] 2 AM. JUR. 2d Administrative Law § 353 (1962)

[35] Id. § 378.

[36] Maley v. Thomasville Furniture Co., 214 N.C. 589, 594, 200 S.E 438, 441 (1939).

[37] Johnston, supra note 2, at 11.

C. Double Jeopardy -- Criminal Punishments and Non-criminal Penalties

The Johnston article stated:

> [W]hen considering penalties under this plan, it should be remembered that some offenses . . . will continue to constitute crimes as well as abuses of the driving privilege -- for instance, drunken driving and hit-and-run. With respect to these offenses, an offending driver will have to answer to both the court and the administrative official, and neither's decision should be binding on the other.[38]

Johnston concluded that "because of the different nature of the two proceedings, this double responsibility does not constitute double jeopardy . . . ."[39] Judicial opinion lends substantial support to Johnston's statement, particularly where the non-criminal penalty imposed is suspension of the operator's license.[40]

In Harrell v. Scheidt,[41] the North Carolina Supreme Court held that revocation of an operator's license by the Commissioner of Motor Vehicles was not precluded by a prior criminal conviction of driving under the influence of alcohol and narcotics based on the same facts. The court said:

> The revocation is no part of the punishment fixed by the jury or the court wherein the offender is tried . . . . Nor is it, in our opinion, an added punishment for the offense committed. It is civil and not criminal in its nature.[42]

Other jurisdictions have come to similar conclusions. For example, the New Jersey Supreme Court held that the suspension of driver licenses by the Director of the Division of Motor Vehicles was an administrative

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[38] Id. at 8.

[39] Id. at 8, n.20.

[40] See generally 42 A.L.R. 2d 634 (1955).

[41] 243 N.C. 735, 92 S.E. 2d 182 (1956).

[42] Id. at 739, 740, 92 S.E. 2d 187.

act, and although suspension was based on charges of criminal conduct on which the motorists had been convicted or acquitted, there was no double jeopardy.[43] In Helvering v. Mitchell,[44] the United States Supreme Court held that acquittal of a criminal charge of willfully attempting to evade the income tax did not preclude imposition of a monetary fraud penalty of a non-criminal nature.

Aside from the constitutional issue of "double jeopardy", it should be considered whether there is any practical value in having two entirely separate proceedings for the same offense, one for the imposition of non-criminal penalties and one for criminal punishment. Such dual proceedings would impose a double burden on the time and resources of the offender and the State, rather than aiding in the prompt and efficient dispatch of business. The interests of simplicity would be better served by hearing each case in one forum or the other (according to the nature of the offense) but not in both.

D. Jury Trial in Administrative Hearings and on Judicial Review

In North Carolina, as in other jurisdictions, it has not been held that jury determinations of the facts are required in administrative hearings. The accepted view is that administrative tribunals are legislatively-created, quasi-judicial bodies which "need not necessarily conform to court procedure except where the statute so requires . . . ."[45]

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[43] Atkinson v. Parsekian, 37 N.J. 143, 179 A.2d 732 (1962); accord, Commonwealth v. Funk, 323 Pa. 390, 186 A. 65 (1936), where the court held that administrative suspension of the operator's license was not barred by a prior acquittal on charges of drunken driving. The court emphasized that in an administrative proceeding it was unnecessary to show "guilt beyond a reasonable doubt."

[44] 303 U.S. 391 (1938).

[45] Maley v. Thomasville Furniture Co., 214 N.C. 589, 594, 200 N.C. 438, 441 (1939).

The question might be asked, however, whether a jury trial is necessary, if requested, when there is a provision for appeal from a final administrative decision to a superior court, as there is in every known instance.[46] Would the appeal of the administrative decision to the superior court become a civil cause of action requiring a jury trial in that court on timely request? The answer to that question appears to be, "No."

The North Carolina Supreme Court has said that where a statute makes an administrative determination "conclusive and binding as to all questions of fact supported by any competent evidence," there is no constitutional right to a jury trial despite the fact that the cause is "placed on the 'civil issue docket' and tried under the 'rules prescribed for the trial of other civil causes.'"[47]

The Court distinguished Utilities Comm'n. v. Carolina Scenic Coach Co.[48] where a jury trial was held to be necessary on appeal to the superior court from an administrative decision of the Utilities Commission. The court said that "the statutes, G.S. 1097 and 1098, providing appeal from that administrative agency . . . do not contain the provision that the findings of fact by the Utilities Commission shall be conclusive on appeal."[49]

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[46] See, e.g. G.S. §§ 143-306 et seq.; G.S. §§ 150-1 et seq.

[47] Unemployment Compensation Comm'n. v. Willis, 219 N.C. 709, 712, 15 S.E. 2d 4, 6 (1941).

[48] 218 N.C. 233, 10 S.E. 2d 824 (1940).

[49] Unemployment Compensation Comm'n. v. Willis, supra note 47 at 712, 713, 15 S.E. 2d at 6. The statute, G.S. § 62-26(10), was amended in 1955 to make the grounds for judicial review the same as those of the Administrative Review Act, G.S. §§ 143-306 et seq.

The court in the Carolina Scenic Coach case was careful to point out that "upon appeal the whole matter is heard de novo, and any competent evidence bearing upon the controversy may be heard, regardless of the proceeding before the Commissioner."[50]

The Administrative Review Act[51] (which would govern appeals from administrative traffic tribunals "unless adequate procedure for judicial review is provided by some other statute,"[52]) is in accord with the view that there is no constitutional requirement of a jury trial where the appeal is not a hearing de novo. The Act states that "the review of administrative decisions under this chapter shall be conducted by the court without a jury."[53] Although the Act does not specifically provide that the findings of fact of the administrative agency are to be conclusive on appeal, it states that the superior court "shall take no evidence not offered at the hearing . . . except that where no record was made of the administrative proceeding or the record is inadequate, the judge in his discretion may hear the matter de novo."[54]

The reviewing court is not authorized to become a fact-finding tribunal, but may act when:

> [T]he administrative findings, inferences, conclusions, or decisions are:
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> (a) in violation of constitutional provisions; or

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[50] Utilities Comm'n. v. Carolina Scenic Coach Co., supra note 47, at 240, 10 S.E. 2d at 828.

[51] G.S. §§ 143-306 et seq. (1953).

[52] G.S. § 143-307.

[53] G.S. § 143-314.

[54] Ibid.

(b) in excess of the statutory authority or jurisdiction of the agency; or
(c) made upon unlawful procedure; or
(d) affected by other error of law; or
(e) unsupported by competent material, and substantial evidence in view of the entire record as submitted; or
(f) arbitrary or capricious.[55]

The Uniform Revocation of Licenses Act,[56] which sets out the procedures for hearing and appeal on license revocations for twenty North Carolina Administrative agencies, also provides for the superior court judge to sit without a jury when hearing appeals from the agencies and has identical limitations on the scope of review.[57]

Other statutory provisions giving finality to administrative findings of fact have not been struck down as denying any constitutional right to jury determinations of such facts. For instance, on judicial review of a decision of the Employment Security Commission, "the determination of the Commission upon such review in the superior court shall be conclusive and binding as to all questions of fact supported by any competent evidence."[58] (Emphasis added.) Administrative determinations of the Industrial Commission and of the Highway Commission "shall be conclusive and binding as to all questions of fact."[59]

The appellate court retains the right to determine for itself whether the fact-findings of the administrative agency are "supported

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[55] G.S. § 143-315.

[56] G.S. §§ 150-1 et seq. (1953).

[57] G.S. § 150-27.

[58] G.S. § 96-4(m); see State ex rel. Employment Security Comm'n. v. Hennis Freight Lines, Inc., 248 N.C. 496, 103 S.E. 2d 829 (1958).

[59] G.S. § 97-86 (as amended 1959), § 136-29 (1958).

by competent evidence." While stating that "the Superior Court has only appellate jurisdiction to review the award for errors of law,"[60] the Supreme Court has held that "whether the record contains any competent evidence to support the facts as found and whether the facts as found are sufficient to support the conclusions of the Commission are questions of law."[61] (Emphasis added.)

Support for the view that no jury is required when reviewing an administrative decision is also found in the present procedure for appeal to the Superior Court from any discretionary driver's license suspension by the Department of Motor Vehicles.[62] The Supreme Court has interpreted the statute to mean that this

> . . . is more than a review as upon a writ of certiorari. It is a rehearing de novo, and the judge is not bound by the findings of fact or the conclusions of law made by the department. Else why "take testimony," "examine into the facts," and "determine" the question at issue.[63]

Despite the Court's interpretation of the statute as requiring a rehearing de novo, no mention is made of a need for findings of fact by a jury. It is the duty of the "court or judge . . . to examine into the facts of the case."[64] Furthermore, the Court appears to have viewed the need for a de novo review as being derived from the statute. The

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[60]Ballenger Paving Co. v. North Carolina State Highway Comm'n., 258 N.C. 691, 695, 129 S.E. 2d 245, 248 (1963).

[61]Moore v. Adams Electric Co., Inc., 259 N.C. 735, 736, 131 S.E. 2d 356, 357 (1963).

[62]G.S. § 20-25.

[63]In re Wright, 228 N.C. 301, 303, 45 S.E. 2d 370, 372 (1947); accord, Fox v. Scheidt, 241 N.C. 31, 84 S.E. 2d 259 (1959).

[64]G.S. § 20-25.

Legislature could specify a narrower review if it wished, as it has with respect to administrative decisions to which the Administrative Review Act and the Uniform Revocation of Licenses Acts are applicable.[65] If it were ruled that a jury trial is necessary where there is a de novo review, the Legislature would only have to make it clear that the review was not to be de novo.

E. Enforcement of the Administrative Decision

In the Johnston plan, "the courts through application of the criminal law will continue to furnish the 'force' in traffic law enforcement."[66] Johnston was referring to the need for retaining driving without a license as a criminal offense in order to give strength to the suspension or revocation of an operator's license by the administrative tribunal. Such a criminal trial would necessarily remain within the traditional judicial system with the procedural guarantees of the criminal trial. For most offenses, however, traditional criminal sanctions would no longer be available under the Johnston plan, and consideration must also be given to other means which would be used to enforce the payment of monetary penalties imposed.

1. Enforcement by Criminal Action

One method of forcing payment of a penalty is to make failure to pay a crime. This method is presently used to coerce payment of municipal traffic or parking penalties -- i.e. the failure to obey a municipal

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[65] See p. 19, supra.

[66] Johnston, supra, note 2, at 5.

ordinance is made a misdemeanor.[67] There may be some doubt as to the merit of such a procedure, since one of the purposes of the Johnston plan is to eliminate, insofar as possible, the criminal stigma of the "traffic crime."

2. Enforcement by Civil Action

A more common alternative in North Carolina is to enforce monetary penalties by providing for the bringing of a civil action against the "defendant." This would be "a civil action of debt" such as the North Carolina Supreme Court referred to in Bd. of Educ. v. Henderson[68] and State v. Briggs.[69] For instance, while the North Carolina Industrial Commission is authorized to determine whether to levy a penalty for failure to comply with provisions of the Workmen's Compensation Act,[70] failure to pay the penalty would not result in imprisonment but would require the Commission to bring a civil action for payment. The findings of fact by the Commission will be accepted by the court if supported by competent evidence.

A separate civil action to collect the administratively imposed penalty would be of doubtful value, however, unless a summary procedure could be established which would eliminate the prohibitive expense in money and time necessary for the prosecution of a multitude of debt proceedings.

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[67] G.S. § 14-4.

[68] Supra, note 13.

[69] Supra, note 14.

[70] G.S. § 97-18 (e).

3. Enforcement by Contempt Proceedings

Traditionally, it has been necessary to rely on the courts to enforce the payment of a monetary penalty. In most jurisdictions, administrative boards and tribunals have been held to lack the power to punish for contempt, even where an attempt has been made by the legislative body to confer such power.[71] In discussing the contempt powers of a federal administrative body, the United States Supreme Court said:

> Such a body could not, under our system of government, and consistently with due process of law, be invested with authority to compel obedience to its orders by a judgment of fine or imprisonment. Except in the particular instances enumerated in the Constitution [of the United States] . . . the power to impose a fine or imprisonment in order to compel the performance of a legal duty imposed by the United States can only be exerted . . . by a competent judicial tribunal.[72]

In North Carolina, contrary to the majority position, there is a possibility that the administrative agency could hold the defendant in contempt for failure to pay the penalty imposed by a hearing meeting the requirements of due process. In a 1931 decision, In re Hayes[73] the North Carolina Supreme Court held that the Industrial Commission had power to punish by fine or imprisonment, without resort to the courts, a witness who refused to answer questions of the Commission.

The Court said that the Commission was "primarily an administrative agency of the State" on which power is expressly conferred by the statute

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[71] See generally 1 AM. JUR. 2d Administrative Law § 173 (1962); 12 AM. JUR. Contempt § 54 (1938).

[72] Interstate Commerce Comm'n. v. Brimson, 154 U.S. 447, 485 (1893).

[73] 200 N.C. 133, 156 S.E. 791 (1931).

creating the . . . Commission . . .[74] to subpoena witnesses for either party . . . ." The Court noted that under the statute[75] "the Superior Court has the power to aid the Commission in procuring the attendance of witnesses at hearings before the Commission . . . ." The Court said, however, that this power, which is the power normally given to assist in the orderly functioning of administrative agencies, was "clearly not adequate." The power given to the Superior Court to aid the Commission was held

> . . . not, however, by its express terms or by implication [to] deprive the Commission or any member thereof, while conducting a hearing as required by statute, of the power to compel a witness . . . after being duly sworn, to testify.[76]

The court correctly noted that

> It has been uniformly held by this Court and by courts of other jurisdictions that the power to punish for contempt committed in the presence of the court, is inherent in the court, and not dependent upon statutory authority.[77] (Emphasis added.)

The Court then equated the Industrial Commission "when conducting a hearing" with a court and by this analogy found the Commission to have "the power to adjudge a witness who has deliberately and persistently refused to answer a question propounded to him, in contempt, and to punish such witness for such contempt, by fine or imprisonment."[78]

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[74] Pub. Laws 1929, c. 120, now G.S. §§ 97-77 to 95.

[75] G.S. § 97-80 (c).

[76] In re Hayes, supra note 73, at 140-41, 156 S.E. at 794 (1931).

[77] Id. at 141, 156 S.E. at 794; citing Snow v. Hawkes, 183 N.C. 365, 111 S.E. 621 (1922).

[78] Ibid.

Although the Hayes opinion has not been cited on this point in any subsequent opinion, it does not appear to have been reversed or qualified. It stands in opposition to the weight of judicial opinion as to administrative contempt powers, including the view of the United States Supreme Court.[79] The importance of the Hayes decision lies in the possible effect of such contempt powers in expediting the enforcement of traffic infraction penalties and procedures. If the Hayes reasoning were to be applied to the administrative traffic forum, it would be possible to force immediate compliance with a subpoena, assure response to the questions of the hearing officer, and enforce by threat of contempt the collection of any penalty unpaid by the traffic offender -- all without the need to seek the aid of the courts and without the inevitable slight delays which would come while the requisite court orders or judgments were obtained.

Despite the Hayes decision, it is submitted that authorization to use such procedures would be of doubtful constitutionality. Once confronted with a situation in which the administrative tribunal actually ordered the imprisonment of someone who failed to pay a penalty, the North Carolina Supreme Court might see fit to re-examine its previous view.

4. Enforcement by Suspension of the Operator's License

The most practical and effective method of insuring the payment of monetary penalties without any need to utilize the power of the courts would be to require the suspension of the operator's license by the Department of Motor Vehicles until the penalty was paid.[80] Though the

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[79] See Interstate Commerce Comm'n. v. Brimson, supra note 72.

[80] See generally Johnston, supra note 2, at 12-14.

suspension of the license is not considered a criminal punishment,[81] the loss of this privilege in our mobile society would usually constitute a forceful sanction. Moreover, it would tend to operate with more nearly equal severity on all citizens than does a monetary penalty, the weight of which is largely contingent on the resources of the person on whom it is levied.

F. Review Procedure

There is no provision in the North Carolina Constitution specifically providing for an appeal to the courts from all decisions of administrative agencies. Article IV, section 3, which states that "appeals from administrative agencies shall be to the General Court of Justice," could be interpreted either as (1) permitting appeals from all administrative decisions, or (2) requiring that such appeals as are legislatively provided for will be to the General Court of Justice. Most jurisdictions hold that there is no constitutional right to appeal from an administrative decision, appellate procedures being a matter of statutory provision.[82]

Even in the absence of a constitutional right of appeal, the North Carolina Supreme Court has held that:

> The Court has inherent authority to review the discretionary action of any administrative agency, whenever such action affects personal or property rights, upon a prima facie showing, by petition for writ of certiorari, that such agency has acted arbitrarily, or in disregard of law.[83] (Emphasis added).

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[81] See pp. 10-11, supra.

[82] See generally 2 AM. JUR. 2d Administrative Law §§ 556-559 (1962).

[83] In re Wright, 228 N.C. 584, 587, 46 S.E. 2d 696, 698 (1948).

The writ of certiorari is exercised at the discretion of the court; however, it is not an appeal or review as of right.[84]

Furthermore, the Supreme Court has held that "the license or permit to . . . operate [a motor vehicle] is not a contract or property right in a constitutional sense."[85] A strict application of this statement would appear to preclude any judicial review of a driver's license suspension by writ of certiorari. "The courts are exceedingly slow to rule that a statute precludes all judicial review . . .",[86] however.

On the other hand, it might be held that administrative imposition of a non-criminal, monetary penalty for a traffic infraction would constitute an action affecting property rights. If so, the courts would have "inherent authority" to review the penalty by writ of certiorari.

Although there may be no constitutional right to an appeal to the courts or to judicial review by writ of certiorari from the administrative suspension of a driver's license, it has been the practice to provide by statute for judicial review of driver's license suspensions as well as other discretionary administrative decisions.[87] G.S. § 20-25 provides for de novo review by a superior court judge of all driver's license suspensions "except where such cancellation is mandatory."

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[84]Belk's Dept. Store v. Guilford County, 222 N.C. 441, 23 S.E. 2d 897 (1943).

[85]Fox v. Scheidt, 241 N.C. 31, 34, 84 S.E. 2d 259, 262 (1954).

[86]2 AM. JUR. 2d Administrative Law § 561 (1962).

[87]See pp. 17-22, supra.

Since 1953, the Administrative Review Act[88] has provided for an appeal as of right from any final administrative decision "unless adequate procedure for judicial review is provided by some other statute."[89] The Act would govern appeals from administrative traffic tribunals in the absence of any provision to the contrary. Where such a statute provides an orderly procedure for appeal, certiorari cannot be used to gain judicial review unless the aggrieved party could not perfect the appeal through no fault of his own.[90]

The scope of the judicial review - when available - and the finality of the administrative findings have been discussed at page 17, supra.

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[88] G.S. § 143-306 et seq.

[89] G.S. § 143-307.

[90] In re Halifax Paper Co., 259 N.C. 589, 131 S.E. 2d 441 (1963).

VI. THE GENERAL COURT OF JUSTICE AS THE ORIGINAL FORUM FOR HEARING TRAFFIC INFRACTIONS

It has been submitted that there is no constitutional barrier (1) to the "decriminalization" of specific traffic violations and the establishment of a system of "penalties" to be imposed for the violation of the statutory provisions, with an ultimate sanction of suspension or revocation of the operator's license; (2) to the hearing of charges of infractions by a system of administrative tribunals operating uniformly throughout the State; (3) to the absence of a jury for the determination of facts before the administrative tribunals; and (4) to the absence of a jury on appeal from the administrative decision to the courts, where the findings of fact of the administrative tribunal have been declared by statute to be conclusive.

A. Jurisdiction of the Courts to Hear Non-Criminal Traffic Infractions

The Johnston proposal to establish a new system of administrative forums outside the regular court system to hear "traffic infractions" was written prior to the court improvement effort of the last decade. The 1962 constitutional amendment, now in the early stages of implementation, was intended to simplify, make uniform, and improve the efficiency of the courts of the State and particularly the inferior court system.

Given these objectives of the court improvement effort now underway, it becomes pertinent to inquire whether there are constitutional limitations on the power of the Legislature to vest in the courts, rather than in administrative tribunals, responsibility for hearing charges of "traffic infractions" and determining whether to impose a prescribed penalty.

It may be that it is desired to retain the benefits of making minor traffic infractions non-criminal, although the plan to establish a system of administrative tribunals might be impractical. In some counties, for example, the volume of traffic cases may not be large enough at present to warrant the establishment of a new tribunal requiring additional personnel and funds. Or it may be felt that traffic hearings are more suited to traditional judicial organs.

If so, it would be impossible to establish special traffic courts of a non-administrative nature without a constitutional amendment. Article IV, section 1, of the North Carolina Constitution provides that "the General Assembly shall have no power to . . . establish or authorize any courts other than as permitted by this Article."

This does not mean, however, that violations of non-criminal traffic infractions could not be heard in the court system. Article IV does establish a General Court of Justice, the lowest level of which is the District Court division, including one or more Magistrates for each county.[91] Because of the large number of acts which would constitute traffic infractions under the decriminalized system, and because of the need to have readily accessible forums for hearing traffic charges, the District Court would be the appropriate original forum for traffic infractions, if this task were to be assigned to the judicial system and not to a system of administrative tribunals.

Article IV, section 10(3), states that "the General Assembly shall, by general law uniformly applicable in every local court district of the State, prescribe the jurisdiction and powers of the District Courts and Magistrates." There would appear to be no constitutional barrier, then,

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[91]N.C. CONST. art. IV, § 8.

to legislative provision that the District Court (or perhaps the magistrates as agents of the District Court) be empowered to hear all cases of "traffic infractions"--as long as the provisions were uniform throughout the State.[92]

B. Jury Trial on Original Hearing

Assuming that the District Courts or the Magistrates could be empowered to hear traffic infraction cases originally, it must be determined whether it is constitutionally required that such hearing include a right of jury trial, at least on request of the person charged with the infraction. It will be remembered that the person is not being "prosecuted" for a "crime," but is charged with a violation of a statute for which a constitutionally permissible penalty of a non-criminal nature may be imposed.

There is no federally guaranteed right to a jury trial in a state cause of action, since the Seventh Amendment of the United States Constitution requiring jury trial applies only to the federal courts.[93]

Article I, Section 13, of the North Carolina Constitution has been interpreted to preclude any waiver of jury trial in criminal cases and to preserve jury trial on appeal from a court of subordinate jurisdiction.[94] Whether the North Carolina Constitution guarantees a jury trial in an original non-criminal proceeding before a court of the State is a more complex question.

The Constitution, as amended in 1962, provides:

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[92]See N.C. CONST. art. IV, § 20.

[93]See Caudle v. Swanson, 248 N.C. 249, 103 S.E. 2d 357 (1958).

[94]See, e.g. State v. Ellis, 210 N.C. 170, 185 S.E. 662 (1932).

> There shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action, and in which there shall be a right to have issues of fact tried before a jury. Every action prosecuted by the people of the State as a party against a person charged with a public offense, for the punishment of the same, shall be termed a criminal action.[95] (Emphasis added.)

The Constitution now clearly specifies that a jury may be waived by consent of all parties in a civil case,[96] but the constitutional provision that "there shall be a right to have issues of fact tried before a jury . . ." would appear to give an absolute right to a jury trial in the absence of such a waiver. In addition, Article I, section 19, states that "in all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people and ought to remain inviolable."

While the section is not couched in mandatory terms, and though there have been cases holding that various matters are not "controversies at law respecting property" in the constitutional sense,[97] there are numerous cases which offer support to the doctrine that jury trial is a requisite of a civil action. For instance, it has been held:

> Where issues of fact are raised by the pleadings in a cause and trial by jury is not waived, the verdict of a jury determining the issues of fact is an indispensable step in the trial of the cause, and the court is without power to enter a final judgment in the absence of such verdict . . . . This is true even though the issues of fact are raised by pleadings in actions for the enforcement of equitable rights.[98]

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[95] N.C. CONST. art. IV, § 11(1), as amended in 1962.

[96] N.C. CONST. art. IV, § 12.

[97] See, e.g. Belk's Dept. Store v. Guilford Cty., 222 N.C. 441, 23 S.E.2d 897 (1943), discussing appeals from property tax appraisals; Fox v. Scheidt, 241 N.C. 31, 84 S.E.2d 259 (1959), discussing appeals from suspension of driver's licenses.

[98] Erickson v. Starling, 235 N.C. 643, 654-55, 71 S.E.2d 384, 392 (1952); but cf. Com'rs. of Stokes Cty. v. George, 182 N.C. 414, 109 S.E. 77 (1921); Porter v. Armstrong, 134 N.C. 447 (1904).

Doubt is cast on the absolute right to jury trial in civil cases, however, by a number of decisions of the North Carolina Supreme Court which have held that:

> The right to a trial by jury . . . applies only to cases in which the prerogative existed at common law or was procured by statute at the time the Constitution was adopted, and not to those where the right and remedy with it are thereafter created by statute.[99]

This statement was quoted with approval in a 1963 Supreme Court decision, Kaperonis v. North Carolina State Highway Comm'n.[100] In an eminent domain proceeding, the Court held that failure to provide for a jury determination of facts did not make unconstitutional a statute giving the trial judge authority to "hear and determine any and all issues raised by the pleadings, other than the issue of damages."[101] (Emphasis added.) It said:

> 'The ancient mode of trial by jury' is the consecrated institution. This expression has a technical, peculiar and well understood sense. It does not import that every legal controversy is to be submitted to and determined by a jury, but that the trial by jury shall remain as it anciently was.[102]

In another case in which a jury trial was sought on review by the court of an administrative decision, the Supreme Court said:

> While placing a case on the civil issue docket usually indicates a trial by jury of issues of fact, this does not necessarily follow, nor compel the conclusion that the

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[99]Groves v. Ware, 182 N.C. 553, 558, 109 S.E. 568, 571 (1921), holding constitutional a statute requiring that only six freeholders, rather than a jury of twelve, be summoned to inquire into the sanity of an allegedly insane person; accord, 2 N.C.L. REV. 45 (1923).

[100]260 N.C. 587, 133 S.E.2d 464 (1963).

[101]G.S. § 136-108.

[102]Kaperonis v. North Carolina State Highway Comm'n., supra note 100 at 593, 133 S.E.2d at 468.

Legislature so intended, as there may be, and frequently are, issues of law and questions of fact, triable by the judge, which properly find their way to this docket.[103] (Emphasis added.)

A dilemma is presented by the seemingly contradictory holdings of the Erickson[104] and Kaperonis[105] cases. Each case is supported by precedent and has not been specifically qualified or overruled. Yet, if taken at face value, one decision seems to require a jury trial in all civil cases while the other would permit the Legislature to eliminate jury trials in cases involving rights and remedies not existing at the time of the adoption of the 1868 Constitution. No attempt to discuss and reconcile the two views has been found.

C. Jury Trial in Special Proceedings.

It may be of importance that although G.S. § 136-103 calls an eminent domain proceeding such as that in Kaperonis a "civil action," it has been included in the past within the category of "special proceedings," along with proceedings in lunacy, partition, mandamus, etc. Each of these proceedings eliminates the jury, or provides for a jury of less than 12 persons, yet has not been held unconstitutional.

There is no constitutional recognition of the "special proceeding"; however, the 1868 Code of Civil Procedure, as brought forward in the General Statutes, provided that:

Remedies in the courts of justice are divided into:

1. Actions.
2. Special proceedings.[106]

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[103]Unemployment Compensation Comm'n. v. Willis, supra note 46, at 712, 15 S.E.2d at 6.

[104]Erickson v. Starling, supra note 98.

[105]Kaperonis v. North Carolina State Highway Comm'n., supra note 100.

[106]G.S. §§ 1-1.

An "action" is

> . . . an ordinary proceeding in a court of justice, by which a party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment or prevention of a public offense.[107] Every other remedy is a special proceeding.[108]

What constitutes a "special proceeding" has never been well-defined, and the determination appears to turn primarily on tradition. In 1870, the Supreme Court said that "any proceeding that . . . may be commenced by petition, or motion upon notice, is a special proceeding."[109] In the very next case Justice Rodman said that he did not quite approve of this definition. He said that "those actions are special proceedings in which existing statutes direct a procedure different from the ordinary."[110]

No case has been found in which the legislature specifically provided that some new proceeding - such as a hearing of non-criminal "traffic infractions" by the courts - was to be considered a "special proceeding." It is possible that the courts would show deference to a specific legislative designation, however, particularly in view of the language in the Kaperonis case holding that jury trial is required only in those cases in which it was required at the time of the adoption of the Constitution.

It is obvious that our automobile traffic laws are comparatively recent statutory creations. It may be argued, therefore, that the Legislature can specifically provide for the hearing of non-criminal

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[107] G.S. § 1-1, 2.

[108] G.S. § 1-3.

[109] Tate v. Powe, 64 N.C. 644, 648 (1870).

[110] Woodley v. Gilliam, 64 N.C. 649 (1870).

traffic infractions without jury trial. It appears certain that failure to specify that issues of fact are to be determined by the court sitting without a jury would result in a ruling that jury trial is required. Unfortunately, the lack of a judicial clarification indicates that the only means of assuring that such a procedure would be held constitutional would be so to provide by constitutional amendment.

D. Jury Trial on Appeal

If jury trial were necessary in the original court proceeding, there would normally be no need for another jury trial on appeal, the issues of fact having been determined in the lower courts.

Article IV, section 10(5), provides, however, "that appeals from Magistrates shall be heard de novo, with the right of trial by jury as defined in this Constitution and the laws of this State." If Magistrates were given jurisdiction over traffic infractions, whether there would be a jury trial on appeal would, of course, depend on whether traffic infraction proceedings are civil actions of the type requiring jury trial. If it is true that jury trial is not required except where it was guaranteed at the time of the adoption of the Constitution, no jury trial would be necessary on appeal, though a de novo determination of all issues by the court would still be necessary.

Basically, however, it is not the availability of jury trial on appeal which is of greatest importance, since the number of appeals from minor traffic infractions will be relatively small. It is the summary nature of the original hearing which is essential to the establishment of a workable traffic infraction proceeding.

VII. DISPOSITION OF NON-CRIMINAL TRAFFIC INFRACTIONS IN OTHER JURISDICTIONS

The "de-criminalization" of minor traffic offenses would be a distinct departure from the previous handling of traffic offenses in North Carolina. Since this is true, it might be valuable to examine other jurisdictions to determine whether this practice has been employed elsewhere, and if so, with what degree of success.

New York appears to be the only state in which a traffic violation is made not a crime by express statutory provision.[111]

The "de-criminalization" of traffic infractions in New York occurred initially in 1929,[112] and the original act has been amended in minor ways over the years. The present statute reads:

> The violation of any provision of this chapter or of any law, ordinance, order, rule or regulation regulating traffic which is not declared by this chapter to be a misdemeanor or felony. A traffic infraction is not a crime and the punishment imposed therefor shall not be deemed for any purpose a penal or criminal punishment and shall not affect or impair the credibility as a witness or otherwise of any person convicted thereof. This definition shall be retroactive and shall apply to all acts and violations heretofore committed where such acts and violations would, if committed subsequent to the taking effect of this section, be included within the meaning of the term "traffic infraction" as defined herein. Outside of cities having a population of one million, courts and judicial officers heretofore having jurisdiction over such violations shall continue to do so and for such purpose such violations shall be deemed misdemeanors . . . except

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[111] 57 COLUM. L. REV. 441 (1957); citing N. Y. State Joint Legislative Committee on Motor Vehicle Problems, Report on the Modernization of the Vehicle and Traffic Law of the State of New York, at 113 (1954).

[112] See Subd. 29 of VEHICLE AND TRAFFIC LAW OF 1929, § 2.

that no jury trial shall be allowed for traffic infractions . . . . For purposes of arrest without a warrant . . . a traffic violation shall be deemed a crime.[113] (Emphasis added.)

Thus, in New York the trial of "de-criminalized" traffic infractions is still heard in the traditional court system, rather than by administrative tribunals. In cities of over one million, the criminal court of the city has exclusive jurisdiction; in less populous areas, jurisdiction has remained with the courts previously having jurisdiction over the once-criminal violations.[114]

A jury trial was initially permitted in the de-criminalized traffic cases. In 1939, the statute was amended to preclude jury trial, apparently without serious challenge as to its constitutionality. This is of interest since the constitutional provisions of New York regarding juries are very similar in language to those of North Carolina, although judicial interpretation has resulted in significant differences in fact. Article I, section 3, of the New York Constitution says:

> Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever, but a jury trial may be waived by the parties in all civil cases . . . ."

But according to the New York Court of Appeals, the "trial by jury" preserved by Article I, section 3, is the right to jury trial in such cases as it existed at the time of the adoption of the original New York Constitution.[115] For instance, the Constitution of New York does not guarantee the right to jury trial in cases of which equity courts formerly

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[113] 62A McKINNEY'S CONSOL. LAWS OF N. Y. 155 (as amended 1962).

[114] Ibid.

[115] Blum v. Fresh Grown Preserve Corp., 292 N. Y. 241, 54 N.E.2d 809 (1944).

had jurisdiction.[116] This interpretation of the constitutional provisions in civil actions in New York is similar to the doctrine repeated in the North Carolina Kaperonis decision.[117]

There is a significant variation between New York and North Carolina in the requirements of jury trial in criminal cases. In New York, "trial of misdemeanors specified by the Legislature may be without jury."[118] (Emphasis added.) In North Carolina, however, Article I, section 13, of the Constitution, stating that "the Legislature, may . . . provide other means of trial, for petty misdemeanors, with the right of appeal," has been interpreted to mean that while original trial without a jury is permissible, jury trial is preserved on appeal.

If it were merely a cumbersome and expensive jury trial which it was desired to eliminate, New York would have less reason to "de-criminalize" than would North Carolina, since no jury trial would be necessary at any stage of the usual criminal traffic violation. As this might indicate, the New York courts have stated that the sole purpose in denominating a traffic violation not a crime was to prevent the offender from being adjudged and treated as a criminal.[119]

One of the problems in the administration of the New York non-criminal proceedings has been that the brief statutory provision has necessarily left many of the procedural rules to be invented by the courts. As one commentator has said:

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[116]See note 91, 2 McKINNEY'S CONSOL. LAWS, ANNOTATED CONST., art. I, § 2.

[117]Kaperonis v. North Carolina State Highway Comm'n., supra note 100.

[118]N. Y. CONST. art. VI, § 18.

[119]Squadrito v. Griebsch, 1 N. Y. 2d 471, 154 N.Y.S.2d 37 (1956).

> Problems have arisen and will continue to arise as long as the courts persist in clinging to the tenuous proposition that in New York the traffic infraction is sometimes a crime and sometimes not. Although efforts at solving this problem through case-by-case development and administrative pronouncement have met with some degree of success, the key to really effective solution lies in additional legislative action further to consolidate and clarify the subject.[120]

This experience would appear to indicate that if North Carolina were to undertake a similar "de-criminalization" of the traffic offenses, it would be wise to set out with specificity the procedures for arrest, hearing, and appeal.

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[120] 42 CORNELL L. Q. 262, 269-70 (1957).

VIII. SOME PRACTICAL ASPECTS OF THE PROPOSED SYSTEM

It was initially observed that, although this study was concerned primarily with the strictly legal aspects of the Johnston proposal, some comment on practical aspects of the implementation of such a proposal would be included.

A. The Effect on Enforcement

One of the premises of the proposal for making minor traffic violation non-criminal is that such treatment will reduce the "antagonism and non-cooperation" which results when persons are treated as "ordinary criminals."[121] In contrast, it may be appropriate to consider whether a quotation from the Wisconsin Law Review is applicable to the North Carolina proposal:

> It may be safely said . . . that in Wisconsin after eleven years of calling municipal traffic violations civil offenses instead of minor crimes, there has been no change in individual resentment on conviction of a municipal traffic charge or in public feeling toward the criminal law generally. Without much education, the public will not differentiate between names, when the effects of the procedures (financial loss and awarding of points toward the loss of driver's license) are the same.[122] (Emphasis added.)

B. Procedural Simplicity

The greatest simplification in traffic offense procedure is the elimination of the time and expense of a jury trial. If an administrative system were established, elimination of the jury trial would be

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[121] Johnston, supra note 2, at 2.

[122] Conway, Is Criminal or Civil Procedure Proper for Enforcement of Traffic Laws, WIS. L. REV. 418, 443 (May, 1959).

no problem, since jury trial is not a necessity in such a forum.[123] Under the present criminal offense procedure, it is not a major problem since the General Assembly may now provide that no jury trial is necessary for "petty misdemeanors" except on appeal. Since there are extremely few appeals from traffic convictions in proportion to the number of cases handled, jury trials are not numerous.

If the hearings were held in the regular court system and were made non-criminal proceedings, they would probably be considered civil actions. Unless the courts adopted the Kaperonis doctrine[124] that jury trial was not required except where required at the time of the adoption of the North Carolina Constitution, a jury trial would be necessary in the original hearing unless waived by the parties.

If jury trial were available on the original hearing, a substantial number of traffic violators might invoke their right to have a jury, anticipating a more sympathetic view from a jury than from a judge or a hearing officer. In other words, "de-criminalizing" the traffic infraction could conceivably result in a greater loss of time and money than now occurs in the criminal trials of traffic violators.

C. The Judicial Workload

Aside from the merits and demerits of "de-stigmatizing" minor traffic infractions and the possible procedural simplification which civil or administrative proceedings could bring about, the following quotation from the Wisconsin Law Review may deserve consideration:

> Mere number of criminal prosecutions will not break down criminal enforcement if appropriate steps are taken to

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[123]See p. 17 supra.

[124]See p. 34 supra.

gear the number of judges to the volume of work. Further, to the extent that the criminal courts are separate from the civil courts, then as the criminal courts are unburdened the load is shifted to the already loaded civil courts. In terms of the total job of law enforcement, it makes no difference whether the prosecution is civil or criminal.[125]

D. Facilities and Personnel Required by Administrative Tribunals

Johnston's plan for administrative traffic tribunals calls for "a hearing room designed along the lines of a small courtroom and furnished sufficiently well to offer an appearance of quiet dignity."[126] Johnston also observes that:

> The most important aspect . . . will be the personnel who are to preside . . . . Hearing officers should be required to have legal training . . . [and] to undergo special training in the hearing and disposition of traffic cases. They should be paid a salary commensurate with the responsibility of the position . . . .[127]

Both concepts are commendable, but such facilities are lacking in many counties--for the regular courts as well as the proposed traffic tribunals. In 1964, many dilapidated courtrooms fail "to offer an appearance of quiet dignity"; in 1964, over 35 inferior court judges are not attorneys, yet have authority to incarcerate persons for up to two years.[128]

It may be that much of the disrespect for the present traffic offense system is caused by the too-frequent encounter with run-down courtrooms and poorly-trained judges, and not by classifying the traffic offense as a crime. If so, it must be considered whether it is facilities, salaries,

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[125]Conway, supra note 122.

[126]Johnston, supra note 2, at 11.

[127]Id. at 10.

[128]According to studies made in 1964 for the Courts Commission by the Institute of Government.

and training for the personnel of administrative tribunals or for personnel of the courts that should warrant priority in the necessary outlay of funds.

E. Cost of Administrative Tribunals

The reduction in the burden on the court system which now hears criminal traffic charges would probably result in a substantial saving, but it has not been determined whether the saving would be equivalent to the cost of instituting and maintaining the traffic tribunals. According to Johnston:

> The cost of administration of the plan will be paid out of the financial penalties assessed defendants. All funds collected will be paid into the state treasury, and all amounts above the actual expenses of administration will be returned quarterly or semi-annually to the cities and counties in accordance with the ratio of collections.[129]

Penalties might provide adequate funds for the administrative system or for a system or non-criminal actions in the existing courts, but these funds now go to the counties for the support of public schools. The North Carolina Constitution provides:

> [T]he clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal or military laws of the State . . . shall belong to and remain in the several counties, and shall be faithfully appropriated for establishing and maintaining free public schools in the several counties of this State . . . .[130] (Emphasis added.)

It would not be unconstitutional to return all penalties levied for non-criminal traffic infractions to the State General Fund for appropriation to finance the traffic tribunal system, since technically the funds would not be "penalties and forfeitures . . . for any breach of the penal

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[129]Johnston, supra note 2, at 14.

[130]N.C. CONST. art. IX, § 5.

laws of the State." (Emphasis added.) The problem is that a substantial source of support for the public schools would be lost to the counties, since the once "penal" or criminal fines would become penalties collected for non-penal infractions.[131] A 1958 study of the fiscal operation of the North Carolina courts showed that in nine counties of representative populations in eastern, central, and western parts of the State, "fines and forfeitures" accounted for $673,825, or 37% of all court receipts. This figure includes cash bond forfeitures and property and money confiscations, however, and how much of the figure was "clear proceeds" is unknown.

It is not unlikely that in education-minded North Carolina there would be a demand for compensating funds to replace those lost to the schools by the reclassification of traffic violations, or for a constitutional amendment which would require that non-penal traffic penalties continue to go to the county public school funds. In either case, a new source of funds would be required for one of the programs.

F. Constitutional Amendment

It has been concluded that the only way of assuring that the courts could hear non-criminal traffic infractions without a right of jury trial would be to so provide by constitutional amendment.[132] It has also been pointed out that an amendment would be necessary if non-penal traffic penalties were to be constitutionally earmarked for the county public school funds. It must be considered whether those amendments would be timely during the present period of attempting to implement the 1962 court amendments.

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[131] A Preliminary Report on the Fiscal Operation of the Courts of North Carolina, Institute of Government, April 1959.

[132] See p. 37, supra.

IX. ISSUES NOT DISCUSSED IN THIS REPORT

It has been necessary to deal summarily with many issues raised by the proposal set forth in the Johnston article; other related issues have not been discussed at all. Among the latter category of issues which may be of concern in the administration of a system of non-criminal traffic offenses are these:

1) Are "convictions" of a non-criminal traffic offense admissable in evidence in a civil negligence action on the same facts?[133]

2) Are "convictions" of a non-criminal traffic offense admissable in evidence in a subsequent criminal action, where both civil penalty and criminal sanction are authorized?[134]

3) Is the burden on the State to prove its case by "a preponderance of the evidence" or "beyond a reasonable doubt"?[135]

4) May the defendant refuse to testify on grounds of possible self-incrimination?

5) Does the defendant have a constitutional right to be confronted with the witnesses against him?

6) Is the Johnston proposal to eliminate the technical arrest, substituting a temporary "lifting" of the driver's license by the apprehending law enforcement official, feasible?[136]

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[133]See Walther v. News Syndicate Co., 276 App. Div. 169, 93 N.Y.S.2d 537 (1st Dept. 1949); 35 CORNELL L. Q. 872 (1950).

[134]See State ex rel. Hurwitz v. North, 307 Mo. 607, 264 S. W. 678 (1924); Silver v. McCamey, 221 F.2d 873 (D. C. Cir. 1955); 104 PA. L. REV. 112 (1955-56).

[135]Helvering v. Mitchell, 303 U.S. 391, 403 (1938).

[136]Johnston, supra note 2, at 8.