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REPORT TO
THE LEGISLATIVE RESEARCH COMMISSION
ON
LEGISLATIVE COMPENSATION AND LEGISLATIVE SESSION DAYS
IN THE GENERAL ASSEMBLY OF NORTH CAROLINA

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INTRODUCTION

The Legislative Research Commission has asked the Institute of Government to attempt to determine the relationship, if any, between the holding of Saturday sessions of the General Assembly and the practice of paying per diem compensation to members of the General Assembly for a full seven days a week. This report has been prepared in response to that request.

BACKGROUND

The pertinent sections of the North Carolina Constitution are as follows:

Art. II, § 22. Each house shall be judge of the qualifications of its own members, shall sit upon its own adjournment from day to day, prepare bills to be passed into laws, and the two houses may also jointly adjourn to any future day, or other place.

Art. II, § 28. The members of the General Assembly for the term for which they have been elected shall receive as a compensation for their services the sum of fifteen dollars (\$15.00) per day for each day of their session for a period not exceeding one hundred and twenty days. The compensation of the presiding officers of the two houses shall be twenty dollars (\$20.00) per day for a period not exceeding one hundred and twenty days. Should an extra session of the General Assembly be called, the members and presiding officers shall receive a like rate of compensation for a period not exceeding twenty-five days. The members and presiding officers shall also receive, while engaged in legislative duties, such subsistence and travel allowance as shall be established by law; provided, such allowances shall not exceed those established for members of State boards and commissions generally.

Do these sections, when read together, contemplate that per diem compensation will be paid on the basis of actual days of attendance at legislative

sessions, on the basis of legislative days (i.e., days on which the two houses are actually convened), or on the basis of calendar days elapsed from the date the General Assembly first convenes? The practice for many years has been that legislators are paid on the basis of calendar days, or seven days a week for the maximum number of days allowable under the Constitution (currently 120 days). Since every regular session in recent years has sat more than 120 calendar days, legislators have served without per diem compensation for a short period near the end of the session.

For example, the 1965 regular session convened on February 3 and adjourned sine die on June 17. A total of 135 calendar days elapsed between these dates. The 120-day pay period ended on June 2, which meant that members served for the last 15 calendar days without per diem compensation, although subsistence and travel allowance payments continued. Since neither house ever convenes on Sunday, however, the session lasted for only 116 legislative days. And if one excludes Saturdays, on which no business was done in either house, there were only 97 working days--days on which legislative business was actually transacted.

Suppose the formal Saturday session were eliminated: would this change require a shift from the long-standing practice of computing legislative compensation on the basis of calendar days to a practice of computing such compensation on the basis of legislative days (which would then be identical to working days)? The search for an answer requires an examination of the constitutional provisions as they have evolved from their beginning in 1875, and the legislative interpretation of the Constitution as it may be inferred

from legislative practice. A related question, should Saturday sessions be eliminated, is whether adjournment from Friday to Monday would require a weekly joint resolution of both houses.

CONSTITUTIONAL LIMITS ON THE LENGTH OF THE SESSION

The Constitutions of 1776 and 1868 contained no limit on the length of the sessions of the General Assembly and did not prescribe the compensation of its members. The predecessor of the present Art. II, § 28, was proposed by the Convention of 1875 and ratified by the people in 1876. It fixed the per diem compensation of legislators at \$4.00 per day for a period not to exceed 60 days (20 days for an extra session) and stated that "should they remain longer in session they shall serve without compensation."

In 1928 this section was repealed (Pub. Laws 1927, c. 203) and a new section was substituted which fixed a flat salary of \$600 for each regular session with no limit on the length of the session.

After several unsuccessful attempts at revision, the original form of Art. II, § 28, was restored in 1950 (Sess. Laws 1949, c. 1267) with per diem being fixed at \$15 for a period not to exceed 90 days (25 days for an extra session). In 1956 the section was again amended to increase the compensable period to 120 days and to authorize subsistence and travel allowances (Sess. Laws 1955, c. 1169).

Since 1875 the actual length of the session has been closely tied to the pay period. Even during the 1929-1949 period, when legislative pay was

a flat \$600 per session, an effort was made to keep within the old 60-day limit. The following table shows the number of legislative days for each regular session from 1927 to 1965.

<u>Year</u>	<u>Legislative Days</u>	<u>Year</u>	<u>Legislative Days</u>
1927	55	1947	76
1929*	60	1949	94
1931	121	1951**	88
1933	113	1953	98
1935	106	1955	121
1937	66	1957***	109
1939	78	1959	118
1941	58	1961	116
1943	55	1963	121
1945	67	1965	116

* Begin \$600 flat salary
** Begin 90-day limit, \$15 per diem
*** Begin 120-day limit, \$15 per diem

SATURDAY SESSIONS

I. 1915-1921. During these four sessions the General Assembly regularly convened in plenary session on every Saturday with a few exceptions. Attendance on Saturday was fairly good. In 1915 and prior sessions the Monday convening hour was the same as any other day. Beginning in 1917 it was moved back to early in the afternoon, and there usually would be a night session on Monday. Beginning with the Extra Session of 1920, 8:00 p.m. became the normal hour of convening on Monday. In each of these sessions bills were taken up on Saturday in their normal sequence, both public and local bills being considered. The following tables show the number of members

answering the roll in the House of Representatives on Saturdays, and the hour fixed for convening on the following Monday for the years indicated. A cursory check of the Senate Journals indicates that the two houses have always followed similar practices as regards Saturday sessions.

<u>Year</u>	<u>Date</u>	<u>No. Present</u>	<u>Monday Convening Hour</u>
1915	1/9	97	12 noon
	1/16	82	12 noon
	1/23	85	12 noon
	1/30	no roll call*	12 noon
	2/6	90	12 noon
	2/13	74	11:00 a.m.
	2/20	97	11:00 a.m.
	2/27	90	11:00 a.m.
	3/6	107	9:30 a.m.

* Joint Session for address of Wm. Jennings Bryan

1917	1/6	71	9:30 a.m.
	1/13*	no roll call*	4:00 p.m.
	1/20	86	3:00 p.m.
	1/27	81	3:00 p.m.
	2/3	67	3:00 p.m.
	2/10	69	3:00 p.m.
	2/17	68	2:30 p.m.
	2/24	86	12 noon
	3/3	90	10:00 a.m.

* The first week of the 1917 session was incredibly hectic, as the General Assembly strove to enact all its local bills before the Jan. 10 deadline fixed by the constitutional amendments proposed in 1915 to prohibit local bills on many subjects.

1919	1/11	no roll call	2:00 p.m.
	1/18	no roll call	2:30 p.m.
	1/25	83	2:00 p.m.
	2/1	72	3:00 p.m.
	2/8	79	2:30 p.m.
	2/15	71	3:00 p.m.
	2/22	87	3:00 p.m.
	3/1	95	10:00 a.m.
3/8	86	10:30 a.m.	

<u>Year</u>	<u>Date</u>	<u>No. Present</u>	<u>Monday Convening Hour</u>
Ex. Sess.			
1920	8/14	80	8:00 p.m.
	8/21	85	8:00 p.m.
1921	1/8	79	2:00 p.m.
	1/15	no roll call	7:30 p.m.
	1/22	75	8:00 p.m.
	1/29	70	8:00 p.m.
	2/5	82	8:00 p.m.
	2/12	86	8:00 p.m.
	2/19	83	3:45 p.m.
	2/26	96	3:00 p.m.
	3/5	100	8:00 p.m.

II. 1923-1931. During these five sessions attendance on Saturday began to drop off considerably. While an effort was made to conduct public business on Saturday, this was often impossible due to lack of a quorum. The last session to consider public bills regularly on Saturdays was in 1931.

<u>Year</u>	<u>Date</u>	<u>No. Present</u>	<u>Public Bills</u>	<u>Monday Convening Hour</u>
1925	1/11	no roll call	no	8:00 p.m.
	1/17	no roll call	no	7:30 p.m.
	1/24	68	no	8:00 p.m.
	1/31	no roll call	no	8:00 p.m.
	2/7	no roll call	no	8:00 p.m.
	2/14	71	no	8:00 p.m.
	2/21	76	no	11:00 a.m.
	2/28	94	yes	11:00 a.m.
	3/7	88	yes	10:00 a.m.
1929	1/12	62	no	8:00 p.m.
	1/19	no roll call	no	8:00 p.m.
	1/26	no roll call	no	8:00 p.m.
	2/2	no calendar action		8:00 p.m.
	2/9	68	no	8:00 p.m.
	2/16	70	yes	8:00 p.m.
	2/23	90	yes	8:00 p.m.
	3/2	89	yes	8:00 p.m.
	3/9	94	yes	11:00 a.m.
	3/16	87	yes	10:00 a.m.

<u>Year</u>	<u>Date</u>	<u>No. Present</u>	<u>Public Bills</u>	<u>Monday Convening Hour</u>
1931	1/10	no roll call	no	8:00 p.m.
	1/17	no roll call	no	7:30 p.m.
	1/24	no roll call	no	8:00 p.m.
	1/31	no roll call	no	8:00 p.m.
	2/7	no roll call	no	8:00 p.m.
	2/14	no roll call	no	12 noon
	2/21	76	yes	12 noon
	2/28	80	yes*	11:00 a.m.
	3/7	76	yes	12 noon
	3/14	71	yes	12 noon
	3/21	no roll call	no	12 noon
	3/28	84	yes**	8:30 p.m.
	4/4	no roll call	no	10:00 a.m.
	4/11	no calendar action		10:00 a.m.
	4/18	no roll call	no	10:00 a.m.
	4/25	no calendar action		8:00 p.m.
	5/2	61	yes	8:00 p.m.
	5/9	no calendar action		8:00 p.m.
	5/16	no roll call	no	3:00 p.m.
	5/23	76	yes***	8:00 p.m.

* Local Government Commission Act passed the House.

** Revenue Act passed the House on second reading.

*** Conference Report on Revenue Act passed the House.

III. 1933-1953. During this period roll call votes were not taken on Saturdays as a general rule, but an effort was made to transact routine business on Saturdays. Messages were received from the other house, bills were occasionally ratified, and committee reports were received. Bill introductions, both public and local, were not unusual. There were few Saturdays on which no action of any kind was taken.

IV. 1955-1963. Beginning with the session of 1955 messages from the other house were no longer received, due to difficulties experienced with reference to committee by members asked to preside on Saturday. The Senate transacted no business on any Saturday at the 1955 session, but the House continued to enact local bills on second and third readings voice vote on

9 out of the 17 normal Saturdays. On the last Saturday of the session the House held a full-scale public bill session while the Senate took no action.

In the sessions of 1957, 1959, 1961 and 1963 each house occasionally took up local voice vote calendar on Saturday but these occasions became increasingly rare. Full sessions were held in both houses on the Saturday before adjournment in 1957. The House took no calendar action on any Saturday in 1959 and 1963 although one bill was introduced in the House on a Saturday in each of these sessions.

V. 1965. The 1965 session was the first session at which no action was taken in either house on any Saturday of the session.

VI. Summary.

1. Prior to the 1917 regular session, Saturday was a working day. Attendance was usually down somewhat from other weekdays, but public business was taken up in normal order and each house reconvened on Monday at the regular hour fixed by the Rules.

2. Beginning with 1917, the Monday convening hour was set back to early in the afternoon and Saturday attendance was down to 70 or 80.

3. The Monday convening hour of 8:00 p.m. was first used at the 1920 Extra Session. In 1921 it became the regular hour of convening on Mondays. Saturday attendance remained around 70 or 80. Saturday sessions were confined to local business early in the session, but public bills were regularly taken up on Saturdays late in the session.

4. Beginning with the 1933 regular session, no roll calls were held on normal Saturdays for lack of a quorum. Toward the end of the session, Saturday became a regular working day if a quorum could be mustered.

5. By 1957 only voice vote local calendar action was taken up on Saturdays; there was no other business transacted.

6. Since 1959 no business of any nature has been transacted on normal Saturdays. In 1965, no business was transacted on any Saturday.

ORIGIN OF THE INTERPRETATION OF ART. II, §§ 22 AND 28 AS
REQUIRING PAY FOR CALENDAR DAYS

I have been unable to find any authoritative interpretation of the Constitution supporting the practice of tying legislative per diem compensation to calendar days. There has not been a ruling on the subject by the Attorney General from 1908 to the present, nor a relevant decision of the Supreme Court. Shepard's Citations shows only four cases citing Art. II, §§ 22 and 28. They are as follows:

1. Kendall v. Stafford, 178 N. C. 461 (1919), held that a city council had no power to increase its own pay even though the charter conferred authority for the council to "fix" its pay. Chief Justice Clark, in a concurring opinion, stated that the reason for the constitutional fixation of legislative pay was that before 1877 the General Assembly had often wasted as much as a week wrangling over how much members were to be paid.

2. State ex rel. Alexander v. Pharr, 179 N. C. 699 (1920), held that the courts have no jurisdiction over quo warranto to try title to a seat in the General Assembly.

3. State ex rel. Bouldin v. Davis, 197 N. C. 731 (1929), is a quo warranto case involving a municipal official.

4. Opinion of the Justices, 227 N. C. 705 (1947), held that the General Assembly was without power to provide for subsistence and travel allowances for its members in the absence of express Constitutional authority. The Justices had been asked for an advisory opinion (Sess. Laws 1947, Res. 21) on the constitutionality of a bill proposed in the 1947 General Assembly which would have provided subsistence and travel allowances. The court noted that a proposed Constitutional amendment which would have expressly authorized such a bill (Sess. Laws 1945, c. 1042) had just been defeated at the polls, and that the settled policy of the State was that public officers should not be given the power to fix their own compensation. Thus, the court would feel obliged to construe Art. II, § 28, as removing the question of legislative pay in whatever form from the discretion of the General Assembly. (Subsistence and travel allowances were expressly authorized by an amendment proposed by Sess. Laws 1955, c. 1169, and ratified by the people in 1956.)

It is probable that the practice of tying per diem to calendar days is the product of tradition alone. From 1875 to 1927 legislative pay was fixed at \$4.00 per diem and limited to 60 days. In order to complete the public business in 60 days, Saturday sessions were essential. Sunday pay was essential to subsistence in Raleigh since subsistence and travel allowances were not possible until 1957. In days when transportation was poor the natural assumption was that most members would journey to Raleigh for the two months of the session and remain there until it was over. The small amount of the per diem, even by the monetary values of 1875, demonstrates that it served in effect as a subsistence allowance, not a salary. The slow decrease in the purchasing power of the dollar only accentuated this.

By the time weekly travel to and from Raleigh became possible, the tradition of paying for seven days a week was so firmly ingrained that no serious thought questioned it. This is demonstrated by Pub. Laws 1929, c. 2. At the general election of 1928, the Constitution was amended to substitute a fixed salary of \$600 for the former per diem. At the 1929 session there was considerable debate as to whether the salary was payable in a lump sum in advance, at the end of the session, or in installments. By statute the General Assembly directed that the salary might be paid in installments upon request by a member, but "in no instance shall installments or per diem amount to more than ten dollars per day . . . for the number of days the General Assembly has been in session." Apparently it was contemplated that checks would be issued weekly, monthly, or at some other interval as requested by individual members and the amount due should be computed by multiplying the number of days elapsed by 10. The same act provided in section 2 "That nothing in the provisions of section one shall prevent members . . . from receiving the full compensation of six hundred dollars . . . for the term of the regular session of the General Assembly, whether the term remains in session for sixty days or a shorter period."

Consideration of the Constitutional per diem as a subsistence allowance rather than as payment for services rendered goes far toward explaining the willingness of the General Assembly to tolerate the gradual decline of the Saturday session. While members might not be in Raleigh on Saturday and Sunday, hotel bills still had to be paid (if the room were to be reserved) and travel expenses met. But also bound up with the problem of legislative subsistence is the tradition of joint adjournment.

JOINT ADJOURNMENT

For many years the phrase of Art. II, § 22, authorizing the two houses to "jointly adjourn to any future day, or other place" along with the phrase providing that each house "shall sit upon its own adjournment from day to day" (emphasis supplied) has been thought to (1) require the formality of a joint resolution should both houses desire to adjourn to a day other than the following calendar day (Sunday excluded), and (2) prevent either house from adjourning separately to any day other than the following calendar day (Sunday excluded). From the language of this section has also arisen the impressive ceremonies of sine die adjournment made possible by the architectural structure of the Capitol, an arrangement preserved in the State Legislative Building. While concern over the pay problem, and occasional use for routine business, have been the major reasons for continuation of Saturday sessions, the formality of a joint resolution thought to be essential for adjournment from Friday to Monday has also played a part.

Examination of the Journals reveals only one instance of failure to hold a Saturday session in the period from 1915 to 1965. In 1955 the two houses jointly adjourned from Friday, April 29, to Monday evening, May 1 (See Sess. Laws 1955, Res. 37). Since this session was still operating under the 90-day pay limit, which had expired in mid-April, no threat to Saturday pay was involved. A Joint Resolution fixed the hour of adjournment on Friday, but apparently the ceremonies associated with sine die adjournment were not observed.

CONCLUSION

The interpretation of the North Carolina Constitution which fixes the per diem compensation of members of the General Assembly at \$15 per day beginning on the day of convening and ending 120 calendar days later has its origin in legislative custom which became fixed between 1875 and 1915--a time during which legislative and working days were identical. The gradual decline of Saturday sessions as improvements in transportation made weekly trips to and from Raleigh possible resulted in a separation of the concepts of legislative and working days, but pay practices were continued on the basis of former conditions. There has been no authoritative decision interpreting the Constitution to require per diem compensation on the basis of a seven-day week, or to equate the per diem payments with actual days worked. In fact, from the beginning per diem has been paid for Sundays. Therefore, there appears to be no judicially enforceable barrier at the present time to explicit recognition of what has been a fact for at least 40 years: most members do not attend on Saturday even though they are paid as if they did. Particularly in light of the long-standing practice that members are paid for Sunday on which no sessions have ever been held, there appears to be no necessary correspondence between days for which per diem is paid, and days on which members actually engage in legislating for the State. However, the absence of authority can also cut the other way. While it seems unlikely that the Supreme Court would render an opinion requiring the empty formality of the present Saturday session, and most unlikely that the Court would

attempt to compel members to attend and transact business on Saturday, a final answer cannot be given until the Court speaks through litigation or an advisory opinion.

