Report To The GENERAL ASSEMBLY of NORTH CAROLINA

CORPORATE TAX STRUCTURES OF OTHER STATES
THE PRESERVATION OF HISTORIC SITES
MENTAL INSTITUTION EMPLOYEES
1963 HOUSE BILL 1122
MUNICIPAL SCHOOL TRANSPORTATION

LEGISLATIVE COUNCIL
1965

FINAL REPORT

COMMITTEE FOR STUDY OF
Corporate Tax Structures of Other States

COMMITTEE FOR STUDY OF
The Preservation of Historic Sites

COMMITTEE FOR STUDY OF
Mental Institution Employees

COMMITTEE FOR STUDY OF
1963 House Bill 1122

COMMITTEE FOR STUDY OF
Municipal School Transportation

LEGISLATIVE COUNCIL

January 1965

TABLE OF CONTENTS

Page

Committee for study of Corporate Tax Structures of Other States

Committee Information. 1
Committee Statement 3
"A SENATE RESOLUTION DIRECTING THE LEGISLATIVE COUNCIL TO MAKE A STUDY OF THE CORPORATE TAX STRUCTURE OF OTHER STATES.". 4

Committee for study of The Preservation of Historic Sites

Committee Information 5
Legal Powers to Preserve Historic Buildings and Areas in North Carolina. . . . 7
New Mexico Decision. 21
Arkansas Act. 30
"A BILL TO BE ENTITLED AN ACT AUTHORIZING MUNICIPALITIES TO PRESERVE AND PROTECT HISTORIC BUILDINGS AND CLASSIFYING SUCH BUILDINGS FOR PURPOSES OF TAXATION.". 35

Committee for study of Mental Institution Employees

Committee Information. 40
Committee Statement. 42

Committee for study of House Bill 1122

Committee Information. 43
Committee Statement. 47
"A BILL TO BE ENTITLED AN ACT RELATING TO ATTORNEYS' FEES IN PROCEEDINGS TO CAVEAT WILLS." 48

Table of Contents (cont)

Page

Committee for study of
Municipal School Transportation

Committee Information. 49
Committee Report. 55

COMMITTEE FOR STUDY OF

CORPORATE TAX STRUCTURES OF OTHER STATES

LEGISLATIVE COUNCIL STUDY NO. 4
(By Senate Resolution ratified 25 June 1963)

COMMITTEE FOR STUDY OF
CORPORATE TAX STRUCTURES OF OTHER STATES

Chairman : Representative Jyles J. Coggins
P. O. Box 1508
Raleigh, North Carolina

Ex-Officio : T. Clarence Stone, President of the Senate
H. Clifton Blue, Speaker of the House of Representatives
Hugh S. Johnson, Jr., Chairman of the Council

Members from the Council : Senator R. E. Brantley, Vice-Chairman of the Council
Senator Irwin Belk
Representative Gordon Greenwood
Representative L. Sneed High
Representative Hollis M. Owens, Jr.
Senator Thomas J. White
Representative Sam L. Whitehurst
Senator Staton P. Williams
Senator Cicero P. Yow

Others : Senator Frank Forsyth
Representative Clyde H. Harriss, Sr.
Senator Jimmy Johnson
Senator P. D. Midgett, Jr.
Senator William P. Saunders
Representative J. Shelton Wicker
Representative Thomas H. Woodard

Legislative Council Study No. 4

Introduced by: Senators Yow and Hanes
Adopted : 25 June 1963

A SENATE RESOLUTION DIRECTING THE LEGISLATIVE COUNCIL TO MAKE A STUDY OF THE CORPORATE TAX STRUCTURE OF OTHER STATES.

Be it resolved by the Senate:

Section 1. The North Carolina Legislative Council is herewith requested and directed to make a study of the corporate tax structure of other states as compared with the North Carolina corporate tax structure and to report its findings and recommendations to the General Assembly of 1965.

Sec. 2. This Resolution shall become effective upon its adoption.

COMMITTEE FOR STUDY OF CORPORATE TAX STRUCTURES OF OTHER STATES

The Corporate Tax Committee of the Legislative Council was appointed in January, 1964. Sometime thereafter, the Chairman of this Committee resigned and subsequently the position was filled by a new appointment. Preliminary work had not progressed far enough that a complete study could be made prior to the convening of the 1965 General Assembly.

Therefore, the Committee and the Council recommend that this study be reassigned to the next Legislative Council.

SESSION 1965

INTRODUCED BY:

Senator Coggins

Referred to:

A SENATE RESOLUTION DIRECTING THE LEGISLATIVE COUNCIL TO MAKE A STUDY OF THE CORPORATE TAX STRUCTURE OF OTHER STATES.

Be it resolved by the Senate:

Section 1. The North Carolina Legislative Council is authorized and directed to make a study of the North Carolina corporate tax structure and compare same with other states and to report its findings and recommendations to the General Assembly of 1967.

Sec. 2. This Resolution shall become effective upon its adoption.

COMMITTEE FOR STUDY OF

THE PRESERVATION OF HISTORIC SITES

LEGISLATIVE COUNCIL STUDY NO. 6
(By House Resolution)

COMMITTEE FOR STUDY OF
THE PRESERVATION OF HISTORIC SITES

Chairman	:	Senator Cicero P. Yow 9-10 Wallace Building Wilmington, North Carolina
Ex-Officio	:	T. Clarence Stone, President of the Senate H. Clifton Blue, Speaker of House of Representatives Hugh S. Johnson, Jr., Chairman of the Council
Members from: the Council	:	Senator Irwin Belk Representative Jyles J. Coggins Representative Gordon Greenwood Representative L. Sneed High Senator Thomas J. White Representative Sam L. Whitehurst
Others	:	Representative Thomas D. Bunn Representative Hoyle T. Efird Representative Claude M. Hamrick Mrs. Grace T. Rodenbough Representative Arthur W. Williamson

A RESOLUTION CALLING FOR STUDY AND RECOMMENDATIONS BY THE STATE LEGISLATIVE COUNCIL WITH RESPECT TO THE POWERS OF MUNICIPALITIES TO PRESERVE HISTORIC SITES.

WHEREAS, a growing number of municipalities throughout the State have shown an increasing interest in the preservation of historic areas, sites, and buildings and sections surrounding historic sites and buildings; and

WHEREAS, there is a continuing and urgent need to relate the acquisition and maintenance of historic buildings and sites to the larger sections within which they lie; and

WHEREAS, the legal authority of municipalities to preserve such areas through the use of the police power is unclear and uncertain, and should be clarified; NOW THEREFORE,

Be it resolved by the House of Representatives of North Carolina

Section 1. That the Legislative Council shall cause a study to be made of the legal authority of municipalities to preserve historic areas, sites and buildings, to determine the need for legislative action in regard to the establishment of such authority as an exercise of the police power, and to have prepared such necessary legislation for consideration by the 1965 Session of the General Assembly.

Sec. 2. This Resolution shall become effective upon its adoption.

LEGAL POWERS TO PRESERVE HISTORIC BUILDINGS AND AREAS IN NORTH CAROLINA

The charge to the Legislative Council under which this study has been undertaken requires that the Council (a) study the legal authority of municipalities to preserve historic areas, sites and buildings, (b) determine the need for legislative action in regard to the establishment of such authority as an exercise of the police power, and (c) have prepared such necessary legislation for consideration by the 1965 session of the General Assembly.

I. Objectives and General Approach

In order to comply with this charge, it is first necessary that there be some understanding of the objectives sought and the general mechanisms required in order to "preserve historic areas, sites and buildings."

We must recognize that there are several categories of buildings and sites involved. There are, for example, certain buildings of outstanding architectural importance, such as Tryon's Palace. There are certain buildings in which events of great significance to the state's history have taken place, such as the Capitol or perhaps the Bennett Place. There are the birthplaces or residences of outstanding personages of the state, which may be quite humble as buildings. And there are

buildings having local, though not statewide, significance. Then there are the old towns or old neighborhoods, such as are relatively common in the eastern part of the state, which may have many individual buildings of importance historically or architecturally but which also have a general character worth preserving. In some cases there may be no individual buildings of outstanding quality but the neighborhood or town may nevertheless be worth preserving either as an example of a particular type of development or because its overall character is especially charming.

We may wish to acquire and preserve some of the outstanding buildings or sites as "museums" of a sort. We may also wish to preserve the setting of such buildings so that they will not be drowned in a sea of incongruous neighboring development. We may wish to perserve certain buildings of lesser significance of lesser quality, not as museums, but as buildings which are actively used. We may wish simply to protect and preserve the character of a neighborhood or a town by insuring that such changes as are made in the form of new buildings or alterations will reinforce, rather than destroy, the overall effect of the area.

The general mechanisms for reaching these objectives will naturally differ. Preservation of a particular building as a museum will normally mean that that building must be acquired and maintained by either a governmental or a private organization,

which may or may not be able to meet the costs of the operation through fees paid by visitors. Preservation of the "setting" of such a building may involve either the acquisition of neighboring properties, followed by appropriate maintenance and improvements, or the regulation of such properties.

Preservation of the character of an old neighborhood or a town, on the other hand, must normally rest upon regulations for the most part, although acquisition of certain key properties in the area may be necessary.

With regard to each type of situation, it should be recognized that in many cases a great deal may be accomplished voluntarily through publicity, inducements of various types, and persuasion.

II. Present Authority to Preserve Historic Buildings and Areas

A. Acquisition of Buildings, Sites, Surrounding Areas

In addition to numbers of special acts authorizing acquisition of particular named sites, the General Statutes have granted various powers of this type. G.S. Chapter 121 (especially G.S. 121-2(9), 121-7, and 121-8) authorizes the State Department of Archives and History (a) to acquire properties of historic or archaeological significance by gift, purchase, devise or bequest, or (where such properties are in imminent danger of being impaired or destroyed) eminent domain; (b) to acquire adjacent properties "deemed necessary for the proper use and administration of historic or archeological properties;" (c) to assist (financially)

a county, municiaplity, or nonprofit organization in such acquisition; and (d) to take necessary steps to maintain and operate such properties.

Such cases as In re Department of Archives and History, 246 N.C. 392 (1957) would seem to indicate that this grant of power is clearly valid. Numerous cases in other states and in the U. S. Supreme Court support the same conclusion.

Municipalities apparently do not have specific authority from the General Statutes for the acquisition of historic buildings and sites. However, G.S. 160-200(40) authorizes acquisition, establishment, and support of a "museum", and G.S. 160-158 (as well as G.S. 160-204 and 160-205) authorizes acquisition of "parks" and "recreational facilities," which may be an adequate basis for acquiring some types of historic buildings or sites.

B. Protection of the Setting of Historic Buildings

As was noted above, the State Department of Archives and History has limited authority under G.S. 121-2(9) to acquire property adjacent to historic sites.

Municipalities may provide a proper setting for some such sites through acquiring adjacent areas as "parks".

Municipalities under their usual zoning powers (G.S. Chapter 160, Article 14) may regulate and restrict "the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts

and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes." These powers may be used to prevent some incongruous development in the vicinity of historic sites. However, there is some legal question as to how far they may be used to regulate the appearance of structures.

C. Deterring the Owner from Altering or Destroying a Specific Building or Site

There apparently is no statutory authority in North Carolina under which the owner of a historic building or site may be deterred from altering it or destroying it, other than through acquisition of the building or site as described above.

D. Preservation of the Character of a Neighborhood or Town

In some measure a municipality may preserve its character, or the character of particular neighborhoods, through exercise of the zoning powers described above. However, as we have noted, there is some legal question as to how far such powers may be used to regulate the appearance of structures.

It might be pointed out that since 1948 Winston-Salem has had provisions in its zoning ordinance providing that within the "Old and Historic Salem District" no building or structure may be altered or erected without the owner's first securing a certificate of appropriateness from a special Board of Architectural Review, concerned with insuring that any new construction or alterations would fit in generally with the pattern established by Old Salem. Since 1963 Wilmington has had somewhat

similar prosivions in its zoning ordinance. Apparently there have been no North Carolina court cases passing on such provisions as these. However, the Attorney General has expressed his opinion that the zoning enabling act does not grant authority to adopt such provisions.

There is apparently no other legislative authority for this type of control to be found in the General Statutes, other than the municipalities' general powers to regulate and control nuisances of various types.

III. Needs for Further Statutory Authority; Possible Approaches

From the above listing, it may be seen that the following areas are not fully covered by existing statutory authority: (1) protection of the "setting" for especially significant historic sites and buildings, (2) preservation of the overall character of particular neighborhoods or small towns, and (3) deterrence of the owner from altering or destroying particular buildings. On analysis, it appears that the first of these is merely a special application of the second. The needs boil down, therefore, to two: (1) specific authority to regulate the appearance of new buildings and alterations which are constructed in particular areas, so that they do not destroy the character of the neighborhood or ruin the setting of a particular building or site; (2) authority by which the owners of existing historic

buildings may be deterred from destroying them or altering them in such a way as to destroy this significance.

There are many approaches which have been followed in various states and localities for achieving these ends. The General Assembly might reasonably decide that one particular legal device would suffice, or it might decide that a range of such devices was needed.

A. Controlling the Appearance of New Buildings in Historic Areas

No preservationist seriously contends that entire neighborhoods or small towns should be preserved intact against any alterations or new development. However, it is frequently pointed out that most new development can be planned so as to strengthen the character of a neighborhood, while on the other hand, even a single "sore thumb" type of development might destroy the character of that neighborhood.

Limited controls over the external appearance of new buildings in historic areas, designed to preserve the general character of the neighborhood, may take several forms.

First, a locality might simply prepare a plan, showing the features which it hopes to preserve and the types of architectural treatment of new buildings which will help preserve the neighborhood's character. This would be merely a device for enlisting interest, and compliance would be voluntary. Essentially this was the procedure followed in Chapel Hill's central business district after World War II. No legislative

authority would be required for this.

Second, the locality might constitute a board of architects or other qualified persons to act in a purely advisory capacity with respect to plans for new buildings in particular areas. The board's task would be one of gaining the confidence of property owners and developers and persuading them to follow agreed-upon standards. Since there would be no regulatory powers involved, no legislative authority would be required.

Third, the locality might establish regulations providing for formal control of the external appearance of new buildings in particular historic areas. Such regulations might be included in the town's zoning ordinance (as in the case of the Winston-Salem and Wilmington regulations described earlier), or they might take the form of a separate ordinance. It is possible that the present zoning enabling act constitutes an adequate grant of power for such regulations, despite the Attorney General's opinion to the contrary. This was held by the New Mexico Supreme Court (construing a zoning enabling act almost identical with North Carolina's) in the case of Santa Fe v. Gamble-Skogmo, Inc. (the opinion of which accompanies this memorandum). On the other hand, New Mexico (subsequent to the beginning of this case) and Missouri have both found it desirable to spell out this authority specifically in their zoning enabling acts.

A much more popular legislative approach has been to provide separate and distinct authority (i.e., unrelated to the zoning

act) for the regulation of historic districts. This type of act permits regulation both of new buildings and of proposed alteration or destruction of old buildings in such districts. An example is the Arkansas law, a copy of which accompanies this memorandum. Other states having generally similar laws include Alabama, California, Connecticut, Illinois, Louisiana, Maryland, Massachusetts, Pennsylvania, and Rhode Island.

Altogether, some 50 cities, including Charleston, S.C., New Orleans, Alexandria and Williamsburg, Va., Georgetown, D. C., Natchez, Annapolis, Galveston, and Santa Barbara, Calif., have regulations of one or another of the above types.

There have been remarkably few court tests of these regulations. It may be speculated whether this is because (a) property owners assume their validity; (b) there is strong public support for their objectives, which property owners do not care to struggle against; (c) the regulations have been enforced with caution and reasonableness; (d) property owners recognize the financial advantages of maintaining a high standard of quality in a neighborhood with distinctive character; or some other reason. Regardless, the courts have been generally sympathetic to the regulations. Probably the best-known cases have been those supporting and enforcing the Vieux Carre regulations in New Orleans (e.g., New Orleans v. Levy, 223 La. 14, 64 S.2d 798 (1953)). (These are not altogether in point, because they are

backed by provisions of the state constitution.) The Supreme Judicial Court of Massachusetts has rendered advisory opinions upholding acts pertaining to the Beacon Hill area of Boston and Nantucket (Opinion of the Justices, 128 N.E.2d 563 (1955); Opinion of the Justices, 128 N.E.2d 557 (1955)). The U. S. Supreme Court's opinion as to such regulations may have been presaged by the widely quoted dicta from the redevelopment case of Berman v. Parker, 348 U.S. 26 (1954): "The concept of the public welfare is broad and inclusive....The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled." The Rhode Island Supreme Court interpreted (and by inference sustained) an ordinance of this type in Hayes v. Smith, 167 A. 2d 546 (1961). On the other hand, in Hankins v. Borough of Rockleigh, 150 A. 2d 63 (1959) a New Jersey court ruled invalid a requirement that new structures be "early American" in style or otherwise conform to existing residential architecture. The language of Turner v. New Bern, 187 N.C. 541 (1924), indicates that the North Carolina Supreme Court of that time, at least, would have tried hard to sustain regulations aimed at preserving the character of historic neighborhoods.

B. Deterring Alteration or Destruction of Existing Buildings

There is an even broader range of measures to preserve

existing buildings of historic importance against destruction. The obvious solution, of course, is for the governmental unit concerned to acquire the property. But the expense involved in widespread acquisition and maintenance of such properties makes this course infeasible, and there are serious questions as to the wisdom of widespread removal of property from the community's tax base. As we have seen, there is already adequate statutory authority for the state, and perhaps for municipalities, to acquire those properties whose importance justifies acquisition.

Among the other measures which have been tried in various states are the following:

First, a study may be made of all of the buildings in a given area, using architects and historians and others with professional knowledge, as a basis for classifying those which are worthy of preservation. This measure, which requires no grant of statutory power and might in fact be done by a private organization, is a necessary basis for any rational scheme of regulation. However, through publicizing the results of this survey, the owners of significant properties may be encouraged to take pride in maintaining their properties. This has been the basis for a very successful program in Charleston, S. C. Added to such publicity may be such "gimmicks" as the installation of attractive plaques on outstanding buildings, special notations concerning them on tourist maps of the city, etc.

A second type of measure is the use of financial inducements to the owner of such property to maintain it in its present condition. Under this heading are (a) the payment of grants (one-time or annual) to the owner of the property and (b) the offering of some form of tax relief to him, in return for his maintaining the property and possibly opening it to the public on certain agreed-upon occasions. Both of these measures would require statutory authority. The first might raise questions as to whether such payments were for a "public purpose" under Article V, Section 3 of the State Constitution, but it is believed that with proper drafting the act could be made to meet this test. The second approach (some form of tax relief) would involve classification by the General Assembly of that type of property under its powers specified in Article V, Section 3 of the State Constitution, so as to subject it to lower tax rates. Presumably there should be a determination by a state agency (either the State Department of Archives and History or the Historic Sites Advisory Committee) concerning the historic value of each piece of property before such grants or tax relief would be made available to the property owner.

A third approach is to require the owner of property in a historic district, or which has been designated as of special significance, to give local authorities 30 or 60 days' notice of his intention to alter or destroy his building, during which

period they would have the opportunity to publicize the proposed action and seek a purchaser for the property who would maintain it or otherwise find a means of preserving it. This approach is followed in a fairly large number of local ordinances around the country. It would require a grant of statutory authority.

Fourth, most of the state laws we have mentioned in the preceding subsection provide that within a historic district a structure may not be altered or demolished without the prior grant of a certificate of appropriateness by a special commission or by the town board. See, for example, § 19-5005 at page 32 of the attached Arkansas Historic Districts Act. Usually there is a provision under which the commission is <u>required</u> to grant such a certificate in hardship cases (see the provisions of § 19-5007 on pages 32-33 of said act.)Provisions of this type were included in the Massachusetts acts upheld in the advisory opinions of the Supreme Judicial Court cited earlier in this report.

Finally, the state of Kentucky is apparently considering the adoption of provisions under which the state or local governments could acquire (through purchase or condemnation) legal rights in the nature of easements, which would thereafter prevent the owner of the fee of the property from altering or demolishing structures thereon without the prior permission of the governmental unit. This approach too, which blends the police power and the power of eminent domain so that compensation

can be paid for restrictions, would require statutory authority. It reportedly has been used successfully in the United Kingdom by the British National Trust.

* * * * * * * * * * *

Attached to this report is a copy of the type of legislation requested in the 1963 Resolution. However, the Committee and the Council believe that extension of this power and authority to the political sub-divisions of this State is not in the public interest and the people are better served by the powers presently vested in the State.

C O P Y

FILED: January 27, 1964

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

CITY OF SANTA FE,

Plaintiff - Appellee,

No. 7327

vs.

GAMBLE-SKOGMO, INC.
and CHARLES ATWELL,
Defendants - Appellants.

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY

SWOPE, Judge

DEAN S. ZINN
JOHN D. DONNELL
Santa Fe, New Mexico

Attorneys for Appellee

GILBERT, WHITE & GILBERT
SUMNER S. KOCH
Santa Fe, New Mexico

Attorneys for Appellants

O P I N I O N

NOBLE, Justice.

This appeal requires our determination whether the historical zoning ordinance of the City of Santa Fe is ultra vires of the city's powers and whether the ordinance is valid and constitutional

Defendants, Gamble-Skogmo, Inc. and Charles Atwell, resident manager, obtained a permit pursuant to the city building code to remodel a building within the historical zone in Santa Fe. One requirement of the plans and specifications and of the permit was that to comply with the historical zoning ordinance, the window apnes not exceed thirty inches square. The window pane requirement was accomplished by installation of "mullions" or wooden dividers back of the window panes which gave the appearance of window panes of the required size. After completion of the remodeled building, but before the city's approval, the defendants removed the dividers leaving large show windows contrary to the city ordinance and the building permit.

This appeal followed the conviction and sentence in the district court, on appeal from the city court.

We find no merit to defendants' first contention that a criminal conviction cannot be supported because the historical zoning ordinance contains no penalty clause. The historical zoning act prescribes the conditions for approval of plans and specifications upon which a building permit is issued under the building code. Defendants were charged and found guilty in city court with violation of that provision of the Uniform Building Code which requires all construction work to be according to the plans and specifications approved with the building permit. No attack was made, either in the trial court or here, upon the building code.

Santa Fe Ordinance 1957-18, adopted October 30, 1957, created an historical district and provided regulations for buildings constructed or altered therein. Its purpose is stated as:

"Section 2. Purpose of Creating 'H' Historical District.

That in order to promote the economic, cultural and general welfare of the people of the City of Santa Fe, and to insure the harmonious, orderly and efficient growth and

development of the municipality, it is deemed essential by the City Council of the City of Santa Fe, that the qualities relating to the history of Santa Fe, and a harmonious outward appearance which preserves property values and attracts tourists and residents alike, be preserved; some of these qualities being: the continued existence and preservation of historical areas and buildings; continued construction of buildings in the historic styles, and a general harmony as to style, form, color, proportion, texture and material between buildings of historic design and those of more modern design."

Defendants next direct their attack to the historical zoning portion of the city's zoning ordinance, claiming a lack of enabling legislation authorizing such an exercise of the police power by the city.

A municipality has no inherent right to exercise police power. Its powers are derived solely from the state. Town of Mesilla v. Mesilla Design Center & Book Store, 71 N.M. 124, 376 P.2d 183; Munro v. City of Albuquerque, 48 N.M. 306, 150 P. 2d 733. We, therefore, examine the statutes in force at the time the ordinance was adopted directing our inquiry to whether the grant of zoning power authorized preservation of a historical area. It is agreed that the authority, if it is to be found, must be contained in §§ 14-28-9 to 11, N.M.S.A. 1953. § 14-28-10 contains a specific grant of power to regulate or restrict the erection, construction, re-construction alteration, repair or use of buildings, structures or lands, and § 14-28-11 provides that "such regulations and restrictions" shall be "in accordance with a comprehensive plan... to promote the health and the general welfare.." We note in passing that specific legislative authority was subsequently granted by the "Historic District Act," Ch. 92, Laws 1961.

Defendants assert that the enabling legislation limited a municipality's zoning power to enactment of regulations restricting the height, number of stories, and size of buildings; the size of lots and percentage thereof that may be occupied; the density of population, and the location and use of buildings for trade, industry, residence or other uses. We find no such restriction in the statute. Sec. 14-28-11, N.M.S.A. 1953, grants the authority to regulate and restrict "in accordance with a comprehensive plan...; to promote health and the general welfare;.." The legislature, then, granted municipalities authority, by zoning ordinances, to restrict and regulate buildings and structures in accordance with a comprehensive plan for the general welfare of the city and its people. To be within the authorized purposes the zoning ordinance must bear some reasonable relationship to the general welfare.

The term "general welfare" has not been exactly defined, we think, by reason of the same definitive problem expressed in Arnold v. Board of Barber Examiners, 45 N.M. 57, 70, 109 P. 2d 779, regarding the phase "affected with a public interest," where it was said:

> "....The phrase 'affected with a public interest' probably can never be given an exact definition. This is probably desirable when we reflect upon the constant and ever changing conditions of our social and economic structure. This condition clearly implies the necessity for some degree of latitude allowable for obviously necessary judicial interpretation."

See, also, Barwin v. Reidy, 62 N.M. 183, 192, 307 P. 2d 175, which described the public policy as a "wide domain of shifting sands."

No decisions discussing the precise question of enabling legislation have been pointed out to us nor have we found any. However, analogous questions were before the Massachusetts Supreme Court on at least two occasions. The question there was the constitutionality of proposed legislation establishing and preserving historical areas in that state. In each case the right to exercise the police power depended upon whether preservation of such an historical area and style of architecture was comprehended within the public welfare. If it was, the police power could be onstitutionally exercised to preserve and protect such areas.

If the opinion of the Justices to the Senate, 333 Mass. 783, 128 N.E. 2d 563, 566, it was said:

> "The announced purpose of the act is to preserve this historic section for the educational, cultural, and economic advantage of the public. If the General Court believes that this object would be attained by the restrictions which the act would place upon the introduction into the district of inappropriate forms of construction that would destroy its unique value and associations, a court can hardly take the view that such legislative determination is so arbitrary or unreasonable that it cannot be comprehended within the public welfare."

In a second opinion of the Justices to the Senate, 333 Mass. 773, 128 N.E. 2d 557, 559, 561, the same question was presented regarding an act establishing historic districts knows as"(1) Old and Historic Nantucket District, and (2) Old and Historic Siasconset District." The purpose of the act was to promote the general

welfare of the inhabitants of the town through "'the preservation and protection of historic buildings, places and districts of historic interest; through the development of an appropriate setting for these buildings, places and districts; and through the benefits resulting to the economy of Nantucket in developing and maintaining its vacation-travel industry through the promotion of these historic associations.'...." The purpose was held to be for the promotion of the public welfare. We quote at some length from the Massachusetts court because of its special application to the situation presented by the instant case. In 128 N.E. 2d at 561, 562, it was said:

> "....Can it rest upon the less definite and more inclusive ground that it serves the public welfare? The term public welfare has never been and cannot be precisely defined....."

The court after discussing other decisions went on to say:

> "....We may also take judicial notice that Nantucket is one of the very old towns of the Commonwealth; that for perhaps a century it was a famous seat of the whaling industry and accumulated wealth and culture which made itself manifest in some fine examples of early American architecture; and that the sedate and quaint appearance of the old island town has to a large extent still remained unspoiled and in all probability constitutes a substantial part of the appeal which has enabled it to build up its summer vacation business to take the place of its former means of livelihood..... There has been substantial recognition by the courts of the public interest in the preservation of historic buildings, places, and districts. (citing authorities)
>
> "It is not difficult to imagine how the erection of a few wholly incongruous structures might destroy one of the principle assets of the town,....
>
> "We are of opinion that in a general sense the proposed act would be an act for the promotion of the public welfare..."

For other persuasive decisions, because they involved the question whether the taking, under eminent domain, for preservation of sites of historical interest was for a public purpose; in the public interest; or for the general welfare, see: United States v. Gettysburg Electric Ry., 160 U.S. 668, 681, 16 S. Ct. 427, 40 L.Ed. 576, (Site of the Gettysburg Address); Flaccomio v. Mayor & City Council of Baltimore, 194 Md. 275, 71 A. 2d 12, 14, (property where the "Star Spangled Banner" which flew over Fort McHenry was made); State v. Kemp, 124 Kan. 716, 261 Pac. 556, 59 A.L.R. 940, (the Shawnee Mission property, an early Indian mission).

State courts generally have held that the police power may be exercised only to protect and promote the safety, health, morals and general welfare. 29 Fordham L.R. 729. Since the legislature can preserve such historical areas by direct legislation as a measure for the general welfare, it follows that municipal ordinances protecting such areas are authorized under enabling legislation granting power to zone for the public welfare. We, therefore, hold that the purpose of the Santa Fe historical zoning ordinance is within the term "general welfare," as used in the municipal zoning enabling legislation.

Defendants agree that there is authority supporting the validity of ordinances enacted under legislative authority having for their purpose the preservation of historical buildings, areas or districts and limiting construction or alteration to specified historical architectural design. They, therefore, limit their challenge to the window pane restriction of the ordinance, "single panes of glass larger than thirty inches square are not permissable except as otherwise provided, " asserting that control of buildings by regulating the size and shape of its windows has no relation to the public welfare, but on the contrary, amounts only to an aesthetic detail which they contend will not support the exercise of the police power. We find the argument to be without merit.

The cases relied upon by defendants deal with purely aesthetic regulations having no connection with preservation of an historical area or an historical style of architecture, and are, accordingly, either distinguishable upon their facts or are not persuasive under the facts of the instant case. Defendants have lifted the single architectural design from the detailed description in the ordinance of the "Old Santa Fe Style" and say that such a minute detail of construction is only an attempt by the city to impose its idea of an aesthetic detail of architecture and is, therefore, an arbitrary and unreasonable exercise of police power. They ignore the fact that the window pane requirement is only one of very many details of the historical architectural style which it is said has evolved within the City of Santa Fe from about the year 1600 to the present, which the ordinance seeks to protect and preserve. So far as the record discloses, the window design is as much a part of the Santa Fe style as are flat roofs, projecting vigas, and wooden lintels. The announced purpose of the ordinance is to preserve the historic sections of the city and its ancient architecture for the culture and economic advantage of the people. The council has, in effect, said that to permit incongruous structures would destroy a great historic area and one of the principal assets of the city.

Since the legislative body of the city has declared that the power is being exercised for a public purpose, the role of the judiciary becomes an exceedingly narrow one. Berman v. Parker, 348 U.S. 26, 33, 75 S.Ct. 98, 99 L.Ed. 27; City of Alamogordo v. McGee, 64 N.M. 253, 327 P. 2d 321.

Under the restricted attack made upon the ordinance,it seems unnecessary to decide here whether aesthetic considerations, denied under earlier decisions, furnish ground for the exercise of the police power as is increasingly held by modern authorities. Berman v. Parker, supra; Opinion of the Justices, 103 N.H. 268, 169 A. 2d 762; and see discussion 35 Boston U.L.R. 615; 32 U. of Cincinnati L.R. 367; 2 Wayne L.R. 63. In any event, without deciding the question, such considerations cannot be entirely ignored. People v. Stover, 12 N.Y. 2d 462, 191 N.E. 2d 272. New Mexico is particularly dependent upon its scenic beauty to attract the host of visitors, the income from whose visits is a vital factor in our economy. Santa Fe is known throughout the whole country for its historic features and culture. Many of our laws have their origin in that early culture. It must be obvious that the general welfare of the community and of the State is enhanced thereby. Bearing in mind all these factors, we hold that regulation of the size of window panes in the construction or alteration of buildings within the historic area of Santa Fe, as a part of the preservation of the "Old Santa Fe Style" of architecture, is a valid exercise of the police power granted to the city. Opinion of the Justices to the Senate, 333 Mass. 773, 128 N.E. 2d 557; Opinion of the Justices to the Senate, 333 Mass. 783, 128 N.E. 2d 563; Opinion of the Justices, 103 N.H. 268, 169 A. 2d 762; City of New Orleans v. Impastato, 198 La. 206, 3 So. 2d 559; City of New Orleans v. Pergament, 198 La. 852, 5 So. 2d 129; City of New Orleans v. Levy, 223 La. 14, 64 So. 2d 798; and see State v. Wieland, 269 Wis.262, 69 N.W. 2d 217. In best v. Zoning Bd. of Adjustment of the City of Pittsburg, 393 Pa. 106, 141 A. 2d 606, 612, the court said:

> "Not only is the preservation of the attractive characteristics of a community a proper element of the general welfare, but also the preservation of property values is a legitimate consideration...."

Defendants argue together their claim that the ordinance unconstitutionally delegates legislative authority to the style committee and the planning commission and that it fails to furnish adequate standards to guide the commission. It is settled that a legislative body may not vest unbridled or arbitrary power in an administrative agency but must furnish a reasonably adequate standard to guide it. State v. State Board of Finance, 69 N.M. 430, 367 P. 2d 925. Standards required to support a delegation of power by

the local legislative body need not be specific. Most decisions hold that broad general standards are permissible "so long as they are capable of a reasonable application and are sufficient to limit and define the Board's discretionary powers." Hiscox v. Levine, (1961), 31 Misc. 2d 151, 216 N.Y.S. 2d 801, 804; Gilman v. Newark, (1962), 73 N.J. Super. 562, 180 A. 2d 365, 383; Miller v. Tacoma, (1963), 61 Wash. 2d 374, 378 P. 2d 464, 473; State v. Wieland, supra. See Ward v. Scott, 11 N.J. 117, 93 A. 2d 385, 387, for a full evaluation of broad standards set by various legislatures and held to be valid. In line with the foregoing, the Annotation, 58 A.L.R. 2d 1083, 1087, entitled "Attack on validity of zoning statute, ordinance, or regulation on ground of improper delegation of authority to board or officer," points out that:

> "In general, it may be said that there is a growing tendency to sustain delegations of zoning authority guided only by general policy standards, experience having shown that any attempt to limit the administrative decisions to matters of detail as to which precise standards can be laid down results only in creating an inflexible and unworkable zoning plan with resultant pressures on the legislative body for frequent amendments leading to the evils of spot zoning."

See, also, Anderson, Architectural Controls, 12 Syracuse L. R. 26, 44 (1960).

Defendants argue that the exception, "Except as otherwise provided" in the "panes of glass" provision makes the requirement meaningless. The ordinance expressly provides at least one exception to the maximum thirty-inch window pane, in permitting larger plate glass windows under portals. Applying the above principles to the terms of the ordinance under consideration, it is apparent that there has not been a grant of uncontrolled power to an administrative agency as in State v. State Board of Finance, supra. As we have pointed out, the purpose of the ordinance is to preserve the historic style of architecture. To that end the "Old Santa Fe Style" is described in great detail, including such things as roof lines, fire walls, inset and exterior portals, canales, decorative panels, etc. The functions and duties of the style committee, as provided by the ordinance, are to conform the architectural style of proposed alterations, with the description in the ordinance and the committee's determination must be based on the standard of:

> "...harmony with adjacent buildings, preservation of historical and characteristic qualities, and conformity to the Old Santa Fe Style"

Since the council recognized that it would be impossible to rigidly and literally set forth every detail without impairing the underlying public purpose, it adopted a policy expressed in the ordinance which enables some variances consistent with the public interest and the purpose of the overall zone plan. A reading of the entire historical section of the zoning ordinance makes it apparent the council did, however, provide specific safeguards to insure against arbitrary action or unrestricted administrative discretion. Thus, the style committee is required to report to the city planning commission and it, in turn, to the city council.

In the light of all of the foregoing, we conclude that there is no substantial basis for a claim that the ordinance vests uncontrolled discretion in an administrative body, nor does it appear that the ordinance fails to furnish the necessary standards to guide the administrative body designated by the ordinance.

Defendants assert that because other buildings in the neighborhood have display windows with panes exceeding thirty inches square, the defendants are denied the equal protection of the law by reason of failure to enforce the ordinance against others. Defendants point to five photographs of buildings which contain windows with panes in excess of thirty inches. The city has sufficiently explained that the windows complained about as unauthorized variations were exempt from the requirement for a number of reasons.

No evidence of a policy of discrimination or partiality amounting to an arbitrary or capricious administration of the ordinance has been pointed out to us. The courts will not interfere with the discretion vested in the administrative body in the absence of a showing of an abuse of its discretion. Beirn v. Morris, 14 N.J. 529, 537, 103 A. 2d 361; Sinclair Refining Co. v. City of Chicago, (7th Cir. 1949), 178 F. 2d 214, 217. Furthermore, it is no defense to a prosecution for violating an ordinance that others have been permitted to violate it without prosecution or punishment. Kansas City v. Wilhoit (Kan. City Ct. App., 1951), 237 S.W. 2d 919, 924. We find no merit to the assertion that there has been such an unequal and oppressive application of the ordinance as to amount to denial by the State of that equal protection of the laws which is secured to defendants by the Fifth Amendment to the United States Constitution.

Finding no error, the judgment and sentence appealed from are affirmed.

IT IS SO ORDERED.

s/ M. E. NOBLE
Justice

ARKANSAS HISTORIC DISTRICTS ACT
(Arkansas Annotated Code, §19-5001 to 19-5011; Acts, 1963, No. 484)

§19-5001. Short title.--This act shall be known and may be cited as the Historic Districts Act.

§19-5002. Legislative purpose.--The purpose of this act is to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of buildings, sites, places, and districts of historic interest, through the maintenance of such as landmarks in the history of architecture of the municipality, of the state and of the nation, and through the development of appropriate settings for such buildings, places and districts.

§19-5003. Procedure for establishment of historic districts.--Any city having a population of not less than 26,000 and not more than 30,000 and any city having a population of not less than 100,000 according to the most recent Federal Census may, by ordinance adopted by vote of the governing body thereof, establish historic districts and may make appropriations for the purpose of carrying out the provisions of this act, subject to the following provisions:

A. An Historic District Commission, established as provided in Section 4, shall make an investigation and report on the historic significance of the buildings, structures, features, sites or surroundings, included in any such proposed historic district and shall transmit copies of its report to the Arkansas History Commission, the Planning Commission of the municipality, if any, and in the absence of such Planning Commission, to the governing body of the municipality, for their consideration and recommendation, and each such body or individual shall give its recommendation to the Historic District Commission within sixty days from the date of receipt of such report. Such recommendations shall be read in full at the public hearing to be held by the Historic District Commission as hereinafter specified. Failure to make recommendations within sixty days after date of receipt shall be taken as approval of the report of the Historic District Commission.

B. The Historic District Commission shall hold a public hearing on the establishment of a proposed historic district after giving notice of such hearing by publication in a newspaper of general circulation in the municipality once a week for three consecutive weeks, the first such publication to be at least twenty days prior to said public hearing. Such notice shall include the time and place of said hearing, specify the purpose and describe the boundaries of the proposed historic district.

C. The Historic District Commission shall submit a final report with its recommendations and a draft of a proposed ordinance to the governing body of the municipality within sixty days after the public hearing. The report shall contain the following:

1. A complete description of the area or areas to be included in the historic district or districts. Any single historic district may embrace non-contiguous lands;

2. A map showing the exact boundaries of the area or areas to be included within the proposed district or districts;

3. A proposed ordinance designed to implement the provisions of this act;

4. Such other matters as the Commission may deem necessary and advisable.

D. The governing body of the municipality after reviewing the report of the Historic District Commission shall take one of the following steps.

1. Accept the report of the Historic District Commission and enact an ordinance to carry out the provisions of this act;

2. Return the report to the Historic District Commission with such amendments and revisions thereto as it may deem advisable, for consideration by the Historic District Commission and a further report to the governing body of the municipality within ninety days of such return;

3. Reject the report of the Historic District Commission stating its reasons therefor and discharge the commission.

E. The Historic District Commission established under the provisions of this act may, from time to time, by following the procedures set out in subsections (B) to (D), inclusive, of this section, suggest proposed amendments to any ordinance adopted hereunder or suggest additional ordinances to be adopted hereunder.

§19-5004. Appointment of historic district commission--Qualifications--Term--Vacancies--Compensation--Officers--Authority.--The Historic District Commission, hereinafter referred to as "Commission", shall consist of five members appointed by the mayor, subject to confirmation by the governing body of the city, who shall be electors of such municipality holding no salaried or elective

municipal office. The appointments to membership on the Commission shall be so arranged that the term of at least one member will expire each year, and their successors shall be appointed in a like manner for terms of three years. Vacancies shall be filled in like manner for the unexpired term. All members shall serve without compensation. The Commission shall elect a Chairman and Vice-Chairman annually from its own number. The Commission may adopt rules and regulations not inconsistent with the provisions of this act and may, subject to appropriation, employ clerical and technical assistance or consultants and may accept money, gifts or grants, and use the same for such purposes.

§19-5005. Certificate of appropriateness required.-- No building or structure including stone walls, fences, light fixtures, steps and paving or other appurtenant fixtures shall be erected, altered, restored, moved, or demolished within an historic district until after an application for a certificate of appropriateness as to exterior architectural features has been submitted to and approved by the Commission. The municipality shall require a certificate of appropriateness to be issued by the Commission prior to the issuance of a building permit or other permit granted for purposes of constructing or altering structures. A certificate of appropriateness shall be required, whether or not a building permit is required. For purposes of this act "exterior architectural features" shall include the architectural style, general design and general arrangement of the exterior of a structure, including the kind and texture of the building material and the type and style of all windows, doors, light fixtures, signs and other appurtenant fixtures. The style, material, size and location of outdoor advertising signs and bill posters within an Historic District shall also be under the control of the Commission.

§19-5006. Commission not to be concerned with interior architectural features.--In its deliberations under this act, the commission shall not consider interior arrangement or use and shall take no action under this act except for the purpose of preventing the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures or appurtenant fixtures, in the Historic District obviously incongruous with the historic aspects of the District.

§19-5007. Filing of certificate--Hearing--Notice--Determination.-- Within a reasonable time not to exceed thirty days after the filing of an application for a certificate of appropriateness with the Commission, said Commission shall determine the property to be materially affected by such applications and forthwith send by mail, postage prepaid, to the applicant and to the owners of all such properties to be materially affected, notice of the hearing to be held by the Commission on said application.

The Commission may hold such public hearings as are necessary in considering any applications for certificates of appropriateness. The Commission shall act on such application for certificate of appropriateness within a reasonable period of time. The Commission shall determine whether the proposed construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, or appurtenant fixtures involved will be appropriate to the preservation of the Historic District for the purposes of this act; or whether, notwithstanding that it may be inappropriate, owing to conditions especially affecting the structure involved, but not affecting the Historic District generally, failure to issue a certificate of appropriateness will involve a substantial hardship, financial or otherwise, to the applicant, and whether such certificate may be issued without substantial detriment to the public welfare and without substantial derogation from the intent and purpose of this act.

If the Commission determines that the proposed construction, reconstruction, alteration, restoration, moving or demolition is appropriate or is not appropriate, owing to conditions as aforesaid but that failure to issue a certificate of appropriateness would involve substantial detriment or derogation as aforesaid, or if the Commission fails to make a determination within a reasonable time prescribed by ordinance, the Commission shall forthwith approve such application and shall issue to the applicant a certificate of appropriateness. If the Commission determines that a certificate of appropriateness should not be issued, it shall place upon its records the reasons for such determination and may include recommendations respecting the proposed construction, reconstruction, alteration, restoration, moving or demolition. The Commission shall forthwith notify the applicant of such determination.

§19-5008. Certain changes not prohibited.--Nothing in this act shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in the historic district which does not involve a change in design, material color, or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, or demolition of any such feature which the building inspector or similar agent shall certify is required by the public safety because of an unsafe or dangerous condition; nor to prevent the construction, reconstruction, alteration, restoration or demolition of any such feature under a permit issued by a building inspector or similar agent prior to the effective date of the establishment of said Historic District.

§19-5009. Appeal from decision to chancery court--Remedy exclusive.--Any applicant aggrieved by the determination of the Commission may, within 30 days after the making of such decision, appeal to the Chancery Court of the county wherein the property is located. The Court shall hear all pertinent evidence and shall annul the determination of the Commission if it finds the reasons given for such determinations to be unsupported by the evidence or to be insufficient in law and may make such other decree as justice and equity may require. The remedy provided by this section shall be exclusive; but the applicant shall have all rights of appeal as in other equity cases.

§19-5010. Powers vested in chancery court.--The Chancery Court having jurisdiction over the property in question shall have jurisdiction in equity to enforce the provisions of this act in the rulings issued thereunder and may restrain by injunction violations thereof.

§19-5011. Violation to constitute misdemeanor.--Any person who violates any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than $10.00 nor more than $500.00. Each day that a violation continues to exist shall constitute a separate offense.

SESSION 196 5

INTRODUCED BY:

Referred to:

A BILL TO BE ENTITLED AN ACT AMENDING THE MUNICIPAL ZONING ENABLING ACT SO AS TO AUTHORIZE THE DESIGNATION AND PROTECTION OF HISTORIC DISTRICTS

The General Assembly of North Carolina do Enact:

Section 1. Legislative findings. It is hereby determined and declared as a matter of legislative finding that the historical heritage of this State is among its most valued and important assets. It is the intent of this Act to authorize municipalities of the State, by appropriate provisions within their zoning ordinances, (1) to safeguard the heritage of the municipality by preserving any districts therein which reflect elements of its cultural, social, economic, political, or architectural history, (2) to stabilize and improve property values in such a district, (3) to foster civic beauty, (4) to strengthen the local economy, and (5) to promote the use and preservation of such districts for the education, welfare, and pleasure of residents of the municipality and of the State as a whole.

Sec. 2. Article 14 of Chapter 160 of the General Statutes of North Carolina as amended is hereby amended by adding the following new sections between § 160-178 and § 160-179:

"§ 160-178.1. Designation of historic districts. Any such legislative body may, as part of a zoning ordinance enacted or amended pursuant to this article, designate (and

from time to time amend) one or more historic districts within the area subject to the ordinance. Such ordinance may treat historic districts either as a separate use-district classification or as districts which overlap other zoning districts. No historic district or districts shall be designated until:

"(a) the zoning commission or local planning board shall have made an investigation and report on the historic significance of the buildings, structures, features, sites or surroundings included in any such proposed district, and shall have prepared a description of the boundaries of such district, and

"(b) the State Department of Archives and History, acting through such agent or employee as may be designated by its Director, shall have made an analysis of a recommendations concerning, such report and description of proposed boundaries. Failure of the Department to submit its analysis and recommendations to the municipal governing body within 60 days after a written request for such analysis has been mailed to it shall relieve the municipal governing body of any responsibility for awaiting such analysis, and said body may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

"The municipal governing body may also in its discretion, refer the planning board's report and proposed boundaries to any local Historic Sites Commission or other interested body for its recommendations prior to taking action to amend the zoning ordinance.

"On receipt of these reports and recommendations, the municipal legislative body may proceed in the same manner

as would otherwise be required for the adoption or amendment of any appropriate zoning ordinance provisions.

"§160-178.2. Historic district commission. In the event that a municipal legislative body chooses to designate one or more historic districts, it shall appoint a Historic District Commission. Such commission shall consist of not less than three nor more than nine members, a majority of whom shall be qualified by special interest, knowledge, or training in such fields as history or architecture, who need not be residents of the municipality. Members shall be appointed for such terms (not to exceed four years, but with eligibility for reappointment) as shall be specified by the municipal legislative body. The legislative body, may, in its discretion, appoint the local planning board ex officio as the Historic District Commission.

"§160-178.3. Certificate of appropriateness required. From and after the designation of a historic district, no building nor structure (including stone walls, fences, light fixtures, steps and pavement, or other appurtenant features) nor any type of outdoor advertising sign shall be erected, altered, restored, or moved within such district until after an application for a certificate of appropriateness as to exterior architectural features has been submitted to and approved by the Historic District Commission. The municipality shall require such a certificate to be issued by the Commission prior to the issuance of a building permit or other permit granted for purposes of constructing or altering structures. A certificate of appropriateness shall be required whether or not a

building permit is required.

"For purposes of this act, 'exterior architectural features' shall include the architectural style, general design, and general arrangement of the exterior of a structure, including the kind and texture of the building material and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In case of outdoor advertising signs, 'exterior architectural features' shall be construed to mean the style, material, size, and location of all such signs.

"The Commission shall not consider interior arrangement or use and shall take no action under this section except for the purpose of preventing the construction, reconstruction, alteration, restoration, or moving of buildings, structures, appurtenant fixtures, or outdoor advertising signs in the historic district which would be obviously incongruous with the historic aspects of the district.

"Prior to issuance or denial of a certificate of appropriateness the Commission shall take such action as may reasonably be required to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard. In cases where the Commission deems it necessary, it may hold a public hearing concerning the application. An appeal may be taken to the Board of Adjustment from the Commission's action in granting or denying the certificate, in the same manner as any other appeal to such Board. Any appeal from the Board of Adjustment's decision in any such case shall be heard by the Superior Court of the County in which

the municipality is located. Trial shall be de novo, with procedure as in other civil matters.

"§160-178.4. Certain changes not prohibited. Nothing in this article shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in a historic district which does not involve a change in design, material, color, or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, or demolition of any such feature which the building inspector or similar official shall certify is required by the public safety because of an unsafe or dangerous condition.

"§160-178.5. Delay in demolition of historic buildings. From and after the designation of a historic district, no building or structure therein shall be demolished or otherwise removed until the owner thereof shall have given the Historic District Commission 60 days' written notice of his proposed action. During such 60-day period the Historic District Commission may negotiate with the owner and with any other parties in an effort to find a means of preserving the building. If the Historic District Commission finds that the building involved has no particular historic significance or value toward maintaining the character of the district, it may waive all or part of such 60-day period and authorize earlier demolition or removal."

Sec. 3. Should any section, clause, or provisions of this Act be declared by the courts to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the Act as a whole nor any part thereof other

than the part so decided to be unconstitutional or invalid.

Sec. 4. All laws and clauses of laws in conflict herwith are hereby repealed to the extent of such conflict. Provided, however, that any municipal legislative body may elect to proceed either under the provisions of this Act or under any similar provisions of its charter, and this Act shall not be construed to repeal such charter provisions.

Sec. 5. This Act shall become effective upon its ratification.

COMMITTEE FOR STUDY OF

MENTAL INSTITUTION EMPLOYEES

LEGISLATIVE COUNCIL STUDY NO. 9
(By Senate Resolution ratified 26 June 1963)

COMMITTEE FOR STUDY OF
MENTAL INSTITUTION EMPLOYEES

Chairman	:	Representative Gordon Greenwood P. O. Box 8 Black Mountain
Ex-Officio	:	T. Clarence Stone, President of the Senate H. Clifton Blue, Speaker of House of Representatives Hugh S. Johnson, Jr., Chairman of the Council
Members from: the Council	:	Senator R. E. Brantley, Vice-Chairman of the Council Representative Jyles J. Coggins Representative Hollis M. Owens, Jr. Representative Sam L. Whitehurst Senator Staton P. Williams
Others	:	Senator David Clark Representative Jack M. Euliss Mrs. James W. Collier

Legislative Council Study No. 9

Introduced by: McMillan of Wake,
Williamson of Columbus,
Bunn and Coggins
Adopted : June 25, 1963

A HOUSE RESOLUTION RELATING TO A STUDY BY THE LEGISLATIVE COUNCIL OF THE FEASIBILITY OF A FORTY-HOUR WEEK FOR EMPLOYEES OF MENTAL INSTITUTIONS.

WHEREAS, the members of the House of Representatives are mindful of the merif of efficiency in the treatment and care of the patients at the several North Carolina Mental Institutions; and

WHEREAS, the members of the House of Representatives are of the opinion that the question of the feasibility of a forty-hour work week is a worthy subject for study by the Legislative Council; NOW, THEREFORE,

Be it resolved by the House of Representatives:

Section 1. It is hereby requested that the Legislative Council do make a study of the question of the feasibility of a forty-hour work week for employees at the several North Carolina Mental Institutions.

Sec. 2. This Resolution shall be in full force and effect upon its adoption.

Pursuant to the House Resolution adopted June 25, 1963, captioned "A House Resolution relating to a study by the Legislative Council of the feasibility of a forty-hour work week for employees of Mental Institutions", the Legislative Council Committee assigned to study the preceding Resolution submits the following report for your consideration:

In conferences with the Personnel Department and the Department of Administration, the Committee has found that the various mental institutions are currently devising a program whereby all employees will be working not more than forty hours per week or its equivalent by June 30, 1965. Funds for this program are available and the forty-hour week will be accomplished by phasing-in during the fiscal year, July 1, 1964 through June 30, 1965. In ascertaining the facts concerning working hours for mental institutions, the Committee also found that other Departments are operating with employees who work more than forty-hours per week. A separate report by the Personnel Committee will recommend that all state employees be placed on a forty-hour week as soon as necessary funds are available.

The above report is respectfully submitted on behalf of the Committee by the Chairman, Representative Gordon H. Greenwood.

Gordon H. Greenwood

Gordon H. Greenwood, Chairman
Personnel Committee

July 16, 1964

COMMITTEE FOR STUDY OF

HOUSE BILL 1122

LEGISLATIVE COUNCIL STUDY NO. 10
(By House Resolution ratified 25 June 1963)

COMMITTEE FOR STUDY OF
1963 HOUSE BILL 1122

Chairman	:	Senator Staton P. Williams 331 North Ninth Street Albemarle, North Carolina
Acting Chairman	:	Senator Carl V. Venters Jacksonville North Carolina
Ex-Officio	:	T. Clarence Stone, President of the Senate H. Clifton Blue, Speaker of House of Representatives Hugh S. Johnson, Jr., Chairman of the Council
Members from the Council	:	Representative Jyles J. Coggins Representative L. Sneed High Representative Hollis M. Owens, Jr. Senator Thomas J. White
Others	:	Representative Allen C. Barbee

Legislative Council Study No. 10

Introduced by: Representative Barbee
Adopted : June 25, 1963

A RESOLUTION AUTHORIZING THE LEGISLATIVE COUNCIL TO MAKE A STUDY OF HOUSE BILL 1122 PROVIDING THAT FEES OF ATTORNEYS REPRESENTING UNSUCCESSFUL CAVEATORS SHALL NOT BE TAXED AGAINST DECEDENTS' ESTATES AND MAKE RECOMMENDATIONS TO THE 1965 GENERAL ASSEMBLY.

WHEREAS, House Bill 1122 providing that no fees of attorneys representing unsuccessful caveators shall be allowed and taxed against the estate, or the representative of the estate, of any decedent, or against the propounders of the will of any decedent, was introduced by Representative Barbee on May 27, 1963; and

WHEREAS, House Bill 1122 was referred to Committee on Judiciary No. 1 of the House of Representatives and was considered by that Committee to have merit but to need further study; and

WHEREAS, it is felt that sufficient time does not remain in the 1963 Session of the General Assembly to give the bill proper study and consideration to permit it to pass through the legislature prior to adjournment; NOW, THEREFORE,
Be it resolved by the House of Representatives of the General Assembly of North Carolina:

Section 1. The Legislative Council is hereby authorized to make a study of House Bill 1122 to the end that it may make recommendations to the 1965 General Assembly concerning the desirability of enactment of legislation by the

1965 General Assembly of legislation prohibiting fees of attorneys representing unsuccessful caveators being allowed and taxed against the estate, or the representative of the estate, of any decedent, or against the propounder of the will of any decedent.

Sec. 2. This Resolution shall become effective upon its adoption.

House Bill 1122

Introduced by Representative Barbee

A BILL TO BE ENTITLED AN ACT TO AMEND G. S. 6-21 TO EXCLUDE FEES OF ATTORNEYS REPRESENTING UNSUCCESSFUL CAVEATORS FROM COSTS TAXED AGAINST DECEDENTS' ESTATES.

The General Assembly of North Carolina do enact:

Section 1. G.S. 6-21 is amended by adding the following proviso at the end of the section:

"Provided, however, no fees of attorneys representing unsuccessful caveators shall be allowed and taxed against the estate, or the representative of the estate, of any decedent, or against the propounders of the will of any decedent."

Sec. 2. All laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 3. This Act shall be in full force and effect from and after its ratification.

(Not reported by House Committee)

Pursuant to House Resolution authorizing the Legislative Council to make a study of H. B. 1122, providing that fees of attorneys representing unsuccessful caveators shall not be taxed against decedents' estates and make recommendations to the 1965 General Assembly, the Committee of the Legislative Council, after careful study and consideration, makes the following recommendation:

That G.S. 6-21.2, as the same presently appears in the 1963 Cumulative Supplement to Volume 1B of the General Statutes, be amended by striking out the period at the end of the present subsection (2), and inserting a semi-colon in lieu of the period, and adding thereto the following language: "provided, however, that in any caveat proceeding under this subsection, if the court finds as a fact that the proceeding is frivolous or without merit the court shall not tax against the estate of the decedent, as a part of the costs, attorneys' fees for the attorneys for the caveators."

Attached hereto is a copy of the proposed bill embodying the recommendation of the subcommittee.

Respectfully submitted,

Carl V. Venters

Senator Carl V. Venters, Chairman

Reed High

Allen C. Barbee

Hugh S. Johnson Jr

January 29, 1965

SESSION 1965

INTRODUCED BY:

Representative Barbee

Referred to:

A BILL TO BE ENTITLED AN ACT RELATING TO ATTORNEYS' FEES IN PROCEEDINGS TO CAVEAT WILLS.

The General Assembly of North Carolina do enact:

Section 1. Subsection 2 of G.S. 6-21, as the same presently appears in the 1963 Cumulative Supplement to Volume 1B of the General Statutes, is hereby amended by striking out the period at the end of the present Subsection 2, inserting a semicolon in lieu of the period, and adding thereto the following language: "provided, however, that in any caveat proceeding under this subsection, if the court finds as a fact that the proceeding is frivolous or without merit, the court shall not tax against the estate of the decedent, as a part of the costs, attorneys' fees for the attorneys for the caveators."

Sec. 2. This Act shall not apply to pending litigation.

Sec. 3. All laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 4. This Act shall become effective upon its ratification.

COMMITTEE FOR STUDY OF

MUNICIPAL SCHOOL TRANSPORTATION

LEGISLATIVE COUNCIL STUDY NO. 11
(By House Resolution ratified 25 June 1963)

COMMITTEE FOR STUDY OF
MUNICIPAL SCHOOL TRANSPORTATION

Chairman	:	Senator Staton P. Williams 331 North Ninth Street Albemarle, North Carolina
Acting Chairman	:	Senator R. E. Brantley P. O. Box 127 Tryon, North Carolina
Ex-Officio	:	T. Clarence Stone, President of the Senate H. Clifton Blue, Speaker of House of Representatives Hugh S. Johnson, Jr., Chairman of the Council
Members from: the Council	:	Senator Irwin Belk Senator Cicero P. Yow Representative Jyles J. Coggins Representative Gordon Greenwood Representative L. Sneed High Representative Hollis M. Owens, Jr.
Others	:	Representative Carl Bailey Senator Claude Currie Representative A. A. McMillan of Wake

Introduced by: Rep. Bailey
Adopted : June 25, 1963

A HOUSE RESOLUTION REQUIRING THE LEGISLATIVE COUNCIL TO STUDY THE EFFECT OF S. B. 534 RELATING TO TRANSPORTATION OF SCHOOL PUPILS WITHIN A MUNICIPALITY ON REVENUES OF LOCAL BUS COMPANIES AND ON LOCAL BUS SERVICE GENERALLY.

WHEREAS, S.B. 534, as amended, would promulgate a State policy of using funds appropriated by the State for school transportation to transport pupils living within a municipality to a public school located within the municipality; and

WHEREAS, the providing of free transportation by State and local governments to school pupils living within a municipality might adversely affect the revenues of local bus companies and might result in the suspension of local bus service in some municipalities within the State; NOW, THEREFORE, Be it resolved by the House of Representatives:

Section 1. The Legislative Council is hereby authorized and directed to proceed to study the effect S.B. 534, as amended, will have on local bus companies now hauling school children, its effect on the revenues of such companies and on local bus service generally, and the Legislative Council shall report its findings to the 1965 General Assembly within one month after it convenes.

Sec. 2. This Resolution shall be in full force and effect from and after the date of its adoption.

Senate Bill 534

Introduced by Senators Humber, Jordan and Hamilton

Ratified 19 June 1963

A BILL TO BE ENTITLED AN ACT TO AMEND SUBCHAPTER IX OF CHAPTER 115 OF THE GENERAL STATUTES OF NORTH CAROLINA RELATING TO THE TRANSPORTATION OF PUPILS RESIDING WITHIN A MUNICIPALITY ASSIGNED TO PUBLIC SCHOOLS WITHIN THE SAME MUNICIPALITY.

WHEREAS, the North Carolina State Board of Education now allocates funds for the purpose of providing transportation to the pupils enrolled in the public schools within this state when such pupils

(a) reside outside municipalities and attend schools located outside municipalities; or

(b) reside outside municipalities and attend schools located inside municipalities; or

(c) reside inside municipalities and attend schools located outside municipalities; or

(d) reside in territory annexed by a municipality after February 6, 1957, and attend schools within the same municipality, when transportation was provided in such area prior to annexation; or

(e) reside in one municipality but attend schools in another municipality; and

WHEREAS, the North Carolina State Board of Education does not allocate funds for transporting children who live within the same municipality and attend public schools within the same municipality except as hereinabove set forth; and

WHEREAS, in recent years there has been a substantial expansion of the territory encompassed by our cities and towns through annexations thereby causing many pupils residing within a municipality and assigned to schools within the same municipality to travel great distances often in excess of five miles, without benefit of public school transportation, all to the great detriment and hardship of many citizens of our state; and

WHEREAS, all funds appropriated from time to time by the General Assembly for the purpose of providing transportation to the pupils enrolled in the public schools within this State should be allocated by the North Carolina State Board of Education without regard to the location or existence of any municipal boundary line; NOW, THEREFORE,

The General Assembly of North Carolina do enact:

Section 1. Chapter 115 of the General Statutes is amended by the addition of new section immediately following G.S. 115-181, to be designated G.S. 115-181.1 and to read as follows:

"§ 115-181.1. Municipal corporate limits to have no bearing on eligibility for school transportation. - This sub-

chapter shall be construed to place upon the State, the State Board of Education in its use of funds appropriated by the State for school transportation, and any county or city administrative unit which elects to provide school transportation, the same duty to supply funds for the transportation of pupils who live within the corporate limits of a municipality in which is located a public school in which such pupils are enrolled or assigned as that required for transportation to or from school of any other pupils residing within the county or city administrative unit. Provided, however, that as to transportation supplied hereunder to pupils whose place of residence and school are both located within the same municipality, any County or City administrative unit electing to provide under the provisions of this subchapter shall ascertain whether as of the time of such election there is a franchized public carrier within such municipality willing and able to provide such transportation and if there is, then said administrative unit may contract for transportation of its pupils by one or more of such carriers, subject to existing control of services and rates by the governing body of the municipality and the North Carolina Utilities Commission."

Sec. 2. G.S. 115-186(b) is rewritten to read as follows:

"Unless road or other conditions shall make it unadvisable to do so, public school buses shall be routed on State and municipality-maintained streets and roads so that

the school bus to which each pupil is assigned shall pass within one mile of the residence of each such pupil who lives one and one-half miles or more from the school to which enrolled or assigned, without regard to whether or not such pupil's residence and assigned school are located within the corporate limits of the same municipality."

Sec. 3. G.S. 115-186(e) is deleted in its entirety.

Sec. 4. G.S. 115-190.1 is deleted in its entirety.

Sec. 5. All laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

Sec. 6. The provisions of this Act shall be in full force and effect from and after July 1, 1965.

COMMITTEE FOR STUDY OF MUNICIPAL SCHOOL TRANSPORTATION

Pursuant to Legislative Council Study 11, the Committee for study of Municipal School Transportation met several times, and conducted a full public hearing.

The Committee was authorized by said Council Study 11 and directed to proceed to study the effect of Senate Bill 534, as amended, on local bus companies now hauling school children, its effect on the revenues of such companies and the local bus service generally.

We have come to the conclusion, after full study and public hearing that said Senate Bill 534 will not have an adverse effect on local bus companies now hauling school children, will not adversely affect the revenues of such companies and will not adversely affect the local bus service generally. Therefore, it is the considered opinion of this Committee that Senate Bill 534, as amended, should not be altered but should remain as is.

The public hearing produced evidence, submitted by local bus lines and by The Honorable Harry Westcott, Chairman of the North Carolina Utilities Commission, to the effect that a large percentage of the receipts of local bus companies

comes from the hauling of school children. It is perfectly clear that without the receipts derived from this business great financial damage would result to these local bus companies. We are of the opinion that they do at the present time and will continue to haul school children within municipalities cheaper and safer than State school buses could do.

Our study has revealed that the school boards are not interested in taking over the business of hauling children and will gladly contract with the local bus lines to permit the local bus lines to continue to haul children within municipalities.

This Committee is also of the opinion that municipal traffic would be cluttered up and congested by the use of State school buses within municipalities.

Therefore, we are desirous and we are confident that school boards will contract with the local bus lines and that harmonious conditions will exist under the terms of Senate Bill 534.

Since the ultimate responsibility for all matters connected with the schools rests with the respective boards of education, we feel that, although the bus lines will do a better job and a less expensive job of hauling school children in municipalities, we should not recommend that Senate Bill 534 should be made mandatory as far as forcing the school boards to contract with local bus lines in all cases. Thus, our recommendation to the General Assembly is that no change be made in Senate Bill 534 relative to the contracts between the school boards and the bus lines.