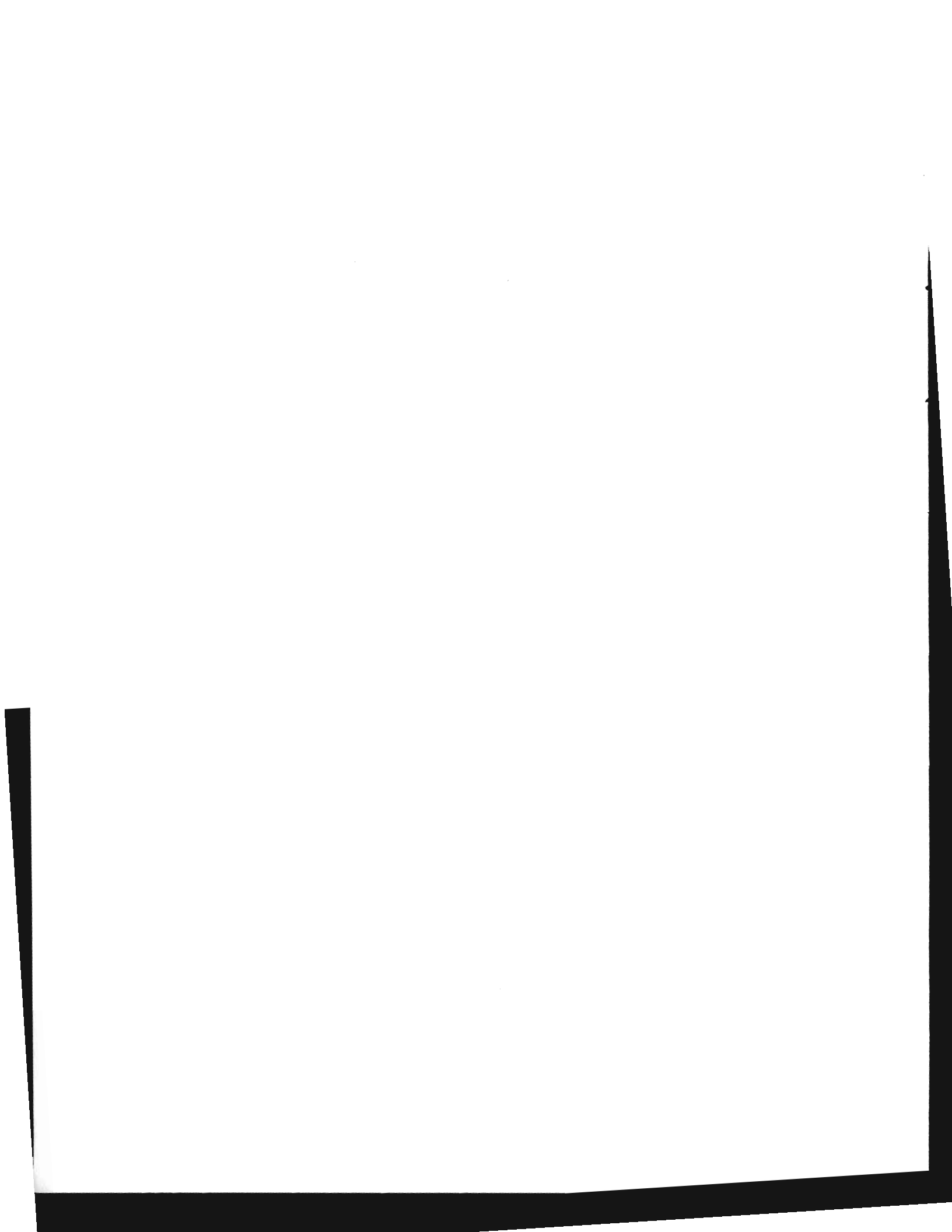


1973 REPORT

LEGISLATIVE RESEARCH COMMISSION

AN INVESTIGATION OF THE DESIRABILITY OF CREATING

A NORTH CAROLINA TOBACCO ADVISORY BOARD



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## INTRODUCTION

On July 13, 1971, the House of Representatives of the General Assembly of North Carolina adopted House Resolution 1524 directing the Legislative Research Commission "to make an in-depth study of the tobacco industry in North Carolina to ascertain whether a Tobacco Advisory Board should be created to provide assistance to the tobacco industry in this State." The Commission was instructed to study harvesting, opening dates of tobacco markets, selling time on the various markets, redrying and processing facilities, powers and duties of the Commissioner of Agriculture with reference to the tobacco industry and other factors deemed necessary to promote orderly flow of tobacco through the markets and to prevent congestion in processing facilities. (A copy of H.R. 1524 is contained in Appendix I.)

House Bill 1487 which sought to establish a North Carolina Tobacco Advisory Board with power to recommend opening dates and allocation of selling time for North Carolina Markets, was considered by the 1971 North Carolina General Assembly and defeated on July 9, 1971 (Unfav. Report by House Calendar Committee); a similar bill, H.B. 148, was defeated during the 1963 session of the North Carolina General Assembly.7

The Co-chairmen of the Legislative Research Commission appointed Senator Thomas E. Strickland Chairman of a Committee (LRC Committee) to undertake a study of HR 1524 and to report findings to the full Commission for review and final endorsement.

Chairman Strickland is a member of the Legislative Research Commission; other members of the LRC Committee to produce the initial study effort were drawn from the General Assembly at large and from tobacco farming interests in the public sector. The LRC Committee members are: Mrs. Harry Caldwell, President of the State Grange; Representative J. A. Everett; Representative Julian B. Fenner; Representative James C. Green (Vice Chairman of the LRC Committee), Mr. B. C. Mangum, President, N. C. Farm Bureau; and Senator Vernon E. White.

#### LRC COMMITTEE PROCEEDINGS

The LRC Committee began its investigation and deliberations on February 25, 1972. (A listing of LRC Committee meetings is contained in Appendix II.)

Representative Green, a sponsor of HR 1524 which authorized the study, indicated that the purpose of the resolution was to remedy the concerns of numerous people from southeastern North Carolina who had discussed their tobacco marketing problems with him. He suggested that the LRC Committee hold public hearings in different geographical areas to gather the views of the people on the problems encountered in the marketing of tobacco.

Mr. John Cyrus, Head of the Tobacco Marketing Section of the North Carolina Department of Agriculture, outlined the present tobacco marketing procedure which results from non-compulsory recommendations of the 33-man Industry-wide Flue Cured Marketing Committee (Marketing Committee) whose membership represents all segments of the tobacco industry: the

farmer, the warehouseman and the buyer. The Marketing Committee is completely voluntary in nature, and it has no statutory authority; however, its recommendations have been generally followed. Members of the Marketing Committee work out a coordinated plan of marketing schedules and opening dates for each of the tobacco belts in a five state area. A major problem for the Marketing Committee has been a satisfactory allocation of sales time between the various belts. This is a complicated legal situation and an interstate problem. Mr. Cyrus reminded the LRC Committee that the Federal Courts have ruled that tobacco is a commodity which moves in interstate commerce and that a state cannot regulate tobacco marketing in restraint of trade without violating the federal antitrust laws. Mr. Cyrus further offered his personal opinion that the Marketing Committee's 1971 basis for selling time allocation (crop estimates) was unstable, and was probably one of the reasons for dissatisfaction with the marketing scheme.

Looking to draw on outside experience, the LRC Committee went to the statutes of other states, particularly Georgia. Georgia has a statutory Tobacco Advisory Board which surveys the condition of the state tobacco crop and recommends an opening date for the Georgia markets. (Georgia Code §§ 111-208 and 111-209.) However, Georgia has only one belt; North Carolina has four. (Provisions of the North Carolina General Statutes that are relevant to tobacco marketing, including the powers of the Commissioner of Agriculture, are set out in Appendix III.) N. C. Commissioner of Agriculture Jim Graham

attended some of the LRC Committee meetings; both Mr. Graham and Mr. Cyrus of his staff indicated that under current conditions the present statutory powers of the N. C. Commissioner of Agriculture are adequate.

#### PRELIMINARY HEARING

On March 27, 1972, the LRC Committee heard from three witnesses knowledgeable in tobacco marketing matters. Mr. Bill Glenn, President of Carolina Leaf Tobacco Company in Greenville and former member of the Marketing Committee, stated his opposition to any proposed Tobacco Advisory Board which would set the opening dates or otherwise control the marketing of flue-cured tobacco within the State. Mr. Glenn traced the history of attempts to control tobacco marketing during the last seventy (70) years beginning with the Tobacco Association of the United States, a group of domestic manufacturing companies and export leaf companies which decided on dates buyers would be available on the various belts. In the 1940's the warehouse associations took over this function, attempting to set opening dates. Now the Marketing Committee makes recommendations with respect to opening dates and sales times for the marketing of tobacco.

The method of marketing and processing tobacco changed significantly during this period. Processing changed from simple bundling to more sophisticated loose-leaf methods. Equipment required by the new type of processing is expensive, and because of the expense the number of processing plants has



been reduced. The fewer number of plants has caused a slow-down in the time required from market to processing completion because each of the plants now has to process an increased portion of the total volume of tobacco.

The purpose of the Marketing Committee, Mr. Glenn explained, is to recommend procedures to assist the orderly flow of tobacco from the farmer through the warehouse to the processor. This orderly flow is necessary because the limited number of manufacturing plants can only process 85 million pounds per week. Before the existence of the Marketing Committee tobacco was allowed to jam up in the markets (too much to be processed normally), and costly marketing holidays were necessary. No holidays have been necessary since the start of the Marketing Committee. There are five flue-cured tobacco belts, ranging south to north: Georgia-Florida, the Border, the Eastern Belt, the Middle Belt and the Old Belt. Historically they have opened in order, from south to north. In normal growing years Georgia-Florida tobacco is ready ahead of the other belts; and, also in normal years, the other belts follow in geographical order. Buyers start on the Georgia-Florida Belt and then travel to the next belt north, and so on, finally to the Old Belt.

The Marketing Committee is composed of growers, warehousemen and buying companies, with growers holding a majority. Members are not paid and, as Mr. Cyrus indicated, the Industry's following of recommendations is completely voluntary since there is no statutory authority. The Marketing Committee

provides a forum for all interested parties before recommending a comprehensive marketing plan for all the flue-cured marketing areas.

Mr. Glenn indicated that some of his experiences on the Marketing Committee have been frustrating; but that, for the most part, the Marketing Committee has done an excellent job for the entire industry. He asserted that the buying companies cannot supply enough buyers to work all markets at the same time, and that consequently there must be an orderly series of openings. He recognized that cross-belt movement causes problems for local farmers in the belt of sale. However, Mr. Glenn stated his belief that the Marketing Committee is the best answer to the problems since marketing is interstate in character and beyond solution by a state marketing committee.

Also on March 27, the LRC Committee heard from Mr. F. H. Sugg, a warehouseman from Greenville, who praised the Marketing Committee for its unity of action in promoting an orderly market. He indicated the industry has a limited capacity to process tobacco and that the volume of sale must be kept in line with this capacity by cooperation with the Marketing Committee in order to protect the growers from low prices. He also stated his opposition to the formation of a Tobacco Advisory Board, indicating that single-state regulation in a multi-state marketing scheme would cause problems.

The last witness to be heard by the LRC Committee on March 27, was Mr. Frank Bryant, the present Chairman of the Marketing Committee. He traced problems encountered by the Marketing

Committee in trying to set up an equitable tobacco marketing program; problems and limitations from the demand for tobacco, the number of buyers, the number of graders supplied by the USDA, seasonal workers, seasonal transportation, redrying facilities (80 to 85 million pounds per week) and the amount of tobacco which the Stabilization Board can buy. Mr. Bryant reminded the LRC Committee that the Marketing Committee has received commendations from every segment of the industry and from the state and federal governments praising the work which it has done.

#### BORDER BELT PUBLIC HEARING

The fifth meeting of the LRC Committee on the Tobacco Advisory Board took the form of a public hearing in Whiteville, N. C. on April 10, 1972. The hearing was attended by farmers and other interested parties from the Border Belt.

Mr. Ralph Sasser, the Chairman of the Bladen County Extension Service, gave the Committee the results of a survey of area farmers which showed that thirty-two percent had sold tobacco outside the Border Belt. Mr. Charles Raper, Chairman of the Columbus County Extension Service, stated that 70 percent of the tobacco in that county was not harvested when the market opened there. These witnesses identified the two main problems of Border Belt farmers: (1) crowded local markets bringing the necessity of out-of-belt sales while these markets were open (with accompanying high transportation costs), and (2) the early closing of local markets causing

remaining local tobacco to be sold out-of-belt (with the same high transportation costs).

Farmers which appeared before the LRC Committee for the most part expressed discontent with the marketing time arranged by the Marketing Committee. Mr. Sandy White, Jr., of Clarkton indicated that when the Border markets opened, all of his tobacco was still in the field (because of a late start due to weather). The late start resulted in a bottleneck of sales developing at the warehouses during the last few days of the market period. Mr. Howard Grissom of Dublin told of a long line of trucks waiting outside the warehouses during this period. There were several indications that the warehouse jam resulted from inadequate booking arrangements, and that the bookings used gave favored treatment to some large or influential growers.

Many farmers had to sell their tobacco on other belts because of the inopportune closing time. Some of them, such as Abner Lanier of Wilmington, encountered difficulty in trying to sell their tobacco in other markets. Mr. Lanier finally sold his tobacco 150 miles from his home while using his father's name to overcome the reluctance of warehousemen to schedule the sale of non-local tobacco.

Many of the farmers agreed with Mr. Raper, that they had had no "meaningful contact" with the Marketing Committee. Mr. N.B. Carroll of Tar Heel, N. C. testified that he was without a channel to tell the Marketing Committee of his tobacco marketing problems. Mrs. Caldwell of the LRC

Committee urged that individuals like Mr. Carroll attend farm organization meetings, as they are represented on the Marketing Committee.

Other problems which witnesses brought up were varied, but among the identified problem areas was the marketing of non-local tobacco. Mr. Hoyt Inman, the Master of the Waccamaw Grange #1218, expressed his organization's concern over the sale of "outside" tobacco on the Border Belt. He urged that more Border Belt selling time be allocated in order to market this non-local tobacco.

Mr. James R. Oliver, a representative of the Grange on the Marketing Committee from Fairmont, outlined the difficulties of the Marketing Committee in drawing up marketing schedules because of unpredictable factors like weather. Last year the Marketing Committee employed crop estimates as a base to set up the market schedules; Mr. Oliver suggested that perhaps a better base would be historical experience.

Mr. Oliver suggested that last year's allocations were manipulated by the input factor of crop estimates. He argued that the manipulation resulted in the Florida-Georgia Belt getting more market time and the Border Belt less, and that the manipulation was the result of political influence. Georgia and Florida have only one belt, whereas North Carolina has four belts with political power divided among them. He also offered the criticism that the buying companies control the Marketing Committee and its influential subcommittee.

Mr. Oliver put forth some suggested improvements, among which was the reduction of the size of the Marketing Committee to the

size of its subcommittee. (He stated that the subcommittee really makes the allocations and the full Marketing Committee merely "rubberstamps" the subcommittee's decision.)

#### EASTERN BELT PUBLIC HEARING

The sixth meeting of the Committee was held in Greenville on April 17, 1972, to hear the testimony of interested parties in the Eastern Belt. Most of those testifying at the hearing agreed with Mr. Lloyd Massey of Dudley, tobacco grower and State Grange member, that the Marketing Committee had done a good job in allocating market time, considering the problems inherent in the situation. The attitude of the farmer toward market scheduling by the Marketing Committee was typified by Mr. W. L. Williamson of Kenly who expressed a wish that the Eastern Belt open when the local tobacco is ready to be sold. The desire for earlier openings was a popular issue presented. Also, the booking system was criticized as being inadequate or unfair.

The general comment seemed to indicate the price which the farmer receives for tobacco does not vary greatly from belt to belt; however, expenses for the producer-farmer increase when he must transport his tobacco to out-of-belt markets because local markets are not open or are filled with out-of-belt tobacco. Mr. Williamson pointed out that farmers have large cash requirements (1/2 of the required cash is needed after the harvest has begun) and thus farmers are pressed to sell their tobacco as early as possible.

Most of the witnesses expressed confidence in the Marketing Committee, and asserted that the remaining problems in marketing tobacco can be solved by the Marketing Committee. Some witnesses suggested that the Marketing Committee be strengthened. However, responding to LRC Committee questions, some of the farmers testifying indicated that they did not have any input into the Marketing Committee.

All of the witnesses who commented on the advisability of N. C. legislation concerning a tobacco Advisory Board indicated that single-state legislation of this sort probably would not help the multi-state marketing situation. Opposition to a Tobacco Advisory Board was expressed by Representative Sam Bundy, Farmville, N. C.

#### OLD AND MIDDLE BELTS PUBLIC HEARING

The May 15, 1972, meeting of the Committee on Tobacco Advisory Board was held in Durham and was attended by interested parties from the Old and Middle Belts.

Most of the witnesses, including Mr. Walker Stone of the Durham Tobacco Board of Trade, Mr. Charles King of the Board of Directors of the Wake County Farm Bureau and Mr. Lee Russell, an Old Belt farmer, favored the present Marketing Committee. Several witnesses suggested that the Marketing Committee be given more power and strengthened.

Mr. W. W. Yeargin, a farmer in Granville County, repeated the suggestion heard frequently at earlier meetings of the LRC Committee and prominent in the minds of witnesses at this

hearing, that the markets should open earlier to relieve congestion. Limited early openings, allocation of sales time according to processing capacity and improved booking systems were the issues that received repeated mention.

Representative James D. Speed, Louisburg, appeared and expressed his opposition to a Tobacco Advisory Board in North Carolina. In his discussion with LRC Committee members, Representative Speed summarized the feelings of his area farmers as being against such a board.

#### MARKETING COMMITTEE ACTION

In late June of 1972 the Marketing Committee proposed a plan of recommendations that calls for limited early openings in the Eastern, Middle and Old Belts, and makes provision for Border Belt adjustment by additional buyers in the fifth, sixth and seventh weeks of operation. It appears to the LRC Committee that in this plan the Marketing Committee has been reasonably responsive to most of the criticism of the marketing situation. It is noted that there has been some discontent over particular operations within the present system; however, the problems causing this discontent seem to be representative of the inherent conflict that results from an attempt to allocate parts of limited marketing opportunity among competing tobacco interests.



CONCLUSIONS AND RECOMMENDATIONS OF THE LRC COMMITTEE

Responding to the direction of H. R. 1524, the LRC Committee has investigated the desirability of creating a North Carolina Tobacco Advisory Board. The conclusion of the LRC Committee is that the State of North Carolina should not create a Tobacco Advisory Board. This conclusion is supported by the following reasons:

1. A single state tobacco advisory board (in North Carolina) would not have the power to control the historical problems of marketing tobacco in a multi-state marketing situation (five states).
2. Even if the single state power were available, or if use of available state power is attempted, the Federal antitrust laws prohibit the implementation of powers to control the interstate movement of tobacco.
3. Based on its public hearings, the LRC Committee has found little support for the creation of an advisory board; the majority of responsive public comment indicated opposition to any attempt at a legislative solution to marketing problems.
4. There were some comments at the public hearings indicating Marketing Committee opposition and criticism, but there were no suggestions as to how a state tobacco advisory board could better serve the industry.
5. Many of the comments received by the LRC Committee were in favor of continuation of the Marketing Committee operations; many comments urged strengthening the Marketing Committee rather than establishing a parallel effort by a state board.
6. The Marketing Committee is doing a good job, considering the problems of conflicting interests

that it has encountered; a state advisory board would detract from the effectiveness of the Marketing Committee.

7. No part of the tobacco industry seems to want any further governmental control of their operations; the tobacco marketing situation should not become involved in the state political system, as would be the case with a state advisory board.

The LRC Committee feels that the Marketing Committee offers the best forum for resolution of the difficulties in the tobacco markets; however, the LRC Committee study has identified inadequacies and problems in the Marketing Committee's past recommendations. Some of these inadequacies and problems appear to have been remedied by the current Marketing Committee recommendations, but others will undoubtedly arise from the conflict that is necessarily a part of the competition between different tobacco marketing interests. Working within the presently used system, the LRC Committee feels that improvement would come from implementation of the following recommendations:

1. All segments of the tobacco industry should work toward and encourage an orderly scheduling or booking system so that better cooperation between warehousemen and farmers can result in optimal use of processing facilities.
2. The basis that has been used for making selling time allocations, crop estimates, is unstable and there is room for improvement in these allocations; a more accurate method should be used in determining crop estimates.
3. The effective use of limited early openings is encouraged. It is noted that the Marketing Committee has already recommended a plan of limited early openings, and at this time it appears to the LRC Committee that the implementation of this plan has been most successful.

4. The Marketing Committee and its member organizations are encouraged to further publicize the time and location of meetings and the identity of the member-representatives.
5. Farmers are encouraged to bring more information to the Marketing Committee, and the Marketing Committee is encouraged to use this information in responding to tobacco marketing problems.
6. From the LRC Committee investigation and hearings, it appears that a realistic opening date in Georgia would make for a better marketing situation over the whole industry.



GENERAL ASSEMBLY OF NORTH CAROLINA

1971 SESSION

HOUSE RESOLUTION 1524

ADOPTED July 13, 1972

Appendix I



Sponsors: Representative Green; Soles, James, John, Tart.

Referred to: Wildlife Resources.

July 8

1 A RESOLUTION REQUESTING THE LEGISLATIVE RESEARCH COMMISSION TO  
2 STUDY THE ADVISABILITY OF CREATING A TOBACCO ADVISORY BOARD TO  
3 PROVIDE ASSISTANCE TO THE TOBACCO INDUSTRY IN NORTH CAROLINA.

4 Whereas, the tobacco industry is a primary economic  
5 asset to the State; and

6 Whereas, there is a need for an in-depth study of the  
7 tobacco industry in order to assist the growers, warehousemen,  
8 processors and manufacturers in maintaining and improving this  
9 segment of the State's economy; and

10 Whereas, specific attention should be given to  
11 harvesting, marketing, opening dates and other factors to insure  
12 an orderly flow of tobacco through the market channels and to  
13 prevent congestion in processing facilities;

14 Now, therefore, be it resolved by the House of Representatives:

15 Section 1. The Legislative Research Commission is  
16 hereby directed to make an in-depth study of the tobacco industry  
17 in North Carolina to ascertain whether a Tobacco Advisory Board  
18 should be created to provide assistance to the tobacco industry  
19 in this State.

20 Sec. 2. The study shall include, but not be limited to,  
21 harvesting, opening dates of tobacco markets, selling time on the

1 various markets, redrying and processing facilities, and such  
2 other factors as the Commission deems necessary to promote an  
3 orderly flow of tobacco through the markets and to prevent  
4 congestion in processing facilities. The Commission shall study  
5 the powers and duties of the Commissioner of Agriculture with  
6 reference to the tobacco industry.

7           Sec. 3. The Legislative Research Commission shall  
8 report its findings and recommendations to the 1973 General  
9 Assembly.

10           Sec. 4. This resolution shall be effective upon  
11 ratification.

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## APPENDIX II

Meetings of the Committee on the Tobacco Advisory Board of the North Carolina Legislative Research Commission.

1. February 25, 1972 - organization
2. March 13, 1972 - background study
3. March 27, 1972 - preliminary hearing
4. April 10, 1972 - Border Belt hearing
5. April 17, 1972 - Eastern Belt hearing
6. May 15, 1972 - Old and Middle Belts hearing
7. June 5, 1972 - study summary and review
8. July 10, 1972 - report draft
9. August 18, 1972 - final report





APPENDIX III

North Carolina General Statutes

CH. 105. TAXATION

§ 105-77.

§ 105-77. **Tobacco warehouses.** — (a) Every person, firm, or corporation engaged in the business of operating a warehouse for the sale of leaf tobacco upon commission shall, on or before the first day of July of each year, apply for and obtain from the Commissioner of Revenue a State license for the privilege of operating such warehouse for the next ensuing year, and shall pay for such license the following tax:

For a warehouse in which was sold during the preceding year ending the first day of July:

Less than 1,000,000 pounds .....	\$ 50.00
1,000,000 pounds and less than 2,000,000 .....	75.00
2,000,000 pounds and less than 3,000,000 .....	175.00
3,000,000 pounds and less than 4,000,000 .....	250.00
4,000,000 pounds and less than 5,000,000 .....	400.00
5,000,000 pounds and less than 6,000,000 .....	500.00

For all in excess of 6,000,000 pounds, five hundred dollars (\$500.00) and six cents (6¢) per thousand pounds.

(b) If a new warehouse not in operation the previous year, the person, firm, or corporation operating such warehouse may procure a license by payment of the minimum tax provided in the foregoing schedule, and at the close of the season for sales of tobacco in such warehouse shall furnish the Commissioner of Revenue a statement of the number of pounds of tobacco sold in such warehouse for the current year, and shall pay an additional license tax for the current year based on such total volume of sales in accordance with the schedule in this section.

If an old warehouse with new or changed ownership or management, the tax shall be paid according to the schedule in this section, based on the sale during the preceding year, just as if the old ownership or management had continued its operation.

(c) The Commissioner of Agriculture shall certify to the Commissioner of Revenue, on or before the first day of July of each year, the name of each person, firm, or corporation operating a tobacco warehouse in each county in the State, together with the number of pounds of leaf tobacco sold by such person, firm, or corporation in each warehouse for the preceding year, ending on the first day of July of the current year.

(d) The Commissioner of Agriculture shall report to the solicitor of any judicial district in which a tobacco warehouse is located which the owner or operator thereof shall have failed to make a report of the leaf tobacco sold in such warehouse during the preceding year, ending the first day of July of the current year, and such solicitor shall prosecute any such person, firm or corporation under the provisions of this section.

(e) The tax levied in this section shall be based on official reports of each tobacco warehouse to the State Department of Agriculture showing amount of sales for each warehouse for the previous year.

(f) The Commissioner of Revenue or his deputies shall have the right, and are hereby authorized, to examine the books and records of any person, firm, or corporation operating such warehouse, for the purpose of verifying the reports made and of ascertaining the number of pounds of leaf tobacco sold during the preceding year, or other years, in such warehouse.

(g) Any person, firm, or corporation who or which violates any of the provisions of this section shall, in addition to all other penalties provided for in this Article, be guilty of a misdemeanor, and upon conviction shall be fined not less than five hundred dollars (\$500.00) and/or imprisoned, in the discretion of the court.

(h) No county shall levy any license tax on the business taxed under this section. Cities and towns may levy a tax not in excess of fifty dollars (\$50.00) for each warehouse. (1939, c. 158, s. 142; 1963, c. 294, s. 4.)

## CH. 106. AGRICULTURE—TOBACCO

## ARTICLE 39.

*Leaf Tobacco Warehouses.*

§ 106-452. **Maximum warehouse charges.**—The charges and expenses of handling and selling leaf tobacco upon the floor of tobacco warehouses shall not exceed the following schedule of prices, viz.: For auction fees, fifteen cents on all piles of one hundred pounds or less, and twenty-five cents on all piles over one hundred pounds; for weighing and handling, ten cents per pile for all piles less than one hundred pounds, for all piles over one hundred pounds at the rate of ten cents per hundred pounds; for commissions on the gross sales of leaf tobacco in said warehouses, not to exceed two and one half per centum: Provided that tobacco warehouses selling burley tobacco only may charge commissions on the gross sales of burley leaf tobacco not to exceed three and one half per centum (3½%). There may also be a basket fee of twenty-five cents (25¢) per basket on all burley leaf tobacco sold in such warehouses. (1895, c. 81; Rev., s. 3042; C. S., s. 5124; 1941, c. 291; 1955, c. 1029.)

§ 106-453. **Oath of tobacco weigher; duty of weigher to furnish list of number and weight of baskets weighed.**—All leaf tobacco sold upon the floor of any tobacco warehouse shall first be weighed by some reliable person 18 years of age or older, who shall have first sworn and subscribed to the following oath, to wit: "I do solemnly swear (or affirm) that I will correctly and accurately weigh all tobacco offered for sale at the warehouse of . . . . . and correctly test and keep accurate the scales upon which the tobacco so offered for sale is weighed." Such oath shall be filed in the office of the clerk of the superior court of the county in which said warehouse is situated.

Immediately upon the weighing of any lot or lots of tobacco, the tobacco weigher shall furnish, upon request, to the person delivering such tobacco to the scale for weighing a true list showing the number of baskets of tobacco weighed and the individual weight of each such basket so presented. (1895, c. 81, s. 2; Rev., s. 3043; C. S., s. 5125; 1951, c. 1105, s. 1; 1971, c. 1085, s. 2.)

§ 106-454. **Warehouse proprietor to render bill of charges; penalty.**—The proprietor of each and every warehouse shall render to each seller of tobacco at his warehouse a bill plainly stating the amount charged for weighing and handling, the amount charged for auction fees, and the commission charged on such sale, and it shall be unlawful for any other charges or fees to be made or accepted. For each and every violation of the provisions of this article a penalty of ten dollars may be recovered by anyone injured thereby. (1895, c. 81, ss. 3, 4; Rev., s. 3044; C. S., s. 5126.)

§ 106-455. **Tobacco purchases to be paid for by cash or check to order.**—The proprietor of each and every warehouse shall pay for all tobacco sold in said warehouse either in cash or by giving to the seller a check payable to his order in his full name or in his surname and initials and it shall be unlawful to use any other method. Every person, firm or corporation violating the provisions hereof shall, in addition to any and all civil liability which may arise by law, be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by fine not exceeding one hundred dollars or imprisonment not exceeding thirty days, or both, in the discretion of the court. (1931, c. 101, s. 1; 1939, c. 348.)

CH. 106. AGRICULTURE—TOBACCO

ARTICLE 40.

*Leaf Tobacco Sales.*

§ 106-456. **Accounts of warehouse sales required.**—On and after the first day of August, one thousand nine hundred and seven, the proprietor of each and every leaf tobacco warehouse doing business in this State shall keep a correct account of the number of pounds of leaf tobacco sold upon the floor of his warehouse daily. (1907, c. 97, s. 1; C. S., s. 4926.)

§ 106-457. **Monthly reports to Commissioner; results classified.**—On or before the tenth day of each succeeding month the said warehouse proprietors shall make a statement, under oath, of all the tobacco so sold upon the floor of his warehouse during the past month and shall transmit the said statement, at once, to the Commissioner of Agriculture at Raleigh, North Carolina. The report so made to the Commissioner of Agriculture shall be so arranged and classified as to show the number of pounds of tobacco sold for the producers of tobacco from first hand; the number of pounds sold for dealers; and the number of pounds resold by the proprietor of the warehouse for his own account or for the account of some other warehouse. (1907, c. 97, s. 2; C. S., s. 4927; Ex. Sess. 1921, c. 76.)

§ 106-458. **Commissioner to keep record and publish in Bulletin.** — The Commissioner of Agriculture shall cause said statements to be accurately copied into a book to be kept for this purpose, and shall keep separate and apart the statements returned to him from each leaf tobacco market in the State, so as to show the number of pounds of tobacco sold by each market for the sale of leaf tobacco; the number of pounds sold by producers, and the number of pounds resold upon each market. The Commissioner of Agriculture shall keep said books open to the inspection of the public, and shall, on or before the fifteenth day of each month, after the receipt of the reports above required to be made to him on or before the tenth day of each month, cause the said reports to be published in the Bulletin issued by the agricultural Department and in one or more journals published in the interest of the growth, sale, and manufacture of tobacco in the State, or having a large circulation therein. (1907, c. 97, s. 3; C. S., s. 4928; Ex. Sess. 1921, c. 76.)

§ 106-459. **Penalty for failure to report sales.**—Any warehouse failing to make the report as required by § 106-457 shall be subject to a penalty of twenty-five dollars and the costs in the case, to be recovered by any person suing for same in any court of a justice of the peace; and the magistrate in whose court the matter is adjudicated shall include in the cost of each case where the penalty is allowed one dollar, to be paid to the Department of Agriculture for expense of advertising. (1915, c. 31, s. 1; C. S., s. 4929.)

§ 106-460. **Commissioner to publish names of warehouses failing to report sales; certificate as evidence.**—The Commissioner shall, on the 14th day of each month, publish in some newspaper the names of the tobacco warehouses that have failed to comply with this article.

The certificate of the Commissioner under seal of the Department shall be admissible as evidence the same as if it were deposition taken in form as provided by law. (1915, c. 31, ss. 2, 3; C. S., s. 4930; Ex. Sess. 1921, c. 76.)

§ 106-461. **Nested, shingled or overhung tobacco.**—It shall be unlawful for any person, firm or corporation to sell or offer for sale, upon any leaf tobacco warehouse floor, any pile or piles of tobacco, which are nested, or shingled, or overhung, or either as hereinafter defined:

- (1) **Nesting tobacco:** That is, so arranging tobacco in the pile offered for sale that it is impossible for the buyer thereof to pull leaves from the bottom of such pile for the purpose of inspection;
- (2) **Shingling tobacco:** That is, so arranging a pile of tobacco that a better quality of tobacco appears upon the outside and tobacco of inferior quality appears on the inside of such pile; and
- (3) **Overhanging tobacco:** That is, so arranging a pile of tobacco that there are alternate bundles of good and sorry tobacco. (1933, c. 467, s. 1.)

§ 106-462. **Sale under name other than that of true owner prohibited.**—It shall be unlawful for any person, firm or corporation to sell or offer for sale or cause to be sold, or offered for sale, any leaf tobacco upon the floors of any leaf tobacco warehouse, in the name of any person, firm or corporation, other than that of the true owner or owners thereof, which true owner's name shall be registered upon the warehouse sales book in which it is being offered for sale. (1933, c. 467, s. 2.)

§ 106-463. **Allowance for weight of baskets and trucks.**—It shall be unlawful for any person, firm or corporation in weighing tobacco for sale to permit or allow the basket and truck upon which such tobacco is placed for the purpose of obtaining such weight to vary more than two pounds from the standard or uniform weight of such basket and truck. (1933, c. 467, s. 3.)

§ 106-464. **Violation made misdemeanor.**—Any person, firm or corporation violating the provisions of §§ 106-461 to 106-463 shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1933, c. 467, s. 4.)

§ 106-465. **Organization and membership of tobacco boards of trade; rules and regulations; price fixing prohibited.**—Tobacco warehousemen and the purchasers of leaf tobacco, at auction, on warehouse floors, are hereby authorized to organize, either as nonstock corporations, or voluntary associations, tobacco boards of trade in the several towns and cities in North Carolina in which leaf tobacco is sold on warehouse floors, at auction.

Such tobacco boards of trade as may now exist, or which may hereafter be organized, are authorized to make reasonable rules and regulations for the economical and efficient handling of the sale of leaf tobacco at auction on the warehouse floors in the several towns and cities in North Carolina in which an auction market is situated.

The tobacco boards of trade in the several towns and cities in North Carolina are authorized to require as a condition to membership therein the applicants to pay a reasonable membership fee and the following schedule of maximum fees shall be deemed reasonable, to wit:

A membership fee of fifty dollars (\$50.00) in those towns in which less than three million pounds of tobacco was sold at auction between the dates of August 20, 1931, and May 1, 1932; a fee of one hundred dollars (\$100.00) in those towns in which during said period of time more than three million and less than ten million pounds of tobacco was sold; a fee of one hundred fifty dollars (\$150.00) in those towns in which during said period of time more than ten million and less than twenty-five million pounds of tobacco was sold; a fee of three hundred dollars (\$300.00) in those towns in which during said period of time more than twenty-five million pounds of tobacco was sold.

Membership, in good standing, in a local board of trade shall be deemed a reasonable requirement by such board of trade as a condition to participating in the business of operating a tobacco warehouse or the purchase of tobacco at auction therein.

Membership in the several boards of trade may be divided into two categories:

- (1) Warehousemen;
- (2) Purchasers of leaf tobacco other than warehousemen.

Purchasers of leaf tobacco may be: (i) Participating or (ii) nonparticipating. The holder of a membership as a purchaser of leaf tobacco shall have the option of becoming, upon written notice to the board of trade, either a participating or a nonparticipating member. Individuals, partnerships, and/or corporations who are members of tobacco boards of trade, established under this section or coming within the provisions of this section, as nonparticipating members shall not participate in or have any voice or vote in the management, conduct, activities, allotment of sales time, and/or hours, the fixing of dates for the opening or closing of tobacco auction markets, or in any other manner or respect. Individuals, partnerships, and/or corporations who are such nonparticipating members in any of the several tobacco boards of trade shall not be responsible or liable for any of the acts, omissions or commissions of the several tobacco boards of trade.

It shall be unlawful and punishable as of a misdemeanor for any bidder or purchaser of tobacco upon warehouse floors to refuse to take and pay for any basket or baskets so bid off from the seller when the seller has or has not accepted the price offered by the purchaser or bidder of other baskets. Any person suspended or expelled from a tobacco board of trade under the provisions of this section may appeal from such suspension to the superior court of the county in which said board of trade is located.

Nothing in this section shall authorize the organization of any association having for its purpose the control of prices or the making of rules and regulations in restraint of trade. (1933, c. 268; 1951, c. 383.)

**Jurisdiction of Federal Trade Commission.** — There is a substantial public interest in maintaining free and open competition among warehousemen on tobacco auction markets. The public interest often is specific and substantial, because the unfair method employed threatens the existence of present or potential competition. That is the basis for the jurisdiction of the Federal Trade Commission in a case involving regulations adopted pursuant to this section governing the allocation of selling time to tobacco warehouses. *Asheville Tobacco Bd. of Trade, Inc. v. Federal*

*Trade Comm'n*, 263 F.2d 502 (4th Cir. 1959).

The decisions of the North Carolina courts since the enactment of this section make it clear that the sale of tobacco at auction is of great public importance to the State of North Carolina, but they also show that the operation of the business is in the hands of private parties. A tobacco board of trade is organized primarily for the benefit of those engaged in the business; its articles of association and bylaws constitute a contract amongst the members by which each member consents to

reasonable regulations pertaining to the conduct of the business. Such a board is not an instrumentality of the State, and its activities are subject to the jurisdiction of the Federal Trade Commission. *Asheville Tobacco Bd. of Trade, Inc. v. Federal Trade Comm'n*, 263 F.2d 502 (4th Cir. 1959).

**Rules and Regulations of Board.**—The authority granted to a tobacco board of trade, under and by virtue of the provisions of this section, to make reasonable rules and regulations for the economical and efficient handling of the sale of leaf tobacco at auction on warehouse floors where an auction market is situated, is sufficiently broad to include the authority to make reasonable rules and regulations in respect to allotment of sales time. *Co-operative Warehouse v. Lumberton Tobacco Bd. of Trade*, 242 N.C. 123, 87 S.E.2d 25 (1955); *Day v. Asheville Tobacco Bd. of Trade*, 242 N.C. 136, 87 S.E.2d 18 (1955).

The articles of association for the purposes expressed in the charter and bylaws of a tobacco board of trade, organized and existing under and by virtue of this section, constitute a contract between it and its members, and as a consequence of membership in the corporation for mutual membership, each member is deemed to have consented to all reasonable rules and regulations pertaining to the business. *Co-operation Warehouse v. Lumberton Tobacco Bd. of Trade*, 242 N.C. 123, 87 S.E.2d 25 (1955); *Day v. Asheville Tobacco Bd. of Trade*, 242 N.C. 136, 87 S.E.2d 18 (1955).

Regulations adopted by a local tobacco board of trade involving allocation of sell-

ing time to warehouses were held in the instant case to unreasonably and unduly restrain trade in the purchase and sale of tobacco and to constitute unfair methods of competition and unfair acts or practices in commerce within the meaning of the Federal Trade Commission Act. *Asheville Tobacco Bd. of Trade, Inc. v. Federal Trade Comm'n*, 263 F.2d 502 (4th Cir. 1959).

A tobacco board of trade has no authority to legislate. It cannot create a duty where the law creates none. The legislature has the authority to regulate, within constitutional limits, the sale of leaf tobacco upon the auction markets of this State, and in doing so may prescribe standards of conduct to be observed by those who conduct auction warehouses as well as others participating in the sales. But this is a nondelegable power. *Kinston Tobacco Bd. of Trade v. Liggett & Myers Tobacco Co.*, 235 N.C. 737, 71 S.E.2d 21 (1952).

**Board Has No Right to Establish Sales and Require Buyers to Purchase Thereat.**—This section is silent upon the question of the number of sales and prescribes no standard by which the number of sales may be determined. Therefore, in the absence of an agreement, either expressed or implied, a board organized under this section has no right to establish sales and require buyers to purchase thereat. *Kinston Tobacco Bd. of Trade v. Liggett & Myers Tobacco Co.*, 235 N.C. 737, 71 S.E.2d 21 (1952).

Applied in *Roberts v. Fuquay-Varina Tobacco Bd. of Trade, Inc.*, 220 F. Supp. 608 (E.D.N.C. 1963), aff'd, 332 F.2d 521 (4th Cir. 1964).



# TEACHER LICENSING

