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LEGISLATIVE RESEARCH COMMISSION

REPORT
TO THE
1977

GENERAL ASSEMBLY OF NORTH CAROLINA



LICENSING BOARDS AND SMALL BUSINESS MATTERS

RALEIGH, NORTH CAROLINA

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STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
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January 4, 1977

TO THE MEMBERS OF THE 1977 GENERAL ASSEMBLY OF NORTH CAROLINA:

The Legislative Research Commission herewith reports to the 1977 General Assembly on the activities of its Committee on Licensing Boards and Small Business Matters. The Committee was assigned three studies during the 1975-1977 interims: LICENSING BOARDS (S.L. 1975, c. 851, s.8), THE HEARING AID BUSINESS (S.L. 1975, c. 851, s.11.5), and WRECKER SERVICE (authority of Research Commission Co-chairmen, G.S. 120-30.17).

The Committee concentrated on producing a study on licensing boards, and the results of its work on the subject make up the major part of this report. The Committee did not begin its study until late during the interim because it was waiting for the results of a study of licensing boards which was being conducted by the Attorney General's Office.

Because of some unforeseen difficulties and limitations on the time of the committee chairman from other legislative duties, the Committee did not fully examine the Hearing Aid Business. The study on Licensing Boards does contain some information on the North Carolina State Hearing Aid Dealers and Fitters Licensing Board, but this is the only treatment of the broader subject.

For the same reasons that prevented the Committee's full examination of the Hearing Aid Business, there was only a brief study of Wrecker Service. This report contains some of the staff-gathered information on Wrecker Service presented to the Committee, but it does not reflect a complete study.

Yours truly,

John T. Henley

James C. Green

Co-Chairmen

LEGISLATIVE RESEARCH COMMISSION



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INTRODUCTION

The Legislative Research Commission, authorized by Article 6B of Chapter 120 of the General Statutes, is a general-purpose legislative study group. The Commission is co-chaired by the Speaker of the House and the President Pro-Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)). The subjects to be studied are determined by bill or resolution of the General Assembly or by direction of the Commission Co-Chairmen.

At the direction of the 1975 General Assembly, the Legislative Research Commission has undertaken studies of twenty-nine matters. These studies were divided into ten groups according to related subject matter. The Co-Chairmen of the Legislative Research Commission, under the authority of General Statutes 120-30.10(b) and (c), appointed committees to conduct the studies, the committees consisting of members of the General Assembly and of the public. Each member of the Legislative Research Commission was given responsibility for one group of studies, and he served as chairman of the committees appointed within his area of responsibility.

Co-Chairmen, one from each house of the General Assembly,
were designated on each committee.

COMMITTEE PROCEEDINGS

Ratified House Bill 296 of the 1975 General Assembly (Chapter 851 of the 1975 Session Laws) directs, in Section 8, a study of State Licensing Boards. A copy of ratified House Bill 296 is attached as Appendix A. The Legislative Research Commission's Committee on Licensing Boards and Small Business Matters was created to produce a number of studies, including the study directed by Section 8. The Committee met on December 28, 1976 in the Legislative Building; a listing of the members is attached as Appendix B. The Committee began by discussing some of the general issues concerning licensing boards and discussing the language of ratified House Bill 296 which structures the study.

Mrs. Catherine Arrowood, Mr. Alan Baughcum and Mr. John Silverstein, members of the Attorney General's staff, appeared before the Committee and discussed the investigation of licensing boards currently being conducted by the Attorney General's office. Mr. Silverstein presented to the Committee a statement from Attorney General Rufus L. Edmisten concerning the problems in this area. The statement contains a specific request to the 1977 General Assembly to institute a moratorium on the creation of new licensing boards; a copy is attached as Appendix C. The Committee also received from the Attorney General's office a report entitled "A Legal and Economic Survey of North Carolina Licensing Boards" prepared by Mr. Baughcum; a copy is attached as Appendix D. The report

contains a review of federal activity, a discussion of developments in North Carolina, an analysis of the economics of occupational licensing boards in North Carolina, a review of the legal authority of the Attorney General to act in this area and a listing of policy options for the future.

The Committee received from the General Research Division of the Legislative Services Office copies of materials as follows: 1. Chapter 93-B of the General Statutes of North Carolina which provides some regulation of all occupational licensing boards; 2. the State Auditor's annual summary report on financial operations of occupational licensing boards for fiscal years ending during 1975; and 3. "sunset" materials relating to licensing boards. Copies of these materials are attached as Appendices E, F and G.

CONCLUSIONS AND RECOMMENDATIONS

After examining materials from the Attorney General's office and the General Research Division of the Legislative Services Office, the Committee has concluded that the subject of licensing boards is too broad to conduct an indepth investigation within the time constraints that a committee of the Legislative Research Commission must operate. The Committee directed the staff to draft a report and to include in the report the following recommendations to the 1977 General Assembly:

That the 1977 Session of the General Assembly declare a moratorium on the creation of new licensing boards; and

That the 1977 Session of the General Assembly create a special study commission to completely study the problems of licensing boards, provide for adequate funding and support for the new commission, and require the commission to submit a report to the 1979 General Assembly on the convening day of the session.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1975
RATIFIED BILL

CHAPTER 851

HOUSE BILL 296

AN ACT TO DIRECT THE LEGISLATIVE RESEARCH COMMISSION TO STUDY
VARIOUS MATTERS.

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission is directed to study the following issues, designing the individual study efforts as described in the other sections of this act:

- (1) Services for the blind (H. 296);
- (2) The office of magistrate (H. 720);
- (3) Land records information systems (H. 785);
- (4) North Carolina laws on sex discrimination (H. 845, S. 668);
- (5) Problems in foreclosure law (H. 893);
- (6) Fire and casualty insurance rate regulation (H. 1214);
- (7) State licensing boards (H. 1223);
- (8) Need for compensation of victims of crimes (H. 1202);
- (9) Means to increase the level of professionalism and efficiency of local building inspectors (S. 325);
- (10) The effect of the tax-exempt status of State-owned property upon local government revenue (S.765); and
- (11) The possibility of State operation of a fisheries training vessel program (S.855);
- (12) Emergency Medical Care and Services;

- (13) The operation of the North Carolina Department of Correction's Prison Enterprises Division (H. 1265, S. 806);
- (14) Programs available to females committed to the Department of Correction (H. 20, S. 24);
- (15) The need for an actuarial services division within the Department of State Treasurer (H. 331);
- (16) The feasibility of using inmate labor in Department of Correction construction (S.606);
- (17) The problems of the hearing aid business (S. 630);
- (18) The relationship between the Division of Community Colleges and the State Department of Public Instruction (S. 909);
- (19) The problem of sexual assaults in North Carolina (H. 816); and
- (20) The funding, benefits, and operations of the Retirement System (H. 994).

Sec. 2. In its study of services for the blind the Legislative Research Commission shall inquire into the responsibilities for services to the blind of North Carolina, and the current operating practices of the North Carolina Department of Human Resources and North Carolina Library for the Blind and Physically Handicapped. The study shall embrace: (1) present services to the blind, (2) ways of achieving greater effectiveness in rendering services, and (3) possible expansion and strengthening quality of services to the blind.

Sec. 2.5. In its study of emergency medical care and services the Legislative Research Commission shall inquire into

training, standards, examination, qualifications and other pertinent areas of emergency medical care and services, and a special subcommittee shall be authorized consisting of six persons named by the Speaker of the House of which three shall be members of the House and three shall be public members who are interested in the problem of emergency medical care; and six persons named by the Lt. Governor of which three shall be members of the Senate and three shall be public members who are interested in the problem of emergency medical care.

Sec. 3. In its study of the office of magistrate the Legislative Research Commission shall examine the office of magistrate in North Carolina, including, but not restricted to, the method of appointment, compensation, and criteria by which allocation of magistrates are determined for each county.

Sec. 4. In its study of land records information systems in North Carolina the Legislative Research Commission shall investigate and review the land records information systems of the State and make recommendations concerning ways of modernizing them and making them more uniform. The Legislative Research Commission shall include in its study an inquiry into the following issues: (1) Should there be created a State registrar's office to perform a role with regard to the registers of deeds similar to that performed by the Administrative Officer of the Court with regard to the clerks of superior court. (2) Should the assignment of land parcel identifiers and the creation of land parcel identifier indexes be required. (3) What arrangements can be made to provide automated data processing services to counties that desire them but do not have them

available. (4) What should the role of land title registration be in a system of modernized land records. (5) How should the modernization of land records be financed. (6) If a decision is made to establish a system of land records using parcel identifiers, parcel identifier indexes, and computerization, what statutory revisions must be made to facilitate conversion to this system. (7) In establishing a modernized land records system, what changes need to be made in records that make claims against land but are filed against persons, rather than against particular parcels of land. (8) Should land records and land information, whether stored in a computer, on microfilm, or in books, be available from a single county office. (9) What statutory revisions are needed to improve land records systems exclusive of those necessary to implement a computerized system based upon parcel identifiers. (10) What statutory revisions are needed to increase statewide uniformity of land records systems.

Sec. 5. In its study of sexual discrimination in North Carolina laws and practices the Legislative Research Commission shall examine North Carolina laws and practices, including the General Statutes, case law, customs and regulations of the various branches of State government; the studies shall examine these laws and practices as they relate to a specific sex, as they may deny equality of rights under the laws of this State, and as they might be modified by the possible passage of the Equal Rights Amendment to the Constitution of the United States. The Legislative Research Commission shall also study the desirability of enacting the legislation contained in Senate Bill

813 from the 1975 Session, or the enactment of similar legislation that would establish a fair employment opportunity commission in North Carolina with powers and duties designed to eliminate discrimination based upon race, color, religion, national origin, ancestry, age, or sex.

Sec. 6. In its study of the problems in North Carolina's statutory treatment of foreclosure the Legislative Research Commission shall examine the North Carolina General Statutes and applicable case law concerning: (1) foreclosure of real and personal property, and (2) lien laws and other statutes allowing the taking, sale, or other disposal of property, both real and personal.

Sec. 7. In its study of fire and casualty insurance rate regulation the Legislative Research Commission shall have the responsibility to make a thorough and comprehensive study of all aspects of fire and casualty insurance rate regulation in North Carolina and in other states in the Union. In conducting its studies the Legislative Research Commission shall evaluate and report on the system of prior approval rate making as used in this State and other states and shall compare the effectiveness and rate impact of the practices and procedures utilized in this State as compared with other states. In addition, the Legislative Research Commission shall evaluate and report on the rate impact of other systems of rate making including but not limited to (1) file and use rate making and (2) open competition rate making and (3) rate making utilizing the concept of return on invested capital. The Legislative Research Commission shall further evaluate the advantages and disadvantages of establishing

an insurance commission consisting of three or more members with adequate supporting staff which shall be invested with the authority to determine and fix fire and casualty rates for use in North Carolina.

Sec. 8. In its study of State licensing boards the Legislative Research Commission shall:

(1) Look into the present law in North Carolina and compare North Carolina law and practice with that in other states;

(2) Inquire into the proper makeup of licensing boards;

(3) Determine whether there is any misuse of funds by licensing boards;

(4) Determine whether licensing boards are unduly restricting entry into their respective professions; and

(5) Seek information on how to get more people into needed professions.

Sec. 9. In its study of the need for compensation of victims of crimes the Legislative Research Commission shall analyze all problems surrounding the establishment of a plan by which victims of crimes committed within North Carolina might be compensated for the injuries that they sustain. The Legislative Research Commission is specifically directed to study the following areas:

(1) the types of crimes and of injuries for which compensation should be awarded;

(2) the experience of other jurisdictions in administering similar programs, the problems that these

jurisdictions have encountered and the cost of such programs;

(3) whether such a program should be administered separately or under the auspices of an existing State department or agency;

(4) the estimated cost of administration of a program and of awarding compensation under it; and

(5) any actual or potential sources of aid either federal or otherwise to help this State defray the costs of such a program.

Sec. 10. In its study of means to increase the level of professionalism and efficiency of local building inspectors the Legislative Research Commission shall include an examination of training opportunities, expanded technical assistance from State agencies, improved compensation, joint organizational arrangements, advisory services, and intergovernmental grant programs.

Sec. 11. In its study of the effect of tax-exempt State-owned property upon local governmental revenue the Legislative Research Commission shall look at the relationship between State and local governments regarding the exemption of State-owned real property from ad valorem taxation, including the nature and extent of acquisition of real property by the State within the last decade, the effect of tax exemption upon local tax revenues, and the cost of local government services that benefit State-owned real property.

Sec. 11.1. In its study of the fisheries training vessel issue the Legislative Research Commission shall have the

following responsibilities:

(1) To determine the need for training vessels; to determine the number and kinds of vessels necessary to provide North Carolina's students of vocational fisheries the highest educational, training and experience opportunities; to determine the optimum navigation, safety, propulsion and fishing equipment for each class of vessel, and to make recommendations to the General Assembly and the State Board of Education.

(2) To investigate sources of funding for obtaining and equipping training vessels, and to make recommendations to appropriate agencies that they seek funds.

(3) To establish criteria for dockage, scheduling, maintenance, ownership, insuring, operating and financing for the efficient prosecution of the Vocational Fisheries Program, and to recommend these criteria to the State Board of Education.

(4) To recommend an administrative structure or organization or agency to direct and manage the training vessel program for maximum training opportunities for vocational fisheries students.

(5) To examine the motor pool approach to State-owned vessels where all departments would have access to some use of vessels now under exclusive departmental control.

Sec. 11.2. In its study of programs available to females committed to the Department of Correction the Legislative Research Commission shall evaluate the educational, vocational, and rehabilitative programs available to females committed to the custody of the Department of Correction, and recommend possible

improvements and additions to these programs.

Sec. 11.3. In its study of the need for the creation of a Division of Actuarial Services within the Department of the State Treasurer the Legislative Research Commission shall look into the availability, quality, use and costs of the actuarial services furnished by private business to those agencies of the State requiring these services.

Sec. 11.4. In its study of the feasibility of using inmate labor in Department of Correction construction the Legislative Research Commission shall look into either construction of new facilities or conversion or expansion of existing facilities being undertaken to the maximum extent feasible utilizing such inmate labor as may be available and fit for such work, contingent upon the availability of funds. If appropriate, the Commission report shall propose a comprehensive master plan for future construction. If the Commission should determine that construction of campus type facilities using inmate labor would be feasible and beneficial, special attention should be given to the development of an appropriate system to provide inmate incentives which might include:

(1) Review of the incentive wage provisions of G.S. 148-18,

(2) Review of good time credit as provided in G.S. 148-13,

(3) Special work release consideration for exemplary work performance, and

(4) Development of any other rewards or incentives that

may seem to be desirable.

Sec. 11.5. In its study of the problems of the hearing aid business the Legislative Research Commission shall look into the manufacture, distribution, sale and repair of hearing aids.

Sec. 11.6. In its study of the relationship between the Division of Community Colleges and the State Department of Public Instruction the Legislative Research Commission shall produce recommended legislation that will clearly define, by statute, the relationship between the Division of Community Colleges and the Department of Public Instruction and suggest any other appropriate adjustments.

Sec. 11.7. In its study of the problem of sexual assaults the Legislative Research Commission shall undertake:

(1) An analysis of statistics of reported rapes and the ultimate disposition of these cases,

(2) An examination of the reasons rape cases are not reported or not prosecuted,

(3) A follow-up study of the long-term impact of the crime upon rape victims, and

(4) An examination of the social and psychological profile of the rapist to aid in the development of appropriate sanctions and programs for rehabilitation.

The Commission shall also review the North Carolina criminal code, examine pertinent court procedures and develop recommendations for revision of those statutory provisions and procedural policies it deems appropriate. The Commission shall further develop recommendations for implementation and funding

for:

(1) Such programs as it finds necessary to train criminal justice, emergency room, crisis intervention center and rape crisis center personnel in appropriate techniques in the investigation and counseling of the rape victim, and

(2) Programs for education of the public in rape prevention.

Sec. 11.8. In its study of the Retirement System the Legislative Research Commission shall look into the many questions that have developed among members of the General Assembly concerning the financing of the Teachers' and State Employees' Retirement System and the Local Governmental Retirement System, and the Commission shall study the financing, the benefits and the operation of the retirement systems. The Commission shall further examine:

(1) Providing a permanent plan for maintaining the relative adequacy of benefits for retired employees;

(2) A comparison of our benefit structure with those of other jurisdictions; and

(3) A determination of the advisability of combining the administration and actuarial services for all the retirement systems financed in whole or in part by State funds.

Sec. 12. The Co-chairmen of the Legislative Research Commission are authorized to appoint additional members of the General Assembly to study committees to assist the regular members of the Research Commission in conducting these studies, and they are authorized to appoint members of the public to advisory subcommittees. The President Pro Tempore of the Senate

shall consult with the President of the Senate when he considers these additional appointments.

Sec. 13. For the purpose of producing the studies directed by this act and other expressions by the General Assembly, one hundred thousand dollars (\$100,000) is appropriated for use during the 1975-76 and 1976-77 fiscal years by the Legislative Research Commission. This appropriation shall be in addition to any other appropriation to the use of the Legislative Research Commission, and any amount not expended in the first fiscal year 1975-76 shall be available to the Research Commission in the second year 1976-77.

Sec. 14. In its study of the operation of the North Carolina Department of Correction's Prison Enterprises Division, the Legislative Research Commission shall include an investigation of Prison Enterprises' relationship to privately operated businesses, of the management goals of the Department of Correction in this division, and of the attitudes of private business interest in competition with Prison Enterprises.

Sec. 15. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 25th day of June, 1975.

JAMES B. HUNT, JR.

James B. Hunt, Jr.

President of the Senate

JAMES C. GREEN, SR.

James C. Green, Sr.

Speaker of the House of Representatives

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STATEMENT OF
RUFUS L. EDMISTEN
ATTORNEY GENERAL

BEFORE THE
LEGISLATIVE COMMISSION
ON OCCUPATIONAL LICENSING

RALEIGH
NORTH CAROLINA

DECEMBER 28, 1976

AS YOU KNOW, I HAVE REQUESTED THE LEGISLATURE TO INSTITUTE A MORATORIUM ON NEW OCCUPATIONAL LICENSING LEGISLATION IN NORTH CAROLINA. OCCUPATIONAL LICENSING IS RAPIDLY BECOMING AN IMPORTANT ISSUE WHICH WE, ON THE STATE LEVEL, MUST ADDRESS FOR TWO REASONS. FIRST A FAILURE TO ACT ON OUR PART WILL RESULT IN THE POSSIBILITY OF FEDERAL INTERVENTION BECAUSE OF ECONOMIC OVERREGULATION.

IN THE PAST, THE LICENSING OF OCCUPATIONS HAS BEEN DESIGNED TO PROTECT THE PUBLIC FROM HARM. THE EFFECT OF LICENSING IN RECENT YEARS, HOWEVER, HAS OFTEN BEEN TO PROTECT THOSE LICENSED FROM THE DEMANDS OF COMPETITION AND FREE ENTERPRISE.

SOME EXAMPLES ILLUSTRATE THE PROBLEM. IN FLORIDA, THE FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD FLUNKED ALL THE APPLICANTS WHO TOOK THE EXAM IN 1973. THE FLORIDA LEGISLATURE UNDERTOOK AN INVESTIGATION TO DETERMINE WHETHER THE BOARD WAS MERELY TRYING TO ELIMINATE COMPETITION IN THE GENERAL CONTRACTOR AREA. THE BOARD REASSESSED ITS FINDINGS AND DECIDED THAT MORE THAN HALF OF THE APPLICANTS HAD PASSED AFTER ALL. THIS IS BUT ONE OF THE REASONS WHY THE FEDERAL TRADE COMMISSION AND THE ANTITRUST DIVISION OF THE U. S. DEPT. OF JUSTICE HAVE BEGUN CLOSE SCRUTINY OF STATE LICENSING LAWS. THERE HAS ALSO BEEN ACTIVITY BY FEDERAL COURTS REGARDING THE ADVERTISING AND COMPETITIVE BIDDING RESTRAINTS OFTEN FOUND IN LICENSING LAWS.

LAST MONTH, THE FIRST FEDERAL SUIT EVER WAS INITIATED AGAINST A STATE BOARD, THE TEXAS BOARD OF ACCOUNTANCY.¹ THE SUIT ALLEGES THAT THE BOARD RESTRICTED PRICE COMPETITION AMONG THE STATE'S ACCOUNTANTS. CLEARLY, WITH THE SPECTRE OF FEDERAL INVOLVEMENT IMMINENT IN AN AREA LONG RESERVED TO THE STATES WE MUST MAKE AN EFFORT TO CLEAN UP OUR OWN BACKYARD.

A SECOND REASON FOR SCRUTINIZING OCCUPATIONAL LICENSING IS A DEVELOPING TENDENCY TO OVERREGULATE OUR ECONOMY. IN NORTH CAROLINA, WE CURRENTLY RESTRICT ENTRY INTO OVER 35 DIFFERENT OCCUPATIONS. IT TOOK US 60 YEARS TO SET UP THE FIRST 18 BOARDS; IN THE 25 YEARS SINCE 1951, THE GENERAL ASSEMBLY HAS ESTABLISHED BARRIERS TO ENTRY FOR ANOTHER 17 OCCUPATIONS. THE LAST GENERAL ASSEMBLY ALONE CREATED FOUR NEW BOARDS AND EXTENSIVELY REVISED A NUMBER OF OTHERS. THESE LAWS MOVE US TOWARD A CONTROLLED ECONOMY - WHERE EVEN THE MOST ORDINARY OCCUPATIONS ARE UNDER THE CONTROL OF THE STATE AND THE MEMBERS OF THAT OCCUPATION. THE TIME HAS COME FOR US TO STOP THE DESTRUCTION OF OUR FREE ENTERPRISE SYSTEM.

WHAT CAN WE DO TO PREVENT FEDERAL INTERVENTION AND ECONOMIC OVERREGULATION? AT THE DEPARTMENT OF JUSTICE, WE HAVE BEEN EXAMINING THIS PROBLEM FOR THE LAST YEAR. AS A STARTING POINT

¹NOVEMBER 19, 1976, WALL STREET JOURNAL.

WE SELECTED FOR EXAMINATION THE THREE DOZEN LICENSING BOARDS WHICH WERE INDEPENDENT OF ANY STATE AGENCY. AT THIS TIME WE ARE MEETING WITH THESE LICENSING BOARDS IN AN ATTEMPT TO, AT A MINIMUM, BRING THEIR RULES AND REGULATIONS IN LINE WITH CURRENT CASE LAW.

TO ACHIEVE A COMPLETE REEXAMINATION OF OUR LICENSING LAWS, HOWEVER, WE NEED THE HELP OF THE LEGISLATURE. THEREFORE, I CALL ON THE LEGISLATURE TO ASSIST US IN THIS EFFORT. THERE ARE SEVERAL STEPS WE MUST TAKE. FIRST, WE NEED A MORATORIUM ON ANY FURTHER OCCUPATIONAL REGULATION. IT IS TIME FOR US TO BE HESITANT TO RESTRAIN COMPETITION. SECONDLY, WE MUST REEXAMINE OUR CURRENT LICENSING LAWS TO BRING THEM IN LINE WITH RECENT CASE LAW AND TO MAKE SURE THAT WE ARE REGULATING ONLY TO THE EXTENT NECESSARY TO PROTECT THE PUBLIC. THIRDLY, WE MUST DEVELOP A SET OF GUIDELINES TO AID LEGISLATORS IN DETERMINING WHEN LICENSING IS NEEDED AND WHEN IT IS NOT.

WE AT THE DEPARTMENT OF JUSTICE WANT TO WORK WITH THE LEGISLATURE AND ITS COMMISSION ON LICENSING TO ELIMINATE ECONOMIC OVERREGULATION IN NORTH CAROLINA AND TO AVOID ANY POSSIBILITY OF FURTHER FEDERAL INTERVENTION IN THE AFFAIRS OF OUR STATE. WE CAN MAINTAIN A HIGH LEVEL OF PROFESSIONAL ACCOUNTABILITY WITHOUT BEING ADVOCATES OF RESTRAINTS ON COMPETITION.

A LEGAL AND ECONOMIC SURVEY OF N. C. OCCUPATIONAL
LICENSING BOARDS

Alan Baughcum
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INTRODUCTION

This report summarizes developments in the area of occupational licensing. It covers federal initiatives, both current and proposed; it reviews recent U.S. and N.C. case law; it describes the implied economic motivation and the actual economic impact of the operation of N.C. occupational licensing boards.

The purpose of this paper is to describe and to motivate policy decisions. If there is no attempt to monitor, supervise, or change the present process by which boards are authorized and operate, the problems described in this report will worsen.

The issue is timely. Note that the Supreme Court has decided against occupational licensing boards in three cases in the last year alone. The Federal government is mobilizing an increasing amount of resources to deal with problems in the area. The general public, as evidenced by picketers in N.C. demanding advertising of drug prices, is increasingly manifesting concern with government regulations.

The report will proceed in five sections: first, a review of federal activity; second, developments in N.C. will be summarized; third, an analysis of the economics of occupational licensing boards in N.C.; fourth, a review of the legal authority of the Attorney General to act in the area; fifth, a listing of policy options for the future.

Section One: Federal Activity

U.S. Justice Department

The Justice Department has filed four suits against professional associations whose practices were objectionable. There has

been a price fixing suit filed against the American Association of Anesthesiologists and a suit against the American Bar Association for advertising restrictions. Suits involving various restrictions created by the American Society of Civil Engineers and the American Institute of Architects resulted in consent settlements.

The Antitrust Division of the U.S. Justice Department has created a special section whose sole purpose is to review constitutional and antitrust problems in government regulations over various occupations. There will be an increasing number of investigations and suits as this section fills the positions authorized for it.

The Justice Department will host a conference to be held in the spring of 1977 which will involve each of the States' Attorneys General. The purpose of the conference will be to confront the issue of coordinating state and federal policy and correcting problem areas with occupational licensing.

Federal Trade Commission

The Federal Trade Commission has been gradually increasing its efforts over the last three years in this area. In 1974, they issued a report which investigated the effects of licensing on the prices charged by television repairmen. The report indicated that licensing created higher prices and a greater incidence of parts fraud than did the unregulated market place.

The Commission has proposed advertising rules for funeral homes and the sale of eye glasses.

They have instituted formal investigations into the veterinary profession and medical profession. There are informal investigations into the dental and legal professions.

In December of 1976, the Federal Trade Commission filed suit against the American Medical Association for its restrictions on price advertising.

U.S. Department of Labor

The Manpower Administration of the Department of Labor has funded several grants whose purpose was to analyze the impact of licensing boards in such areas as restrictions on offender employment, adequacy and consistency of testing procedures across states, revisions for quality control of the regulated occupation by the board, and the economic motivation of licensing boards.

Currently underway is a nationwide project to prepare a handbook for use by licensing boards in order to help in standardization of testing and furthering the public interest by closer monitoring of those in the occupation who are already licensed. The handbook would also direct itself to the question of whether new boards should be licensed in an effort to provide state legislators with a framework for decision making.

Overview

The Federal Government has manifested considerable interest and concern in the area of occupational licensing on a variety of fronts. All indications are is that resources mobilized at the national level to confront these problems will increase.

U.S. Supreme Court

It would appear that the U.S. Supreme Court is beginning to move away from the exemption to antitrust laws granted state agencies under Parker v. Brown, 317 US 341. It would appear that unless the procedures by which the board operates are explicitly authorized by statutory authority, such procedures will be open to attack under the Sherman Act and the First and Fourteenth Amendments.

In Goldfarb, et ux. v. Virginia State Bar, et al, 421 US 773 (decided June 16, 1975), the Supreme Court ruled that a minimum fee schedule promulgated by the State Bar was a violation of §1 of the Sherman Act. The Court ruled that Congress did not intend any sweeping "learned profession" exclusion from the Sherman Act and that any exemption from the Sherman Act would have to be conduct "compelled by direction of the State acting as a sovereign." [The Supreme Court continued to limit the exemption of regulatory activity from attack under the Sherman Act by allowing Mary Elizabeth Hospital to sue the trustees of Rex Hospital and a local health planning officer on the grounds that they had conspired to limit Mary Elizabeth's ability to construct new hospital capacity. (Hospital Building Company v. Trustees of Rex Hospital, et al, decided May 24, 1976, No. 74-1452.)]

In Virginia State Board of Pharmacy, et al, appellants v. Virginia Citizens Consumer Council, Inc., et al, 44 LW 4686 (decided May 24, 1976), the Supreme Court held that commercial speech is not wholly outside the protection of the First and Fourteenth Amendments. The Court noted that the "ban on

advertising prescription drug prices cannot be justified on the basis of the State's interest in maintaining the professionalism of its licensed pharmacists;"

In further decisions this year, the Supreme Court has limited the ability of regulatory authorities to impose U.S. citizenship requirements. In Examining Boards of Engineers, Architects and Surveyors, et al v. Flores De Otero, No. 74-1267, decided June 17, 1976, the Supreme Court held that the rules of a board requiring U. S. citizenship for a license application were unconstitutional under either the Equal Protection Clause of the Fourteenth Amendment or the Due Process Clause of the Fifth Amendment. In Hampton, Chairman, U. S. Civil Service Commission, et al. v. Mow Sun Wong, et al, No. 73-1596, decided June 1, 1976, the Supreme Court held that the Civil Service Commission's regulations barring non-citizens, including lawfully admitted resident aliens, from employment in the federal competitive civil service was unconstitutional as a violation of due process under the fifth amendment. A further holding in Matthews, Secretary of Health, Education, and Welfare v. Diaz, et al, 73-1046, decided June 1, 1976, indicated that Medicare benefits could be withheld from aliens who were not permanent residents and who were not resident for the required five-year period; the Court was explicit that these regulations, which would be unconstitutional if applied to U.S. citizens, were made constitutional by the power of Congress to regulate immigration. In summary, the Supreme Court has clearly rejected requirements of U.S. citizenship and seem to imply that residency requirements were also objectionable.

The Supreme Court decisions are in addition to the Oregon District Court decision holding fee schedules promulgated by the Oregon State Bar to be violations of the Sherman Act (U.S. of America, plaintiff v. Oregon State Bar, defendant, decided November 22, 1974) and the U. S. District Court for the District of Columbia in U. S. of America, plaintiff v. National Society of Professional Engineers, defendant, on November 26, 1975 holding that the Society's prohibition on competitive bidding in its Code of Ethics was a per se violation of §1 of the Sherman Act.

Federal courts have been increasingly prone to subjecting the regulations and procedures of licensing agencies and professional associations to scrutiny under the Sherman Act, the First, Fifth, and Fourteenth Amendments.

Section Two: N. C. Case Law

The Courts in North Carolina have been more skeptical of licensing boards for a longer period of time than have U. S. Courts. In fact, the N. C. Supreme Court found three boards to be unconstitutional. In State v. J. P. Harris, 216 NC 746, Feb. 2, 1940, the N. C. Supreme Court declared the Dry Cleaners Board unconstitutional. In Roller v. Allen, 245 NC 516, 96 SE 2d 851, Feb. 27, 1957, the Court found the Tile Contractors Board unconstitutional. In State v. Owen Ballance, 229 NC 764, Feb. 4, 1949, the N. C. Supreme Court found the Photographers Board to be unconstitutional.

The Ballance decision is of interest for several reasons. First, the decision was written by Sam Ervin. Second, other state courts referred to it when declaring Photographers Boards in their states to be unconstitutional. Third, Judge Ervin provided a list of occupations which he felt could legitimately be regulated by the State if in fact the regulation of photographers was found to be in the public interest. One of the occupations which he listed was watchmaking. In 1967, the General Assembly created the N.C. State Board of Examiners for Watchmaking and Repairing.

In a more recent case (In the Matter of: Certificate of Need for Aston Park Hospital, Inc., 282 NC 542), the N. C. Supreme Court (opinion written by Justice Lake) found that the statute which required a private hospital to seek and receive a certificate of need from the Medical Care Commission in order to construct and operate a hospital or other medical care facility on private property with private funds was a

deprivation of liberty without due process of law in violation of the Article I, §19 of the Constitution of North Carolina and established a monopoly in existing hospitals contrary to the provisions of Article I, §34 and granted to existing hospitals exclusive privileges forbidden by Article I, §32.

In a more recent decision (Revco Southeast Drug Centers, Inc., et al. v. The North Carolina Board of Pharmacy and the North Carolina Pharmaceutical Association, 21 N.C. App. 156, 204 S.E. 2d 38), the N.C. Court of Appeals found that the statute which authorized the Board to adopt a code of professional conduct was an unlawful delegation of legislative powers without sufficient standards and guidelines.

In spite of the activity of the N. C. Appellate Courts, North Carolina has a considerable number of licensing boards and is seemingly likely to increase the number of occupations which will be licensed. Consider Table 1. It shows that N. C. has created some thirty-five independent licensing boards since 1881. (This excludes in its count the three boards found unconstitutional by the N. C. Supreme Court.) Table 2 shows that the rate at **which boards** are being licensed may well be on the increase. It required 60 years for the state to create the first 18 boards; in the 25 years since 1951, the General Assembly has created another 17 boards. In the first half of the 1970's, the General Assembly has

BOARD NAME	YEAR GENERAL ASSEMBLY CREATED BOARD	STATUTORY AUTHORITY
Architecture, N.C. Board of	1915	(83-2)
Auctioneers Commission, N. C.	1973	(85B-3)
Barber Examiners, State Board of	1929	(86-6)
Certified Public Accountant Examiners, State Board of	1925	(93-12)
Chiropractic Examiners, State Board of	1917	(90-139)
Contractors, State Licensing Board for	1925	(87-2)
Cosmetic Art Examiners, State Board of	1933	(88-13)
Dental Examiners, State Board of	1935	(90-22)
Electrical Contractors, State Board of Examiners of	1937	(87-39)
Foresters, State Board of Registration for	1975	(89B-3)
Hearing Aid Dealers & Fitters Board, N. C. State	1969	(93D-3)
House Movers Licensing Board	1975	(136-44.30)
Landscape Architects, N. C. Licensing Board of	1969	(89A-1)
Landscape Contractors, N.C. Registration Board	1975	(89D-4)
Law Examiners, Board of	1933	(84-24)
Medical Examiners, Board of	1858-9	(90-2)
Mortuary Science, N.C. Board of	1901	(90-210.18)
Nursing, N. C. Board of	1965	(90-158)
Nursing Home Administrators, N. C. State Board of Examiners for	1969	(90-277)
Opticians, N.C. State Board of	1951	(90-238)
Optometry, State Board of Examiners in	1909	(90-116)

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Board Name	Year General Assembly Created Board	Statutory Authority
Osteopathic Examination and Registration, State Board of	1907	(90-130)
Pharmacy, State Board of	1881	(90-54)
Physical Therapy, N.C. State Examining Committee of	1951	(90-257)
Plumbing & Heating Contractors, State Board of Examiners of	1937	(87-16)
Podiatry Examiners, Board of	1919	(90-202.4)
Practicing Psychologists, N. C. State Board of Examiners of	1967	(90-270.1)
Professional Engineers and Land Surveyors, N. C. State Board of Registration for	1921	(89C-4)
Real Estate Licensing Board, N. C.	1957	(93A-3)
Refrigerator Examiners, State Board of	1955	(87-52)
Sanitarian Examiners, State Board of	1959	(90A-2)
Speech and Language Pathologists and Audiologists, Board of Examiners for	1975	(90-303)
Veterinary Medical Board, N. C.	1903	(90-182)
Watchmaking and Repairing, N. C. State Board of Examiners for	1967	(93C-2)
Water Well Contractor Examiners, State Board of	1961	(87-70)

Source: N. C. General Statutes

<u>PERIOD</u>	<u>NUMBER OF BOARDS CREATED IN PERIOD</u>
Prior to 1901	2
1901 - 10	4
1911 - 20	3
1921 - 30	4
1931 - 40	5
1941 - 50	0
1951 - 60	5
1961 - 70	7
1971 -	<u>5</u>
TOTAL	35

Source: Table 1

created as many boards as it created in the entire decade of the 1950s. The last General Assembly alone created four new boards: Foresters, House Movers, Landscape Contractors, and Speech and Language Pathologists and Audiologists. If the justification for licensing these particular occupations seems doubtful, that perception is reenforced by the 1968 data shown in Table 3 which would indicate that Foresters were licensed in only 10 of the 50 states. There was no information on house movers, landscape contractors, and speech and language audiologists and pathologists.

Summary of Federal and North Carolina Case Law

The federal courts and state courts in North Carolina have shown a willingness to examine the constitutionality of occupational licensing boards, have been willing to allow Sherman Act coverage, and have been willing to scrutinize the requirements for licensing on constitutional grounds. Notice that the citizenship requirement for licensing is a very common one among N. C. Boards. Based on recent Supreme Court decisions, it seems clearly unconstitutional. Notice also that overbroad statutory authority giving boards the power to adopt codes of professional conduct is commonplace in N.C.; recent court decisions would seem to indicate that such codes are of doubtful constitutionality. The question of whether or not an occupation should be regulated seems legitimate under the opinions of the N. C. Supreme Court; in particular, the justification for watchmaking regulations seems du-

<u>OCCUPATION LICENSED IN NORTH CAROLINA</u>	<u>NUMBER OF STATES IN WHICH OCCUPATION IS LICENSED</u> *
Architect	50
Auctioneer	42
Barber	50
Certified Public Accountant	50
Chiropractor	46
Contractor	36
Cosmetologist	50
Manicurist	20**
Dentist	48
Dental Hygienist	50
Electrical Contractor	30 (Electrician)
Forester	10
Hearing Aid Dealer and Fitter	4
House Mover	
Landscape Architect	12
Landscape Contractor	NA
Lawyer	50
Medical Doctor	50
Mortuary Science	
Embalmer	50
Funeral Director	44
Nursing	
Licensed Practical Nurse	50
Registered Nurse	50 (Professional Nurs
Nursing Home Administrator	17
Optician	37 (Ophthalmic dispens Optician/Oculist)
Optometrist	50
Osteopath	50
Pharmacist	50
Physical Therapist	50 (Physiotherapist)
Plumbing and Heating Contractor	39 (Plumber/Gasfitter
Podiatrist	50 (Chiropodist/ Podiatrist)
Psychologist	37
Professional Engineer	50
Land Surveyor	43 (Land Surveyor/ Ci Engineer)

Real Estate	50
Broker	50
Salesmen	50
Refrigeration Contractor	NA
Sanitarian	32
Speech and Language Pathologist and Audiologist	NA
Veterinarian	50
Watchmaker - Watch repairer	14 (Watchmaker/ **Clockmaker)
Water Well Contractor	13

NA: Not Available

* Source: "Occupational Licensing and the Supply of Nonprofessional Manpower," Manpower Research Monograph No. 11, Manpower Administration, U.S. Department of Labor, 1969. Data shown represent approximate numbers due to the lack of uniformity in occupational classification from state to state.

** Source: Council of State Government, Occupations and Professions Licensed by the States, Puerto Rico and the Virgin Islands (1968). Presumably all 50 states license dentists if, in 1969, all 50 states licensed dental hygienists.

bious given previous indication from the N. C. Supreme Court that such regulation was unconstitutional.

Section Three: The Economics of Occupational Licensing

This section will attempt to describe the behavior and authority of N. C. occupational licensing boards in the light of the economist's model of competition. Economists would describe the market for a particular good or service as being located on a continuum somewhere between two poles: one polar case being competition, the other being monopoly. The question which this section proposes to address is where on this continuum would N. C. licensing boards be most likely to locate.

A competitive market requires four elements: that there be a large number of buyers and sellers, that there be free dissemination of knowledge and information in the market, that there be good mobility of resources, and that the product sold in the market be reasonably homogeneous. A market in which a monopoly exists is the antithesis of the competitive market, i.e. there is only one firm to which buyers can go for the product, information is likely to be severely restricted and resource mobility may very well be impaired.

One measure of the degree to which an occupation is willing to be competitive is the openness of board membership to members of professions and occupations unconnected with the occupation licensed by the board. While one can debate whether or not the majority of the board members should be or should not be members

of the regulated occupation, there certainly would seem to be no good reason for denying at least one seat on the board to someone whose statutory authorization would be to represent explicitly the public interest. Table 4 reviews the composition of the boards of N. C. The statutory authority creating the boards requires a public interest member in only two of 209 board seats. Given the way the statutes are written, the governor would presumably have the authority to appoint public interest members to some 22 of the 209 seats. Note that the governor would have the power to appoint a majority of board members to represent the public interest on only two boards: House Movers and Real Estate. The lack of explicitly designated public interest members indicates a desire to have the occupation regulated only by those who are a part of that regulation process (board members from the occupation regulated are invariably required to be licensed). While the composition of the board does not guarantee that the occupation will be regulated in a monopolistic fashion, it is clearly more consistent with the monopoly end of the market continuum than the competitive end.

Another possible indication of the nature of regulation is the manner in which the boards report on their activities to the State. General Statute 93B-2(1957) requires that the occupational licensing board will file with the Secretary of State and with the Attorney General

Table 4

BOARD	TOTAL NUMBER OF MEMBERS	MAXIMUM POSSIBLE NUMBER OF PUBLIC MEMBERS*	
		Discretion	Actual
Architecture	5	0	0
Auctioneers	5	2	0
Barbers	3	0	0
Certified Public Accountant	4	0	0
Chiropractic	3	0	0
Contractors	5	2	0
Cosmetic Art	5	0	0
Dental	6	0	0
Electrical Contractors	5	0	0
Foresters	5	1	0
Hearing Air Dealers & Fitters	7	0	0
House Movers	7	4	0
Landscape Architect	5	0	0
Landscape Contractors	9	2	0
Law	9	0	0
Medical	7	0	0
Mortuary Science	7	0	0
Nursing	12	0	0
Nursing Home Administrator	7 (voting)	4 **	0
Opticians	5	0	0
Optometry	5	0	0
Osteopathic	5	0	0
Pharmacy	5	0	0
Physical Therapy	7	0	0
Plumbing & Heating Contractors	7	0	0
Podiatry	3	0	0
Practicing Psychologists	5	0	0
Professional Engineers & Land Surveyors	7	0	0
Real Estate	5	3	0
Refrigerator	7	0	0
Sanitarian	9	1	1 ***
Speech & Language Pathologists & Audiologists	5	0	0
Veterinary	6	0	0
Watchmaking & Repairing	5	0	0
Water Well Contractor	7	3	1
TOTALS	209	22	2

* Some appointments are left to governor's discretion. Thus, the "Discretion" number would be the outside limit of public members. A public member would be one who is not involved with the occupation on whose Board he sits; his charge would be to explicitly represent the public interest. The "Actual" column lists those public memberships specifically created by the General Assembly.

** Although these four members do not have to be representatives of nursing homes, they must be in a profession that deals with the care and treatment of the aged.

*** Required only to be "public-spirited."

Source: N. C. General Statutes
Individual Boards' Rules and Regulations

an annual report containing the information shown on Table 5. Presumably the purpose of G.S. 93B was to give the Attorney General and the Secretary of State some limited supervisory role, if only in the most rudimentary sense. The requirements of the law in making these reports have been flagrantly violated. The Attorney General's files on these annual reports are virtually nonexistent. The reporting to the Secretary of State has been somewhat better. Table 6 shows that of the 35 boards, there is some information in the Secretary of State's files on 25 of them. Note that ten of the 35 boards have filed no reports whatsoever. Even the boards which one would presume would be the most conscientious have been less than rigorous in their compliance with the law. For example, the Board of Law Examiners has filed only three annual reports with the Secretary of State. The Dental Board has not filed since 1973. Professional Engineers and Land Surveyors are the only board of the 35 which filed reports during the 1960s. There is no data whatsoever available for the 1950s even though the statute which requires those reports was passed by the General Assembly in 1957.

A further indication of the nature of these boards can be drawn from referring back to Table 1. As this Table and Table 2 indicate, N. C. is licensing an increasing number of decreasingly worthy boards. What reason is there for not allowing the market to operate for

TO THE SECRETARY OF STATE OF NORTH CAROLINA:

* * * * *

ANNUAL REPORT, filed pursuant to the requirements of Chapter 1377, Session Laws 1957, for the year ending _____.

(1) _____
(Occupational Licensing Board)

(Address)

(a) Names of Members of Board and addresses:

(b) Officers of Board:

(2) Number of persons who applied to Board for examination: _____

(3) Number who were refused examination: _____

(4) Number who took the examination: _____

(5) Number to whom initial licenses were issued: _____

(6) Number who applied for licenses by reciprocity or comity: _____

(7) Number who were granted licenses by reciprocity or comity: _____

(8) Number of licenses suspended or revoked: _____

(9) Number of licenses terminated for any reason other than failure to pay the required renewal fee: _____

COPY OF ANNUAL FINANCIAL REPORT IS ATTACHED.

Respectfully,

Secretary

Date: _____

ANNUAL REPORTS IN SECRETARY OF STATE'S FILES

<u>BOARD</u>	<u>YEARS OF REPORT</u>
Architecture	1972 ,- current
Auctioneers	none
Barber	1971 - current
Certified Public Accountant	1970 - current
Chiropractic	1973, 1975
Contractors	1974, 1975
Cosmetic Art	1972, 1973, 1975
Dental	through 1973
Electrical Contractors	1971 - current
Foresters	none
Hearing Aid Dealers and Fitters	none
House Movers	none
Landscape Architects	1972, 1973
Landscape Contractors	none
Law	1973 - current
Medical	1971 - current
Mortuary Science	1970 - current
Nursing	1970 - current
Nursing Home Administrators	none
Opticians	none
Optometry	1970, 1971
Osteopathic	through 1973
Pharmacy	1971 - current
Physical Therapy	1970 - 1974
Plumbing & Heating Contractors	1971 - current

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<u>Board</u>	<u>Years of Report</u>
Podiatry	1970 - current
Practicing Psychologists	none
Professional Engineers & Land Surveyors	through 1974
Real Estate	1972 - current
Refrigerator	1970 - current
Sanitarian	1970 - 1973, 1975
Speech & Language Pathologists & Audiologists	none
Veterinary	1971, 1972
Watchmaking & Repairing	none
Water Well Contractor	1970 - current

auctioneers, hearing aid dealers and fitters, house movers, landscape architects and contractors, nursing home administrators, speech and language pathologists and audiologists, watchmakers, and water well contractors? Note that these boards (with the exception of Foresters, Landscape Architects, and Landscape Contractors) are "practice" acts, i.e. no one can practice the occupation without having gone through the procedures for licensing set up by the board. The three exceptions are "title" acts.

It is possible to construct, at least conceptually, a rigorous criteria by which boards could be labeled competitive or monopolistic in motivation. If a board is truly interested in promoting the public interest and maintaining quality (both of which are consistent with competition), then it would restrict entry to those qualified and continually monitor the existing license holders to make sure they maintain a satisfactory minimum level of competence. If the board is merely acting as a cartel manager or a monopolistic, however, then the emphasis will be purely on entry restriction since that is the surest way to keep market prices, or salaries in this case, high.

Table 7 compiles the data available from the files of the Secretary of State (see Tables 5 and 6) and computes the percentage of those who are licensed as a portion of those taking the exam. Also computed are the annual num-

RD	YEAR ENDED	# LICENSED # TAKING EXAM (x 100%)	# OF LICENSES REVOKED OR SUSPENDED	# OF LICENSEES
	<u>6/30</u>			
Architecture	1975	61.7%	40	Approximately 1600 as of Oct. 15, 1975
	1974	71.0%	47	
	1973	100.0% + ?	27	
	1972	54.5%	23	
	1971	-	-	
	1970	55.3%	25	
	<u>6/30</u>			
Members	1975	100.0%	1	
	1974	100.0%	1	
	1973	100.0% + ?	0	
	1972	100.0% + ?	0	
	1971	87.9%	0	
	<u>3/31</u>			
Registered Public Accountants	1976	27.3%	6	Approximately 7600 in Jan., 1976
	1975	26.3%	2	
	1974	19.7%	2	
	1973	23.1%	1	
	1972	24.5%	2	
	1971	19.3%	1	
	<u>7/31</u>			
Proprietary	1975	95.5%	1	
	1974		?	
	1973	90.0%	4	
	<u>12/31</u>			
Contractors	1975	95.5%	0	Approximately 3000 as of May 21, 1975
	1974	100.0%	0	
	1973	100.0%	0	

BOARD	YEAR ENDED	# LICENSED # TAKING EXAM (x 100%)	# OF LICENSES REVOKED OR SUSPENDED	# OF LICENSEES
	<u>6/30</u>			
Cosmetic Art	1975	94.7%	0	
	1974			
	1973	86.0%	0	
	1972	84.8%	1	
	1971	81.7%	0	
Dental	<u>12/31</u>			
Dentists	1975			Approximate 1700 as of April 4, 1973 in N.
	1974			
	1973	82.7%	4	
	1972	95.7%	1	
	1971	93.2%	4	
	1970	90.3%		
	1969	91.6%		
	1968	93.2%		
	1967	88.5%		
1966	82.8%			
Dental Hygienists	1975			Approximate 650 as of April 4, 1973 in N.
	1974			
	1973	95.2%	0	
	1972	95.9%	0	
	1971	95.6%	0	
	1970	96.5%		
	1969	96.2%		
	1968	90.2%		
	1967	88.9%		
1966	95.7%			
	<u>6/30</u>			
Electrical Contractors	1975	18.1%	0	
	1974	29.1%	0	
	1973	35.0%	1	
	1972	35.5%	0	
	1971	31.2%	0	

BOARD	YEAR ENDED	# LICENSED # TAKING EXAM (x 100%)	# OF LICENSES REVOKED OR SUSPENDED	# OF LICENSEES
	<u>12/31</u>			
Landscape Architects	1975			
	1974			
	1973	7.1%	0	
	1972	- (0/0)	12	
	<u>12/31</u>			
Law	1975	89.0%	"not our jurisdiction"	
	1974	86.1%	"	
	1973	87.3%	"	
	<u>10/31</u>			
Medical	1975	71.3%	0 (1 volun- tarily surrendered)	Approximately 8700 physicians in N.C. licensed by N.C. as of 3/1/74
	1974	75.7%	4 (3 stayed)	
	1973	79.7%	0	
	1972	84.2%	0	
	1971	85.8%	1	
	<u>12/31</u>			
Forensic Science	1975	83.2%	34	
	1974	78.1%	31	
	1973	84.4%	19	
	1972	72.6%	29	
	1971	86.1%	30	
	1970	69.4%	6	
	<u>12/31</u>			
Nursing				
	Registered Nurse	1975	70.3%	2
		1974	68.8%	2
		1973	72.5%	6
		1972	69.2%	6
		1971	63.2%	5
		1970	62.5%	7 (includes voluntary surrender)

BOARD	YEAR ENDED	# LICENSED # TAKING EXAM (x 100%)	# OF LICENSES REVOKED OR SUSPENDED	# OF LICENSEES
Licensed Practical Nurse	1975	81.7%	1	
	1974	82.6%	0	
	1973	84.2%	0	
	1972	85.9%	2	
	1971	86.8%	4	
	1970	85.32%	2	
Opticians *	1974	88.9%		
	<u>6/30</u>			
Optometry	1975			
	1974			
	1973			
	1972			
	1971	76.9%	4	
	1970	100.0% + ?	6	
	<u>7/31</u>			
Osteopathic	1975			
	1974			
	1973	0/0	0	
	1972	0/0	0	
	1971	0/0	0	
	<u>4/30</u>			
Pharmacy	1975	<u>Two Exams</u> 46.6% 59.0%	3**	3176 phar- macists as 5/1/75
	1974	71.9% 71.1%	7	
	1973	86.8% 79.4%	3	
	1972	82.7% 64.5%	10	
	1971	93.7% 78.0%		

* Source:
Raleigh News
& Observer,
8/31/75

** Includes one
voluntary surrender

RD	YEAR ENDED	$\frac{\# \text{ LICENSED}}{\# \text{ TAKING EXAM}} (\times 100\%)$	$\#$ OF LICENSES REVOKED OR SUSPENDED	$\#$ OF LICENSEES
	<u>12/31</u>			
Physical Therapy				
Physical Therapist	1975			Approximately 700 Physical Therapists in 1975
	1974	97.5%	0	
	1973	-	-	
	1972	96.4%	0	
	1971	61.5%	0	
Physical Therapy Assistant	1975			Approximately 150 Physical Therapy Assistants in 1975
	1974	90.9%	0	
	1973	96.4%	0	
	1972	100.0%	0	
	1971	100.0%	0	
	<u>12/31</u>			
Building and Contracting Contractors	1975	53.1%	0	4000 as of 7/10/75
	1974	52.6%	0	
	1973	48.6%	0	
	1972	43.5%	0	
	1971	46.5%	0	
	1970	38.3%	0	
	<u>12/31</u>			
Asst. Attorney	1975	50.0%	0	
	1974	100.0%	0	
	1973	100.0%	0	
	1972	80.0%	0	
	1971	80.0%	0	
	1970	100.0%	0	

BOARD	YEAR ENDED	# LICENSED # TAKING EXAM (x. 100%)	# OF LICENSES REVOKED OR SUSPENDED	# OF LICENSEES
	<u>11/30</u>			
Professional Engineers and Land Surveyors				
Professional Engineers	1975		1	5460 Professional Engineers as of 11/30/75
	1974			
	1973	14.8%		
	1972	18.3%		
	1971	17.5%		
	1970	27.3%		
	1969	57.7%		
	1968	64.4%		
	1967	51.9%		
	1966	26.9%		
	1965	24.5%		
	1964	22.2%		
Land Surveyors	1975			1070 Licensed Surveyors as of 11/30/75
	1974			
	1973	30.0%		
	1972	53.3%		
	1971	51.9%		
	1970	73.7%		
	1969	73.5%		
	1968	79.4%		
	1967	100.0% + ?		
	1966	71.8%		
	1965	74.4%		
	1964	84.4%		
	<u>6/30</u>			
Real Estate				
Brokers	1975	43.8%	13	19,260 Brokers as of 6/30/75
	1974	55.0%	5	
	1973	53.4%	4	
	1972	60.9%	6	
Salesmen	1975	69.3%	2	3879 Salesmen as of 6/30/75
	1974	60.4%	1	
	1973	60.7%	1	
	1972	56.3%	0	

RD	YEAR ENDED	# LICENSED # TAKING EXAM (x 100%)	# OF LICENSES REVOKED OR SUSPENDED	# OF LICENSEES
	<u>12/31</u>			
igerator	1975	53.8%	0	
	1974	65.3%	0	
	1973	65.9%	0	
	1972	73.9%	0	
	1971	67.2%	0	
	1970	76.2%	0	
	<u>12/31</u>			
tarian	1975	100.0%	0	
	1974	?	0	
	1973	67.7% (2/3)	0	
	1972	100.0%	0	
	1971	100.0%	0	
	1970	100.0% + ?	0	
	<u>6/30</u>			
rianary	1975			Approximately 70 as of 6/75
	1974			
	1973			
	1972	95.8%	5	
	1971	85.4%	8	
	<u>12/31</u>			
r Well ractors	1975	100.0%	0	
	1974	88.9% (8/9)	0	
	1973	100.0%	0	
	1972	87.5% (7/8)	0	
	1971	100.0%	0	
	1970	100.0%	0	

ber of licenses revoked or suspended annually. Entry restriction and a large number of license revocations should mean that the board is insistent on quality control.

Those boards who only restrict entry and are less than aggressive in revoking or suspending licenses would seem to fit the monopoly model. Note that while this test as a conceptual matter is quite rigorous, the available data is limited. In addition the manner in which the boards answer the questions required by the statute is such that it is sometimes unclear that they are giving the data requested. Therefore a considerable degree of caution should be used in interpreting these numbers. Contact with the board would have to be made in order to get accurate figures which one could trust.

In Architecture, it would appear that the board restricts entry and annually revokes or suspends a considerable number of licenses. However, from independent evidence, it is known that the numbers of licenses revoked or suspended shown in Table 7 are inaccurate. Most of those are revoked or suspended for reasons other than the competence of the license holder, i.e., failure to pay fee, moved out of state, death, etc. The Architecture Board seems generally consistent with the monopoly model of the economists.

The data for the Barbers Board would indicate that it is unlikely to fit either mode. There seems to have been very little entry restriction and almost no licenses revoked or suspended. It would seem reasonable to question

the need for the continued existence of this board on the basis of this data. Prior to making that judgment, however, one would need to contact the board to do a more thorough review of the activities of the board.

In short, Table 7 would seem to indicate that the following boards would fit the monopoly model: Certified Public Accountants, Cosmetic Art, Dental, Electrical Contractors, Landscape Architects, Law, Medical, Mortuary Science (again one of those boards where the data on license revocation appears to include licenses lost for reasons other than competence), Nursing, Pharmacy, Plumbing and Heating Contractors, Professional Engineers and Land Surveyors, Real Estate, and Refrigerator. The remaining boards would indicate a pattern similar to that of Barbers, i.e. very little insistence on quality control at the entry level or on those already in the profession.

It might be objected that the measure of entry restrictions used above is too limited. The board can set up such requirements for education and/or apprenticeship, that, even if it passed everyone who took the exam, there would still be considerable restriction of entry. A review of the boards' rules and regulations would indicate that this is in fact reasonable. For example, barbers are required to complete over 1500 hours of schooling plus an apprenticeship in addition to taking the licensing exam. Thus the percentage of those taking the exam who receive licenses may be an inadequate measure of the restrictiveness of the boards.

It might also be objected that using the number of licenses revoked or suspended is a poor measure of quality control in the existing profession since there may be continuing education requirements by the board which insure minimum levels of competence. Consider Table 8. This is a survey of the general statutes and rules of the boards in an effort to locate those which have continuing education requirements. Note that there are only six boards which have either statutory or regulatory requirements of continuing education: Chiropractic, Hearing Aid Dealers and Fitters, Opticians, Optometry, Podiatry, and Veterinary. Note that none of the more important health and construction boards have these requirements. Note also that of the six boards which do require continuing education, three set maximum limits on the amount of hours which a person can take to satisfy the continuing education requirements. Certainly the presence of continuing education requirements in only six of the thirty-five boards examined would not be consistent with the economist's model of a board intent on insuring quality and competition.

Notice that the question of whether or not a board fits a competitive model or a monopoly model is important since N. C. Constitution frowns on exclusive privileges and monopoly. It is also questionable as to what the public interest is in maintaining the licensing board of an occupation which functions purely as a monopolist rather than as a quality control mechanism consistent with competition.

<u>BOARD</u>	<u>CONTINUING EDUCATION REQUIREMENTS</u>	
	<u>General Statutes</u>	<u>Rules</u>
Architecture	None	None
Auctioneers	None	None
Barbers	None	None
Certified Public Accountants	None	None
Chiropractic	None	\$.0205 (2) Two days (approved by Board) per year.
Contractors	None	None
Cosmetic Arts	None	None
Dental	None	NA
Electrical Contractors	None	None
Hearing Aid Dealers & Fitters	G.S. 93D-3 At Board's Discretion	\$.0020 Requirements Unknown.
House Movers	None	None
Landscape Architects	None	None
Landscape Contractors	None	None
Law	None	None
Medical	None	None
Mortuary Science	None	None
Nursing	None	None
Nursing Home Administrators	None	NA
Opticians	None	\$.0206 (6) Courses approved by Board "shall not exceed six hours of each calendar year."

<u>Board</u>	<u>Continuing Education Requirements</u>	
	<u>General Statutes</u>	<u>Rules</u>
Optometry	G.S. 90-123.1 "...courses... prescribed by the board shall not exceed 25 hours in any calendar year."	Subchapter 42B- §.0302 Minimum of 10 hours of course study each year. Subchapter 42D-§.0005: Techni- cian must complete minimum of 10 hours of study within the past two years at courses approved by the Board.
Osteopathic	None	None
Pharmacy	None	None
Physical Therapy	None	None
Plumbing & Heating Contractors	None	None
Podiatry	G.S. 90-202.11 Courses approved by the Board not to exceed 25 hours in a calendar year.	§.0208
Practicing Psychologists	None	None
Professional Engineers & Land Surveyors	None	None
Real Estate	None	None
Refrigeration	None	None
Sanitarian	None	None
Speech and Language Pathologists and Audiologists	None	None
Veterinary	None	§.0206 Ten credit hours per year at seminars offered by profession- al schools and asso- ciations.

<u>Board</u>	<u>Continuing Education Requirements</u>	
	<u>General Statutes</u>	<u>Rules</u>
Watchmaking and Repairing	None	None
Water Well Contractor	None	None

Total Number of Boards With Continuing Education Requirements = 6.

There are a considerable number of anticompetitive aspects to the boards in addition to those already cited. Consider Table 9 which indicates those boards which have either rules or statutory authority to restrict competitive bidding. Note that there are seven boards with such restrictions, two of which have these restrictions based in the statutes. The Federal District Court decision against professional engineers and land surveyors in the District of Columbia would seem to indicate that these restrictions are unconstitutional. Table 10 lists those boards which have rules or statutory authority limiting the use of truthful advertising by the regulated occupation. Of the thirteen boards with such restrictions, only four are based on explicit statutory authority. Given that the Supreme Court decision in the Pharmacy case explicitly exempted only medical and legal boards, the constitutionality of such restrictions on advertising would seem to be dubious, especially in the case of opticians and optometrists.

A further entry restriction common among N. C. licensing boards applies to those persons who have been convicted of felonies (sometimes merely crimes). They are limited in their ability to move into a variety of occupations. To the degree that licensing board regulations and statutory authority inhibits this movement into occupations, the rehabilitation process of an offender is impeded. Table 11 reviews the restrictions on license issuance and the requirements for a license revocation

Table 9

<u>BOARD</u>	<u>RESTRICTIONS ON COMPETITIVE BIDDING</u>	
	<u>General Statutes</u>	<u>Rules</u>
Architecture		§.0209 (3) - (4)
Foresters		§.0115-6 Code of Ethics: #18
Landscape Architect		§.0203 ? Unprofessional Conduct: #2
Law	G.S. 84-38	DR2-103
Opticians	G.S. 90-255	
Optometry		§.0302 (2)
Professional Engineers and Land Surveyors		§.0701 (f) (2)

BOARD	AUTHORITY WHICH LIMITS USE OF TRUTHFUL ADVERTISING	
	<u>General Statutes</u>	<u>Rules</u>
Architecture		§.0209 (7)
Certified Public Accountants		§.0301
Chiropractors		§.0301 (c) & §.0302
Foresters		Code of Ethics: #2
Landscape Architect		§.0203 Guidelines for Professional Conduct: #2
Law		Code of Professional Responsibility Disciplinary Rules 2-101, 102, 103
Opticians	G.S. 90-249	
Optometrists	G.S. 90-121.12 (18)	§.0202 & §.0302 (1)
Physical Therapy	G.S. 90-265 & 266	
Podiatrist	G.S. 90-202.8	
Professional Engineers & Land Surveyors		§.0702 (1)
Psychologists		Code of Ethics: #10
Speech & Language Pathologists & Audiologists		§.0303

General Statutes

Issuance

Revocation

Board

	<u>Issuance</u>			<u>Revocation</u>		
	F	MT	GMC	F	MT	GMC
Architecture	x		x ¹			
Auctioneers	x		x			
Barber	x			x		
CPA			x	x ²	x ²	
Chiropractic		x	x		x	x
Contractors	x ³	x	x	x		
Cosmetic Art	x			x		
Dental	x ⁴	x ⁴	x	x ⁴	x ⁴	
Electrical Contractors			x			
Foresters			x			
Hearing Aid			x		x ⁴	
House Movers						
Landscape Architects	x		x	x		
Landscape Contractors		x ⁴			x ⁴	
Law					x ⁵	
Medical	x	x	x	x	x	x
Mortuary Science	x	x	x	x	x	x
Nursing			x	x	x	x
Nursing Home Administrators			x			x
Opticians			x	x ²		
Optometry	x ^{2,4}	x ^{2,4}	x	x ^{2,4}	x ^{2,4}	

<u>Board</u>	<u>General Statutes</u>					
	<u>Issuance</u>			<u>Revocation</u>		
	F	MT	GMC	F	MT	GMC
Osteopathic	x	x	x	x	x	
Pharmacy	x	x	x	x	x	x
Physical Therapy			x			
Plumbing & Heating Contractors						
Podiatry	x ⁴	x ⁴	x	x ⁴	x ⁴	x
Psychologists	x		x	x		
Prof. Engineers & Land Surveyors			x	x	x	
Real Estate			x	x ⁴	x ⁴	
Refrigerator						
Sanitarian	x		x	x		
Speech & Language Audiologists & Pathologists						
Veterinary			x	x	x	
Watchmaking	x	x	x	x	x	
Water Well Contractor	x	x	x	x	x	x

x = License card denied, revoked or suspended for not possessing a good moral character (GMC), for being convicted of a felony (F), or for being convicted of any crime involving moral turpitude (MT).

x¹ = Statutory language similar to GMC.

x² = Statutory language refers to "criminal conviction", not simply a felony conviction.

x³ = Applicant can be licensed only if convicted felon has had his citizenship rights restored.

x⁴ = License can be denied or revoked not only for conviction but also for plea of nolo contendere.

x⁵ = Statutory language refers to criminal offense showing professional unfitness

of N. C. Boards. While one might reasonably allow the board to review a record of criminal convictions or ask for personal references, certainly one would wish to be very careful to avoid giving the board the power to restrict entry into a profession which is unrelated to either the flaws in character of the applicant or to the record of criminal convictions. There would seem to be room to allow forgiveness by requiring that only those convictions within the last five or ten years be considered. The actual statutory authority of the boards to restrict entry to those with criminal records is considerable. Not only can a person be restricted as to entry or lose his license for conviction on a felony charge, but in some cases can lose the right to practice his profession or occupation simply by pleading nolo contendere.

The Economic Costs of Licensing Regulation

It is rare for economists to come to general agreement on any topic. Nonetheless, the review of economic literature shown in the attached Bibliography is unanimous in arguing that present methods of occupational licensing are inefficient and more costly than they ought to be.

Unfortunately, it has proved most difficult to estimate the dollar value of excess costs in N. C. regulations. Such excess costs would be measured by the amount of overcharges on goods and services currently provided plus the amount of such goods and services which are not provided at the current prices in excess of what would be sold at competitive prices.

The articles by the Benhams indicate that the prices of eyeglasses rise as the degree of restrictiveness in advertising increases. The more restrictive a state's board is in allowing advertising of price, then the higher the price that state's citizenry pays for eyeglasses. The Benhams note that North Carolina is the most restrictive state in the Union in its advertising rules.

Using the data in the Benham article, it is estimated that one-third of the current sales of eyeglasses in states which restrict advertising represent excess costs. Applying this to a conservatively estimated \$30 million sales figure for N. C. results in a savings to consumers of \$10million annually. Note that the one-third overcharge is conservative since N. C. is more restrictive than the average state.

If the elimination of advertising prohibitions for opticians and optometrists can save N. C. \$10 million per year, the amount of savings from eliminating other restrictions would also seem likely to be significant.

It is worthwhile to reemphasize there is virtually no disagreement among economists that loosening anticompetitive restraints imposed by licensing boards will result in significant benefits to consumers and society at large.

Section Four: Legal Authority of the Attorney General

Exhibit 1 consists of a memorandum from Norma Harrell providing a legal exposition of the statutory authority of the Attorney General to act in the area of occupational licensing boards. The Attorney General can ask the boards to hold public hearings to change the rules, initiate public hearings on his own, refuse to defend the board in imposing certain objectionable and unconstitutional requirements, or sue the board as the public representative of the citizens of North Carolina.



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RUFUS L. EDMISTEN
ATTORNEY GENERAL

13 July 1976

M E M O R A N D U M

FROM: NORMA S. HARRELL

RE: Role of Attorney General vis a vis Needed
Changes Regarding Occupational Licensing

The Attorney General's Office cannot compel occupational licensing boards to make changes in their rules or operations despite the fact that they may be exceeding their statutory authority or violating anti-trust provisions. However, when the Attorney General's Office becomes aware of anti-trust violations or unauthorized activities with anti-competitive effects, there are ways by which this Office can seek to achieve the changes needed.

When the Attorney General's Office becomes aware of an obviously improper or illegal rule or policy, it should point out the problem and possible consequences to the licensing board or agency. If the agency does not change the rules or policy after informal discussion, the Office might request a rule-making hearing under the Administrative Procedure Act and, if the hearing request is granted, point out the illegality or impropriety in the rule-making hearing.

If they are still unwilling to change the impermissible policy or rule, they should be warned pursuant to G.S. §143-300.4 that the Attorney General's Office could not defend them in any suit based on that particular policy or rule because it would not be in the best interests of the State. For example, there are several licensing boards in this State which require their licensees to be United States citizens even though the applicable statutes do not create such a requirement. In view of the recent United States Supreme Court decision, Examining Board of Engineers, Architects, and Surveyors v. de Otero (June 17, 1976), the citizenship requirement is unquestionably illegal. As counsel for a licensing board, the Attorney

Memo
Page 2
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General's Office has a duty to warn a board of the illegality and possible consequences of enforcing such a rule, and to use every means within its power to persuade the board to abandon the prohibited policy.

The Attorney General also acts as the public representative of the citizens of the State. In unusual situations, it might be appropriate for the Attorney General to sue a licensing board on behalf of the public. N.C.G.S. §114-2(8)(a) authorizes suits to be initiated by the Attorney General before state and federal courts, regulatory officers, agencies and bodies on behalf of the State and its agencies and citizens in matters affecting the public interest. Although a procedure of this type should be used sparingly, the Attorney General does represent the citizens of the State as well as State agencies. This authority should be kept in mind and invoked in unusual situations. For example, it might be considered desirable to bring a suit to have the Board of Watchmakers and Repairers declared unconstitutional. There does not seem to be any legitimate police power concern which would authorize the licensing and regulation of the watchmaking and repairing trade other than the usual concern, common to all occupations, that the public should be protected from fraud and dishonesty. The decisions of the North Carolina Supreme Court are clear that a mere desire to prevent fraud and dishonesty is not sufficient to justify licensing under the police power. G.S. §114-2 would authorize such a suit if the Attorney General should deem it advisable.

NSH/ch

Section Five: Policy Options

1. Boards

- a. Ask that the Boards voluntarily institute public hearings to remove or change objectionable regulations.
- b. Require the Board, under APA rules, to hold public hearings to remove or change objectionable regulations.
- c. Review with the Board its method of operation in order to insure public interest is furthered; gather material and data for further study.
- d. Require adequate reporting to Attorney General pursuant to G.S. 93B.

2. Legislation

- a. Testify before the subcommittee of the House Finance Committee charged with studying "State licensing boards" authorized by House Resolution 1223. (Chairman: Thomas B. Sawyer, D-Guilford; Report due 1977 General Assembly Session).
- b. Prepare and sponsor legislation:
 1. Public Member on Each Board
 2. Repeal Restrictive Advertising Statutes
 3. Repeal Statutes Restricting Competitive Bidding
 4. Set uniform, fair and consistent rules for good moral character requirements and treatment of criminal records in license issuance and revocation.

5. Require Continuing Education
 6. "Sunset" legislation for occupational licensing boards.
- c. Testify before committees considering bills to license additional occupations.
3. Court Action
 - a. Sue to declare certain boards unconstitutional
 - b. Sue to declare certain statutory authority (to restrict advertising, competitive bidding, to require U.S. citizenship) unconstitutional.
4. Other
 - a. Cooperate within U.S. Justice Department in developing policies on occupational licensing.
 - b. Actively aid U.S. Department of Labor in preparation of its handbook on occupational licensing.
 - c. Apply for \$15,000 grant from Manpower Administration, U.S. Department of Labor to set up demonstration project to accomplish 1. (a)-(d) and 2. (a)-(c).

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Chapter 93B.

Occupational Licensing Boards.

Sec.	Sec.
93B-1. Definitions.	93B-5. Compensation and employment of board members.
93B-2. Annual reports required; contents; open to inspection.	93B-6. Use of funds for lobbying prohibited.
93B-3. Register of persons licensed; information as to licensed status of individuals.	93B-7. Rental of state-owned office space.
93B-4. Annual audit of books and records; payment of cost; report of financial operations.	93B-8. Examination procedures.
	93B-9. Age requirements.
	93B-10. Expiration of term of appointment of board member.

§ 93B-1. Definitions. — As used in this Chapter:

“License” means any license (other than a privilege license), certificate, or other evidence of qualification which an individual is required to obtain before he may engage in or represent himself to be a member of a particular profession or occupation.

“Occupational licensing board” means any board, committee, commission, or other agency in North Carolina which is established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within, a particular profession or occupation, and which is authorized to issue licenses; “occupational licensing board” does not include State agencies, staffed by full-time State employees, which as a part of their regular functions may issue licenses. (1957, c. 1377, s. 1.)

§ 93B-2. Annual reports required; contents; open to inspection. — Each occupational licensing board shall file with the Secretary of State and with the Attorney General an annual financial report, and an annual report containing the following information:

- (1) The address of the board, and the names of its members and officers;
- (2) The number of persons who applied to the board for examination;
- (3) The number who were refused examination;
- (4) The number who took the examination;
- (5) The number to whom initial licenses were issued;
- (6) The number who applied for license by reciprocity or comity;
- (7) The number who were granted licenses by reciprocity or comity;
- (8) The number of licenses suspended or revoked; and
- (9) The number of licenses terminated for any reason other than failure to pay the required renewal fee.

The reports required by this section shall be open to public inspection. (1957, c. 1377, s. 2; 1969, c. 42.)

§ 93B-3. Register of persons licensed; information as to licensed status of individuals. — Each occupational licensing board shall prepare a register of all persons currently licensed by the board and shall supplement said register annually by listing the changes made in it by reason of new licenses issued, licenses revoked or suspended, death, or any other cause. The board shall, upon request of any citizen of the State, inform the requesting person as to the licensed status of any individual. (1957, c. 1377, s. 3.)

§ 93B-4. Annual audit of books and records; payment of cost; report of financial operations. — The books and records of each occupational licensing board shall be audited annually by the State Auditor. The cost of all audits shall be paid out of the funds of the occupational licensing boards. One copy of the

audit report of each of the boards shall be submitted by the State Auditor to the Legislative Services Office.

The State Auditor shall issue annually a report containing a summary of the financial operations of each board. The State Auditor shall submit copies of the annual summary of the occupational licensing boards to the Governor, the Lieutenant Governor, the President pro tem of the Senate, the Speaker of the House of Representatives and the Legislative Services Office. (1957, c. 1377, s. 4; 1965, c. 661; 1973, c. 1301.)

Editor's Note. — The 1973 amendment rewrote this section.

§ 93B-5. Compensation and employment of board members. — (a) Board members shall receive as compensation for their services per diem not to exceed thirty-five dollars (\$35.00) for each day during which they are engaged in the official business of the board.

(b) Board members shall be reimbursed for all necessary travel expenses and registration fees in an amount not to exceed that authorized under G.S. 138-6(a)(1),(2), and (4) for officers and employees of State departments.

(c) One member of the board may receive reasonable compensation for any purpose which the board shall deem appropriate, at a sum fixed by the board. In addition thereto, said board member shall be entitled to the same compensation provided in subsections (a) and (b).

(d) Except as provided in subsection (c) above, board members shall not be paid a salary or receive any additional compensation for services rendered as members of the board.

(e) Board members shall not be permanent, salaried employees of said board.

[(f) No individual may be a member of more than one occupational licensing board at any one time.] (1957, c. 1377, s. 5; 1973, c. 1303, s. 1; c. 1342, s. 1.)

Editor's Note. — The first 1973 amendment added to the section as it stood before the 1973 amendments the provision that has been codified, in brackets, as subsection (f) in the section as set out above.

The second 1973 amendment rewrote the section, which formerly consisted of a single paragraph, as subsections (a) through (e) of the section as set out above.

Session Laws 1973, c. 1303, s. 2, provides: "Nothing in this act shall prohibit any person

from serving as an ex officio member of any board."

Session Laws 1973, c. 1342, s. 2, provides: "Members of the State Board of Barber Examiners are hereby authorized to continue the performance of their assigned duties until the expiration of the term of their current appointment. Any member hereafter appointed to the Board for a full term or an unexpired term shall be subject to the provisions of this act."

§ 93B-6. Use of funds for lobbying prohibited. — Occupational licensing boards shall not use any funds to promote or oppose in any manner the passage by the General Assembly of any legislation. (1973, c. 1302.)

§ 93B-7. Rental of state-owned office space. — Any occupational licensing board, which financially operates on the licensing fees charged and also occupies state-owned office space, shall pay rent, in a reasonable amount to be determined by the Governor, to the State for the occupancy of such space. (1973, c. 1300.)

§ 93B-8. Examination procedures. — (a) Each applicant for an examination given by any occupational licensing board shall be informed in writing or print of the required grade for passing the examination prior to the taking of such examination.

(b) Each applicant for an examination given by any occupational licensing board shall be identified, for purposes of the examination, only by number rather than by name.

(c) Each applicant who takes an examination given by any occupational licensing board, and does not pass such examination, shall have the privilege to review his examination in the presence of the board or a representative of the board.

(d) Notwithstanding the provisions of this section, under no circumstances shall an occupational licensing board be required to disclose to an applicant questions or answers to tests provided by recognized testing organizations pursuant to contracts which prohibit such disclosures. (1973, c. 1334, s. 1.)

§ 93B-9. Age requirements. — Any other provision notwithstanding, no occupational licensing board may require that an individual be more than 18 years of age as a requirement for receiving a license. (1973, c. 1356.)

§ 93B-10. Expiration of term of appointment of board member. — A board member serving on an occupational and professional licensing board whose term of appointment has expired shall continue to serve until a successor is appointed and qualified. (1973, c. 1373, s. 1.)

Editor's Note. — Session Laws 1973, c. 1373, s. 2, makes the section effective July 1, 1975.

STATE OF NORTH CAROLINA
OCCUPATIONAL LICENSING BOARDS

SUMMARY REPORT
OF THE
FINANCIAL OPERATIONS

For Fiscal Years Ended During 1975

Prepared By
DEPARTMENT OF STATE AUDITOR
Raleigh, North Carolina



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DIVISIONS
FISCAL AUDITS
OPERATIONAL AUDITS
ACCOUNTING SYSTEMS
N. C. FIREMEN'S PENSION FUND
LAW ENFORCEMENT OFFICERS'
BENEFIT AND RETIREMENT FUND
CONFEDERATE WIDOWS' PENSION

Advisory Budget Commission
Raleigh, North Carolina

Gentlemen:

In accordance with the provisions of Chapter 93B, Section 4, of the General Statutes, we submit our annual summary report on the financial operations of the Occupational Licensing Board for fiscal years ended during 1975. Due to the licensing boards having different fiscal year ends, we are only including in this report a summary of the cash receipts and disbursements statements prepared on a "cash basis". Our individual audit reports, which are also filed with the Legislative Fiscal Research Division, contain the detailed operating results of each board.

During the audits of the individual occupational licensing boards, we discovered inconsistencies and/or a lack of uniformity in the General Statutes, regulations and policies that govern these boards. Some are listed below:

1. Most licensing board's fees are regulated by general statute while other boards' fees are regulated by the individual board of directors.
2. Some boards are required to bank with the State Treasurer, while others are permitted to bank with private financial institutions. Boards banking with the State Treasurer are subject to Budget Division rules and regulations. Other boards are only subject to the general statute pertaining to that particular board.
3. Several boards are required to revert funds to the State Treasurer and/or transfer excess funds to another agency for a specific purpose while most boards are allowed to keep all excess receipts over disbursements. While being required to revert or transfer all or a certain percentage of excess collections does have merits in that it controls excessive cash accumulations, it also may be a restraint to operations in cases where extraordinary expenditures become necessary and where boards are required, by the nature of the board, to purchase certain publications, etc. for applicants. The board may not be able to take advantage of volume purchasing in order to obtain the best possible price.

4. Some boards' records are maintained in with the parent state agencies operating fund without separate accounting records being maintained. This practice makes it difficult to determine if the board is self-supporting.
5. In general we found that the boards are in compliance with Chapter 93B-5, Compensation and employment of board members. However, (2) two boards that are listed in this audit report for the first time question whether or not they are subject to the provisions of Chapter 93B. The above mentioned boards are (1) Morehead City Navigation and Pilotage Commission and (2) Board of Navigation and Pilotage for the Cape Fear River and Bar. Both of these boards were established under Chapter 76.

Currently these boards compensate board members as follows:

- A. One board pays the members \$100.00 each for every board meeting.
 - B. One board divides all excess profits among the members of the board.
6. In all the boards with the exception of the (2) two mentioned in Item (5) above, the number of persons licensed for a particular profession is subject to successfully meeting the requirements set forth by the board. These requirements may include (but may not be limited to) such items as education, experience, examination and payment of fees.

In the case of the Morehead City Navigation and Pilotage Commission and the Board of Navigation and Pilotage for the Cape Fear River and Bar the number of licensees is controlled by statute (Chapter 76). For example:

<u>Licensing Board</u>	<u>Number Of Pilots Authorized</u>
Morehead City Navigation and Pilotage Commission	3
Board of Navigation and Pilotage for the Cape Fear River and Bar	15

We are hopeful that the aforementioned problem areas will be of interest and that efforts to create more uniformity in the Occupational Licensing Boards in North Carolina will be considered.

Respectfully submitted,

Henry L. Bridges

Henry L. Bridges
State Auditor

April 1, 1976

**Summary Report On The Financial Operations Of The Occupational Licensing Board
For Fiscal Years Ended During 1975**

Occupational Licensing Board	Fiscal Year Ended	Beginning Cash Balance	Add: Cash Receipts	Deduct: Cash Disbursements	Ending Cash Balance	Cash Increase/Decrease* During Year	Funds Held By	Amount of Funds Revertible For Year
Board of Medical Examiners of the State of North Carolina	October 31, 1975	\$251 738 34	\$123 506 14	\$160 342 68	\$214 901 80	\$ 36 836 54*	Bank	None
Board of Navigation and Pilotage for the Cape Fear River and Bar	December 31, 1975	20 631 09	12 612 62	10 974 00	22 269 71	1 638 62	Bank	None
Morehead City Navigation and Pilotage Commission	December 31, 1975	34 41	2 911 38	2 860 00	85 79	51 38	Bank	None
North Carolina Auctioneer Licensing Board	June 30, 1975	58 485 18	94 265 00	51 387 37	101 362 81	42 877 63	State	None
North Carolina Board of Architecture	June 30, 1975	69 494 96	55 876 01	62 167 94	63 223 03	6 271 93*	Bank	None
North Carolina Board of Landscape Architects	December 31, 1975	2 003 80	6 796 00	4 827 38	3 972 42	1 968 62	Bank	None
North Carolina Board of Nursing	December 31, 1975	287 299 94	326 464 66	296 535 46	317 229 14	29 929 20	Bank	None
North Carolina Board of Pharmacy	April 30, 1975	47 638 92	170 914 86	116 430 97	102 122 81	54 483 89	Bank	None
North Carolina Board of Private Protective Services	June 30, 1975							
<i>Note: Since all receipts and disbursements are recorded in the State Bureau of Investigation General Fund Code 10283 no separate audit report is prepared.</i>								
North Carolina Board of Water Well Contractor Examiners	December 31, 1975	8 178 84	7 892 18	7 503 71	8 567 31	388 47	Bank	None
North Carolina Licensing Board For Contractors	December 31, 1975	79 081 25	161 151 20	174 896 24	65 336 21	13 745 04*	Bank	None
North Carolina Real Estate Licensing Board	June 30, 1975	399 432 47	384 197 43	328 770 40	454 909 50	55 477 03	Bank	\$40 396 35
North Carolina State Board of Barber Examiners	June 30, 1975	84 177 52	111 445 50	110 469 95	85 153 07	975 55	State	None

Licensing Board

	Fiscal Year Ended	Beginning Cash Balance	Add: Cash Receipts	Deduct: Cash Disbursements	Ending Cash Balance	Cash Increase (Decrease) During Year	Funds Held By	Amount Of Funds Revertible For Year
North Carolina State Board of Certified Public Accountant Examiners	March 31, 1975	\$ 60 709 04	\$119 924 21	\$114 977 07	\$ 65 656 18	\$ 4 947 14	Bank	None
North Carolina State Board of Chiropractic Examiners	April 30, 1975	5 521 25	10 483 74	9 414 26	6 590 73	1 069 48	Bank	None
North Carolina State Board of Cosmetic Art Examiners	June 30, 1975	24 569 62	253 021 80	237 605 00	39 986 42	15 416 80	State	None
North Carolina State Board of Dental Examiners	December 31, 1975	95 424 70	67 599 75	105 628 37	57 396 08	38 028 62*	Bank	None
North Carolina State Board of Examiners for Nursing Home Administrators	June 30, 1975	5 141 49	6 485 00	7 059 91	4 566 58	574 91*	State	None
North Carolina State Board of Examiners in Optometry	June 30, 1975	16 885 16	30 290 00	24 561 86	22 613 30	5 728 14	Bank	None
North Carolina State Board of Examiners in Watchmaking and Repairing	June 30, 1975	2 330 23	8 896 50	9 838 59	1 888 14	442 09*	Bank	None
North Carolina State Board of Examiners of Practicing Psychologists	June 30, 1975	11 370 11	10 630 00	10 268 06	11 732 05	361 94	State	None
North Carolina State Board of Mortuary Science	December 31, 1975	20 951 89	69 616 52	58 816 23	31 752 18	10 800 29	Bank	None
North Carolina State Board of Opticians	June 30, 1975	14 092 41	5 774 18	6 060 58	13 806 01	286 40*	State	None
North Carolina State Board of Osteopathic Examination and Registration	July 31, 1975	1 419 41	897 21	1 106 36	1 210 26	209 15*	Bank	None
North Carolina State Board of Podiatry Examiners	May 31, 1975	6 292 11	4 189 08	5 164 42	5 336 77	955 34*	Bank	None
North Carolina State Board of Sanitarian Examiners	December 31, 1975	4 719 04	1 393 04	1 740 17	4 371 91	347 13*	Bank	None
North Carolina State Examining Committee of Physical Therapy	December 31, 1975	10 222 38	15 116 25	14 705 68	10 632 95	410 57	Bank	None

	Fiscal Year Ended	Beginning Cash Balance	Add: Cash Receipts	Subtract: Cash Disbursements	Ending Cash Balance	Cash Increase/Decrease During Year	Funds Held By	Amount of Funds Revertible For Year
North Carolina State Hearing Aid Dealers and Fitters Board	May 31, 1975	\$ 5,785.93	\$ 12,108.01	\$ 8,722.71	\$ 9,171.23	\$ 3,385.30	Bank	None
North Carolina Veterinary Medical Board	June 30, 1975	11,991.18	10,317.43	8,540.40	13,768.21	1,777.03	Bank	None
North Carolina Water Treatment Facility Operators Certification Board	June 30, 1975	10,727.36	5,350.00	2,927.11	13,150.27	2,422.89	State	None
State Board of Examiners of Electrical Contractors	June 30, 1975	134,030.18	170,765.69	156,928.69	147,867.18	13,837.00	Bank	\$ 1,220.49
State Board of Examiners of Plumbing and Heating Contractors	December 31, 1975	396,167.76	221,057.21	152,301.91	464,923.06	68,755.30	Bank	None
State Board of Refrigeration Examiners	December 31, 1975	33,733.31	26,653.06	25,962.42	34,423.95	690.64	Bank	267.25
State Board of Registration for Professional Engineers and Land Surveyors	November 30, 1975	72,106.20	115,549.18	123,911.14	63,744.24	8,361.96*	Bank	None
The Board of Law Examiners of the State of North Carolina	October 31, 1975	16,975.73	108,104.04	114,806.69	10,273.08	6,702.65*	Bank	None
Wastewater Treatment Plant Operators Certification Commission	June 30, 1975	9,708.37	9,470.00	11,045.36	8,133.01	1,575.36*	State	None

*Receipts include \$11,895.00 from Contingency and Emergency Fund for Legal Expenses.

FACTORS TO CONSIDER IN REVIEW OF REGULATORY BODIES

Section 1 Arabic Numerical 8 of the Colorado "Sunset Law"

(8) (a) Prior to the termination, continuation, or re-establishment of any such agency, a committee of reference in each house of the general assembly shall hold a public hearing, receiving testimony from the public and the executive director of the department of regulatory agencies and the agency involved, and in such a hearing the agency shall have the burden of demonstrating a public need for its continued existence and the extent to which a change in the type of transfer of the agency may increase the efficiency of administration or operation of the agency.

(b) In such hearings, the determination as to whether an agency has demonstrated a public need for its continued existence shall take into consideration the following factors, among others:

(I) The extent to which the division, agency, or board has permitted qualified applicants to serve the public;

(II) The extent to which affirmative action requirements of state and federal statutes and constitutions have been complied with by the agency or the industry it regulates;

(III) The extent to which the division, board, or agency has operated in the public interest, and the extent to which its operation has been impeded or enhanced by existing statutes, procedures, and practices of the department of regulatory agencies, and any other circumstances, including budgetary, resource, and personnel matters;

(IV) The extent to which the agency has recommended statutory changes to the general assembly which would benefit the as opposed to the persons it regulates;

(V) The extent to which the agency has required the persons it regulates to report to it concerning the impact of rules and decisions of the agency on the public regarding improved service, economy of service, and availability of service;

(VI) The extent to which persons regulated by the agency have been required to assess problems in their industry which affect the public;

(VII) The extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by the persons it regulates;

(VIII) The efficiency with which formal public complaints filed with the division, board, or agency or with the executive director of the department of regulatory agencies concerning persons subject to regulation have been processed to completion by the division, board, or agency, by the executive director of the department of regulatory agencies, by the department of law, and by any other applicable department of state government; and

(IX) The extent to which changes are necessary in the enabling laws of the agency to adequately comply with the factors listed in this paragraph (b).

Section 5 of the Florida "Sunset Law"

Section 5. In determining whether to re-establish a program or function the Legislature shall consider the following criteria:

(1) Would the absence of regulation significantly harm or endanger the public health, safety or welfare?

(2) Is there a reasonable relationship between the exercise of the state's police power and the protection of the public health, safety or welfare?

(3) Is there another less restrictive method of regulation available which could adequately protect the public?

(4) Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved, and if so, to what degree?

(5) Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?

(6) Are all facets of the regulatory process designed solely for the purpose of, and have as their primary effect, the protection of the public?

NOTE: Sunset laws are usually defined as laws which provide for periodic review of programs and agencies and for automatic termination of programs and agencies unless extended by specific legislation.

III. WRECKER SERVICE

Charlotte's Wrecker and Tow Ordinance

§ 20-125

TRAFFIC

§ 20-127

Article VII. Wrecker and Tow Service

Sec. 20-125. Definition.

For the purpose of this article "a wrecker" is a person engaged in a business, or offering the services of tow-in service, whereby disabled motor vehicles are towed or otherwise removed from the place where they are disabled by the use of the wrecker so designed for that purpose or by a truck, automobile or other vehicle so adopted for that purpose upon call by the city under the provisions of this article, when the city places a call other than upon direction by the owner of the vehicle involved. (Ord. No. 551, § 1, 3-25-59)

Sec. 20-126. License—Required.

No wrecker shall engage within the city or offer his service within the city without obtaining a license as hereinafter provided. (Ord. No. 551, § 1, 3-25-59)

Sec. 20-127. Same—Application.

Application for licenses issued hereunder shall be made upon a form prepared and made available by the chief of police and shall state:

- (a) The name, home address and proposed business address of applicant.
- (b) The location, description and hourly availability of the tow trucks owned or operated by the applicant.
- (c) That the applicant has available space for properly accommodating and protecting all disabled motor vehicles to be towed or otherwise removed from the place where they are disabled.
- (d) That the applicant has a storage vault or storage room which is adequate to secure and protect personal property which may be left in vehicles towed to a private wrecker.
- (e) Such other information as the chief of police may find reasonably necessary to effectuate the purpose of this article and to arrive at a fair determination of whether the terms of the article have been complied with. (Ord. No. 551, § 1, 3-25-59)

Sec. 20-128. Same—Application fee.

An application hereunder shall be accompanied by an application fee of ten dollars (\$10.00). (Ord. No. 551, § 1, 3-25-59)

Sec. 20-129. Insurance policies required.

No license shall be issued to an applicant hereunder until he shall have deposited with the chief of police the following insurance policies:

- (a) *Garage keeper's policy.* A garage keeper's legal liability policy covering fire, theft, windstorm and explosion in the minimum amounts of five thousand dollars (\$5,000.00), with each accident deemed a separate claim.
- (b) *Garage liability policy.* A garage liability policy covering the operation of applicant's business, equipment or other vehicles, for any bodily injury, or property damage. This policy shall be in the amount of not less than twenty-five thousand dollars (\$25,000.00) for any one person injured or killed and fifty thousand dollars

(\$50,000.00) for more than one person injured or killed in any one accident, and five thousand dollars (\$5,000.00) for property damage.

Each policy required herein must contain an endorsement of any material change or cancellation. (Ord. No. 551, § 1, 3-25-59)

Sec. 20-130. Investigation by chief of police.

Within fifteen (15) days after receipt of an application as provided for herein, the chief of police shall cause an investigation to be made of the applicant and of his proposed operation. (Ord. No. 551, § 1, 3-25-59)

Sec. 20-131. Standards for issuance of license.

The chief of police shall recommend to the city council that a license be issued when he finds:

- (a) That insurance policies as required by this article have been procured;
- (b) That the applicant and all his employees are fit and proper persons to conduct or work in the proposed business;
- (c) That the requirements of this article and all other governing laws and ordinances have been met;
- (d) That the public convenience and necessity require the wrecker service for which application has been made. (Ord. No. 551, § 1, 3-25-59)

Sec. 20-132. Issuance of license; fee.

After approval by the chief of police and before a license is issued, the city council shall determine whether the public convenience and necessity require the wrecker service for which application has been submitted and after such finding by the city council, a license shall be issued to a successful applicant

hereunder after payment of the license fee of fifteen dollars (\$15.00) to the collector of revenue. (Ord. No. 551, § 1, 3-25-59)

Sec. 20-133. Revocation of license.

The chief of police shall revoke the license issued hereunder when he finds any of the following grounds:

- (a) The license was procured by fraudulent conduct or false statement of a material fact, or that a fact concerning the applicant was not disclosed at the time of his making application, and such fact would have constituted just cause for refusal to issue said license.
- (b) The licensee illegally employed a short wave radio to obtain information as to the location of the scene of an accident or disabled vehicle.
- (c) The licensee has violated the fee schedule by overcharge.
- (d) The licensee has violated any of the requirements of this article or any other rules or regulations as established by the chief of police, approved by the city council. (Ord. No. 551, § 1, 3-25-59)

Sec. 20-134. Duties of licensees.

A wrecker license hereunder shall be issued subject to the following conditions:

- (a) *Exhibition of sticker.* The chief of police shall issue to a licensed wrecker a sticker which the wrecker shall at all times prominently display on the front right windshield of each wrecker or other vehicle used for tow-in services.
- (b) *Maintenance of equipment.* Wreckers shall keep and maintain tow-in equipment which is adequate to perform tow-in service in a reasonably satisfactory manner.
- (c) *Compliance with rate schedule.* Wreckers shall charge for services such rates as may be fixed by the city council.

- (d) *Storage facilities for personal property.* Wreckers shall provide a storage vault or storage room in which personal property left within towed-in vehicles shall be promptly stored and secured. The wrecker shall promptly make a list of such personal property upon receipt thereof.
- (e) *Interception of police calls.* No wrecker shall intercept police calls by short wave radio. (Ord. No. 551, § 1, 3-25-59)

Sec. 20-135. Rules and regulations promulgated by chief of police; approval of city council required.

The chief of police shall adopt and enforce reasonable rules and regulations for wreckers, including establishing zones for the operation of wreckers for city tow-in, such rules and regulations shall be approved by the city council and shall be effective upon such approval by such council. (Ord. No. 551, § 1, 3-25-59)

AN ORDINANCE OF THE COUNTY COMMISSION
OF
CUMBERLAND COUNTY, N.C.
CONCERNING
WRECKER AND TOW SERVICE

H. Martin

34

Section 1) Wrecker and Tow Service--Definition.

As used in this ordinance:

(1) "Wrecker" means a person engaged in the business of, or offering the services of, a vehicle wrecker or towing service, whereby motor vehicles are or may be towed or otherwise removed from one place to another by the use of a motor vehicle manufactured and designed for the primary purpose of removing and towing disabled motor vehicles, said wrecker having a weight of one ton GVW as rated by the manufacturer thereof.

(2) "Towing List" means a list maintained by the Cape Fear Wrecker Association containing the names of those "Wreckers" that are members of the Cape Fear Wrecker Association.

(3) "County" means the County of Cumberland.

Section 2) POLICY.

In order to protect persons who operate motor vehicles inside the County, it is desirable and necessary to adopt this ordinance to insure proper licensing, storage, availability and other controls over persons and firms licensed to provide wrecker service.

Section (3) Application for license.

Any person desiring to perform towing work at Law Enforcement request, shall submit an "Application for membership" in duplicate to the Board of Directors of the Cape Fear Wrecker Association. Application forms shall be obtained from the President of the Association.

These forms shall state:

- (1) The name of the applicant/owner and name of business if different from name of owner. Home and business address and phone.
- (2) The location, size and security features of the storage lot on which towed vehicles will be stored.
- (3) The towing equipment available, its size and capacity.
- (4) A complete listing of the insurance policies, carriers and agents the wrecker applicant would place into effect upon membership approval.

) That the applicant will provide:

- (a) 24-hour-a-day each day of the year wrecker service.
 - (b) Available space for properly accommodating and protecting a minimum of five (5) disabled motor vehicles to be towed or otherwise removed from the place where they are disabled. Said storage space for vehicles shall be enclosed by six(6) foot minimum chain length fence or fence of similar strength and shall have all entrances and exits secured from public access.
 - (c) A storage vault or storage room which is adequate to secure and protect personal property which may be left in vehicles towed to a private wrecker.
- (6) Such other information as the Board of Directors of the Cape Fear Wrecker Association may find reasonably necessary to effectuate the purpose of this section and to arrive at a fair determination of whether the terms of this section have been complied with.

Section 4) Licensing:

The Board of Directors or President of the Cape Fear Wrecker Association will check application for approval or disapproval of Membership.

Section 5) Insurance.

No wrecker membership shall be issued until the applicant has deposited with the President of the Association the following insurance policies or policy number:

- (1) Garage Keeper's Policy- A garage keeper's legal liability policy covering fire, theft, windstorm, vandalism and explosion in the amount of \$10,000 with each vehicle suffering damage being deemed a separate claim.
- (2) Garage Liability Policy- A garage liability policy covering the operation of the owner's business, equipment or other vehicles for any bodily injury or property damage. This policy shall be in the minimum of \$25,000 for any one person injured or killed and a minimum of \$50,000 for more than one person killed or injured in any accident and an additional \$25,000 for property damage.
- (3) Each policy required under this section must contain an endorsement by the carrier providing twenty(20)days notice to both the Association and insured in the event of any change in coverage under the policy.

Section 6) Duties and Requirements of Wrecker Members of the Association.

The owner shall provide a wrecker vehicle of sufficient size and weight as defined in Sec. 1(1). All wreckers shall be equipped with warning lights required under state law. The owner shall provide Continuous 24-hour-a-day service each day of the year, and there shall be an attendant available at all times for the purpose of receiving calls. The owner shall assume all liability and shall indemnify and save the County harmless from such liability for damages sustained by vehicles while being towed or stored and for all personal injuries

occurring to any of the firm's employees or other persons and shall maintain the required insurance policies.

Section 7). Cost and Inspections.

All costs incident to towing and storage shall be paid by the owner or person in charge or possession of the towed and stored vehicle to the owner of the wrecker company and a receipt for payment shall be issued to the said person. The wrecker owner shall maintain approved records and claim check system to assure release of vehicles to the rightful owner or authorized person. Such records shall be open to the County for investigation of specific complaints and for compiling surveys under this ordinance. The owner of any wrecker service shall permit any person appointed by the County Commissioners to inspect his wreckers, vault, security room or storage area at such times as deem appropriate.

Section 8). Wreckers Called by the Law Enforcement.

The Cape Fear Wrecker Association shall insure that wreckers are called to the scene of an accident or to impound vehicles on a rotation basis from the towing list. Law Enforcement Agents shall not call or cause to be called any wrecker not a member with the Association unless all such wreckers are unavailable. No wrecker will be called out of zone.

Section 9). Termination of Membership.

The Wrecker Association on recommendation by the Law Enforcement Agents terminate any membership when it finds:

(1) That the member was secured by fraud or by the concealment of a material fact by the wrecker owner and such fact, if known, would have caused the refusal to issue a membership.

(2) That the wrecker owner has violated any of the requirements or regulations established by the Board of Directors. under this ordinance.

Section 10) Other Regulations.

The Board of Directors shall establish and cause the enforcement of reasonable rules and regulations for wreckers as from time to time he deems appropriate for the safety, well-being and protection of citizens within his jurisdiction and their property.

Section 11) Solicitation of Business.

No wrecker may respond to the scene of an accident or emergency for the purpose of towing vehicles unless specifically called there by the Law Enforcement agents on rotation basis or person involved in the accident or emergency. This section is intended to prohibit wrecker owners from soliciting business at the scenes of accidents and emergencies and Law Enforcement Agents allowing it to happen and shall not be construed to prohibit any wrecker from contracting with any person firm, or corporation providing the wrecker owner, his agents and employees do not solicit towing contracts at the scenes of accidents or emergencies.

Section 12) Violation a Misdemeanor.

Any person who shall violate any provisions of this ordinance shall be guilty of a misdemeanor.

DURHAM

§ 12-210 MOTOR VEHICLES AND TRAFFIC § 12-210

any coaster, toy vehicle or similar device shall go upon any roadway except while crossing a street on a crosswalk and except upon streets set aside as play streets when and as authorized by ordinance. (Code 1947, c. 22, § 19.)

**Article XI. Removal, etc., of Abandoned,
etc., Vehicles.**

DIVISION 1. PUBLICLY OWNED PROPERTY.

Sec. 12-210. Definitions; abandoning motor vehicles prohibited; authority of police to remove vehicles from public property.

(a) A motor vehicle is defined to include all machines designed or intended to travel on land or water by self-propulsion or while attached to any self-propelled vehicle. An abandoned motor vehicle is one that:

- (1) Has been left upon a street or highway in violation of a law or ordinance prohibiting parking;
- (2) Is left on property owned or operated by the city for longer than twenty-four hours; or
- (3) Is left on any public street or highway for longer than seven days.

A junked motor vehicle is an abandoned motor vehicle that also:

- (1) Is partially dismantled or wrecked; or
- (2) Cannot be self-propelled or moved in the manner in which it was originally intended to move; or
- (3) Is more than five years old and worth less than fifty dollars; or
- (4) Does not display a current license plate.

(b) It shall be unlawful for any person to abandon a motor vehicle on a public street or on any public property within the city, and any person who shall be found guilty of a violation of this section shall be punished by fine or imprisonment as provided in state law for punishment for violation of a municipal ordinance.

(c) Any abandoned or junked motor vehicle as defined in subsection (a) of this section may be removed from public

property and disposed of in the manner and by the procedure herein established.

(d) In addition to the removal and disposition of abandoned or junked motor vehicles from the public streets and ways, as provided in this division, any member of the police department may move or cause to be removed any motor vehicle from a street or any other public place owned or controlled by the city, to a garage or other facility designated by the police, under any of the following circumstances:

(1) When any vehicle is left unattended upon any street, public alley, bridge or underpass, where such vehicle constitutes an obstruction to traffic, impedes the cleaning or working of or on such street or public way or interferes with or obstructs authorized street parades and processions.

(2) When a vehicle upon a street or other public way is so disabled as to constitute an obstruction to traffic.

(3) When the person in charge of a vehicle upon a public street or public way is under arrest, being detained, has been removed from such vehicle by officers of the law or, by reason of physical injury or other cause, is incapacitated to such an extent as to be unable properly and safely to operate the same or properly to drive or arrange for its custody or removal.

(4) When any vehicle is left unattended upon a public street, public alley or other public way and is so parked as to constitute a hazard or an obstruction to the normal movement of traffic, or is parked unattended upon any street in front of a private driveway, within fifteen feet in either direction of a fire hydrant, opposite the entrance to a fire station, within any area or zone designated as a bus zone or bus stop, in any area in which parking of vehicles is prohibited or in any area in excess of the authorized period of time for parking at such point. (Ord. No. 3563, § 1.)

Sec. 12-211. Disposition of vehicles held in garages or other facilities.

Any vehicle placed in a garage or other facility pursuant to section 12-210 shall be held until claimed by the legal owner or until otherwise disposed of, as provided in this division or other applicable law. (Ord. No. 3563, § 1.)

Sec. 12-212. Towing-in and storage of vehicles—Referral to garage or service with which city has agreement.

Except when the owner or person in control of the vehicle in question is present and desires towing service by a garage or wrecker of his own preference, all vehicles authorized under the provisions of this division to be towed-in and stored shall be referred to the particular garage or service with which the city has made arrangements for that service. The police department shall be furnished, for ready reference, a list of the garages or services with which the city has made towing-in and storage arrangements. This shall not exclude storage at city-owned facilities. If no advance arrangements have been made, the same may be made at the time of towing such motor vehicle to such storage place. (Ord. No. 3563, § 1.)

Sec. 12-213. Same—Charges allowed for services.

Charges for towing-in and for storing vehicles under the provisions of this division shall be as set forth in written contracts to be entered into between the city and garage or towing-service operators, in schedules adopted by the city council or as stipulated at the time the motor vehicle is towed in. (Ord. No. 3563, § 1.)

Sec. 12-214. Lien for charges; payment of charges prerequisite to release of vehicle.

All towing-in, storage, advertising and other charges incurred by the city or imposed upon the owner or operator of the vehicle in connection with a vehicle towed-in or impounded under this division shall constitute a lien upon such vehicle. No such impounded vehicle shall be released until all such charges have been paid. (Ord. No. 3563, § 1.)

Sec. 12-215. Notice to owner; redemption of vehicle by owner.

When any junked or abandoned vehicle is removed from a street or other public way or from any facility controlled or operated by the city, it shall be the duty of the chief of police, or of such officer as he may designate, to give written notice of the removal of such junked or abandoned motor vehicle or

of such motor vehicle which the police are authorized to remove from the public streets, public ways and facilities in the possession of and being operated by the city, as specifically provided in section 12-210, and such written notice of such removal shall be given to the registered owner of such vehicle at his last known address according to the latest registration certificate or certificate of title on file with the department of motor vehicles, if such information is available upon reasonable inquiry. The notice shall inform the owner of the possible sale or other disposition that can be made of the vehicle under the provisions of this division. The owner may regain possession of the vehicle by paying to the city or the provider of the tow-in and storage service all reasonable costs incidental to the removal and storage, as herein referred to in section 12-213. If the vehicle in question has no license plates or other identification so as to enable the police to ascertain its ownership from registration records, it shall be deemed sufficient notice if the police cause to be published in one issue of a newspaper published in the county a description of the vehicle, the fact and place of its storage, the reasons for towing and storage, the schedule of charges required to be paid for its release and such other data as the chief of police may consider advisable. (Ord. No. 3563, § 1.)

Sec. 12-216. Disposition of unclaimed abandoned vehicles.

After holding an unclaimed abandoned motor vehicle for thirty days, the chief of police and the provider of storage shall each have authority to sell and dispose of the same as herein provided. If such vehicle appears to be worth less than fifty dollars, it shall be appraised by two disinterested dealers or garage men, and if the appraisal is less than fifty dollars, it may be disposed of as a junked motor vehicle as provided in section 12-217. With the consent of the owner, the chief of police may remove or cause to be removed and disposed of any motor vehicle as a junked motor vehicle without regard to the value, condition or age of the same, and without holding it for any prescribed period of time. If the vehicle is worth fifty dollars or more according to the appraisal herein provided for, it shall be sold at public auction. Twenty days' written notice of such sale shall be given to the registered owner at his last known address, the holders

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of all liens of record against the vehicle as shown by the records in the department of motor vehicles and to the department of motor vehicles, if such information is available upon reasonable inquiry. Any person having an interest in the vehicle may redeem it at any time before the sale by paying all costs accrued to date. The proceeds of the sale, if made by the police, shall be paid to the city treasurer who shall disburse the funds in payment of the costs of removal, storage, investigation, sale and liens in that order. If the sale is made by the provider of the storage, the proceeds shall be disbursed in payment of the costs of towing, storage, investigation, sale and liens in that order. The remainder of the proceeds of sale, if any, shall be paid over to the registered owner, or held by or delivered to the city for sixty days if the registered owner cannot be located with reasonable diligence. If the owner does not claim the remainder of the proceeds within sixty days after the sale, the funds shall be deposited in the city's general fund and the owner's rights therein shall be forever extinguished. When it receives a city's or storage provider's bill of sale from a purchaser or other person entitled to receive any vehicle disposed of as provided in this section, the department of motor vehicles shall issue a certificate of title for the vehicle as required by law. (Ord. No. 3563, § 1.)

Sec. 12-217. Disposition of unclaimed junked vehicles.

After holding an unclaimed junked motor vehicle for fifteen days, the chief of police may cause the same to be destroyed or to be sold at a private sale as junk. Within fifteen days after the final disposition of a junked motor vehicle, the chief of police shall cause the department of motor vehicles to be notified that the vehicle has been determined to be a junked motor vehicle and disposed of as such. The notice shall contain as full and accurate a description of the vehicle as can be reasonably determined. Any proceeds from the sale of a junked motor vehicle, after all costs of removal, storage, investigation and sale, and the satisfaction of any liens of record on the vehicle which can be reasonably ascertained have been deducted therefrom, shall be held by the city for thirty days and paid to the registered owner upon demand. If the owner does not claim the proceeds, if any, within thirty days after disposal of the vehicle, the funds remaining shall be deposited

in the city's general fund and the owner's rights therein shall be forever extinguished. (Ord. No. 3563, § 1.)

Sec. 12-218. Procedure with reference to locked and unlocked vehicles.

If a vehicle towed in by police authority under the provisions of this division is locked, it shall remain locked at the storage garage or facility until claimed or otherwise disposed of. If such vehicle is unlocked, the police shall list its contents and post one copy of such list on the windshield and keep a record copy at police headquarters. (Ord. No. 3563, § 1.)

DIVISION 2. PRIVATELY OWNED PROPERTY.

Sec. 12-218.1. When vehicle deemed abandoned, junked, etc., and constitutes an abatable nuisance.

(a) A motor vehicle shall be deemed to be abandoned, to be a junked motor vehicle, to constitute an attractive nuisance or to constitute a health and safety hazard, for the purposes of this division, in the following circumstances:

(1) When it is partially or completely dismantled or wrecked; or

(2) When it is incapable of self-propulsion or of being moved in the manner for which it was originally intended; or

(3) When it has been abandoned, is inoperable, or is damaged, and worth less than fifty dollars; or

(4) When it is a junked vehicle and has been so abandoned for a period of not less than thirty days; or

(5) When it does not display a current license plate; or

(6) When it is an attractive nuisance for children; or

(7) When it is or is reasonably likely to become a breeding place for rats, vermin, snakes or contributes to general circumstances which are inimical to the health or safety of human beings; or

(8) When it constitutes or is reasonably likely to constitute a fire and safety hazard and a source of fire and explosions, and is otherwise detrimental to the safety of human beings, especially of children, and of property.

(b) It is hereby declared that all such vehicles described in subsection (a) of this section, which have remained on

such privately owned property for as long as sixty days, are a hazard to health and safety and constitute an attractive nuisance for children and a public nuisance, which may be abated as provided in this division. (Ord. No. 3561, § 1.)

Sec. 12-218.2. Declaration of nuisance prerequisite to removal; appeal from declaration.

(a) No vehicle described in section 12-218.1 shall be removed from privately owned property without the written request of the owner, lessee or occupant of such premises, unless the chief of the inspections department has declared it to be an attractive nuisance for children or to constitute a public nuisance as hereinabove provided. Such finding and declaration of the chief of the inspections department may be appealed to the city council under the following prescribed procedure:

The owner or other person having an interest in the ownership or right of possession of such abandoned or junked motor vehicle which has been declared by the chief of the inspections department to constitute a public nuisance or an attractive nuisance for children shall have the right of appeal from such declaration or decision to the city council; provided, that a notice of appeal in writing is served upon the chief of the inspections department stating the grounds for such appeal, within seven days after notice is given of such decision or declaration from which the appeal is taken. The decision of the city council upon such appeal shall be final.

(b) The finding and declaration of the chief of the inspections department, and the approval or confirmation of such declaration and finding by the city council, upon appeal, if any appeal has been taken, shall constitute the finding and declaration that the existence of such conditions by the presence of such junked or abandoned motor vehicle on privately owned property has become an attractive nuisance for children, a condition inimical to the health of human beings or a fire hazard or source of fire and explosions, so that such conditions constitute a health or safety hazard, and constitute a public nuisance which may be abated by the removal of such abandoned or junked motor vehicle from such privately owned property and the disposal thereof in the manner herein provided. (Ord. No. 3561, § 1.)

Sec. 12-218.3. Notice to owner.

When any junked or abandoned vehicle is removed from privately owned property, it shall be the duty of the chief of the inspections department, or such officer as he may designate, to give written notice of such removal to the registered owner of such vehicle at his last known address according to the latest registration certificate or certificate of title on file with the department of motor vehicles, if such information is available upon reasonable inquiry. If the junked or abandoned vehicle in question has no license plates or other identification, or is in such state of disrepair as not to enable the chief of the inspections department to ascertain its ownership from registration records, it shall be deemed sufficient notice if the chief of the inspections department causes to be published in one issue of a newspaper published in the county, a description of the vehicle, the address from which it was removed, the place of its storage, the schedule of charges required to be paid for its release, the fact that it will be disposed of by sale and such other data as the chief of the inspections department may consider advisable. (Ord. No. 3561, § 1.)

Sec. 12-218.4. Referral to garage or service with which city has agreement for towing and storage.

Except when the owner or person in control of the vehicle in question is present and desires towing service by a garage or wrecker of his own preference, all vehicles authorized under the provisions of this division to be towed-in and stored shall be referred to the particular garage or service with which the city has made arrangements for that service. The chief of the inspections department shall be furnished, for ready reference, a list of the garages, lots or services with which the city has made towing-in and storage arrangements. This shall not exclude storage at city-owned facilities. If no advance arrangements have been made, the same may be made at the time of towing such motor vehicle to the storage place. (Ord. No. 3561, § 1.)

Sec. 12-218.5. Lien for charges; payment of charges prerequisite to release of vehicle.

All towing-in, storage, advertising and other charges in-

curring by the city or imposed upon the owner or operator of the vehicle in connection with a vehicle towed-in or impounded under the provisions of this division, shall constitute a lien upon such vehicle, and no such impounded vehicle shall be released to the owner or claimant until all such charges have been paid. (Ord. No. 3561, § 1)

Sec. 12-218.6. Redemption of vehicle.

The owner of any vehicle removed pursuant to this division may regain possession of the vehicle by paying to the city all reasonable costs incidental to the removal and storage of such vehicle as provided in this division. (Ord. No. 3561, § 1)

Sec. 12-218.7. Keeping abandoned, junked, etc., vehicle prohibited.

It shall be unlawful for any person to allow to remain, for a period of more than sixty days, any abandoned or junked motor vehicle as described in section 12-218-1, or any motor vehicle constituting a public nuisance or attractive nuisance as defined in section 12-218.2 on any property which he owns, controls, leases or occupies. (Ord. No. 3561, § 1)

Sec. 12-218.8. Authority for division; liability of persons disposing of vehicles pursuant to division.

This division is adopted pursuant to the authority of chapter 503, Session Laws 1969, and General Statutes of North Carolina, section 160A-303, and no person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of any abandoned, lost, junked or stolen motor vehicle for disposing of such vehicle as provided in this division. (Ord. No. 3561. § 1)

Sec. 12-218.9. Applicability of division.

Nothing in this division shall apply to any vehicle in an enclosed building or any vehicle on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of such enterprise, or to any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the city. (Ord. No. 3561, § 1)

