

LEGISLATIVE RESEARCH COMMISSION

OBSCENITY LAWS



REPORT TO THE
1983 GENERAL ASSEMBLY
OF NORTH CAROLINA

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STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



December 15, 1982

TO THE MEMBERS OF THE 1983 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits the report of its Committee on Obscenity Laws.

Respectfully submitted,

Liston B. Ramsey

Liston B. Ramsey

W. Craig Lawing

W. Craig Lawing

INTRODUCTION

The Legislative Research Commission authorized by Article 6B of Chapter 120 of the North Carolina General Statutes (G.S.) is a general-purpose legislative study group. A list of the membership of the Legislative Research Commission will be found in Appendix A.

Among the Commission's duties is that of making or causing to be made, upon the direction of the Cochairmen of the Commission, 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)].

During the 1981 Session the General Assembly directed the Legislative Research Commission to conduct a variety of studies, among which was an examination of the laws concerning obscenity. Resolution 61 of the 1981 General Assembly (First Session, 1981), Appendix B, mandated such a study.

The Commission assigned the study of laws concerning obscenity to its Committee on Obscenity Laws (hereafter referred to as the "Committee"). Senator Robert Davis Warren and Representative George W. Miller, Jr. were appointed the Cochairmen. The other members of the Committee were Senators James Doyle McDuffie and John J. Cavanagh, Jr., Representatives Jo Graham Foster and Bertha Merrill Holt, Chief District Court Judge Robert Leatherwood, III, District Attorney Randolph Riley, Dr. Gene D. Lanier and Messers Rich Gunter, Robert L. Emanuel, Sanford Jordan, Edwin Speas, and Carl Venters, Jr.

COMMITTEE PROCEEDINGS

The Committee on Obscenity Laws has devoted its four meetings to the examination of the North Carolina statutes concerning obscenity. These meetings have been held over a nine-month period. A list of the witnesses appearing at the Committee's meetings is attached as Appendix C.

The Committee at its organizational meeting decided to study the present statutes relating to obscene literature and exhibitions, including the adversary hearing procedure and the public nuisance laws; any available statistical data relating to the sale of obscene material; problems relating to televised broadcasting of obscene material; recent court decisions concerning obscenity; the obscenity statutes of other states; the concerns of librarians; and massage parlors.

More details of the Committee Proceedings can be found in the minutes which are on file in the Legislative Library.

SESSION I

At its first meeting the Committee heard from Professor Arnold Loewy, School of Law, University of North Carolina at Chapel Hill, who assisted the Committee throughout its deliberations at the invitation of the chairmen. Professor Loewy has taught Constitutional Law for a number of years, has drafted some of the present obscenity statutes, and represented the State in upholding those statutes in cases brought on constitutional grounds.

Throughout the Committee's work, Professor Loewy advised the Committee as to any constitutional problems with proposed changes to the present statutes.

Professor Wesley Wallace, retired Chairman of the Department of Radio, Television, and Motion Pictures, also addressed the Committee and attended later Committee meetings. Professor Wallace advised the Committee as to the impact of federal regulations on broadcasting and the resulting preemption of state or local action.

The Committee then reviewed the laws governing obscenity in Chapters 14 (Article 26) and 19 (Articles 1 and 2) of the General Statutes. The Committee held a lengthy discussion on these statutes and related court cases and raised several concerns which were later dealt with in the Committee's Findings and Recommendations.

SESSION II

At its second meeting the Committee heard from members of the public who had requested to appear.

The first speaker was Reverend Coy Privette, Christian Action League. Reverend Privette discussed his views about the relationship between obscenity and antisocial behavior. He spoke in favor of repealing the adversary hearing and also referred the Committee to the laws enacted in Atlanta. The Committee reviewed the Atlanta laws and crime statistics at its third meeting.

Next, the Committee heard from Sharon Thompson, North Carolina Civil Liberties Union. She spoke of the concerns of the NCCLU about any infringement on the First Amendment rights of North Carolina citizens. She spoke against repeal of the adversary hearing which is the position of the NCCLU. She mentioned the small number of prosecutions under the present statutes and suggested that this is due to the low priority given to obscenity cases by district attorneys.

The next speaker was Ann Frazier, Christian Action League. She displayed magazines which she stated had been purchased from a convenience store by a teenager. She also furnished the Committee with copies of letters from the Chief of Police and Mayor of Roanoke Rapids. (See Appendix D)

David Crump, Special Deputy Attorney General and Special Assistant to the Attorney General of North Carolina, spoke to the Committee about the history of the present statutes and the constitutional limitations on General Assembly action. He reviewed the current definition of obscenity. Mr. Crump discussed the use of city/county zoning ordinances

to concentrate or disperse adult businesses. Mr. Crump also suggested adoption of a statute creating a felony of child exploitation which would discourage the use for commercial purposes of children engaged in sexual conduct. Mr. Crump also referred the Committee to the massage parlor ordinance which was enacted by the City of Durham. This ordinance was discussed by the Committee at its final meeting.

Robert Showers, Assistant U.S. District Attorney, spoke against the present adversary hearing requirement. He reviewed the procedure for arrest and prosecution of defendants under the present law.

The Committee directed counsel to research several areas which were discussed at the next meeting.

SESSION III

Dr. Thomas L. Tedford, Professor of Communicaton and Theatre, University of North Carolina at Greensboro, spoke to the, Committee at its third meeting. Professor Ledford reviewed a portion of the textbook which he wrote for the graduate level course "Freedom of Speech and Censorship" which he has taught for twelve years. Professor Tedford recommended adoption of a child pornography statute based on the Ferber decision (the Committee approved such a statute at its final meeting) and recommended retention of the adversary hearing.

Mr. William P. Kelly, a retired agent of the Federal Bureau of Investigation, spoke in favor of repeal of the adversary hearing. Mr. Kelly reviewed his experiences with the F.B.I in enforcement of the obscenity laws and gave his opinions on the involvement of organized crime in the pornography industry.

Staff counsel reviewed the 1980-1982 crime statistics for the City of Atlanta and also discussed information received from the State of Georgia Solicitor General's Office regarding zoning ordinance in Atlanta and Georgia obscenity statutes. (See Appendix E)

She discussed the statutory schemes enacted in other states in the area of obscenity. Eight states (Delaware, Louisiana, Massachusetts, New Mexico, Washington, Vermont, Virginia, and North Carolina) have some form of adversary hearing requirement.

She also reviewed the U.S. Supreme Court decision in New York v. Ferber which upheld a New York statute prohibiting exploiting children for commercial purposes. She suggested that it would be constitutional

to add to the North Carolina statutes a section dealing with sexual performances by children under the age of 16 years.

She also reviewed the Fehlhaber v. State Fourth Circuit Court of Appeals decision which upheld the North Carolina Nuisance statutes.

The Committee then reviewed the list of Committee Options prepared by counsel (see Appendix F) and directed counsel to make several additions to this list. The Options were voted on by the Committee at its final meeting.

SESSION IV

At its final meeting the Committee reviewed the list of Committee Options prepared by counsel and voted on whether each option should be included in the Committee Findings and Recommendations (see page 9). The Committee also reviewed plans for adoption of its final report.

Item four on the list of Committee Options dealt with revision of Article 26 of Chapter 14 to eliminate the requirement of an adversary hearing prior to seizure or criminal action. The Committee voted 5 to 5 on a motion to repeal the adversary hearing requirement. When the chairmen voted, the vote remained tied at 6 to 6 and the motion failed due to the tie.

The Committee noted that in previous meetings it had considered the areas of broadcasting and cablevision, but it recommended no action be taken in those areas.

FINDINGS AND RECOMMENDATIONS

Pursuant to the direction of Resolution 61 of the 1981 General Assembly (First Session, 1981), the Legislative Research Commission's Committee on Obscenity Laws, after having reviewed the information presented, makes the following findings and recommends the following courses of action:

FINDING/RECOMMENDATION 1

The Committee recommends that G.S. 14-190.11 (Public display of sexually oriented materials) be amended to broaden the definition of public display (subsection c). At present the act of placing sexually oriented materials on public display is defined as placing the material "so that explicit sexually oriented material is easily visible from a public street, public road or sidewalk or from the normally occupied property of others." The Committee voted to add "or is easily visible from those portions of any public premises to which the general public is unqualifiedly invited."

FINDING/RECOMMENDATION 2

The Committee recommends that G.S. 14-190.10(c)(2) be amended to eliminate disparate treatment of married and unmarried minors. The statute creates an affirmative defense in a showing that a minor who has received sexually oriented material is married or represented himself to be married. The Committee recommends that subdivision (2) be repealed and subdivision (3) be renumbered as subdivision (2).

FINDING/RECOMMENDATION 3

The Committee recommends that the definition of an adult bookstore in the Adult Establishments Article be amended. At present G.S. 14-202.10(1) defines an adult bookstore as "a bookstore having

as a preponderance of its publications, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities. . ."

The Committee recommends that the preponderance test be replaced by a two-pronged definition which would define an adult bookstore as an establishment which either receives a preponderance of its monthly gross receipts from sales of sexually oriented materials or which contains at any one time in excess of one hundred separate publications of such a nature. (This numerical limit refers to separate pieces of published material and not total number of titles available.)

The Committee also recommends that the definition of "Sexually oriented devices" in G.S. 14-202.10(7) be amended to exclude contraceptive devices. The Committee further recommends that the Adult Establishments Article be amended to include businesses with live entertainment as one of the covered categories.

FINDING/RECOMMENDATION 4

The Committee recommends that G.S. 14-202.12 be amended to state what parties can be charged with a violation of the Adult Establishments Article. The statute presently reads, "Any person who violates G.S. 14-202.11 shall be guilty of a misdemeanor." The Committee recommends that "person" be deleted and replaced by "any owner of a building, owner of a business, or store manager." In the case of a building owner, the Committee recommended that an element of scienter be required.

FINDING/RECOMMENDATION 5

The Committee noted that cities and counties could use zoning ordinances to concentrate or disperse adult establishments. The Committee had no recommendation as to the preferred course for local units of government to use, but it did include a sample dispersal ordinance in this report for informational purposes only. (See Appendix G)

FINDING/RECOMMENDATION 6

After reviewing the recent New York v. Ferber decision, the Committee recommends that G.S. 14-190.6 be amended to create a felony offense of employing or permitting a minor to engage in sexual performance or to promote such performance. The proposed bill tracks the New York statute upheld in Ferber but adds an element of scienter as to the child's age.

FINDING/RECOMMENDATION 7

The Committee recommends that G.S. 14-190.2(c) be amended to repeal the prohibition of purchase of material to be adjudicated in an adversary hearing proceeding.

The statute presently requires that the district attorney attach to the written complaint, "if available without purchase or seizure, a true copy of the allegedly obscene material." The Committee recommends that the words "purchase or" be deleted.

FINDING/RECOMMENDATION 8

The Committee recommends that G.S. 14-202.10 (the Definitions section of the Adult Establishments Article) be amended to define an adult motion picture theatre as an establishment designed to hold more than one person. and an adult mini motion picture theatre as a viewing place designed to hold only one person. The Committee further recommends that a new statute be adopted which will prohibit the presence of more than one

person at any one time in an adult mini motion picture theatre.

FINDING/RECOMMENDATION 9

The Committee considered the use of ordinances by cities or counties to limit the operation of massage parlors. The Committee was made aware of the City of Durham ordinances by the Attorney General's Office. The Committee did not have time to review this ordinance thoroughly, but has included a copy of same in this final report for informational purposes only. (See Appendix H)

FINDING/RECOMMENDATION 10

The Committee recommends that G.S. 14-190.1(b)(2) be amended to delete the word statewide which would localize the community standards to be used in judging obscenity. At present, the statute reads, "The average person applying contemporary statewide community standards. . ."

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GENERAL ASSEMBLY OF NORTH CAROLINA
EXTRA SESSION 1982
RATIFIED BILL

RESOLUTION 61

HOUSE JOINT RESOLUTION 1292

A JOINT RESOLUTION AUTHORIZING STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1981 bill or resolution that originally proposed the study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

- (1) Continuation of study of revenue laws (H.J.R. 15 -- Lilley).
- (2) Continuation of study on problems of aging (H.J.R. 48 -- Messer/S.J.R. 37 -- Gray).
- (3) Day care (H.J.R. 223 -- Brennan).
- (4) Civil rights compliance of non-State institutions receiving State funds (H.J.R. 344 -- Spaulding).
- (5) Social services and public assistance (H.B. 393 -- P. Hunt).
- (6) The need for new health occupational licensing boards (H.B. 477 -- Lancaster/S.B. 285 -- Jenkins).
- (7) Matters related to public education, including:

- a. The feasibility of making the 12th grade optional in the public schools (H.J.R. 890 -- Tally).
 - b. Continue study of public school food service (H.J.R. 948 -- Brennan).
 - c. The teacher tenure law (S.J.R. 621 -- Royall).
 - d. Providing teachers with duty-free periods (S.J.R. 697 -- Speed).
 - e. Continuation of study regarding purchase of buses in lieu of contract transportation, and other school bus transportation matters (no 1981 resolution).
- (8) Campaign financing and reporting (H.J.R. 975 -- D. Clark).
 - (9) State's interests in railroad companies and railroad operations (H.B. 1069 -- J. Hunt).
 - (10) Matters related to insurance, including:
 - a. Insurance regulation (H.B. 1071 as amended -- Seymour), including the feasibility of establishing within the Department of Insurance a risk and rate equity board.
 - b. How the State should cover risks of liability for personal injury and property damage (H.J.R. 1198 -- Seymour).
 - c. Credit insurance (H.J.R. 1328 -- Barnes).
 - (11) Matters related to public property, including:
 - a. Development of a policy on State office building construction (H.J.R. 1090 -- Nye).
 - b. The potential uses and benefits of arbitration to resolve disputes under State construction and procurement contracts (H.J.R. 1292 -- Adams).

c. The bonding requirements on small contractors bidding on governmental projects (H.J.R. 1301 -- Nye).

d. Continue study of the design, construction and inspection of public facilities (S.J.R. 143 -- Clarke).

e. Whether the leasing of State land should be by competitive bidding (S.J.R. 178 -- Swain).

(12) Allocation formula for State funding of public library systems (H.J.R. 1166 -- Burnley).

(13) Economic, social and legal problems and needs of women (H.R. 1238 -- Adams).

(14) Beverage container regulation (H.J.R. 1293 -- Diamont).

(15) Scientific and technical training equipment needs in institutions of higher education (H.J.R. 1314 -- Fulcher).

(16) Role of the State with respect to migrant farmworkers (H.J.R. 1315 -- Fulcher).

(17) Existing State and local programs for the inspection of milk and milk products (H.J.R. 1353 -- James).

(18) Laws authorizing towing, removing or storage of motor vehicles (H.J.R. 1360 -- Lancaster).

(19) Annexation laws (S.J.R. 4 -- Lawing).

(20) Laws concerning obscenity (House Committee Substitute for S.B. 295).

(21) The feasibility of consolidating the State computer systems (S.J.R. 349 -- Alford/H.J.R. 524 -- Plyler).

(22) Laws pertaining to the taxation of alcoholic beverages and the designation of revenues for alcoholism

education, rehabilitation and research (S.J.R. 497 -- Gray).

(23) Regional offices operated by State agencies (S.J.R. 519 -- Noble).

(24) Continue study of laws of evidence (S.J.R. 698 -- Barnes).

(25) Continue study of ownership of land in North Carolina by aliens and alien corporations (S.J.R. 714 -- White).

(26) Rules and regulations pertaining to the Coastal Area Management Act (S.J.R. 724 -- Daniels).

(27) Transfer of Forestry and Soil and Water from Department of Natural Resources and Community Development to Department of Agriculture (H.B. 1237 -- Taylor).

(28) Continue sports arena study (H.J.R. 1334 -- Barbee).

(29) State investment and maximum earning productivity of all public funds (H.J.R. 1375 -- Beard).

Sec. 2. For each of the topics the Legislative Research Commission decides to study, the Commission may report its findings, together with any recommended legislation, to the 1982 Session of the General Assembly or to the 1983 General Assembly, or the Commission may make an interim report to the 1982 Session and a final report to the 1983 General Assembly.

Sec. 3. The Legislative Research Commission or any study committee thereof, in the discharge of its study of insurance regulation under Section 1(10)a. of this act, may secure information and data under the provisions of G.S. 120-19. The powers contained in the provisions of G.S. 120-19.1 through

G.S. 120-19.4 shall apply to the proceedings of the Commission or any study committee thereof in the discharge of said study. The Commission or any study committee thereof, while in the discharge of said study, is authorized to hold executive sessions in accordance with G.S. 143-318.11(b) as though it were a committee of the General Assembly.

Sec. 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified, this the 10th day of July, 1981.

JAMES C. GREEN

James C. Green

President of the Senate

LISTON B. RAMSEY

Liston B. Ramsey

Speaker of the House of Representatives

PRESENTERS

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School of Law

Professor Wesley Wallace,
Retired Chairman, Department of Radio, Television, and Motion Pictures,
University of North Carolina at Chapel Hill

Reverend Coy Privette,
Christian Action League

Sharon Thompson,
North Carolina Civil Liberties Union

Ann Frazier,
Christian Action League

David Crump,
Special Deputy Attorney General and
Special Assistant to the Attorney General of North Carolina

Robert Showers,
Assistant U.S. District Attorney

Dr. Thomas L. Tedford,
Professor of Communication and Theatre,
University of North Carolina at Greensboro

William P. Kelly,
Retired agent, Federal Bureau of Investigation

City of Roanoke Rapids

OFFICE OF THE CHIEF OF POLICE

ROANOKE RAPIDS, N. C. 27870

April 15th, 1982



D. N. BEALE, CHIEF OF POLICE

Legislative Research Commission of Study of Obscenity

Dear Study Commission,

This letter is an appeal to you to recommend that the General Statute 14-190.2, which is the adversary hearing, be repealed. This law makes it impossible for law enforcement to enforce the law. Many of our young people throughout North Carolina have no trouble obtaining obscene material and the mere taking it off the counter and putting it under the counter is not good enough. Our young people today have many obstacles to overcome and it is certainly our duty to remove as many obstacles as possible. On a recent drug raid in this city we also confiscated several forms of obscene material from the people involved in the drug arrests, so there is definitely a link between the two.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. N. Beale".

D. N. BEALE
Chief of Police

DNB/ih

ATLANTA CRIME RATES

SOURCE: Public Affairs Section, Atlanta Police Force

<u>Crime</u>	<u>Time Frame</u>	<u>Number</u>	<u>Decrease (-) Increase (+)</u>
Homicide	1980	200	9% -
	1981	182	
	Jan-June 1981	83	40% -
	Jan-June 1982	50	
Rape	1980	680	5% -
	1981	644	
	Jan-June 1981	126	27% +
	Jan-June 1982	160	
Robbery	1980	4507	5% -
	1981	4735	
	Jan-June 1981	479	6% +
	Jan-June 1982	507	
Aggravated Assault	1980	5470	4% -
	1981	5246	
	Jan-June 1981	1490	13% +
	Jan-June 1982	1679	
Burglary	1980	16,821	4% +
	1981	17,458	
	Jan-June 1981	829	5% +
	Jan-June 1982	863	

ATLANTA CRIME RATES

<u>Crime</u>	<u>Time Frame</u>	<u>Number</u>	<u>Decrease (-) Increase (+)</u>
Larceny	1980	27,539	5% +
	1981	28,966	
	Jan-June 1981	2196	11%+
	Jan-June 1982	2433	
Auto-Theft	1980	3999	11%-
	1981	3566	
	Jan-June 1981	163	25%+
	Jan-June 1982	203	
Major Crime Totals	1980	59,444	2%+
	1981	60,569	
	Jan-June 1981	5357	10%+
	Jan-June 1982	5895	

Committee Options
August 13, 1982

The following list of options for Committee action were taken from my notes on Committee discussions and the minutes of the preceding meetings:

(1) Revision of display statutes to require opaque covers, storage behind counter, positive duty of part of storekeeper to maintain order in viewing area, etc.

G.S. 14-190.11 (Public display of sexually oriented materials) prohibits the placing of sexually oriented materials on public display. This act is defined in (c) as placing the material "so that explicit sexually oriented material is easily visible from a public street, public road or sidewalk or from the normally occupied property of others."

One suggestion is that the definition of public display might be broadened to include any display within a public place, thereby eliminating the public street requirement. Also, at the request of the Committee Mr. Speas has furnished a copy of a bill drafted for the 1977 Session which rewrites G.S. 14-190.11 to require that sexually explicit material be wrapped in an opaque covering. He suggests that an opaque screen shielding such materials could also be used on an either/or basis.

Any changes in the display statute could be limited to establishments which minors are permitted to enter.

(2) Revision of the dissemination to minors statutes to eliminate a possible equal protection problem.

G.S. 14-190.10(c) (2) creates an affirmative defense in a showing that a minor who has received sexually oriented material is married or represented himself to be married. Such a statute contains an equal protection issue and could be revised to eliminate this distinction between married and unmarried minors.

(3) Revision of the Adult Establishments Article to refine the "preponderance" test of materials, clarify what a building is within the meaning of the statute, specify who is subject to prosecution under the statute, etc.

G.S. 14-202.10(1) defines an adult bookstore as "a bookstore having as a preponderance of its publications books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities . . ." Similar language appears in the adult motion picture theater and adult mini motion picture theater definitions.

Under this definition a bookstore which contains 51% Good Housekeeping magazines and 49% Hustler magazines would not be an adult bookstore. This definitional problem allows an escape from the provisions of G.S. 14-202.11 which prohibits more than one adult establishment in one building.

Additional problems arise with the use of the terms "building, premises, structure, or other facility" in G.S. 14-202.11. Does Crabtree Valley Mall (which contains 135 different stores under one roof) constitute one "building, premises, structure, or other facility" within the meaning of this statute?

Another problem which has been raised concerning G.S. 14-202.11 deals with what party the statute prohibits from creating a multi-media adult establishment. G.S. 14-202.12 states that

"(a)ny person who violates G.S. 14-202.11 shall be guilty of a misdemeanor". Does this cover the owner of the building, the store manager, or the sales clerk?

(4) Revision of Article 26 of Chapter 14 to eliminate the requirement of an adversary hearing prior to seizure or criminal action.

The first version of Senate Bill 295 which was introduced in the 1981 Session by Senators Cavanagh and Wright would have repealed G.S. 14-190.2 in its entirety. The adversary hearing requirement applies to any violation of G.S. 14-190.1 (Obscene literature and exhibitions), G.S. 14-190.3 (Exhibition of obscene pictures; posting of advertisements), G.S. 14-190.4 (Coercing acceptance of obscene articles or publications), and G.S. 14-190.5 (Preparation of obscene photographs, slides and motion pictures). It does not cover violations of G.S. 14-190.6 (Employing or permitting minor to assist in offense under Article), G.S. 14-190.7 (Dissemination to minors under the age of 16 years), G.S. 14-190.8 (Dissemination to minors 12 years of age or younger), G.S. 14-190.10 (Disseminating sexually oriented material to minors), and G.S. 14-190.11 (Public display of sexually oriented materials).

(5) Use of zoning ordinances to concentrate or disperse adult establishments.

Cities and counties could pass ordinances which would allow adult establishments to operate only in "combat zones". This would concentrate such businesses in specified areas which could be policed easily and avoided by members of the public who wished to do so. Conversely ordinances could be passed which prohibit the establishment of such business within specified distances of

each other. This would spread such businesses out, might act as a limiting factor in terms of numbers, and would alleviate creation of blighted areas.

(6) Creation of the offense of felony child abuse.

A new statute could be passed which would make the exploitation for commercial purposes of minors engaging in sexual conduct a form of felony child abuse.

(7) Revision of G.S. 14-190.2(c) to repeal the prohibition of purchase of material to be adjudicated in an adversary hearing.

The statute presently requires that the district attorney attach to the written complaint, "if available without purchase or seizure, a true copy of the allegedly obscene material." The words "purchase or" could be deleted from this statute.

(8) Revision of the adversary hearing process to allow one adversary hearing decision to be binding on all criminal actions involving the same materials.

This would eliminate the necessity of holding several hearings on the same material in different communities but might create problems where community standards do not represent widely held mores.

Another suggestion concerned having the Department of Justice handle all adversary hearings.

(9) Delete the words "in a public place" whenever these words appear in 14-190.1 et seq. Example: G.S. 14-190.1(a) would be amended to read: "It shall be unlawful for any person, firm or corporation to intentionally disseminate obscenity ~~IN ANY PUBLIC PLACE.~~

(10) Adopt a new statute which would create the misdemeanor offense of allowing more than one person to be present at one time in a viewing booth at an adult theatre. This should affect the "movie mate" business.

(11) Eliminate the adversary hearing and replace it by an ex parte proceeding. This proceeding could provide for a prior judicial determination as to obscenity which could be followed immediately by prosecution.

(12) Adopt a new statute incorporating the provisions of the Durham Massage Parlor Ordinance. See copy of ordinance distributed at this meeting.

(13) Amend G.S. 14-190.1(b)(2) ("The average person applying contemporary statewide community standards. . .) by deleting the word statewide.

(14) Impose an additional tax on "X-rated" or unrated movies. A similar tax has been instituted in South Carolina and other states.

§ 32-32

ZONING

§ 32-32.1

(f) Drive-in-theaters shall be located within five hundred (500) feet of a major thoroughfare, except limited access facilities, and shall have direct access thereto.

(28) Billboards. (Ord. No. 1966-13, §§ 1, 2, 7-11-66; Ord. No. 1971-9, § 1, 5-10-71; Ord. No. 1979-5, 2-26-79; Ord. No. 1982-14, § 4, 5-24-82)

Sec. 32-32.1. Special entertainment uses.

(a) It is recognized that there are some uses which, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a deleterious effect upon adjacent areas. Special regulation of these uses is necessary to insure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized in this section. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area (i.e., not more than one such use within one thousand (1,000) feet of each other which would create such adverse effects).

(b) Definitions:

- (1) *Adult bookstore*: An establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical area," or an establishment with a segment or section devoted to the sale or display of such material.
- (2) *Adult motion picture theater*: An enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, for observation by patrons therein.
- (3) *Adult motels and hotels*: A place where motion pictures not previously submitted to or not rated by the Motion

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Picture Association of America are shown in rooms designed primarily for lodging, which said motion pictures have as the dominant or primary theme matters depicting, describing or relating to specified sexual activities.

(4) *Specified anatomical areas:* For the purpose of this section, "specified anatomical areas" is defined as:

- a. Less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola; and
- b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(5) *Specified sexual activities:* For the purposes of this section, "specified sexual activities" is defined as:

- a. Human genitals in a state of sexual stimulation or arousal;
- b. Acts of human masturbation, sexual intercourse or sodomy; or
- c. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

(c) Uses. The following uses are permitted under C-3 subject to the provisions of this section:

- (1) Adult bookstores;
- (2) Adult motion picture theaters housed in a permanent indoor structure;
- (3) Clubs and other places of entertainment operated as a commercial enterprise providing nude or seminude entertainment such as "topless" dancing;
- (4) Eating and drinking establishments including drive-in curb service providing nude or seminude entertainment such as "topless" dancing.
- (5) Physical culture establishments, masseurs, massage parlors, and health salons as defined and regulated pursuant to section section 17-14.1 of this Code of Ordinances.
- (6) Adult motels and hotels.
- (d) Locations of uses.

- (1) No use permitted under this section may be located within one thousand (1,000) feet of another use permitted under this section which will be measured from the exterior walls of the building(s) containing such regulated use.
- (2) No use permitted under this section may be within five hundred (500) feet of any area zoned for residential use which will be measured from the exterior walls of the building(s) containing such regulated use. (Ord. No. 1979-7, 3-12-79)

~~Sec. 32-33. M1 industrial district.~~

~~The following uses are permitted in the M1 industrial district:~~

- ~~(1) Dwellings for the residence of caretakers or watchmen only.~~
- ~~(2) Manufacturing enterprises not otherwise prohibited in section 32-35.~~

**ARTICLE III. ADULT BOOKSTORES, THEATERS,
HOTELS AND MOTELS***

Sec. 17-41. Purpose.

It is recognized that there are some uses which, because of their very nature, are recognized as having serious objectionable operational characteristics. Special licensing regulation of these uses is necessary to insure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special licensing regulations are itemized in this article. (Ord. No. 1979-8, 3-12-79)

Sec. 17-42. Definitions.

The following terms, when used in this article, shall have the meanings respectively ascribed to them in this section:

- (1) *Adult bookstore* is an establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," or an establishment with a segment or section devoted to the sale or display of such material.
- (2) *Adult motion picture theater* is an enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," for observation by patrons therein.
- (3) *Specified anatomical areas*, for the purpose of this article, is defined as:
 - (a) Less than completely and opaquely covered human genitals, pubic region, buttock and female breast

*Editor's note—Ord. No. 1979-8, enacted March 12, 1979, amended Ch. 17 by adding provisions designated as §§ 17-4(1)—17-4(10), which provisions have been codified as Art. III, §§ 17-41—17-50, for the purpose of classification

below a point immediately above the top of the areola; and

- (b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- (4) *Adult motel or hotel* is a place where motion pictures are shown in rooms designed primarily for lodging, which said motion pictures have as their dominant or primary theme matters depicting, describing or relating to specified sexual activities.
- (5) *Department* is the police department of the City of Fayetteville.
- (6) *Interested party* is any person, partnership or corporation which is an applicant for a license or who is an employee of an applicant for a license, any person who is a partner in a partnership which is an applicant for a license and any person, partnership or corporation which is an officer, director or principal stockholder of a corporation which is an applicant for a license.
- (7) *License* shall mean a regulatory license under the provisions of this article for the operation of an adult bookstore or a regulatory license for the operation of an adult motion picture theater or a regulatory license for the operation of an adult motel or hotel.
- (8) *Principal stockholder* is any person, partnership or corporation which owns or controls legally or beneficially twenty-five (25) per cent or more of a corporation's outstanding stock. In addition, if a principal stockholder of a corporation (referred to herein as corporation A) is another corporation (referred to herein as corporation B), the officers, directors and principal stockholders of corporation B shall be considered principal stockholders of corporation A. If a corporation is registered with the Federal Securities and Exchange Commission or is registered pursuant to Chapter 55, North Carolina General Statutes, and the corporation's stock is for sale to the general public,

such corporation shall be considered not to have any principal stockholders.

- (9) *Specified criminal act* is any statutory offense, state or federal, of soliciting for prostitution, pandering, prostitution, exposing minors to harmful materials, distributing obscene materials, possession of obscene materials, or transporting of obscene materials.
- (10) *Entertainment* as used in this article means any act, play, burlesque show, revue, pantomime, scene, song dance act, or song and dance act, participated in by one or more employees, guests, customers or any other person or persons, including the act of exhibition of the human body. "Exhibition of the human body" as used in this section means that act of any waitress or other female employee, while visible to any customer, exposing any portion of either breast below a straight line so drawn that both nipples and all portions of both breasts which have a different pigmentation than the main portion of the breast are below such straight line, or wearing any type of clothing so that such may be observed. Entertainment does not include:
- (a) Mechanical music or music provided by a single instrument;
 - (b) Ballroom dancing, square dancing, or round dancing, participated in only by patrons or customers. This subsection does not exempt exhibition dancing whether by an entertainer or patron;
 - (c) Square dance calling or other oral instruction to patrons participating in any dancing described and licensed in subsection (b) of this subsection.
- (11) *Specified sexual activities* are any one or more of the following:
- (a) Depiction of human genitals in a state of sexual stimulation or arousal;
 - (b) Acts of human masturbation, sexual intercourse, sodomy, masochism, sadism or sadomasochism;

(c) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

(12) *Licensee* shall mean any person, partnership, or corporation issued a license pursuant to Chapter 17 of this Code of Ordinances.

(Ord. No. 1979-8, 3-12-79; Ord. No. 1980-3, 2-25-80)

Sec. 17-43. Regulatory license required; investigation of applicant; fee; contents of application.

An annual regulatory license shall be required for each adult bookstore, each adult motion picture theater and each adult motel and hotel. No license shall be issued until an application is made to the department which shall cause an investigation to be made to determine whether the applicant has complied with this article and all other requirements of this Code and of the North Carolina General Statutes. Each application must be accompanied by a fee of two hundred fifty dollars (\$250.00) to cover the cost of investigation and administration. Each application must be sworn to and state the name, address and age of the applicant, or if a partnership, the names, addresses and ages of the persons who constitute such partnership, or if a corporation, the names, addresses and ages of its directors, officers and principal stockholders. Each application must also include the names, addresses and ages of all present employees of the adult bookstore or the adult motion picture theater or adult motel or hotel or if there are no employees, a statement to that effect. Licenses issued pursuant to this section shall be in addition to and not in lieu of any occupational licenses or other licenses or permits required under this Code. (Ord. No. 1979-8, 3-12-79; Ord. No. 1980-3, 2-25-80)

Sec. 17-44. Reserved.

Editor's note—Ord. No. 1980-3, enacted Feb. 25, 1980, provided that § 17-44, pertaining to authorization to issue license following conviction for certain crimes, and derived from Ord. No. 1979-8, enacted Mar. 12, 1979, be rescinded and reserved for future use.

Sec. 17-45. License not to be issued without specific authorization to certain persons after revocation.

The department shall not grant, without specific authorization from the city council, a license to operate an adult bookstore, an adult motion picture theater, or adult motel or hotel to a person if such person was the licensee, or was an employee of the licensee, or was a partner in a partnership which was the licensee, or was an officer, director or principal stockholder of a corporation which was the licensee, of an adult bookstore, an adult motion picture theater or adult motel or hotel at the time such license was revoked under the provisions hereof. The department shall not grant, without specific authorization from the city council, a license to operate an adult bookstore, and adult motion picture theater or adult motel or hotel to a partnership if any partner thereof was a licensee, or was an employee of a licensee, or was a partner in a partnership which was the licensee, or was an officer, director or principal stockholder of a corporation which was the licensee of an adult bookstore, an adult motion picture theater or adult motel or hotel at the time such license was revoked under the provisions hereof. The department shall not grant, without specific authorization from the city council, a license to operate an adult bookstore, an adult motion picture theater or adult motel or hotel to a corporation if any officer, director or principal stockholder thereof was a licensee, or was an employee of a licensee, or was a partner in a partnership which was the licensee, or was an officer, director or principal stockholder of a corporation which was the licensee of an adult bookstore, an adult motion picture theater or adult motel or hotel at the time such license was revoked under the provisions hereof. (Ord. No. 1979-8, 3-12-79)

Sec. 17-46. Issuance of license; term; renewal.

If the department determines that the applicant is eligible for the issuance of a license, a regulatory license shall be issued for the fiscal year beginning July 1st and ending
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June 30th, or a fraction thereof. A license shall be renewed upon the approval of the department after an application for renewal has been duly submitted together with a renewal application fee of one hundred dollars (\$100.00). In order for the department to grant a renewal, the application for renewal and the investigation thereon must show that the applicant is eligible under the provisions hereof for the issuance of a license. (Ord. No. 1979-8, 3-12-79)

Sec. 17-47. Appeal for denial of license.

If the department determines that it may not issue a license to the applicant under the provisions of this article, the department shall notify the applicant of the department's intention to deny the license. Such notice shall include a copy of this section and the reason for the denial of the license. The applicant shall have the right to appeal the denial of the license to the city council by filing with the city clerk a notice of appeal within ten (10) days of receipt by applicant of notice of intent to deny. The city council, within fifteen (15) days of such appeal, shall hold a public hearing to determine whether issuance or renewal of the license would be detrimental to the public health, morals, safety and welfare. If the city council determines that the issuance of the license would not be detrimental to the public health, morals, safety and welfare, the city council shall specifically authorize the department to issue a license to the applicant and the department shall issue such license forthwith. If the city council determines that the issuance of the license would be detrimental to the public health, morals, safety and welfare, the city council so notify the applicant and the department shall not issue such license. (Ord. No. 1979-8, 3-12-79)

Sec. 17-48. Revocation.

The city council, by majority vote of those present, is authorized to revoke the privilege license of any licensee regulated by the provisions of this article under the following circumstances:

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- (a) Any interested party is convicted of a specified criminal act, and said conviction is final and not on appeal. For purposes of this section, the term conviction shall include an adjudication of guilt on a plea of guilty or nolo contendere, the forfeiture of a bond upon a charge of a specified criminal act, or prayer for judgment continued.
- (b) The city attorney, upon notification that any interested party has received a conviction for a specified criminal act, shall notify the licensee that, within twenty (20) days of the receipt of said notice by the licensee, the city council shall hold a public hearing to consider the revocation of the privilege license of the licensee. The standard to be used by the city council in making its decision shall be whether or not the continued operation of the licensed premises would present such a clear and present danger of a serious substantive evil as to be detrimental to the public health, morals, safety and welfare of the surrounding neighborhood. Provided further, that said licensee may waive said hearing by surrendering its license prior to the date and time established for the hearing. (Ord. No. 1980-3, 2-25-80)

Sec. 17-49. Operating adult bookstore, adult motion picture theater or adult motel or hotel illegal without a license.

It shall be unlawful for any person, partnership, corporation or any other entity to operate an adult bookstore, adult motion picture theater or adult motel or hotel within the City of Fayetteville unless such adult bookstore, adult motion picture theater or adult motel or hotel shall have a currently valid regulatory license therefor. (Ord. No. 1979-3, 3-12-79)

Sec. 17-50. Penalty.

Any person, partnership, or corporation violating the provisions of any section of this article shall, upon conviction, be
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punished as provided in section 1-7 of this Code. (Ord. No. 1979-8, 3-12-79)

ARTICLE IV. SECOND-HAND PRECIOUS METALS BUSINESS*

Sec. 17-51. Purpose.

It is recognized that there are some businesses dealing in the purchase of second-hand precious metals that because of their very nature require special licensing regulation in order to promote and protect the health, safety, and welfare of the community. These special licensing regulations are itemized in this article. (Ord. No. 1980-11, 10-13-80)

Sec. 17-52. Regulatory license required.

(a) No person, partnership, corporation or association shall operate a second-hand precious metals business as herein defined unless such person, partnership, corporation or association shall have first applied for and received a regulatory license from the deputy tax collector. A separate regulatory license shall be required for each location, place or premises used for the conduct of a second-hand precious metals business and each regulatory license shall designate the location, place or premises to which it applies. In addition, such business shall not be carried on or conducted in any other place than that designated in or by such regulatory license. Further, such regulatory license shall not be transferable.

(b) Every employee involved in the second-hand precious metals business shall, within five (5) days of being employed, register his name and address with the City of Fayetteville Police Department and have his thumbprints, fingerprints

*Editor's note—Ord. No. 1980-11, adopted Oct. 13, 1980, amended the Code by redesignating former Article IV, § 17-62 as Article V and inserting a new Article IV, §§ 17-51—17-61 as herein set out. Prior to such amendment, §§ 17-51—17-61 had been reserved. An ordinance numbered 1980-10, adopted Sept. 22, 1980, dealt with the same subject matter, but was deleted by the aforementioned Ord. No. 1980-11.
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AN ORDINANCE LICENSING AND REGULATING MASSAGE
BUSINESSES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DURHAM:

Section 1. That Chapter 3 of the Durham City Code is hereby amended by adding thereto the following:

"ARTICLE V. MASSAGE PARLORS, HEALTH SALONS,
AND RELATED BUSINESSES.

Section 3-20. To protect public health, safety, welfare and morals, the following privilege license provisions and regulations are ordained for the privilege of carrying on the business, trade, or profession of massagist and for the operation or carrying on of the businesses, trades, or professions commonly known as massage parlors, health salons, physical culture studios, or similar establishments wherein massage or physical manipulation of the human body is carried on or practiced. The provisions of this article shall not apply to a regularly established and licensed hospital, sanitarium, nursing home, nor to an office or clinic operated and regularly used by a duly qualified and licensed medical practitioner, osteopath, or chiropractor in connection with the practice of medicine, chiropractic, or osteopathy.

Sec. 3-21. Definitions.

Unless the context clearly indicates otherwise, the following words and phrases shall have the following meanings:

- (1) 'Massage' means the manipulation of body muscle or tissue by rubbing, stroking, kneading, or tapping, by hand or mechanical device.
- (2) 'Massage Business' means any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, and massage studios.
- (3) 'Business or profession of massage' includes the massage or treatment of any person for a fee or in expectation of a gratuity from the person massaged.
- (4) 'Massagist' means any person engaged in the business or profession of massage.

Sec. 3-22. Licensing of Massage Business Operators.

- (a) No person, partnership, corporation, or association shall operate a massage business as herein defined unless such person, partnership, corporation or association shall have first applied for and received the privilege license provided by this section.
- (b) Every application for the privilege license prescribed herein shall be upon a form approved by the City Manager and shall be filed with the City Clerk. Every such application shall be made under oath and shall contain the following information:

- (1) If the applicant is a person, the name and residence address of such person. If the applicant is a partnership, corporation or association, the name and residence address of all persons having any legal or beneficial interest in such applicant; and
- (2) The address of the premises where the massage business shall be located; and
- (3) A complete statement of all convictions of any person whose name is required to be given in paragraph (b)(1) above for any felony, or prostitution or any violation of any law relative to prostitution; and
- (4) A complete statement of any revocation, by any governmental unit, of any license to operate a massage business or to engage in the business or profession of massage held by any person whose name is required to be given in paragraph (b)(1) above; and
- (5) A complete statement of any conviction of any person whose name is required to be given in paragraph (b)(1) above, for violation of any statute, law, ordinance or regulation of any government concerning the operation of a massage business or the business or profession of massage; and

- (6) The name and address of any massage business or other establishment owned or operated by any person whose name is required to be given in paragraph (b)(1) above wherein the business or profession of massage is carried on; and
 - (7) A description of any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant.
- (c) The City Clerk shall transmit a copy of the application to the Police Department for an investigative report; to the Inspections Division to determine compliance with all zoning and building regulations and ordinances; and to the Fire Department to determine compliance with any law relating to fire protection. The Police and Fire Departments and the Inspections Division shall, within a reasonable time, not to exceed forty-five (45) days, report the results of their examinations to the City Clerk.
- (d) An application in proper form, accompanied by all reports required by this section, shall be submitted to the City Council, which shall approve such application if the City Council determines that:
- (1) The application contains no misstatement of fact; and

- (2) The applicant, or any person having any legal or beneficial ownership interest in the applicant, has not been convicted of any crime involving sexual misconduct, including but not limited to N.C.G.S. 14-177 through N.C.G.S. 14-202.1, Article 26 (offenses against public morality and decency) and N.C.G.S. 14-203 through 14-208, Article 27 (Prostitution), or of Section 13-31 of this Code, or of any Federal statute relating to prostitution, or of any violation of any law or ordinance of any governmental unit concerning or related to the business or profession of massage; and
- (3) The applicant conforms to all requirements of applicable zoning, building, and fire prevention codes.
- (4) The applicant or any person having a legal or beneficial ownership interest in the applicant has not, for the three year period preceding the application, had a previously issued license for engaging in the business or profession of massage revoked.
- (e) Upon approval of the application by the City Council, and upon receipt of a One Hundred Dollar (\$100.00) license fee, the Collector of Revenue shall issue a privilege license to applicant.
- (f) A license issued pursuant to this section shall be revoked by action of the City Council if the City Council determines that:
 - (1) The licensee has violated any provision

of this article; or

- (2) The licensee, or any agent of the licensee, employs or permits to be on the premises of the applicant's massage business any person practicing the business or profession of massage who has not been issued the privilege license required by Section 3-23 hereof, or whose license under Section 3-23 has been revoked; or
- (3) The licensee, or the legal or beneficial owner of any interest in the licensee is convicted of any crime involving sexual misconduct, including but not limited to G.S. 14-177 through N.C.G.S. 14-202.1, Article 26 (Offenses against public morality and decency) and N.C.G.S. 14-203, through N.C.G.S. 14-208, Article 27 (Prostitution), or
- (4) Any employee of the licensee is convicted of any felony in connection with his or her employment, or is convicted of any crime involving sexual misconduct, including, but not limited to G.S. 14-177 through N.C.G.S. 14-202.1, Article 26 (Offenses against public morality and decency) and N.C.G.S. 14-203, through N.C.G.S. 14-208, Article 27 (Prostitution) or of Section 13-31 of this Code, or
- (5) The licensee violates any zoning, building, or fire prevention ordinance.

- (g) A license issued pursuant to this article is void if the licensee moves or ceases operating a massage parlor at the location required to be stated in the application for license pursuant to Section 3-22(b)(2).

Sec. 3-23. Licensing of Massagists.

- (a) No person shall engage in the business or profession of massage unless such person shall have first applied for and received the privilege license provided by this section.
- (b) The application for the license required by this section shall be upon a form approved by the City Manager and shall be filed with the City Clerk. Such application shall be given under oath and shall contain the following information:
- (1) The name, age and residence address of the applicant; and
 - (2) A complete statement of the previous business or occupation of the applicant for the two years immediately preceding the date of application, including any massage establishment experience; and
 - (3) A complete statement of all convictions of the applicant for any felony or misdemeanor or violation of a local ordinance.
 - (4) A complete statement of any revocation of any license granted by any governmental unit to the applicant to engage in the business or profession of massage.

(5) The date and place of applicant's birth, the name of applicant's parents, and the residence address or addresses of the applicant for the five years immediately preceeding the date of application

(c) The applicant shall submit, as part of the application required in subsection (b) hereof, the following:

(1) Fingerprints of the applicant taken by the Police Department; and

(2) Two recent photographs of the applicant's head and shoulders, of a size and quality prescribed by the City Manager; and

(3) A medical certificate signed by a physician, licensed to practice in North Carolina, within seven days of the date of the application.

The certificate shall state that the applicant was examined by the certifying physician and that the applicant is free of communicable disease.

The additional information required by this subsection shall be provided at the applicant's expense.

(d) The City Clerk shall transmit a copy of the application to the Police Department for an investigative report. The Police Department shall, within a reasonable time, not to exceed forty-five (45) days, report the results of its investigation to the City Clerk.

- (e) An application in proper form shall be submitted to the City Council together with all reports required by this section. The City Council shall approve such application if the Council determines:
- (1) That the applicant is at least eighteen (18) years of age.
 - (2) The application contains no misstatement of fact; and
 - (3) The applicant has not been convicted of any crime involving sexual misconduct, including, but not limited to N.C.G.S. 14-177 through N.C.G.S. 14-202.1, Article 26 (offenses against public morality and decency) and N.C.G.S. 14-203 through 14-208, Article 27 (Prostitution), or of Section 13-31 of this Code, or of any Federal statute relating to prostitution, or for violation of any law or ordinance of any governmental unit concerning or related to the business or profession of massage; and
 - (4) The applicant has not, for the three year period preceding the application, had a previously issued license for engaging in the business or profession of massage revoked; and
 - (5) The applicant is free from communicable disease as evidenced by the medical certificate required herein; and
 - (6) The applicant has not been previously convicted of any violation of any provision of this article.

- (f) Upon approval of the application by the City Council, and upon receipt of a Fifty Dollar (\$50.00) license fee, the Collector of Revenue shall issue a privilege license to the applicant.
- (g) The City Council shall have authority to direct that any person licensed under this section submit to a medical examination by a licensed physician approved by the City Council. This authority shall be exercised only when the Council has reason to believe that any such person has contracted a communicable disease. Refusal to submit to such examination shall be grounds for revocation of such license as provided in subsection (h) of this section. Notwithstanding the provisions of this subsection, every person licensed under this section shall file and continue to file with the City Clerk a new medical certificate with each application for renewal of the license prescribed by this section. Failure to file such updated certificates shall be grounds for revocation of such license as provided in subsection (h) of this section.
- (h) A license issued pursuant to this section shall be revoked by action of the City Council if the City Council determines:
- (1) The licensee has violated any provision of this article; or

- (2) The licensee is afflicted with a communicable disease; or
- (3) The licensee has failed to be examined by a licensed physician when required by the City Council pursuant to subsection (g) of this section, or has failed to file any medical certificate required by said subsection (g); or
- (4) The licensee has been convicted of a felony, or any crime involving sexual misconduct, including, but not limited to N.C.G.S. 14-177 through N.C.G.S. 14-202.1, Article 26 (offenses against public morality and decency) and N.C.G.S. 14-203 through 14-208, Article 27 (Prostitution), or of violating Section 13-31 of this Code, or under any Federal statute relating to prostitution, or for violation of any law or ordinance of any governmental unit related to the business or profession of massage.

Sec. 3-24. Employer to Use Only Licensed Employees.

No person, corporation, partnership, or association licensed under Section 3-22 hereof shall allow or permit any person to massage or treat any person upon the premises operated by the licensee unless the person giving such massage or treatment has complied with all requirements of licensing under Section 3-23, including periodic medical examinations by a licensed physician. Violation of this section shall be grounds for revocation of the license issued to such violator pursuant to this article.

Sec. 3-25. Posting of License.

- (a) Every massagist shall post the license required by the article in his work area.
- (b) Every person, corporation, partnership, or association licensed under Section 3-22 hereof shall display such license in a prominent place.

Sec. 3-26. Notice and Hearing.

Before the City Council revokes a license issued pursuant to this article, or if the City Council determines reasonable grounds exist to deny an application for a license pursuant to this article, the City Council shall cause a written notice to be sent by certified mail to the licensee affected or applicant affected, at the address stated in the license or application. The notice shall advise the affected party of a right to appear before the City Council, with or without legal counsel, at a stated time and place, for the purpose of presenting any evidence relevant to such revocation or denial, and for the purpose of hearing all evidence submitted and examining or cross-examining any person providing such evidence.

Sec. 3-27. Hours of Operation.

- (a) No person licensed as a massagist under Section 3-23 hereof shall massage or treat any person, or engage in the business or profession of massage, before 8:00 A.M. or after 12:00 P.M., prevailing time.

(b) No person, corporation, partnership, or association licensed under Section 3-22 hereof shall admit customers or prospective customers, or remain open for business, or allow, permit or condon any massage or treatment of any person upon the premises before 8:00 A.M. or after 12:00 P.M., prevailing time.

(c) No person in charge of managing a massage business upon the premises shall allow, permit, or condon any massage or treatment of any person before 8:00 A.M. or after 12:00 P.M. prevailing time.

Sec. 3-28. Patronage of Massage Businesses by Minors and Employment of Minors.

(a) No person licensed as a masseur or masseuse under Section 3-23 hereof shall massage or treat any person under the age of eighteen (18) upon the licensed premises, except upon written order by a licensed physician, osteopath, chiropractor, or registered physician therapist, such order being dated and in the possession of the masseur or masseuse giving the massage or treatment. A violation of this subsection shall be grounds for revocation of any license issued to such violator pursuant to this article.

(b) No person, corporation, partnership or association licensed under Section 3-22 hereof shall allow, permit or condon the massage or treatment of any person under the age of eighteen (18) upon the licensed premises, except upon written order by a

licensed physician, osteopath, chiropractor, or registered physicial therapist, such order being dated, and a true copy of such order being in the possession of the licensee before administration of any massage or treatment. A violation of this subsection shall be grounds for revocation of any license issued to such violator pursuant to this article.

- (c) No person, corporation, partnership or association licensed pursuant to Section 3-22 of this article shall employ any person under the age of eighteen (18) years in the operation of a massage business.

Sec. 3-29. Privilege License Annual.

The licenses required under this article are Annual Privilege Licenses. Such licenses shall be due and payable in the same manner as prescribed for other privilege licenses issued by the City of Durham pursuant to the License and Privilege Tax Ordinance of the City.

Sec. 3-30. Penalties.

Any person convicted of violating any provisions of this article shall be punished by fine or imprisoned as provided by N.C.G.S. 14-4.

Sec. 3-31. Separability.

If any section, subsection, sentence, clause, phrase or portion of this Article is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Sec. 2. All ordinances in conflict herewith are hereby repealed.

Sec. 3. This ordinance shall be in full force and effect from and after its passage, provided, however, any person, partnership, corporation or association engaged in the operation of a massage business and every person engaged in the business or profession of massage, at the time of the enactment of this ordinance shall have sixty (60) days in which to comply with the licensing provisions of this ordinance.

APPROVED BY
CITY COUNCIL

MAY 19 1975

J. W. Edwards
CITY CLERK

by Thomas L. Tedford

(The writer is Professor of Communication and Theatre at UNC-G, Greensboro, N. C., where he teaches a graduate-level course on the First Amendment. A version of the essay below was published in the Greensboro Daily News on April 3, 1982, in response to a pro-censorship conference sponsored by the N. C. Christian Action League and Jerry Falwell's Moral Majority at the end of March.)

From time to time the news media report that some branch of the Citizens for Decency under Law, Morality in Media, Moral Majority, or similar organization has acted to bring pressure on state lawmakers to "strengthen" the state's censorship laws. Why is this? Why do various church-related organizations, all of which depend upon the free speech guarantees of the Constitution to assure their freedom to communicate, spend so much time and effort attempting to deny that same freedom to others? The answer, I believe, can be found in history.

The key principle was identified by Louis Henkin, Professor of Law at Columbia University, in "Morals and the Constitution: The Sin of Obscenity," an essay published in the Columbia Law Review in March of 1963. Professor Henkin notes in this oft-quoted article that the "history of obscenity legislation points . . . to origins in aspirations to holiness and propriety. Laws against obscenity have appeared conjoined and cognate to laws against sacrilege and blasphemy, suggesting concern for the spiritual welfare of the person exposed to it Obscenity, at bottom, is not a crime. Obscenity is a sin." Do the facts of history support Professor Henkin? Let us see.

Europe and England

Neither Athens nor Rome during their democratic periods had laws against the dissemination of erotic materials, although they did, under certain circumstances, punish speech which they considered seditious or defamatory. Likewise, neither the Europeans nor the British had laws against explicit sexual communications until relatively recent times (the first English statute was passed by Parliament in 1857).

On the other hand, the foundations for the suppression of religio-moral heresy in all of its variations--from blasphemy to obscenity--did have an early beginning.

Both St. Augustine (354-430 A.D.) and St. Thomas Aquinas (1225-1274 A.D.) taught that salvation could be achieved through compulsion, and that the punishment of "heretics" was both the right and the sacred duty of the Church. The Inquisition, which lasted for over six hundred years, grew out of this authoritarian attitude of leaders of the early Church. As a direct result, thousands of "heretics" were tortured, and many were burned at the stake or otherwise murdered by Church authorities, all in the name of God! In England Church authorities jailed or executed numerous individuals for heresy, held public book burnings, and helped control printing presses under the royal licensing system.

Obscenity did not become a state offense at common law until early in the eighteenth century. Prior to this time, prosecutions for obscenity took place in the ecclesiastical courts of the Church of England. When a prosecutor attempted to try an obscenity case in a state court in 1708, the judge dismissed the case for lack of jurisdiction, observing that the proper place for such matters was a Church court. Furthermore, the judge noted, neither the common law nor statute law provided for the punishment of such material.

This rule was altered by a Christian judge in another state court who, in 1727, permitted the prosecution of Richard Curl for obscenity. Curl was found guilty of the charge because his naughty booklet, entitled Venus in the Cloister, or the Nun in Her Smock, reflected upon "religion, virtue, and morality." By way of this specific case, the "sin of obscenity" became a criminal offense at common law.

In the years following Curl's conviction, support grew among religious leaders for the concept of permitting state courts to punish such matters as blasphemy, profanity, obscenity, and other forms of religio-moral heresy. In 1802, Thomas Bowdler (from whose name we get the term "bowdlerize," meaning to prudishly eliminate objectional language from works of literature) started England's first "Christian action league," which he named The Society for the Suppression of Vice. The announced goals

of Bowdler's new anti-vice group were "to prevent the profanation of the Lord's Day, prosecute blasphemy and suppress blasphemous publications, bring the trade in obscene books to a halt, close disorderly houses and suppress fortune tellers." Several decades later, as noted previously, Parliament responded to the lobbying efforts of this and other "anti-sin" organizations by enacting the Obscene Publications Act of 1857--the first such statute in English history.

The United States

Developments in the United States paralleled those in England, with actions against "sinful" expression evolving from the Church courts to those of the states. The first conviction for obscenity in a civil court in the United States occurred in Philadelphia in 1815 when Jesse Sharpless was found guilty ^{at common law} of displaying a painting "representing a man in an obscene, impudent, and indecent posture with a woman." In 1821 Vermont became the first state to write the "crime" of obscenity into its legal code, an action which was soon followed by Connecticut (1834) and Massachusetts (1835).

The major federal statute, which remains in the U. S. Code to the present day, is the Comstock Act of 1873. This law, which was lobbied through Congress by New York anti-vice crusader Anthony Comstock, makes it a federal crime to use the mails to disseminate materials which are legally obscene. In 1957, the U. S. Supreme Court in the landmark decision of Roth v. U. S. upheld the obscenity provisions of this nineteenth century law. Current state and federal obscenity statutes ^{are} based upon the 1957 Roth definition of obscenity, as altered by the Supreme Court in 1973 in the case of Miller v. California.

Furthermore, American courts have developed a definition of obscenity which differs from the term's original meaning. At first, "obscenity" (from the Latin obscurus) meant that which was loathsome, offensive, or repulsive. American judges--particularly those of the Supreme Court--have redefined the term to mean the sexual, the sensual, and the erotic (including feelings which are warm and pleasant to many).

Crude language, for example, is no longer legally obscene in the United States--only sexual material is obscene.

Government Support for Religion

During the twentieth century the U. S. Supreme Court has declared unconstitutional a variety of statutes and government regulations which attempted to further the establishment of religion. For example, New York's effort to forbid the showing of the Italian film The Miracle on the ground of sacrilege was overturned by the High Court in 1959. Also, an Arkansas statute from the late 1920's which forbade the teaching of evolution in the public schools because the theory supposedly conflicted with the Bible was rejected by the Court in 1968. However, the pious judges of the U. S. Supreme Court continue to approve of government censorship of sinful ideas about sexual morality, thereby making "obscenity" the last religio-moral heresy legally suppressed by civil authority on behalf of the nation's majority religion.

When Thomas Jefferson was informed by his Philadelphia book agent, N. G. Duffief, that a French scientific treatise requested by Jefferson was not available because of its suppression by religious authorities in Pennsylvania, the author of our Declaration of Independence responded as follows (letter to Duffief, April 19, 1814): "Is this then our freedom of religion? And are we to have a censor whose imprimatur shall say what books may be sold, and what we may buy? . . . Whose foot is to be the measure to which ours are all to be cut or stretched? Is a priest to be our inquisitor, or shall a layman, simple as ourselves, set up his reason as the rule for what we are to read, and what we must believe? It is an insult to our citizens to question whether they are rational beings or not, and blasphemy against religion to suppose it cannot stand the test of truth and reason." Jefferson added that if the book in question "be false in its facts, disprove them; if false in its reasoning, refute it. But, for God's sake, let us freely hear both sides, if we choose. . . ."

Tedford
AIA version
June/82

-5-

I can think of no more fitting rebuke to the would-be censors of the United States--whether of some local church, some "decency league," some legislative committee, or some judicial body such as the U. S. Supreme Court (often described by the late Justice Hugo Black as a "National Board of Censors")--than to paraphrase Jefferson: "If explicit sexual communications teach false values, disprove them; if such materials express ideas which you consider to be immoral or sinful, refute them with effective education and persuasion. But for God's sake, let the citizens of this nation hear both sides, if we choose!"

-end-

Prepared by:
Thomas L. Tedford
3615 Hobbs Rd.
Greensboro, N. C. 27410

I. WE CANNOT TRUST THE CENSORS: EXAMPLES FROM THE PAST

"I have personal reservations [about the Burger decision allowing censorship]. Justice William Brennan, who led the dissenters, has gone through a sea change over the past 16 years. So have I. Brennan used to go along with the old Roth formulations of 1957. He has concluded that on balance, more harm is done to a healthy society by censorship than by pornography. I tend to agree." Columnist James J. Kilpatrick, Greensboro Record, July 7, 1973. (emphasis supplied)

Banned Books

Do we learn from the past? If so, the proposal that there be no censorship for adults will certainly be written into law. Here are some examples of books which have been banned in the past--some for religious heresy, some for political views, but most for "obscenity" and "immorality." The source is Anne Lyon Haight's Banned Books, 2nd ed. (New York: H. R. Bowker Co., 1955). To save time in typing the titles have been capitalized rather than underlined.

THE BIBLE (Italy, 553; England, 1409; France, 1538; Spain, 1551; England, 1555; Switzerland, 1560; Germany, 1624; United States--Philadelphia--1782; Russia, 1926; portions of the Revised Standard Version burned by a Baptist minister in N. C. in 1953.) Roger Bacon, OPUS MAIUS, 1268; OPUS MINUS, 1268; OPUS TERTIUM, 1268. Martin Luther, ADDRESS TO THE GERMAN NOBILITY and his translation of the NEW TESTAMENT, banned in Germany, France, Italy.

William Shakespeare, KING RICHARD THE SECOND, THE MERCHANT OF VENICE, and KING LEAR, banned variously in England and the United States from 1597 until 1931. John Milton, AREOPAGITICA, and PARADISE LOST (plus additional works), banned on and off in England and Italy, 1476 until 1948. Daniel Defoe, ROBINSON CRUSOE, MOLL FLANDERS, and other works, England, Spain, Italy variously from 1703 until 1743; banned by U. S. Customs until 1930 (MOLL FLANDERS and ROXANA). Jonathan Swift, GULLIVER'S TRAVELS, Italy, 1734. Voltaire, CANDIDE and other works, censoring began in France in 1716, included Prussia, Italy, Switzerland, and the United States (1929; by Customs; in New York; in Boston; "obscene").

In the United States, for "obscenity": Nathaniel Hawthorne, THE SCARLET LETTER, 1852; screen version, 1925. Elizabeth Barrett Browning, AURORA LEIGH, 1857. Walt Whitman, LEAVES OF GRASS, 1855, and again in 1881. Gustave Flaubert, THE TEMPTATION OF ST. ANTHONY, 1927; NOVEMBER, 1934; MADAME BOVARY, 1954. Hendrik Ibsen, GHOSTS, 1935. Leo Tolstoi, THE KREUTZER SONATA, 1890. Mark Twain, THE ADVENTURES OF TOM SAWYER, 1876; THE ADVENTURES OF HUCKLEBERRY FINN, 1885. Emile Zola, MANA, 1954. George Bernard Shaw, MAN AND SUPERMAN, and MRS. WARREN'S PROFESSION, 1905. Theodore Dreiser, SISTER CARRIE, 1900; THE GENIUS, 1916; AN AMERICAN TRAGEDY, 1930. Sherwood Anderson, DARK LAUGHTER, 1930. Upton Sinclair, OIL!, 1927 (the nine pages objected to included two pages quoted from "The Song of Solomon" in the BIBLE). Marie C. Stopes, MARRIED LOVE, 1921; CONTRACEPTION, 1930. James Joyce, ULYSSES, 1922 (500 copies burned by the Post Office Department). Margaret Sanger, FAMILY LIMITATION, 1915 (a book on birth control). D. H. Lawrence, WOMEN IN LOVE, 1922; LADY CHATTERLEY'S LOVER, 1929; LOVE AMONG THE HAYSTACKS, 1953. Lewis Sinclair, FINER GENTRY, 1927; KINGSBLOOD ROYAL, 1953. Radclyffe Hall, THE WELL OF LONELINESS, 1929. Eugene O'Neill, STRANGE INTERLUDE, 1929. Henry Miller, TROPIC OF CANCER, TROPIC OF CAPRICORN, 1953. Aldous Huxley, ANTIC HAY, POINT COUNTER POINT, 1930. Edmund Wilson, MEMOIRS OF HECAETE COUNTY, 1946. William Faulkner, MOSQUITOES, SANCTUARY, THE WILD PALES, 1948. Lillian Smith, STRANGE FRUIT, 1944. Ernest Hemingway, THE SUN ALSO RISES, 1930; Remarque, ALL QUIET ON THE WESTERN FRONT, 1929; Steinbeck, GRAPES OF WRATH, 1939; Farrell, STUDS LONIGAN, 1937; Winsor, FOREVER AFTER, 1946; Jones, FROM HERE TO ETERNITY, 1951; Life Magazine, "Birth of a Baby, 1938; and a film on the "Birth of a Baby," banned in 1937.

(over)→

II. WE STILL CANNOT TRUST THE CENSORS: RECENT EXAMPLES

The mandatory adversary hearing is designed to provide a system of "fair warning" to libraries, bookstores, magazine stands, theatres, and drama groups as to what is probably "obscene" under the North Carolina statute. The censorship efforts of the last decade prove once again that we cannot trust one another in this matter--people simply do not agree on what is meant by "obscenity." The examples below are from the Newsletter on Intellectual Freedom of the American Library Association. The issue and page citation is provided for each example.

1. A serious scientific film, Spectrum of Modern Human Sexuality, which won an award in the Baltimore Human Sexuality Film program (sponsored by Johns Hopkins University Hospital, departments of psychiatry and behavioral sciences), was ruled obscene by Circuit Court Judge Joseph C. Howard. (January, 1975, p. 12)
2. In Tampa, Fla., the police threatened to prosecute booksellers for "obscenity" unless they removed the following books from the shelves: Jaws, Couples, Fear of Flying, and The Joy of Sex. (July, 1975, p. 117)
3. The principal of Buckingham Co. High School (Va.) cancelled the school subscription to Popular Photography because he found the publication "obscene." (September, 1975, p. 139)
4. Tar Heel, N. C., principal Charles W. Tedder and the local school board labeled 20 books as "smut" and removed them from school shelves. The list includes Hemingway's For Whom the Bell Tolls, A Farewell to Arms, and To Have and Have Not. (July, 1976, p. 85)
5. The East St. Louis Circuit Court, Belleville, Ill., found the clerk in a magazine stand guilty of selling "obscene" magazines, viz., Playboy, Playgirl, Viva, and Gallery. (July, 1976, p. 95)
6. In Orem, Utah, a theatre was threatened with an "obscenity" prosecution if it did not cut scenes from the film Mandingo; and a bookstore was threatened with prosecution if it did not remove its copies of National Lampoon from sale. (July, 1976, p. 98)
7. In Malden, Mass., a district court judge declared Penthouse magazine to be "obscene." (September, 1976, p. 124)
8. The Westport, R. I., School Committee removed these books from the school on "obscenity" grounds: A Clockwork Orange, One Flew Over the Cuckoo's Nest, Romantic's Pair, and The Binding. (January, 1977, p. 5)
9. The sex education film About Sex was described as "obscene" by a community morality group in Rhyne, Nebraska. The group urged that the film be censored because it was filled with "gutter talk" and "brink and raw sex." About Sex is distributed by the Northeast Neb. Family Health Service. (January, 1978, p. 7)
10. In late 1977 the police of Lexington, Ky., armed with a new censorship law, went to work to "clean up Lexington." Confiscated from regular local bookstores, including Golden Postcards, The Little Professor, and Walden Books, were these sex education manuals: The Joy of Sex, More Joy of Sex, Total Sex, Making Love, and The Art of Sexual Pleasure. (March, 1978, p. 10)

(II. Recent Examples, contd.)

11. The film Looking for Mr. Goodbar was described as "obscene" by the police of Provo, Utah, because of alleged "foul language and nudity." A trial was held, tax-payer's money was spent, hours of police and court time were consumed, and the judge finally issued a verdict of "not guilty." (May, 1978, p. 66)
12. When a censorship movement gets underway in a community, the censors seem unable to stop at so-called "hard-core pornography." In Anaheim, Calif., the censors moved from theatres and bookstores to the local schools, persuading the trustees to remove the following "dirty books" from the shelves: Shakespeare's Hamlet, and Romeo and Juliet; all of the works of Charles Dickens, except for Oliver Twist; Richard Wright's Black Boy; Silas Marner; Gone with the Wind; and most of the works of Mark Twain. (January, 1979, p. 6)
13. St. Martin's Press was prosecuted in the State of New York for publishing a sex-education manual entitled Show Me! The book's discussion of the sexual conduct of children includes illustrations. (March, 1979, p. 34)
14. In Monroe, Oregon, the sex-education books entitled A Woman's Body: an Owner's Manual, and A Man's Body: an Owner's Manual, were banned because some persons complained about "their explicit portrayals of male and female anatomies." (May, 1979, p. 51)
15. In Fairhope, Alabama, the librarian of the public library, Claire Oaks, was dismissed by the library board because she continued to circulate the illustrated sex manuals The Joy of Sex and More Joy of Sex to consenting adults. (November, 1979, p. 131)
16. In Atlanta, Ga., Fulton Co. Solicitor Hinson McAuliffe attempted to prohibit the showing of the movie Caligula, and has moved to ban Penthouse, Oui, and Playboy magazines because he films them "obscene." (May, 1980, p. 63)
17. Dightman's Bible Book Center, a religious bookstore in Tacoma, Wash., was condemned for selling a sex manual entitled The Act of Marriage, written by a Christian husband-wife team, and published by the Zondervan religious publishing company. The critics claimed that the book was "immoral" because of its discussion of oral sex. (January, 1981, p. 8)
18. The Baltimore Sun reported that in January, 1981, the principal of a "Christian School" burned the following materials as "immoral" while the students watched: A Batman comicbook; a Daffy Duck comicbook; and copies of the National Geographic. The principal read from the Bible while the books were burning. (March, 1981, p. 42)

--more-- (over)

WE ARE NOT ALONE

Following the 1973 censorship decisions of the U. S. Supreme Court (written by Chief Justice Warren Burger), the legislatures of 15 states took action to show their disapproval of censorship in a free society.

- A. These eight states legislated no outright prohibition upon the dissemination of explicit sexual materials to consenting adults: ALASKA; COLORADO; IOWA; MONTANA; NEW MEXICO; SOUTH DAKOTA; VERMONT; and WEST VIRGINIA.
- B. These seven states (including North Carolina) require a prior civil (or in rem) proceeding, before any criminal action can be instituted: ARKANSAS; LOUISIANA; MASS.; NORTH CAROLINA; NORTH DAKOTA; VERMONT; & WISCONSIN.

(Source: Assoc. of Am. Publishers, Amicus brief, case of Smith v. U.S., Oct., 1976)

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<i>Justice in America</i> (Houghton Mifflin, 1974).	p. 86
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<i>Modern Human Sexuality</i> (Houghton Mifflin, 1976).	p. 100
<i>The Naked Eye</i> (McGraw-Hill, 1967).	p. 79
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Views of contributors to the Newsletter on Intellectual Freedom are not necessarily those of the editors, the Intellectual Freedom Committee, or the American Library Association.

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NORTH CAROLINA LIBRARY ASSOCIATION

P. O. Box 309

Jamestown, North Carolina 27282

September 28, 1982

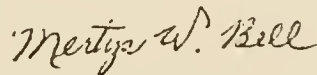
Honorable George W. Miller, Jr.
Co-Chairman of Legislative Research Committee
on Obscenity Law
P. O. Box 451
200 Wachovia Bank Building
Durham, North Carolina 27702

Dear Mr. Miller:

On September 17, 1982, the Executive Board of the North Carolina Library Association unanimously endorsed a resolution requesting the retention of the adversary hearing in the State Obscenity Law. We are advising you of this fact so that you will know that librarians in North Carolina are officially taking this stance.

We will appreciate your support in this matter.

Sincerely,



Mertys W. Bell
President
North Carolina Library Association

sf



INTELLECTUAL FREEDOM RESOLUTION

- WHEREAS, we as concerned citizens in a democratic society and as librarians do recognize the growing problem of censorship in our state, and
- WHEREAS, we believe that libraries should be a marketplace of ideas and make available the widest diversity of views and expressions to their users, and
- WHEREAS, well known and widely accepted books and other library materials have been attacked by overzealous advocates of so-called "clean" literature, and
- WHEREAS, the First Amendment rights of our citizens have been threatened by these groups, and
- WHEREAS, professional librarians use specific written criteria and review mechanisms for selection of materials in building library collections, and
- WHEREAS, if current state laws are modified, librarians may be subjected to undue harassment or punitive action, and
- WHEREAS, we believe it is impossible to legislate morals, and
- WHEREAS, minors are protected under current legislation, and
- WHEREAS, we believe in the right of an individual to choose, and
- WHEREAS, North Carolina statutes dealing with obscene materials have been declared constitutional by the courts,
- THEREFORE, be it resolved that we do hereby support the retention of the prior adversary hearing in N. C. Statute 14-190.2.

Adopted by:

North Carolina Library Association, Executive Board
Raleigh September 17, 1982

Endorsed by:

North Carolina Special Libraries Association, Executive Board
Raleigh September 17, 1982

North Carolina Special Libraries Association, Membership in conference
Raleigh September 17, 1982

Appalachian State University, Faculty, Department of Library & Media
Studies
Boone September 17, 1982

Guilford Library Club
Greensboro September 24, 1982

Documents Section, Executive Board, N. C. Library Association
Davidson September 24, 1982

North Carolina Association of School Librarians, Executive Board
Greensboro September 24, 1982

North Carolina Central University, Faculty, School of Library Science
Durham September 27, 1982

North Carolina Learning Resources Association, Executive Board
Grantsboro October 1, 1982

University of North Carolina, Faculty, Department of Library Science/
Educational Technology
Greensboro October 7, 1982

Cape Fear Library Association
Fayetteville October 14, 1982

Children's Services Section, Executive Board, N. C. Library Association
Salisbury October 15, 1982

Junior Members Round Table, Executive Board, N. C. Library Association
Newton October 20, 1982

Metrolina Library Association, Executive Board
Charlotte October 20, 1982

University of North Carolina, Faculty, School of Library Science
Chapel Hill October 20, 1982

Junior Colleges Section, Executive Board, N. C. Library Association
Goldsboro October 22, 1982

College & University Section, Executive Board, N. C. Library Association Wilmington	October 25, 1932
East Carolina University, Faculty, Department of Library Science Greenville	October 25, 1932
Round Table on the Status of Women in Librarianship, Executive Committee, N. C. Library Association Chapel Hill	October 26, 1932
Resources & Technical Services Section, Executive Committee, N. C. Library Association Jamestown	October 27, 1932
Reference & Adult Services Section, Steering Committee, N. C. Library Association Greensboro	October 29, 1932
Public Library Section, Executive Board, N. C. Library Association Rockingham	November 2, 1932
North Carolina Public Library Trustee Association, Executive Board Mount Olive	November 3, 1932
North Carolina Association of School Librarians, Membership in conference Winston-Salem	November 4, 1932
North Carolina Public Library Directors Association Tarboro	November 5, 1932
North Carolina State Library Commission Raleigh	November 9, 1932
Durham Library Association Durham	

INTRODUCED BY: Senator Warren

Representative Miller

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND CERTAIN OBSCENITY STATUTES.
3 The General Assembly of North Carolina enacts:

4 Section 1. G.S. 14-190.11(c) is amended by inserting
5 the following language between "others" and the period:

6 "or is easily visible from those portions of any public
7 premises to which the general public is unqualifiedly
8 invited".

9 Sec.2. G.S. 14-190.10(c) (2) is repealed and sub-
10 division (3) is renumbered accordingly.

11 Sec.3. G.S. 14-202.10 be rewritten to read:

12 "§ 14-202.10. Definitions.

13 As used in this Article:

14 (1) 'Adult bookstore' means a bookstore:

- 15 a. which receives a preponderance of its income
16 during any calendar month from the sale of publications
17 (including books, magazines, and other periodicals)
18 which are distinguished or characterized by their
19 emphasis on matter depicting, describing, or
20 relating to specified sexual activities or specified
21 anatomical areas, as defined in this section; or
22 b. having at any one time in excess of one hundred
23 volumes (including books, magazines, and other
24 periodicals) which are distinguished or characterized

1 by their emphasis on matter depicting, describing, or relating
2 to specified sexual activities or specified anatomical areas,
3 as defined in this section.

4 (2) 'Adult establishment' means an adult bookstore, adult
5 motion picture theatre, adult mini motion picture theatre, adult
6 live entertainment business, or massage business as defined in
7 this section.

8 (3) 'Adult live entertainment' means any performance of or
9 involving the actual presence of real people which exhibits specified
10 sexual activities or specified anatomical areas, as defined in
11 this section.

12 (4) 'Adult live entertainment business' means any establish-
13 ment or business wherein adult live entertainment is shown for
14 observation by patrons.

15 (5) 'Adult motion picture theatre' means an enclosed building
16 used for presenting motion pictures, a preponderance of which are
17 distinguished or characterized by an emphasis on matter depicting,
18 describing, or relating to specified sexual activities or specified
19 anatomical areas, as defined in this section, for observation by
20 patrons therein. 'Adult motion picture theatre' does not include
21 any adult mini motion picture theatre as defined in this section.

22 (6) 'Adult mini motion picture theatre' means an enclosed
23 building with viewing booths designed to hold patrons which is
24 used for presenting motion pictures, a preponderance of which
25 are distinguished or characterized by an emphasis on matter
26 depicting, describing, or relating to specified sexual activities
27 or specified anatomical areas, as defined in this section, for
28 observation by patrons therein.

1 (7) 'Massage' means the manipulation of body muscle or
2 tissue by rubbing, stroking, kneading, or tapping, by hand or
3 mechanical device.

4 (8) 'Massage business' means any establishment or business
5 wherein massage is practiced, including establishments commonly
6 known as health clubs, physical culture studios, massage studios,
7 or massage parlors.

8 (9) 'Sexually oriented devices' means without limitation
9 any artificial or simulated specified anatomical area or other
10 device or paraphernalia that is designed in whole or part for
11 specified sexual activities but shall not mean any contraceptive
12 device.

13 (10) 'Specified anatomical areas' means:

14 a. less than completely and opaquely covered: (i) human
15 genitals, pubic region, (ii) buttock, or (iii) female breast
16 below a point immediately above the top of the areola; or

17 b. human male genitals in a discernibly turgid state,
18 even if completely and opaquely covered.

19 (11) 'Specified sexual activities' means:

20 a. human genitals in a state of sexual stimulation or arousal;
21 b. acts of human masturbation, sexual intercourse or sodomy; or
22 c. fondling or other erotic touchings of human genitals,
23 pubic regions, buttocks or female breasts."

24 Sec. 4. G.S. 14-202.11 is rewritten to read:

25 "§14-202.11. Restrictions as to adult establishments.

26 No person shall permit any building, premises, structure,
27 or other facility that contains any adult establishment to contain
28 any other kind of adult establishment. No person shall permit any

1 building, premises, structure, or other facility in which sexually
2 oriented devices are sold, distributed, exhibited, or contained
3 to contain any adult establishment.

4 No person shall permit any viewing booth in an adult mini
5 motion picture theatre to be occupied by more than one person at
6 any time."

7 Sec. 5. G.S. 14-202.12 is amended by adding a new sentence
8 at the end to read:

9 "As used herein, 'person' shall include:

10 (1) the owner of the building, premises, structure or
11 facility when such owner knew or reasonably should have known
12 the nature of the business located therein; or

13 (2) the owner of the business; or

14 (3) the manager of the business."

15 Sec. 6. G.S. 14-190.2(c) is amended by deleting the words
16 "purchase or" in line ten.

17 Sec. 7. G.S. 14-190.1 (b) (2) is amended by deleting the word
18 "statewide".

19 Sec. 8. G.S. 14-190.1(d) (6) is amended by deleting the
20 words "State of North Carolina" and inserting in lieu thereof:
21 "community".

22 Sec. 9. If any provisions of this act or the application
23 thereof to any person or circumstances are held invalid, such
24 invalidity shall not affect other provisions or applications of
25 this act which can be given effect without the invalid provision
26 or application, and to this end the provisions of this act are
27 declared to be severable.

28 Sec. 10. This act shall become effective on October 1, 1983.

INTRODUCED BY:

Short Title: Child Pornography

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE FELONY OFFENSES OF USE OF A CHILD IN A SEXUAL
3 PERFORMANCE AND PROMOTING A SEXUAL PERFORMANCE BY A CHILD.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 14-190.6 is retitled and rewritten to read:

6 "§ 14-190.6. Employing or permitting minor to engage or
7 assist in offense under Article or to engage in sexual performance
8 or to promote such performance.

9 (a) Except as provided in (b) and (c), every person 18 years
10 of age or older who intentionally, in any manner, hires, employs,
11 uses or permits any minor under the age of 16 years to do or assist
12 in doing any act or thing constituting an offense under this
13 Article and involving any material, act or thing he knows or
14 reasonably should know to be obscene within the meaning of G.S.14-190.1
15 shall be guilty of a misdemeanor, and unless a greater penalty is
16 expressly provided for in this Article, shall be punishable in the
17 discretion of the court.

18 (b) Every person who shall use a child in a sexual performance
19 shall be punished as a Class H felon. A person is guilty of the
20 use of a child in a sexual performance if knowing the character and
21 content thereof: (1) he employs, authorizes, or induces a child
22 whom he knows or reasonably should know is less than 16 years of age
23 to engage in a sexual performance; or (2) being a parent, legal
24 guardian, or custodian of a child less than 16 years of age he

1 consents to the participation by the child in a sexual performance.

2 (c) Every person who shall promote a sexual performance by
3 a child shall be punished as a Class I felon. A person is guilty
4 of promoting a sexual performance by a child when, knowing the
5 character and content thereof, he produces, directs, or promotes
6 any performance which includes sexual conduct by a child whom
7 he knows or reasonably should know is less than 16 years of age.
8 For purposes of this subsection, 'promote' means to procure,
9 manufacture, issue, sell, give, provide, lend, mail, deliver,
10 transfer, transmute, publish, distribute, circulate, disseminate,
11 present, exhibit, or advertise, or to offer or agree to do the
12 same.

13 (d) For purposes of (b) and (c):

14 'Sexual performance' means any performance or part thereof
15 which includes sexual conduct by a child less than 16 years of
16 age.

17 'Sexual conduct' means actual or simulated sexual intercourse,
18 deviate sexual intercourse, sexual bestiality, masturbation,
19 sadomasochistic abuse, or lewd exhibition of the genitals.

20 'Performance' means any play, motion picture, photograph,
21 or dance or any other visual presentation exhibited before an
22 audience."

23 Sec. 2. This act shall become effective October 1, 1983
24 and shall apply to offenses committed on or after that date.

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