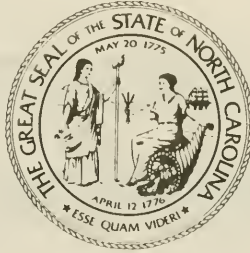


LEGISLATIVE RESEARCH COMMISSION

COUNTY COMMISSIONERS' AUTHORITY OVER LOCAL BOARDS



REPORT TO THE
1987 GENERAL ASSEMBLY
OF NORTH CAROLINA

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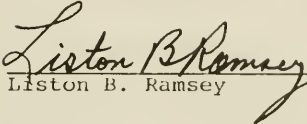
December 15, 1986

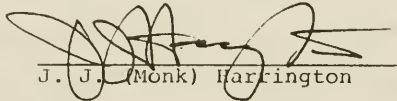
TO THE MEMBERS OF THE 1987 GENERAL ASSEMBLY:

The Legislative Research Commission herewith reports to the 1987 General Assembly on the matter of county commissioners' authority over local boards. The report is made pursuant to Chapter 790 of the 1985 Session Laws.

This report was prepared by the Legislative Research Commission's Committee on County Commissioners' Authority Over Local Boards and is transmitted by the Legislative Research Commission for your consideration.

Respectfully submitted,


Liston B. Ramsey


J. J. (Monk) Harrington

Cochairmen
Legislative Research Commission

C-143

PREFACE

The Legislative Research Commission, authorized by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation 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)].

At the direction of the 1985 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The co-chairmen of the Legislative Research Commission, under the authority of General Statute 120-30.10 (b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Co-chairmen, one from each house of the General Assembly, were designated for each committee.

The study of County Commissioners' Authority Over Local Boards was authorized by Section 1(20) of Chapter 790 of the 1985 Session Laws (1985 Session). That act states that the Commission may consider House Joint Resolution 1405 in determining the nature, scope and aspects of the study. Section

1 of House Joint Resolution 1405 reads: "The Legislative Research Commission may study the following issues concerning control of local commissions, boards, and agencies:

(1) G.S. 153A-77 as it relates to the authority of boards of county commissioners to assume direct control over local commissions, boards, and agencies;

(2) The experience of those counties that have already implemented G.S. 153A-77;

(3) The relative benefits derived and costs incurred by those counties that have previously implemented G.S. 153A-77;

(4) The cost to public health, mental health, and social services by the implementation of G.S. 153A-77 by boards of commissioners; and

(5) Whether public health, mental health, and social services can be provided in a uniform and consistent manner across the State if local boards of commissioners are allowed to further implement G.S. 153A-77."

The Legislative Research Commission grouped this study in its Human Resources area under the direction of Senator Ollie Harris. The Committee was chaired by Representative W. Casper Holroyd, Jr. and Senator R. L. Martin. The full membership of the Committee is listed in Appendix B of this report.

BACKGROUND

BACKGROUND

In 1973 the North Carolina General Assembly enacted G.S. 153A-77 to permit county commissioners in counties with populations in excess of 325,000 to assume direct control of the powers, duties, and activities of local boards. (See Appendix C for G.S. 153A-77). These local boards consist of boards appointed or authorized by county commissioners, including boards of public health, mental health, and social services. The power to make policy decisions and the duty to appoint division directors are among the powers, duties, and activities of these boards. (See Appendix D for description of traditional board structure and for governing statutes).

Mecklenburg County was the driving force behind G.S. 153A-77, seeking enactment of this statute because the Mecklenburg County Board of County Commissioners wanted to dissolve the local board of public health and assume its functions. By attaching a population criterion of 325,000 to G.S. 153A-77, the legislature effectively limited application of the statute at the time it was enacted to Mecklenburg County. Shortly after the statute's enactment, Mecklenburg County Commissioners abolished the board of public health and assumed its functions. Abolition of the boards of mental health and social services occurred in the early 1980's. Through these changes, Mecklenburg County has established a

local department of human resources, with the separate human services divisions governed by central management and a central policy-making board.

Since its enactment, G.S. 153A-77 has been subject to continuous controversy and debate. Supporters of the statute contend that county commissioners should have the power to consolidate, centralize, and streamline local human services structures. They also contend that division directors should be answerable to the electorate through appointment by an elected body rather than an appointed body. Opponents of the statute contend that county commissioners generally do not have the proper qualifications to make policy decisions in an area as specialized and complex as human services. They also contend that the insulation from politics provided by the traditional boards will disappear if county commissioners abolish these boards and assume their functions.

By 1985 both Wake and Guilford counties had estimated populations in excess of 325,000. Opponents of G.S. 153A-77 attempted to prevent these counties from exercising their option to implement G.S. 153A-77 by the introduction of House Bill 1021 during the 1985 Session of the General Assembly, calling for the repeal of G.S. 153A-77. By the time of its ratification, however, the original House Bill 1021 had been replaced by a committee substitute that, rather than repealing the statute, compromised by increasing the population criterion

from 325,000 to 400,000 for a period of two years, reverting to 325,000 on June 30, 1987. (See Appendix E for HB 1021). The purpose of this legislation was to maintain the status quo for two years, giving the legislature time to study the issue. During the 1985 Session, the legislature also authorized this study committee, directing the committee to determine appropriate further implementation of G.S. 153A-77 and to report its findings to the 1987 General Assembly. (See Appendix C for HJR 1405).

COMMITTEE PROCEEDINGS

COMMITTEE PROCEEDINGS

The committee members met three times to familiarize themselves with G.S. 153A-77, discuss the issues, make recommendations, and adopt a report.

April 3, 1986 Meeting

The first committee meeting presented an opportunity for interested parties to express their points of view before the committee. To introduce the committee members to alternative human services structures, officials from Wake and Mecklenburg Counties undertook the task of comparing traditional local board systems with the centralized system used by Mecklenburg County.

Richard Stevens, Wake County Manager, described Wake County's traditional local board structure. (See Appendix F for organization chart). The Wake County voters elect seven county commissioners. Separate, quasi-independent boards govern the human services areas. The county commissioners appoint all members of the Boards of Health and Mental Health. The commissioners also appoint two members to the Board of Social Services. The State appoints two other members and then those four members appoint a fifth member. The appointments comply with the statutory membership requirements. These

boards are responsible for establishing policy, but the Board of County Commissioners must approve funding for implementation of these policies. Mr. Stevens acknowledged that one of the weaknesses of maintaining separate boards is that the coordination of programs and the provision of services may be reduced. Currently, there is no mechanism to provide comprehensive case management which cuts across many program areas. Mr. Stevens suggested that the abolition of separate boards may reduce coordination problems. He also suggested that county commissioners need the authority to choose the best course of action for human services programs. He specifically requested that Wake County Commissioners be granted the authority to choose whether to implement G.S. 153A-77.

Helen Lipman, Human Resources Administrative Officer, Mecklenburg County, presented an overview of Mecklenburg County's centralized local board structure as it has developed through implementation of G.S. 153A-77. (See Appendix G for organization chart). Ms. Lipman stated that in the 1970's the county commissioners had recognized that traditional, multiple policy boards resulted in a diffusion of decision-making authority and initiative. To eliminate this diffusion the commissioners gradually assumed the powers, duties, and activities of the local boards of Health, Mental Health, and Social Services. In 1974 the Board of County Commissioners assumed the powers of the Board of Health, and subsequently appointed the Health Commission for advisory purposes. In 1984

the commissioners adopted a report, which called for a new human services department, abolition of the separate policy boards, creation of a human services council, development of an information management system, and streamlining of support and administrative functions. Following through on this report, the commissioners appointed the Human Services Council, an advisory group, and dissolved the Boards of Social Services and Mental Health, as well as the advisory Health Commission. The Board of County Commissioners now serves as the Boards of Health, Mental Health and Social Services, with the assistance of the Human Services Council. The commissioners have adopted a comprehensive plan to structure a more responsive human services system and are overseeing its gradual implementation. Ms. Lipman stated that this extensive reorganization process has resulted in greater sensitivity to client needs and has enhanced service coordination.

Legislative fiscal staff studied the fiscal effects of the implementation of G.S. 153A-77 by Mecklenburg County and concluded that there were no documented costs or benefits. Staff noted that the commissioners' assumption of the functions of the local boards did not affect the level of service provided by the human service agencies since the commissioners have always had budgetary authority over these programs. Instead, implementation of G.S. 153A-77 gave the commissioners control of top agency personnel and key regulatory functions. Staff further concluded that the total reorganization of human

services as undertaken by Mecklenburg County could produce long-term savings.

Officials from the North Carolina Department of Human Resources appeared before the committee to express their views on G.S. 153A-77. Jim Woodall, Director of the Division of Budget and Analysis, encouraged careful study of the local boards system, giving consideration to the strong tradition of service that local boards have in their communities. He suggested that all counties should be allowed to operate a local department of human resources, while maintaining agency identity. He also suggested that if commissioners are permitted to assume local board functions, they be required to establish an advisory local human resources board, with subcommittees specializing in the areas of health, mental health, and social services. This type board would ensure continued professional guidance for program operations.

Margaret Woodcock, Assistant Director of the State Division of Health Services, approved the coordination of human services, but recommended the retention of separate local boards. Alternatively, she recommended that in the event separate boards are abolished, a super board with the authority and ability to represent the appropriate discipline be established.

Dr. Paul Kayye, Director of the State Division of Mental Health, Mental Retardation, and Substance Abuse Services, described North Carolina's mental health system. Sixteen counties operate single county programs, while eighty-four counties are organized into twenty-five multi-county programs. Dr. Kayye indicated that extensive sharing of programs and staff occurs among counties. He requested that committee members consider how any new options they ultimately recommend will affect these programs. He encouraged thorough study and cautioned the committee against implementing any changes which might negatively affect mental health services currently provided.

John M. Syria, Director of the State Division of Social Services, supported the continued involvement of citizen boards. He advised the committee members, should they decide to expand implementation of G.S. 153A-77, to ensure that the new roles for the county commissioners are fully defined. He emphasized the tremendous responsibility and accountability required in handling the funds received from the federal, state, and local levels and in implementing the necessary social services programs. He supported a flexible system but only to the extent that the best service to clients is provided.

Committee staff analyzed the issue of the constitutionality of G.S. 153A-77. Since its enactment, this statute has

been subject to debate over its constitutionality, but has never been judicially scrutinized. Article II, Section 24 of the North Carolina Constitution prohibits the legislature from enacting any local law related to health. G.S. 153A-77 is related to health because it affects local boards of health. The question posed by G.S. 153A-77 is whether the population criterion renders the law an unconstitutional local law applicable to only a particular locality or a constitutional general law with a reasonable population classification. A local law applies only to a particular locality. A general law applies without classification or exception in every unit of local government of like kind. Article XIV, Section 3, however, permits the legislature to enact general laws for classes defined by population or other criteria. The classification must be reasonable and the law must be applied uniformly to everyone in the class. Staff reminded the committee that courts will presume that enactments by the legislature are constitutional until proven otherwise. Staff suggested that arguably rational reasons exist for applying G.S.153A-77 only to counties with populations in excess of 400,000. Staff recommended, therefore, that the committee members operate upon the presumption that the statute is constitutional and determine their course of action solely according to the public's best interest.

The remaining speakers addressing the committee included: Hattie Garland, N.C. Nurses' Association; Deva O. Wright,

Mental Health Association of N.C.; Patrice Roesler, N.C. Association of County Commissioners; Dr. Joseph Holliday and Owen Braughler, N.C. Association of Health Directors; William H. Potter, Jr., N.C. Dental Society; Dr. Thad Wester, N.C. Medical Society; Henry Jones, Jr., George F. Bond, Jr., and Dr. Barbara Kramer, N.C. Public Health Association; Dr. Dan Allen, N.C. Veterinary Medical Association; Pat Bullard, N.C. Social Services Association (by letter).

With the exception of the Association of County Commissioners, all of the organizations represented by these speakers backed repeal of G.S. 153A-77, or alternatively, continued application to Mecklenburg County only. These organizations based their pleas for repeal on a number of concerns, including the need for professionalism, the need for efficiency, and the need for insulation from political considerations. Decisions made in the areas of health, mental health, and social services require specialized knowledge and expertise that not all county commissioners possess. Advisory boards with the necessary expertise would have to be established to assist the county commissioners. The system, therefore, would offer no greater efficiency than a system of separate boards. In addition to providing limited expertise and efficiency, the system would lend itself to policymaking under the pressure of political influences, since county commissioners are elected officials. Appointed, independent boards provide expertise, efficiency, and political insulation. The organizations that support

repeal of G.S. 153A-77 believe that the traditional local board system "ain't broke, so don't fix it."

The North Carolina Association of County Commissioners dissented from the opinion of those supporting repeal of G.S. 153A-77. The Association believes that the major department heads of county government should all be answerable to the electorate. The Association views the delivery of human services as a public purpose, deserving of public "ownership". G.S. 153A-77 permits public "ownership" since an elected body, the board of county commissioners, rather than appointed bodies, the department boards, would appoint the department directors. The Association also emphasized the sense of total frustration that commissioners have due to their lack of control over programs financed by 25% to 30% of the county budget. The commissioners feel deprived of any input into these expenditures and of any participation in the human services system. The Association encouraged the committee to grant elected officials a more participatory role in the human services system by extending the application of G.S. 153A-77.

September 18, 1986 Meeting

The committee met for a second time to continue its study of G.S. 153A-77. Committee staff again addressed the issue of constitutionality. Staff presented the committee with an

Attorney General's Opinion, responding to an inquiry by the committee cochairmen as to the effect of the population criterion in G.S. 153A-77. The Attorney General ruled that the statute meets the requirements of a general law with classes defined by population and is therefore not void as being a local act in contravention of Article II, Section 24(1)(a). This ruling relied upon the presumption of constitutionality for legislative enactments by the General Assembly, along with case law stating that only when the statutory classification is unreasonable or under-inclusive will the statute be voided as a prohibited local act. (See Appendix H for Attorney General's Opinion).

Commissioner Fountain Odom, Mecklenburg County, Board of County Commissioners, appeared before the committee members to persuade them to leave the Mecklenburg County human services system intact, allowing the county to continue and expand upon the work currently in progress. The goals of that work include better coordination of the human services delivery system, a more integrated system, total accountability for the client's needs, full use of resources, and effective coordination of services to households using one or more service. Commissioner Odom estimated an implementation cost of approximately \$1,000,000 for the new system. He anticipates substantial savings within three to five years of implementation. Commissioner Odom stressed the important role that the single policy board plays in the integrated system and urged the

committee to let Mecklenburg County continue implementation of G.S. 153A-77 so that the human services system may achieve its goals.

The committee expressed an interest in the Human Services Council, established after the Mecklenburg County commissioners assumed the roles of all the human services boards. Commissioner Odom responded to this interest, describing the Council as a purely advisory board composed of nineteen people, including doctors, professors, lawyers, business people, and sociologists. The Council, however, is not required by statute to have a membership consisting of licensed experts and professionals in specified areas as is required of traditional local boards. The purpose of the Council is to assist the county commissioners by providing human services expertise.

Representative James F. Richardson, 52nd House District, Mecklenburg County presented a viewpoint opposed to that of Commissioner Odom. Representative Richardson spoke from the perspective of a former member of the Mecklenburg County Social Services Board. He served on that board in 1973 when its members unanimously opposed the abolition of separate, traditional boards. He indicated that he still maintains that opposition, believing that abolition of these boards denies citizen participation and subjects the process of decision-making to political influences. He also fears that county commissioners do not have the time or expertise to

assume the functions of these specialized boards. Representative Richardson strongly urged the committee to maintain the traditional local board system throughout the state and to require that this system be reestablished in Mecklenburg County.

After accepting additional comments from interested visitors, the committee discussed the issues and possible resolutions. The committee then voted to recommend that G.S. 153A-77 be amended to increase the population criterion to 425,000. (See Appendix I for proposed legislation).

November 18th Meeting

At the final meeting, the committee members reviewed the draft committee report. The committee members approved the report and the recommended legislation for submission to the Legislative Research Commission and the 1987 General Assembly.

FINDINGS AND RECOMMENDATIONS

FINDINGS AND RECOMMENDATIONS

Recommendation 1: The General Assembly should permit the Mecklenburg County Board of County Commissioners to continue serving as the local boards of public health, mental health, and social services, pursuant to G.S. 153A-77.

During the past twelve years Mecklenburg County has undertaken a gradual reorganization of its human services system. That reorganization process, with an implementation cost of approximately \$1,000,000, continues today. County officials anticipate substantial savings within three to five years from completion of implementation, along with substantial improvements in services provided to the citizens of the county.

Abolition of the traditional human services boards and assumption of the functions of those boards constituted Mecklenburg County's first step toward centralization and coordination of its human services system. In light of the time, money, and effort already expended, Mecklenburg County should be able to complete the reorganization process without having to dismantle any part of the structure already in place. The reorganized human services system should be allowed sufficient operation time to prove whether a centralized, human services board is effective and appropriate. For these reasons, the Mecklenburg County Board of County Commissioners should be permitted to continue implementation of G.S. 153A-77.

recommendation 2: All North Carolina counties, except Mecklenburg County and any other county that attains a population in excess of 425,000, should maintain a traditional, local board structure.

The effectiveness of the traditional, local board structure has been proven through years of experience. It is a well-established structure, which has met and continues to meet the human services needs of North Carolina citizens. The advisability of the assumption of local board functions by county commissioners, however, has not yet been established. It may take a number of years to determine whether granting that power to county commissioners is appropriate. Currently, there is no public demand for expansion of the role and powers of county commissioners in the human services area, nor any public outcry against the traditional board structure. For these reasons, all counties, except Mecklenburg County and any other county that attains a population in excess of 425,000, should continue functioning under the guidance of traditional, human services boards.

Recommendation 3: The General Assembly should permit any county that attains a population in excess of 425,000 to implement G.S. 153A-77.

A county with a population in excess of 425,000 will be required to meet the extensive human services needs of its citizens. Any system capable of meeting these needs will be large and complex. The size and complexity of its human services system may lead a highly-populated county to seek a more streamlined structure, with centralized control and greater coordination of services. A single, central policy board, serving as the boards of health, mental health, and social services may be an important, necessary element of the streamlined structure that is sought. For these reasons, a county with a population in excess of 425,000 should be permitted to implement G.S. 153A-77.

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APPENDICES

APPENDIX A

APPENDIX A

LEGISLATIVE RESEARCH COMMISSION

Senator J. J. Harrington, Cochairman
Senator Henson P. Barnes
Senator A. D. Guy
Senator Ollie Harris
Senator Lura Tally
Senator Robert D. Warren

Representative Liston B. Ramsey, Cochairman
Representative Christopher S. Barker, Jr.
Representative John T. Church
Representative Bruce Ethridge
Representative Aaron Fussell
Representative Barney Paul Woodard

APPENDIX B

COUNTY COMMISSIONERS' AUTHORITY OVER LOCAL BOARDS

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APPENDIX C

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1985

HOUSE JOINT RESOLUTION 1405



Sponsors: Representatives Holroyd; Easterling.

Referred to: Appropriations.

June 25, 1985

1 A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH
2 COMMISSION TO STUDY THE ADVISABILITY OF THE FURTHER
3 IMPLEMENTATION OF G.S. 153A-77 BY BOARDS OF COUNTY
4 COMMISSIONERS.

5 Whereas, the State has an interest in promoting the
6 public health, mental health, and social services needs of the
7 citizens of this State; and

8 Whereas, the State has an interest in the provision of
9 public health, mental health, and social services in a uniform
10 and consistent manner; and

11 Whereas, one county board of commissioners has already
12 implemented G.S. 153A-77 by assuming direct control over local
13 commissions, boards, and agencies in that county, and other
14 counties have shown an interest in doing likewise; and

15 Whereas, the further implementation of G.S. 153A-77 by
16 county boards of commissioners to assume direct control of local
17 commissions, boards, and agencies should be studied to determine
18 whether such action is in the public interest and will, in fact,
19 promote the public health, mental health, and social service
20 needs of the citizens of this State and ensure the provision of

1 public health, mental health, and social services in a uniform
2 and consistent manner throughout the State;

3 Now, therefore, be it resolved by the House of Representatives,
4 the Senate concurring:

5 Section 1. The Legislative Research Commission may
6 study the following issues concerning control of local
7 commissions, boards, and agencies:

8 (1) G.S. 153A-77 as it relates to the authority of
9 boards of county commissioners to assume direct control over
10 local commissions, boards, and agencies;

11 (2) The experience of those counties that have already
12 implemented G.S. 153A-77;

13 (3) The relative benefits derived and costs incurred by
14 those counties that have previously implemented G.S. 153A-77;

15 (4) The cost to public health, mental health, and
16 social services by the implementation of G.S. 153A-77 by boards
17 of commissioners; and

18 (5) Whether public health, mental health, and social
19 services can be provided in a uniform and consistent manner
20 across the State if local boards of commissioners are allowed to
21 further implement G.S. 153A-77.

22 Sec. 2. The Commission shall report its findings and
23 recommendations on these issues to the 1987 General Assembly.
24 The report shall include any legislation needed to implement the
25 Commission's recommendations.

26 Sec. J. This resolution is effective upon ratification.

27
28

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1985
RATIFIED BILL

CHAPTER 790
SENATE BILL 636

AN ACT AUTHORIZING STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, MAKING TECHNICAL AMENDMENTS THERETO, AND TO MAKE OTHER AMENDMENTS.

The General Assembly of North Carolina enacts:

- Section 1. Studies Authorized. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1985 bill or resolution that originally proposed the issue or 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 the Study of Revenue Laws (H.J.B. 17-Lilley),
 - (2) Continuation of the Study of Water Pollution Control (H.J.B. 141-Evans),
 - (3) Adolescent Sexuality Teaching (H.J.B. 275-Jerals),
 - (4) Continuation of the Study on the Problems of the Aging (H.J.B. 322-Greenwood),
 - (5) Continuation of the Study of Municipal Incorporations (H. J. B. 389-Greenwood),
 - (6) School Discipline (H.J.B. 861-Colton),
 - (7) Bail Bondsmen and Bail Bond Forfeiture (H. B. 967-Watkins),
 - (8) Preventative Medicine (H.B. 1052-Locks),
 - (9) Life Care Arrangements (H. B. 1053-Locks),
 - (10) State Personnel System (H.B. 1064-Wiser),
 - (11) Long-Term Health Care Insurance (H.B. 1103-Locks),
 - (12) Itinerant Merchants (H. B. 1170-Lancaster),
 - (13) Manufactured Housing Zoning (H. B. 1178-Ballance; S. B. 636-Plyler),
 - (14) Interest Rate Regulation (H.J.B. 1227-Evans),
 - (15) Underground Storage Tank Leakage Hazards and other ground water hazards (H. B. 1281-Locks),
 - (16) Mental Patient Commitments (H.J.B. 1313-Miller),
 - (17) High-Level Radioactive Waste Disposal (H.B. 1373-Diamond; S. B. 655-Hipps),
 - (18) Stun Guns (H. J. B. 1390-McDowell),
 - (19) Continuation of the Study of Water Quality in Haw River and B. Everett Jordan Reservoir (H.J.B. 1393-Hackney),
 - (20) Authority of Boards of County Commissioners in Certain Counties over Commissions, Boards and Agencies (H.J.B. 1405-Holroyd),
 - (21) Superintendent of Public Instruction and State Board of Education (H.J.B. 1412-Nye),
 - (22) Rental Referral Agencies (H. B. 1421-Stamey),
 - (23) Child Abuse Testimony Study (S. B. 165-Hipps),
 - (24) Home Schooling Programs (S. J. B. 224-Winner),
 - (25) Pretrial Release (S.J.B. 297-Winner),

- (26) Inmate Substance Abuse Therapy Program (S.J.B. 317-Plyler),
- (27) Inmate Work-Release Centers (S.B. 406-Swain),
- (28) Community College System (S.B. 425-Martin),
- (29) Community Service Alternative Punishment and Restitution (S.B. 495-Swain),
- (30) State Employee Salaries and Benefits (S.B. 514-Jordan),
- (31) State Infrastructure Needs (S.B. 541-Royall),
- (32) Commercial Laboratory Water Testing (S.B. 573-Taft),
- (33) Outdoor Advertising (S.B. 611-Thomas, R.P.),
- (34) Premium Tax Rate on Insurance Companies (S.B. 633-Hardison)
- (35) Continuation of the Study of Child Support (S.B. 638-Marvin),
- (36) Local Government Financing (S.B. 670-Rauch),
- (37) Medical Malpractice and Liability (S.B. 703-Taft),
- (38) Marketing of Perishable Food (S.B. 718-Basnight),
- (39) Child Protection (S.B. 802-Hipps),
- (40) Legislative Ethics and Lobbying (S.B. 829-Rauch),
- (41) Satellite Courts (S.B. 850-Barnes),
- (42) Substantive Legislation in Appropriations Bills (S.B. 851-Band),
- (43) School Finance Act (S.B. 848-Taft).

Sec. 2. Transportation Problems at Public Facilities. The Legislative Research Commission may identify and study transportation problems at public transportation facilities in North Carolina.

Sec. 2.1. The Legislative Research Commission may study the feasibility of the prohibition of investment by the State Treasurer of stocks of the retirement systems listed in G.S. 147-69.2(b) (6), or of the assets of the trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1 and G.S. 147-69.2(19) in a financial institution that has outstanding loans to the Republic of South Africa or in stocks, securities, or other obligations of a company doing business in or with the Republic of South Africa.

Sec. 3. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1987 General Assembly, or the Commission may make an interim report to the 1986 Session and a final report to the 1987 General Assembly.

Sec. 4. Bills and Resolution References. The listing of the original bill or resolution in this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 5. The last sentence of G.S. 120-19.4(b) is amended by deleting the citation "G.S. 5-4" and inserting in lieu thereof the following: "G.S. 5A-12 or G.S. 5A-21, whichever is applicable".

Sec. 6. G.S. 120-99 is amended by adding a new paragraph to read:

"The provisions of G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that the chairman shall sign all subpoenas on behalf of the Committee.

Sec. 7. G.S. 120-30.17 is amended by adding a new subsection to read:

"(9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it."

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 18th day of July, 1985.

ROBERT B. JORDAN III

Robert E. Jordan III
President of the Senate

LISTON B. RAMSEY

Liston B. Ramsey
Speaker of the House of Representatives

§ 153A-77. Authority of boards of commissioners in certain counties over commissions, boards, agencies, etc.

In the exercise of its jurisdiction over commissions, boards and agencies, the board of county commissioners may assume **direct control** of any activities theretofore conducted by or through any commission, board or agency by the adoption of a resolution assuming and conferring upon the board of county commissioners all powers, responsibilities and duties of any such commission, board or agency. This section shall apply to the board of health, the social services board, area mental health, mental retardation, and substance abuse board and any other commission, board or agency appointed by the board of county commissioners and/or acting under and pursuant to authority of the board of county commissioners of said county. The board of county commissioners may exercise the power and authority herein conferred only after a public hearing held by said board pursuant to 30 days' notice of said public hearing given in a newspaper having general circulation in said county.

The board of county commissioners may also appoint advisory boards, committees, councils and agencies composed of qualified and interested county residents to study, interpret and develop community support and cooperation in activities conducted by or under the authority of the board of county commissioners of said county.

This section applies to counties with a population in excess of **400,000**. (1973, c. 454, ss. 1-2 $\frac{1}{2}$; 1985, c. 589, s. 56; c. 754, s. 1.)

Editor's Note. — Session Laws 1985, c. 589, s. 66 provides that rules to implement the act which are authorized to be adopted by the act or which are otherwise authorized to be adopted by law may be adopted at any time after ratification (July 4, 1985), but shall not become effective before January 1, 1986.

Session Laws 1985, c. 589, s. 65 is a severability clause.

Session Laws 1985, c. 754, which substituted "400,000" for "325,000" in the last paragraph, provides, in a. 2, that the act is effective upon ratification, but shall expire on June 30, 1987, at which time this section shall revert to its status prior to the ratification date of the act (July 15, 1985), except that the amendments made to this section by Session Laws 1985, c. 589, s. 56 shall not expire.

Effect of Amendments. — The 1985 amendment by c. 589, s. 56, effective January 1, 1986, in the first paragraph substituted "may assume" for "is hereby authorized to assume" in the first sentence, substituted "area mental health, mental retardation, and substance abuse board" for "board of mental health (area)" in the second sentence, and substituted "The board" for "It is provided, however, that the board" at the beginning of the last sentence, and in the second paragraph substituted "may also appoint" for "is further authorized and empowered, in the exercise of its discretion, to appoint."

The 1985 amendment by c. 754, s. 1, effective July 15, 1985, substituted "400,000" for "325,000" in the last paragraph. For the expiration date of this amendment, see the Editor's note above.

APPENDIX D

NORTH CAROLINA GENERAL ASSEMBLY
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April 3, 1986

MEMORANDUM

To: Members, Legislative Research Commission
Committee on County Commissioners' Authority
Over Local Boards

From: Catherine Hubbard, Study Committee Counsel

Re: Traditional Structure and Functions of Local
Boards

Pursuant to G.S. 153A-77 county commissioners may assume direct control of the powers, duties, and activities of local boards, including boards of health, social services and mental health. G.S. 153A-77 applies only to counties with populations in excess of 400,000.

In counties where the commissioners do not or may not assume direct control of the powers, duties, and activities of the local boards under G.S. 153A-77, the traditional structure and functions of local boards are as follows:

I. Local Boards of Health

A. Structure

1. County

The county board of health consists of eleven members, each appointed by the county commissioners. The board includes one licensed physician, one licensed dentist, one licensed optometrist, one licensed veterinarian, one registered nurse, one licensed pharmacist, one county commissioner, and four representatives of the general public. If no member of one of the

enumerated professions is available, then a member of the general public is appointed. G.S. 130A-35(b).

Board members serve three year terms, but not more than three consecutive three year terms. The county commissioner member may serve only as long as the member is a county commissioner. G.S. 130A-35(c).

2. District

In lieu of a county board of health, more than one county may join together to form a district board of health. The district board consists of at least fifteen members, but not more than eighteen members. G.S. 130A-37(a).

The county commissioners of each county in the district appoint one county commissioner to the district health board. The county commissioners appointed to the district board then appoint the other members, including at least one licensed physician, one licensed dentist, one licensed optometrist, one licensed veterinarian, one registered nurse, and one licensed pharmacist. If no member of one of the enumerated professions is available, then a member of the general public shall be appointed. G.S. 130A-37(b).

Members of the district board serve terms of three years, except that two of the original members serve terms of one year and two other original members serve terms of two years. No member may serve more than three consecutive three-year terms. A county commissioner member serves only as long as the member is a county commissioner. G.S. 130A-37(c).

B. Functions

The local board of health sets health department policy, recommends a budget, and hears appeals from those aggrieved by the board's rules. G.S. 130A-35(a).

The board has a duty to protect and promote the public health, and may adopt rules necessary to fulfill that duty. G.S. 130A-39(a).

The board may impose a fee for services to be rendered by a local health department, except where prohibited by statute or where an employee of the

local health department is performing services as an agent of the State. G.S. 130A-39(g).

The board must appoint a local health director, after consultation with the appropriate county board or boards of commissioners. G.S. 130A-40.

II. Local Social Services Boards

A. Structure

The county board of social services consists of three members, unless the county commissioners increase the membership to five, as permitted by G.S. 108A-2.

- Three-member board - County commissioners appoint one member who may be a county commissioner or a citizen selected by the commissioners; Social Services Commission appoints one member; these two members then select a third member. G.S. 108A-3(a).
- Five-member board - County commissioners appoint two members; Social Services Commission appoints two members; these four members then select a fifth member. G.S. 108A-3(b).

Each member serves for a term of three years, but may serve no more than two consecutive terms. This consecutive term limitation does not apply if the member was a county commissioner at any time during the first two consecutive terms and is a commissioner at the time of reappointment. G.S. 108A-4.

B. Functions

The county board of social services has a duty to select the county director of social services and to assist the director in planning budgets and dealing with problems relating to his office. G.S. 108A-9(1), (3).

The board serves an advisory function by providing information and advice to county and municipal authorities in developing policies and plans to improve social conditions. G.S. 108A-9(2).

The board also presents the budgets for the county department of social services to the county commissioners. G.S. 108A-9(4).

The county board may enter contracts, whereby the board agrees to render services in exchange for a fee

to cover the cost of the services. The fees charged must be approved by the county commissioners. G.S.108A-10.

III. Local Boards of Mental Health

A. Structure

Counties are directed to provide mental health, mental retardation, and substance abuse services through an area authority. G.S. 122C-115.

The area board consists of at least 15 members but no more than 25 members. G.S. 122C-118(a).

When the area is made up of a single county the board of county commissioners appoints the members. G.S. 122C-118(b).

When the area is made up of more than one county, each board of county commissioners appoints one commissioner as a member of the area board and then these members appoint the other members. G.S. 122C-118(c).

The area board consists of at least one county commissioner from each county except that in a single-county area the commissioners may instead appoint any county resident; at least two licensed physicians; at least one professional from the fields of either psychology, social work, nursing, or religion; at least one individual representing the interests of mental illness, mental retardation, alcoholism and drug abuse; at least one representative from a local hospital or area planning organization; and at least one licensed attorney. G.S. 122C-118(e) (1)-(6).

County Commissioner members serve terms concurrent with their terms as commissioners. Other members serve four-year terms, except that on initial formation of the area board one fourth serve a one year term, one fourth a two year term, one fourth a three year term, and all remaining members a four year term. G.S. 112C-118(f).

B. Functions

The area mental health board engages in planning, budgeting, implementing and monitoring community-based mental health, mental retardation and substance abuse services. G.S. 122C-117(a) (1).

The board must determine the needs of clients and coordinate the provision of services. G.S. 122C-117(a) (3).

The board must develop plans and budgets, meet state rules and comply with federal requirements. G.S. 122C-117(a) (4) (50).

The board must also appoint an area mental health director. G.S. 122C-117(a) (7).

C-035

ARTICLE 2.

Local Administration.

Part 1. Local Health Departments.

§ 130A-34. Provision of local public health services.

(a) A county shall provide public health services.

(b) A county shall operate a county health department, participate in a district health department or contract with the State for the provision of public health services. (1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 62, s. 9; C.S., s. 7604; 1931, c. 149; 1941, c. 185; 1945, c. 99; c. 1030, s. 2; 1947, c. 474, s. 2; 1951, c. 92; 1957, c. 1357, s. 1; 1963, c. 359; 1967, c. 1224, s. 1; 1969, c. 719, s. 1; 1971, c. 175, s. 1; 1973, c. 137, s. 1; c. 1151; 1975, c. 272; 1979, c. 621; 1983, c. 891, s. 2.)

§ 130A-35. County board of health; appointment; terms.

(a) A county board of health shall be the policy-making, rule-making and adjudicatory body for a county health department.

(b) The members of a county board of health shall be appointed by the county board of commissioners. The board shall be composed of 11 members. The composition of the board shall reasonably reflect the population makeup of the county and shall include: one physician licensed to practice medicine in this State, one licensed dentist, one licensed optometrist, one licensed veterinarian, one registered nurse, one licensed pharmacist, one county commissioner and four representatives of the general public. All members shall be residents of the county. If there is not a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse or a licensed pharmacist available for appointment, an additional representative of the general public shall be appointed. If however, one of the six designated professions has only one person residing in the county, the county commissioners shall have the option of appointing that person or a member of the general public.

(c) Except as provided in this subsection, members of a county board of health shall serve three-year terms. No member may serve more than three consecutive three-year terms. The county commissioner member shall serve only as long as the member is a county commissioner. When a representative of the general public is appointed due to the unavailability of a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse or a licensed pharmacist, that member shall serve only until a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse or a licensed pharmacist becomes available for appointment. In order to establish a uniform staggered term structure for the board, a member may be appointed for less than a three-year term.

(d) Vacancies shall be filled for any unexpired portion of a term.

(e) A chairperson shall be elected annually by a county board of health. The local health director shall serve as secretary to the board.

(f) A majority of the members shall constitute a quorum.

(g) A member may be removed from office by the county board of commissioners for cause.

(h) A member may receive a per diem in an amount established by the county Board of Commissioners. Reimbursement for subsistence and travel shall be in accordance with a policy set by the county board of Commissioners.

(i) The board shall meet at least quarterly. The chairperson or three of the members may call a special meeting. (1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 62, s. 9; C.S., s. 7604; 1931, c. 149; 1941, c. 185; 1945, c. 99; c. 1030, s. 2; 1947, c. 474, s. 3; 1951, c. 92; 1957, c. 1357, s. 1; 1963, c. 359; 1967, c. 1224, s. 1; 1969, c. 719, s. 1; 1971, c. 175, s. 1; c. 940, s. 1; 1973, c. 137, s. 1; c. 1151; 1975, c. 272; 1979, c. 621; 1981, c. 104; 1983, c. 891, s. 2; 1985, c. 418, s. 1.)

§ 130A-36. Creation of district health department.

(a) A district health department including more than one county may be formed in lieu of county health departments upon agreement of the county boards of commissioners and local boards of health having jurisdiction over each of the counties involved. A county may join a district health department upon agreement of the boards of commissioners and local boards of health having jurisdiction over each of the counties involved. A district health department shall be a public authority as defined in G.S. 159-7(b)(10).

(b) Upon creation of or addition to a district health department, the existing rules of the former board or boards of health shall continue in effect until amended or repealed by the district board of health. (1957, c. 1357, s. 1; 1969, c. 719, s. 2; 1971, c. 175, s. 2; 1973, c. 143, ss. 1-4; c. 476, s. 128; 1975, c. 396, s. 1; 1981, c. 238; c. 408; 1983, c. 891, s. 2.)

§ 130A-37. District board of health.

(a) A district board of health shall be the policymaking, rule-making and adjudicatory body for a district health department and shall be composed of 15 members; provided, a district board of health may be increased up to a maximum number of 18 members by agreement of the boards of county commissioners in all counties that comprise the district. The agreement shall be evidenced by concurrent resolutions adopted by the affected boards of county commissioners.

(b) The county board of commissioners of each county in the district shall appoint one county commissioner to the district board of health. The county commissioner members of the district board of health shall appoint the other members of the board, including at least one physician licensed to practice medicine in this State, one licensed dentist, one licensed optometrist, one licensed veterinarian, one registered nurse and one licensed pharmacist. The composition of the board shall reasonably reflect the population makeup of the entire district and provide equitable district-wide representation. All members shall be residents of the district. If there is not a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse or a licensed pharmacist available for appointment, an additional representative of the general public shall be appointed. If however, one of the designated professions has only one person residing in the district, the county commissioner members shall have the option of appointing that person a member of the general public.

(c) Except as provided in this subsection, members of a district board of health shall serve terms of three years. Two of the original members shall serve terms of one year and two of the original members shall serve terms of two years. No member shall serve more than three consecutive three-year terms. County commissioner members shall serve only as long as the member is a county commissioner. When a representative of the general public is appointed due to the unavailability of a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse or a licensed pharmacist, that member shall serve only until a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse or a licensed pharmacist becomes available for appointment. The county commissioner members may appoint a member for less than a three-year term to achieve a staggered term structure.

(d) Whenever a county shall join or withdraw from an existing district health department, the district board of health shall be dissolved and a new board shall be appointed as provided in subsection (c).

(e) Vacancies shall be filled for any unexpired portion of a term.

(f) A chairperson shall be elected annually by a district board of health. The local health director shall serve as secretary to the board.

(g) A majority of the members shall constitute a quorum.

(h) A member may be removed from office by the district board of health for cause.

(i) A member may receive a per diem in an amount established by the county commissioner members of the District Board of Health. Reimbursement for subsistence and travel shall be in accordance with a policy set by the county commissioner members of the District Board of Health.

(j) The board shall meet at least quarterly. The chairperson or three of the members may call a special meeting.

(k) A district board of health is authorized to provide liability insurance for the members of the board and the employees of the district health department. A district board of health is also authorized to contract for the services of an attorney to represent the board, the district health department and its employees, as appropriate. The purchase of liability insurance pursuant to this subsection waives both the district board of health's and the district health department's governmental immunity, to the extent of insurance coverage, for any act or omission occurring in the exercise of a governmental function. By entering into a liability insurance contract with the district board of health, an insurer waives any defense based upon the governmental immunity of the district board of health or the district health department. (1957, c. 1357, s. 1; 1969, c. 719, s. 2; 1971, c. 175, s. 2; c. 940, s. 1; 1973, c. 143, ss. 1-4; c. 476, s. 128; 1975, c. 396, s. 1; 1981, cc. 104, 238, 408; 1983, c. 891, s. 2; 1983 (Reg Sess., 1984), c. 1077; 1985, c. 418, s. 2.)

§ 130A-38. Dissolution of a district health department.

(a) Whenever the board of commissioners of each county constituting a district health department determines that the district health department is not operating in the best health interests of the respective counties, they may direct that the district health department be dissolved. In addition, whenever a board of commissioners of a county which is a member of a district health department determines that the district health department is not operating in the best health interests of that county, it may withdraw from the district health department. Dissolution of a district health department or withdrawal from the district health department by a county shall be effective only at the end of the fiscal year in which the action of dissolution or withdrawal transpired.

(b) Notwithstanding the provisions of subsection (a), no district health department shall be dissolved without prior written notification to the Department.

(c) Any budgetary surplus available to a district health department at the time of its dissolution shall be distributed to those counties comprising the district on the same pro rata basis that the counties appropriated and contributed funds to the district health department budget during the current fiscal year. Distribution to the counties shall be determined on the basis of an audit of the financial record of the district health department. The district board of health shall select a certified public accountant or an accountant who is subsequently certified by the Local Government Commission to conduct the audit. The audit shall be performed in accordance with G.S. 159-34. The same method of distribution of funds described above shall apply when one or more counties of a district health department withdraw from a district.

(d) Upon dissolution or withdrawal, all rules adopted by a district board of health shall continue in effect until amended or repealed by the new board of boards of health. (1971, c. 858; 1975, c. 396, s. 2; c. 403; 1983, c. 891, s. 2.)

§ 130A-39. Powers and duties of a local board of health.

(a) A local board of health shall have the responsibility to protect and promote the public health. The board shall have the authority to adopt rules necessary for that purpose.

(b) A local board of health may adopt a more stringent rule in an area regulated by the Commission for Health Services or the Environmental Management Commission where, in the opinion of the local board of health, a more stringent rule is required to protect the public health; otherwise, the rules of the Commission for Health Services or the rules of the Environmental Management Commission shall prevail over local board of health rules. However, a local board of health may not adopt a rule concerning the grading and permitting of food and lodging facilities as listed in Part 6 of Article 8 of this chapter and a local board of health may adopt rules concerning sanitary sewage collection, treatment and disposal systems which are not designed to discharge effluent to the land surface or surface waters and which are not public or community systems only in accordance with G.S. 130A-335(c).

(c) The rules of a local board of health shall apply to all municipalities within the local board's jurisdiction.

(d) Not less than 10 days before the adoption, amendment or repeal of any local board of health rule, the proposed rule shall be made available at the

office of each county clerk within the board's jurisdiction, and a notice shall be published in a newspaper having general circulation within the area of the board's jurisdiction. The notice shall contain a statement of the substance of the proposed rule or a description of the subjects and issues involved, the proposed effective date of the rule and a statement that copies of the proposed rule are available at the local health department. A local board of health shall become effective upon adoption unless a later effective date is specified in the rule.

(c) Copies of all rules shall be filed with the secretary of the local board of health.

(f) A local board of health may, in its rules, adopt by reference any code, standard, rule or regulation which has been adopted by any agency of the State, another state, any agency of the United States or by a generally recognized association. Copies of any material adopted by reference shall be filed with the rules.

(g) A local board of health may impose a fee for services to be rendered by a local health department, except where the imposition of a fee is prohibited by statute or where an employee of the local health department is performing the services as an agent of the State. Notwithstanding any other provisions of law, a local board of health may impose a fee for services performed pursuant to Article 11 of this Chapter, "Sanitary Sewage Systems." Fees shall be based upon a plan recommended by the local health director and approved by the local board of health and the appropriate county board or boards of commissioners. The fees collected under the authority of this subsection are to be deposited to the account of the local health department so that they may be expended for public health purposes in accordance with the provisions of the County Fiscal Control Act. (1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 62, s. 9 C.S., s. 7065; 1957, c. 1357, s. 1; 1959, c. 1024, s. 1; 1963, c. 1087; 1973, c. 477 s. 128; c. 508; 1977, c. 857, s. 2; 1981, c. 130, s. 2; c. 281; c. 949, s. 4; 1983, c. 891, s. 2; 1985, c. 175, s. 1.)

§ 130A-40. Appointment of local health director.

A local board of health, after consulting with the appropriate county board or boards of commissioners, shall appoint a local health director. The State Personnel Commission, after consulting with the Commission for Health Services, shall establish qualifications for a local health director. The qualifications shall give equal emphasis to education and experience. However, a local health director shall not be required to be a physician. When a local board of health fails to appoint a local health director within 60 days of the creation of a vacancy, the State Health Director may appoint a local health director to serve until the local board of health appoints a local health director in accordance with this section. (1957, c. 1357, s. 1; 1973, c. 152, c. 476, s. 128; 1983, c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 1034, s. 75.)

ARTICLE 1.

County Administration.

Part 1. County Boards of Social Services.

§ 108A-1. Creation.

Every county shall have a board of social services which shall establish county policies for the programs established by this Chapter in conformity with the rules and regulations of the Social Services Commission and under the supervision of the Department of Human Resources. Provided, however, county policies for the program of medical assistance shall be established in conformity with the rules and regulations of the Department of Human Resources. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1977, 2nd Sess., c. 1219, s. 6; 1981, c. 275, s. 1.)

§ 108A-2. Size.

The county board of social services in each county shall consist of three members, except that the board of commissioners of any county may increase such number to five members. The decision to increase the size to five members or to reduce a five-member board to three shall be reported immediately in writing by the chairman of the board of commissioners to the Department of Human Resources. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1981, c. 275, s. 1.)

§ 108A-3. Method of appointment; residential qualifications; fee or compensation for services.

(a) Three-Member Board: The board of commissioners shall appoint one member who may be a county commissioner or a citizen selected by the board; the Social Services Commission shall appoint one member; and the two members so appointed shall select the third member. In the event the two members so appointed are unable to agree upon selection of the third member, the senior regular resident superior court judge of the county shall make the selection.

(b) Five-Member Board: The procedure set forth in subsection (a) shall be followed, except that both the board of commissioners and the Social Services Commission shall appoint two members each, and the four so appointed shall select the fifth member. If the four are unable to agree upon the fifth member, the senior regular superior court judge of the county shall make the selection.

(c) Provided further that each member so appointed under subsection (a) and subsection (b) of this section by the Social Services Commission and by the county board of commissioners or the senior regular resident superior court judge of the county, shall be bona fide residents of the county from which they are appointed to serve, and will receive as their fee or compensation for their services rendered from the Department of Human Resources directly or indirectly only the fees and compensation as provided by G.S. 108A-8. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C.S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1; 1971, c. 369; 1973, c. 476, s. 138; 1981, c. 275, s. 1.)

§ 108A-4. Term of appointment.

Each member of a county board of social services shall serve for a term of three years. No member may serve more than two consecutive terms. Notwithstanding the previous sentence, the limitation on consecutive terms does not apply if the member of the social services board was a member of the board of county commissioners at any time during the first two consecutive terms, and is a member of the board of county commissioners at the time of reappointment. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C.S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1; 1981, c. 275, s. 1; c. 770.)

§ 108A-5. Order of appointment.

(a) Three-Member Board: The term of the member appointed by the Social Services Commission shall expire on June 30, 1981, and every three years thereafter; the term of the member appointed by the board of commissioners shall expire on June 30, 1983, and every three years thereafter; and the term of the third member shall expire on June 30, 1982, and every three years thereafter.

(b) Five-Member Board: Whenever a board of commissioners of any county decides to expand a three-member board to a five-member board of social services, the Social Services Commission shall appoint an additional member for a term expiring at the same time as the term of the existing member appointed by the board of commissioners, and the board of commissioners shall appoint an additional member for a term expiring at the same time as the term of the existing member appointed by the Social Services Commission. The change to a five-member board shall become effective at the time when the additional members shall have been appointed by both the county board of commissioners and the Social Services Commission. Thereafter all appointments shall be for three-year terms.

(c) Change from Five-Member to Three-Member Board: The change shall become effective on the first day of July following the decision to change by the board of commissioners. On that day, the following two seats on the board of social services shall cease to exist:

§ 108A-6. Vacancies.

Appointments to fill vacancies shall be made in the manner set out in G.S. 108A-3. All such appointments shall be for the remainder of the former member's term of office and shall not constitute a term for the purposes of G.S. 108A-4. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C.S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1; 1981, c. 275, s. 1.)

§ 108A-7. Meetings.

The board of social services of each county shall meet at least once per month, or more often if a meeting is called by the chairman. Such board shall elect a chairman from its members at its July meeting each year, and the chairman shall serve a term of one year or until a new chairman is elected by the board. (1917, c. 170, s. 1; 1919, c. 46, s. 4; C.S., s. 5015; 1937, c. 319, s. 4; 1941, c. 270, s. 3; 1947, c. 92; 1959, c. 320; 1961, c. 186; 1969, c. 546, s. 1; 1981, c. 275, s. 1.)

§ 108A-8. Compensation of members.

Members of the county board of social services may receive a per diem in such amount as shall be established by the county board of commissioners. Reimbursement for subsistence and travel shall be in accordance with a policy set by the county board of commissioners. (1917, c. 170, s. 1; 1919, c. 46, s. 4; C.S., s. 5015; 1937, c. 319, s. 4; 1941, c. 270, s. 3; 1947, c. 92; 1959, c. 320; 1961, c. 186; 1969, c. 546, s. 1; 1971, c. 124; 1981, c. 275, s. 1; 1985, c. 418, s. 3.)

§ 108A-9. Duties and responsibilities.

The county board of social services shall have the following duties and responsibilities:

- (1) To select the county director of social services according to the merit system rules of the State Personnel Commission;
- (2) To advise county and municipal authorities in developing policies and plans to improve the social conditions of the community;
- (3) To consult with the director of social services about problems relating to his office, and to assist him in planning budgets for the county department of social services;
- (4) To transmit or present the budgets of the county department of social services for public assistance, social services, and administration to the board of county commissioners;
- (5) To have such other duties and responsibilities as the General Assembly, the Department of Human Resources or the Social Services Commission or the board of county commissioners may assign to it. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C.S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1977, 2nd Sess., c. 1219, s. 7; 1981, c. 275, s. 1.)

§ 108A-10. Fees.

The county board of social services is authorized to enter into contracts with any governmental or private agency, or with any person, whereby the board of social services agrees to render services to or for such agency or person in exchange for a fee to cover the cost of rendering such service. This authority is to be limited to services voluntarily rendered and voluntarily received, but shall not apply where the charging of a fee for a particular service is specifically prohibited by statute or regulation. The fees to be charged under the authority of this section are to be based upon a plan recommended by the county director of social services and approved by the local board of social services and the board of county commissioners. In no event is the fee charged to exceed the cost to the board of social services. Fee policies may not conflict with rules and regulations adopted by the Social Services Commission or Department of Human Resources regarding fees.

The fees collected under the authority of this section are to be deposited to the account of the social services department so that they may be expended for social services purposes in accordance with the provisions of Article 3 of Chapter 159, the Local Government Budget and Fiscal Control Act. No individual employee is to receive any compensation over and above his regular salary as a result of rendering services for which a fee is charged.

The county board of social services shall annually report to the county commissioners receipts received under this section. Fees collected under this section shall not be used to replace any other funds, either State or local, for the program for which the fees were collected. (1981, c. 275, s. 1.)

§ 108A-11. Inspection of records by members.

Every member of the county board of social services may inspect and examine any record on file in the office of the director relating in any manner to applications for and provision of public assistance and social services authorized by this Chapter. No member shall disclose or make public any information which he may acquire by examining such records. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C.S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2; 1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2; 1969, c. 546, s. 1; 1981, c. 275, s. 1.)

§ 108A-12. Appointment.

(a) The board of social services of every county shall appoint a director of social services in accordance with the merit system rules of the State Personnel Commission. Any director dismissed by such board shall have the right of appeal under the same rules.

(b) Two or more boards of social services may jointly employ a director of social services to serve the appointing boards; and such boards may also combine any other functions or activities as authorized by Part 1 of Article 20 of Chapter 160A. The boards shall agree on the portion of the director's salary and the portion of expenses for other joint functions and activities that each participating county shall pay. (1917, c. 170, s. 1; 1919, c. 46, ss. 3, 4; C.S., s. 5016; 1921, c. 128; 1929, c. 291, s. 1; 1931, c. 423; 1937, c. 319, s. 5; 1941, c. 270, s. 4; 1957, c. 100, s. 1; 1961, c. 186; 1969, c. 546, s. 1; 1981, c. 275, s. 1.)

§ 108A-13. Salary.

The board of social services of every county, with the approval of the board of county commissioners, shall determine the salary of the director in accordance with the classification plan of the State Personnel Commission, and such salary shall be paid by the county from the federal, State and county funds available for this purpose. (1917, c. 170, s. 1; 1919, c. 46, ss. 3, 4; C.S., s. 5016; 1921, c. 128; 1929, c. 291, s. 1; 1931, c. 423; 1937, c. 319, s. 5; 1941, c. 270, s. 4; 1957, c. 100, s. 1; 1961, c. 186; 1969, c. 546, s. 1; 1981, c. 275, s. 1.)

§ 122C-115. Powers and duties of counties and cities.

(a) Except as provided in G.S. 153A-77, a county shall provide mental health, mental retardation, and substance abuse services through an area authority.

(b) Counties and cities may appropriate funds for the support of programs that serve the catchment area, whether the programs are physically located within a single county or whether any facility housing a program is owned and operated by the city or county. Counties and cities may make appropriations for the purposes of this Chapter and may allocate for these purposes other revenues not restricted by law, and counties may fund them by levy on property taxes pursuant to G.S. 153A-149(c)(22).

(c) Within a catchment area designated by the Commission, a board of county commissioners or two or more boards of county commissioners jointly shall establish an area authority with the approval of the Secretary. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 5, 23; 1981, c. 51, s. 3; 1985, c. 589, s. 2.)

§ 122C-116. Status of area authority.

An area authority is a local political subdivision of the State except that a single county area authority is considered a department of the county in which it is located for the purposes of Chapter 159 of the General Statutes (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 2; 1981, c. 51, ss. 3, 4; c. 539, s. 1; 1983, c. 280; c. 383, s. 2; 1985, c. 589, s. 2.)

§ 122C-117. Powers and duties of the area authority.

(a) The area authority shall:

- (1) Engage in comprehensive planning, budgeting, implementing, and monitoring of community-based mental health, mental retardation, and substance abuse services;
- (2) Provide services to clients in the catchment area;
- (3) Determine the needs of the area authority's clients and coordinate with the Secretary the provision of services to clients through area and State facilities;
- (4) Develop plans and budgets for the area authority subject to the approval of the Secretary;
- (5) Assure that the services provided by the area authority meet the rules of the Commission and Secretary;
- (6) Comply with federal requirements as a condition of receipt of federal grants; and
- (7) Appoint an area director.

(b) The governing unit of the area authority is the area board. All powers, duties, functions, rights, privileges, or immunities conferred on the area authority may be exercised by the area board. (1971, c. 470, s. 1; 1973, c. 476, s. 13; c. 661; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 1, 3, 14, 23; 1981, c. 51, s. 3; 1983, c. 383, s. 1; 1985, c. 589, s. 2.)

§ 122C-118. Structure of area board.

(a) An area board shall have no less than 15 members and no more than 25 members. The size of the area board may be changed from time to time as follows:

- (1) In a single-county area, by the board of county commissioners;
- (2) In a multi-county area by agreement of the boards of county commissioners of all the counties in the catchment area. The agreement shall be evidenced by concurrent resolutions adopted by the affected boards of county commissioners.
- (3) In a single county area, the board of county commissioners shall appoint members of the area board who may be removed with or without cause.
- (4) In areas consisting of more than one county, each board of county commissioners within the area shall appoint one commissioner as a member of the area board. These members shall appoint the other members. A member may be removed, with or without cause, by the group authorized to make the initial appointment.

The group of county commissioner authorized to make appointments to the area board shall appoint new members to the area board to fill vacancies occurring on the board before the end of the appointed term of office. These appointments are for the rest of the unexpired term of office.

The area board shall include:

- (1) At least one county commissioner from each county in the area except that in a single-county area authority the board of commissioners may instead appoint any resident of the county;
 - (2) At least two physicians licensed under Chapter 90 of the General Statutes to practice medicine in North Carolina;
 - (3) At least one professional representative from the fields either of psychology, social work, nursing, or religion;
 - (4) At least one individual each representing the interests of or from citizens' organizations representing the interests of individuals with:
 - a. Mental illness;
 - b. Mental retardation;
 - c. Alcoholism; and
 - d. Drug abuse;
 - (5) At least one representative from local hospitals or area planning organizations; and
 - (6) At least one attorney licensed to practice in North Carolina.
- Any member of an area board who is a county commissioner serves on the board in an ex officio capacity. The terms of county commissioners on an area board are concurrent with their terms as county commissioners. The terms of the other members on the area board shall be for four years, except that upon the initial formation of an area board one fourth shall be appointed for one year, one fourth for two years, one fourth for three years, and all remaining members for four years. (1971, c. 470, s. 1; 1973, c. 455; c. 476, s. 2; c. 1355; 1975, c. 400, ss. 1-1; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 1-5; c. 6, 23; c. 455; 1981, c. 51, s. 3; c. 52; 1983, c. 6; c. 383, s. 1; 1985, c. 589, s. 2.)

§ 122C-119. Organization of area board.

- (a) The area board shall meet at least six times per year.
- (b) Meetings shall be called by the area board chairman or by three or more members of the board after notifying the area board chairman in writing.
- (c) Members of the area board elect the board's chairman. The term of office of the area board chairman shall be one year. A county commissioner area board member may serve as the area board chairman. (1971, c. 470, s. 1; 1973, c. 455; c. 476, s. 133; c. 1355; 1975, c. 400, ss. 1-4; 1977, c. 568, s. 1; 1979, c. 358, ss. 6, 23; c. 455; 1981, c. 52; 1983, c. 6; 1985, c. 589, s. 2.)

§ 122C-120. Compensation of area board members.

- (a) Area board members may receive as compensation for their services per diem and a subsistence allowance for each day during which they are engaged in the official business of the area board. The amount of the per diem and subsistence allowances shall be established by the area board and the amounts shall not exceed those authorized by G.S. 138-5 for State board members.
- (b) Area board members may be reimbursed for all necessary travel expenses and registration fees in amounts fixed by the board. (1979, c. 358, s. 2; 1985, c. 589, s. 2.)

§ 122C-121. Area director.

The area director is an employee of the area board and shall serve at the pleasure of the area board. The director is responsible for the staff appointments, for implementation of the policies and programs of the board in compliance with rules of the Commission and the Secretary, and for the supervision of all service programs and staff. (1971, c. 470, s. 1; 1973, c. 476, s. 133; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 14; 1981, c. 51, s. 3; 1985, c. 589, s. 2.)

APPENDIX E

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1985
RATIFIED BILL

CHAPTER 754
HOUSE BILL 1021

AN ACT TO AMEND G.S. 153A-77 RELATING TO THE POPULATION OF COUNTIES WITH AUTHORITY OVER COMMISSIONS, BOARDS AND AGENCIES. The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-77 is amended in the last sentence by deleting the number "325,000" and substituting the number "400,000".

Sec. 2. This act is effective upon ratification, but shall expire on June 30, 1987, at which time G.S. 153A-77 shall revert to its status prior to the ratification date hereof, except that the amendments made to G.S. 153A-77 by Section 56 of Chapter 589, Session Laws of 1985 do not expire.

In the General Assembly read three times and ratified, this the 15th day of July, 1985.

ROBERT B. JORDAN III

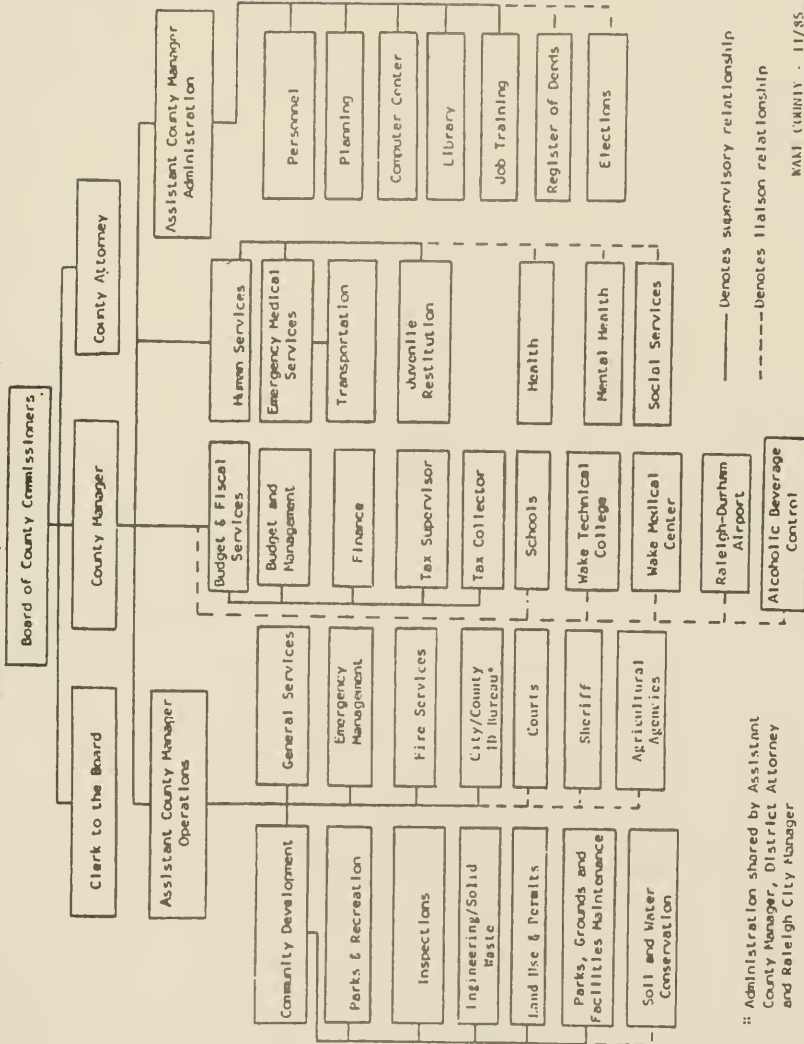
Robert B. Jordan III
President of the Senate

LISTON B. RAMSEY

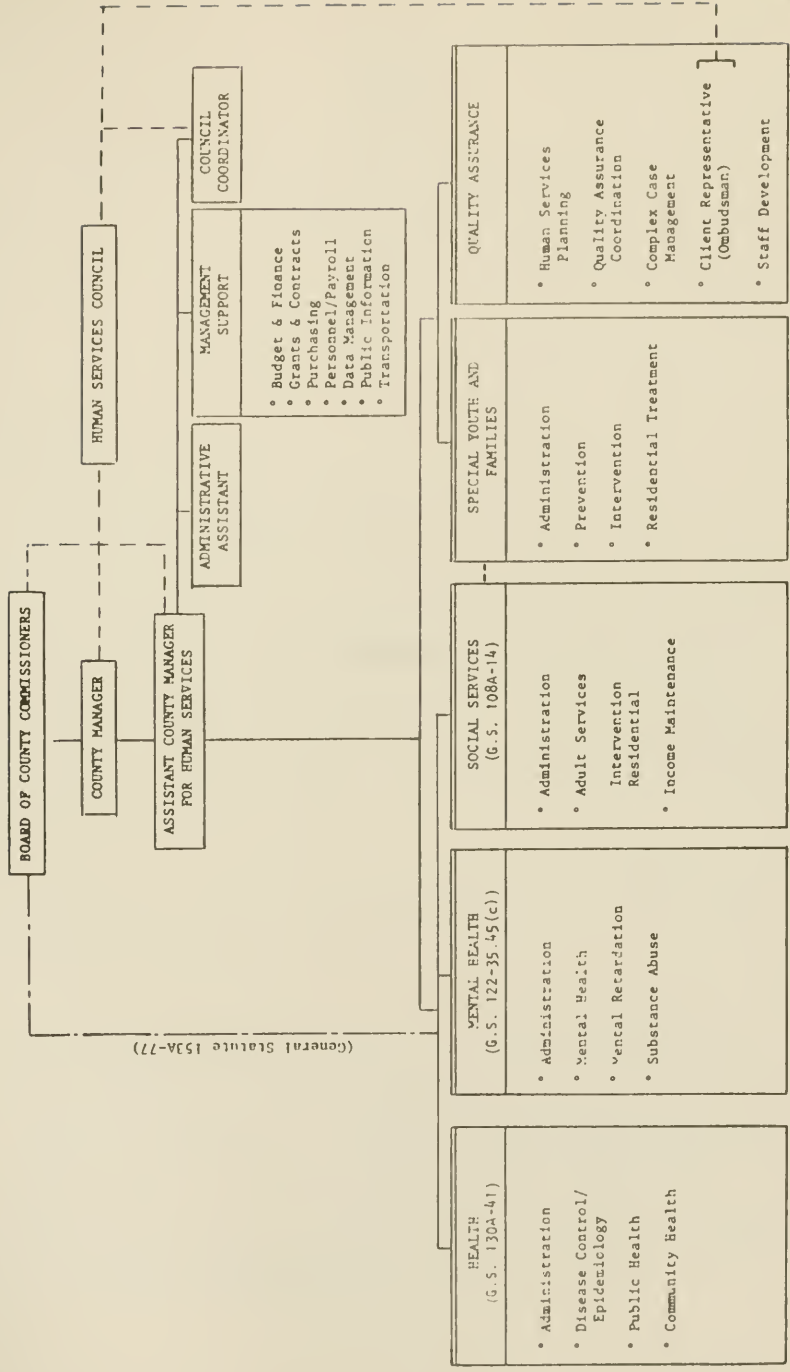
Liston B. Ramsey
Speaker of the House of Representatives

APPENDIX F

ORGANIZATION CHART, WAKE COUNTY GOVERNMENT



APPENDIX G



(General Statute 153A-77)

APPENDIX H

RECEIVED

AUG 29 1986

GENERAL RESEARCH DIVISION



State of North Carolina

Department of Justice

P.O. BOX 629

RALEIGH

27602 0629

August 28, 1986

LACY H. THORNBURG
ATTORNEY GENERAL

Catherine A. Hubbard
Committee Counsel
General Research Division
Room 545
Legislative Office Building
300 North Salisbury Street
Raleigh, North Carolina 27611

Dear Ms. Hubbard:

The Co-chairmen of the Legislative Research Commission's Study Committee on County Commissioners Authority Over Local Boards have requested our opinion about whether G.S. 153A-77 is a law related to health and, if so, whether the population criterion therein meets the requirements of a "general law" so as to avoid the limitation in Article 2, Section 24 of the North Carolina Constitution which prohibits enactment of local laws related to health.

G.S. 153A-77 specifically applies to "the Board of Health." To that extent it is clearly an act dealing with health matters. Idol v. Street, 233 N.C. 730, 65 S.E.2d 313 (1951) and Board v. Wilmington, 237 N.C. 179, 74 S.E.2d 749 (1953).

As to your question of whether this statute is void as being repugnant to Article 2, Section 24(1)(a) of the North Carolina Constitution by virtue of being a local act relating to health, we find Article 14, Section 3 of the North Carolina Constitution instructive. That article defines general laws and specifically states that general laws may be enacted for classes "defined by population or other criteria." Only if the statutory classification is unreasonable or under-inclusive will the statute be voided as prohibited as a local act, but the legislature has wide discretion in making such classifications. Adams v. Department of Natural and Economic Resources, 295 N.C. 683, 249 S.E.2d 402 (1978).

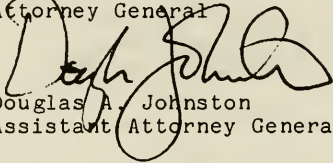
Catherine A. Hubbard
Page two
August 28, 1986

In view of this standard and in light of the presumption of constitutionality for legislative enactments by the General Assembly, it appears that G.S. 153A-77 meets the requirements of a general law with classes defined by population and is therefore not void as being a local act in controvention of Article 2, Section 24(1)(a).

If you should need further information on this matter, please contact me or Robert Reilly.

Sincerely,

LACY H. THORNBURG
Attorney General



Douglas A. Johnston
Assistant Attorney General

LHT/DAJ:ee

Sec. 24. Limitations on local, private, and special legislation.

(1) *Prohibited subjects.* The General Assembly shall not enact any local, private, or special act or resolution:

- (a) Relating to health, sanitation, and the abatement of nuisances;
- (b) Changing the names of cities, towns, and townships;
- (c) Authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys;
- (d) Relating to ferries or bridges;
- (e) Relating to non-navigable streams;
- (f) Relating to cemeteries;
- (g) Relating to the pay of jurors;
- (h) Erecting new townships, or changing township lines, or establishing or changing the lines of school districts;
- (i) Remitting fines, penalties, and forfeitures, or refunding moneys legally paid into the public treasury;
- (j) Regulating labor, trade, mining, or manufacturing;
- (k) Extending the time for the levy or collection of taxes or otherwise relieving any collector of taxes from the due performance of his official duties or his sureties from liability;
- (l) Giving effect to informal wills and deeds;
- (m) Granting a divorce or securing alimony in any individual case;
- (n) Altering the name of any person, or legitimating any person not born in lawful wedlock, or restoring to the rights of citizenship any person convicted of a felony.

(2) *Repeals.* Nor shall the General Assembly enact any such local, private, or special act by the partial repeal of a general law; but the General Assembly may at any time repeal local, private, or special laws enacted by it.

(3) *Prohibited acts void.* Any local, private, or special act or resolution enacted in violation of the provisions of this Section shall be void.

(4) *General laws.* The General Assembly may enact general laws regulating the matters set out in this Section.

Sec. 3. General laws defined.

Whenever the General Assembly is directed or authorized by this Constitution to enact general laws, or general laws uniformly applicable throughout the State, or general laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, no special or local act shall be enacted concerning the subject matter directed or authorized to be accomplished by general or uniformly applicable laws, and every amendment or repeal of any law relating to such subject matter shall also be general and uniform in its effect throughout the State. General laws may be enacted for classes defined by population or other criteria. General laws uniformly applicable throughout the State shall be made applicable without classification or exception in every unit of local government of like kind, such as every county, or every city and town, but need not be made applicable in every unit of local government in the State. General laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, shall be made applicable without classification or exception in every unit of local government, or in every local court district, as the case may be. The General Assembly may at any time repeal any special, local, or private act. (1969, c. 290, s. 1.)

APPENDIX I

INTRODUCED BY:

Referred to:

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A BILL TO BE ENTITLED

AN ACT TO INCREASE THE POPULATION CRITERION FOR COUNTIES THAT
SEEK TO EXPAND COUNTY COMMISSIONERS' AUTHORITY OVER LOCAL
BOARDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-77 is amended in the last
sentence by deleting the number "400,000" and substituting the
number "425,000".

Sec. 2. Section 2 of Chapter 754 of the 1985 Session
Laws is rewritten to read: "This act is effective upon rati-
fication."

Sec. 3. This act is effective upon ratification.

