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THE GENERAL STATUTES OF NORTH CAROLINA

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CONTAINING GENERAL LAWS OF NORTH CAROLINA
ENACTED THROUGH THE SESSION LAWS OF 1981
(REGULAR SESSION, 1982)

Prepared under the Supervision of the Department of Justice
of the State of North Carolina

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Annotated, under the Supervision of the Department of Justice,
by the Editorial Staff of the Publishers

UNDER THE DIRECTION OF
D. P. HARRIMAN, S. C. WILLARD, SYLVIA FAULKNER
AND K. S. MAWYER

Volume 3D

Part II

1982 Replacement Volume

THE MICHIE COMPANY

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Scope of Volume

Statutes:

Full text of Chapters 161 through 168 of the General Statutes of North Carolina, including all enactments through the Session Laws of 1981 (Regular Session, 1982), heretofore contained in 1976 Replacement Volume 3D of the General Statutes and the 1981 Cumulative Supplement and 1982 Interim Supplement thereto.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 302, p. 222.
North Carolina Court of Appeals Reports through Volume 50, p. 567.
South Eastern Reporter 2nd Series through Volume 291, p. 488.
Federal Reporter 2nd Series through Volume 677, p. 882.
Bankruptcy Reports through Volume 19, p. 123.
Federal Supplement through Volume 537, p. 323.
Federal Rules Decisions through Volume 93, p. 253.
United States Reports through Volume 453, p. 691.
Supreme Court Reporter through Volume 102, p. 2048.
North Carolina Law Review.
Wake Forest Law Review.
Campbell Law Review.
Duke Law Journal.
North Carolina Central Law Journal.
Opinions of the Attorney General.

Abbreviations

(The abbreviations below are those found in the General Statutes which refer to prior codes.)

P.R. Potter's Revisal (1821, 1827)
R.S. Revised Statutes (1837)
R.C. Revised Code (1854)
C.C.P. Code of Civil Procedure (1868)
Code Code (1883)
Rev. Revisal of 1905
C.S. Consolidated Statutes (1919, 1924)

Preface

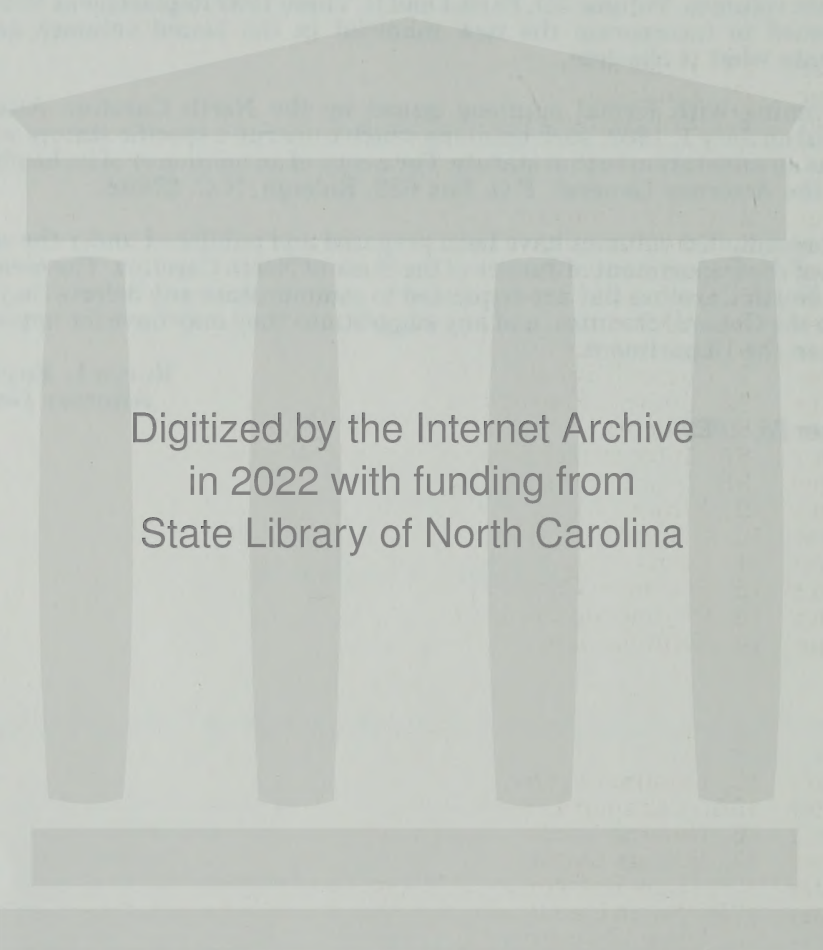
Volume 3D, last replaced in 1976, accumulated a supplement approaching the bound volume in size and including, among other things, extensive changes in and additions to the laws relating to elections and local government finance and of the portion of the law relating to municipal corporations. Due to the substantial increase in the amount of material incorporated in Volume 3D, the current replacement is accomplished by the division of the volume into two separate volumes, Volume 3D, Parts I and II. These 1982 Replacement Volumes are issued to incorporate the new material in the bound volumes and to eliminate what is obsolete.

Beginning with formal opinions issued by the North Carolina Attorney General on July 1, 1969, such opinions which construe a specific statute will be cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The recompiled volumes have been prepared and published under the supervision of the Department of Justice of the State of North Carolina. The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes, and any suggestions they may have for improving them, to the Department.

RUFUS L. EDMISTEN
Attorney General

October 25, 1982



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ARTICLE 1.

The Office.

§ 161-1. Election and term of office.

In each county there shall be elected biennially by the qualified voters thereof, as provided for the election of members of the General Assembly, a register of deeds. (Const., art. 7, s. 1; Rev., s. 2650; C.S., s. 3543; 1981, c. 504, s. 9.)

Cross References. — As to time of election, see § 163-1.

Editor's Note. — A purported amendment to this section in Session Laws 1981, c. 504, s. 9, was made effective upon certification of approval of the constitutional amendments

proposed by ss. 1-3 of the act. The constitutional amendments were submitted to the people at an election held June 29, 1982, and were defeated. Therefore, the 1981 amendment to this section never went into effect.

CASE NOTES

Legislature May Change Duties and Emolument. — The office of register of deeds is constitutional, but the duties are statutory, and the legislature may, within reasonable limits,

change the duties and diminish the emoluments of the office, if the public welfare so requires. *Fortune v. Commissioners*, 140 N.C. 322, 52 S.E. 950 (1905).

§ 161-2. Four-year term for registers of deeds; counties excepted.

At the general election for the year 1936 and quadrennially thereafter there shall be elected in each county of this State by the qualified voters thereof a register of deeds, who shall serve for a term of four years from the first Monday in December after his election and until his successor is elected and qualified: Provided, however, that this section shall not apply to Alexander, Ashe, Beaufort, Cherokee, Clay, Dare, Davidson, Halifax, Haywood, Hyde, Jackson, Johnston, Lincoln, Macon, Mitchell, Moore, Orange, Rowan, Swain, Vance and Yadkin Counties. (1935, cc. 362, 392, 462; 1937, c. 271; 1939, cc. 11, 99; 1941, c. 192; 1949, cc. 756, 830; 1957, c. 1022, s. 2; 1973, c. 215, s. 1.)

§ 161-3. Oath of office.

The register of deeds shall take the oath of office on the first Monday of December next after his election, before the board of county commissioners. (1868, c. 35, s. 2; 1876-7, c. 276, s. 5; Code, s. 3647; Rev., s. 2652; C.S., s. 3544.)

Cross References. — As to form of oath, see § 11-11.

§ 161-4. Bond required.

(a) Every register of deeds shall give bond with sufficient surety, to be approved by the board of county commissioners, in a sum of not less than ten thousand dollars (\$10,000) nor more than fifty thousand dollars (\$50,000), payable to the State, and conditioned for the safekeeping of the books and records, and for the faithful discharge of the duties of his office.

(b) The bond and surety required under subsection (a) shall further be conditioned for the safekeeping of the books and records, and for the faithful discharge of the duties of office of the register of deeds by any incumbent assistant and deputy register of deeds appointed prior to the vacancy pursuant to G.S. 161-6 and holding over after vacancy in the office of register of deeds for the interim, as provided in G.S. 161-5(b). (1868, c. 35, s. 3; 1876-7, c. 276, s. 5; Code, s. 3648; 1899, c. 54, s. 52; Rev., s. 301; C.S., s. 3545; 1963, c. 204; 1965, c. 900; 1969, c. 636.)

Local Modification. — Dare: 1907, c. 75; Nash: 1955, c. 690.

Cross References. — As to failure to regis-

ter instrument as breach of bond, see § 161-14. As to failure to index and cross-index, see § 161-22.

CASE NOTES

The words "and faithfully discharge the duties of his office" in the bond of a register of deeds do not refer alone to the safekeeping of the "records and books," but to all other official acts, the nonperformance of which results in injury. *State v. Young*, 106 N.C. 567, 10 S.E. 1019 (1890).

Failure to Give Bond. — The board of commissioners may declare the office vacant for failure of the register to give a sufficient bond. *State v. Patterson*, 97 N.C. 360, 2 S.E. 262 (1887).

§ 161-4.1. Salary in counties where fees formerly allowed.

In any county where during the fiscal year beginning July 1, 1980, and ending June 30, 1981, the register of deeds received fees in addition to salary, and retained them personally as allowed by local act, the salary of the register of deeds in such county in any future fiscal year shall not be less than the sum of the salary plus fees received in the fiscal year beginning July 1, 1980 and ending June 30, 1981. (1981, c. 968, s. 4.)

Editor's Note. — Session Laws 1981, c. 968, s. 5, makes this act effective Aug. 1, 1981. Session Laws 1981, c. 968, s. 3, provides: "All

local acts or portions of local acts in conflict with any of the provisions of this act are repealed."

§ 161-5. Vacancy in office.

(a) When a vacancy occurs from any cause in the office of register of deeds, the board of county commissioners shall fill such vacancy by the appointment of a successor for the unexpired term, who shall qualify and give bond as required by law.

(a1) When a vacancy occurs from any cause in the office of register of deeds, the board of county commissioners shall fill such vacancy by the appointment of a successor for the unexpired term, who shall qualify and give bond as required by law. If the register of deeds were elected as the nominee of a political party, the board of county commissioners shall consult the county executive committee of that political party before filling the vacancy and shall appoint the person recommended by that committee, if the party makes a recommendation within 30 days of the occurrence of the vacancy. Counties subject to this subsection are not subject to subsection (a). This subsection shall apply only in the following counties: Alamance, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Cherokee, Clay, Cleveland, Davidson, Davie, Graham, Guilford, Haywood, Henderson, Jackson, Madison, McDowell, Mecklenburg, Moore, New Hanover, Polk, Randolph, Rockingham, Rutherford, Stanly, Stokes, Transylvania, Wake, and Yancey.

(b) In the interim between such vacancy in the office of register of deeds and the appointment and qualification of a successor register of deeds, under the provisions of subsection (a), any incumbent assistant or deputy register of deeds appointed under G.S. 161-6 prior to the vacancy shall continue to hold office as assistant or deputy registers of deeds until discharged or otherwise lawfully relieved of office by the lawful successor to the office of register of deeds. (1868, c. 35, s. 4; Code, s. 3649; Rev., s. 2651; C.S., s. 3546; 1965, c. 900; 1975, c. 868, ss. 1, 2; 1977, c. 180; 1981, c. 763, ss. 8, 9, 14; c. 830.)

Cross References. — As to validation of acts of assistant and deputy registers of deeds performed pending filling of vacancy in office of register of deeds, see § 161-28.

Effect of Amendments. — The first 1981 amendment, effective July 1, 1981 and applicable to vacancies occurring on or after that date, added subsection (a1), and deleted

the second paragraph of subsection (a), which applied to vacancies occurring only in the Counties of Buncombe, Cherokee, Clay, Forsyth, Graham, Haywood, Henderson, Jackson, Macon, Madison, Swain and Transylvania.

The second 1981 amendment made subsection (a1) applicable to Avery County.

Session Laws 1981, c. 763, s. 13 provides: "All local acts in conflict with this act are repealed to the extent of the conflict."

CASE NOTES

Appointment of Successor When Office Declared Vacant. — The county commissioners may appoint a successor to the office of register of deeds where they have declared the

office vacant by reason of the incumbent's failure to give a sufficient bond. *State v. Patterson*, 97 N.C. 360, 2 S.E. 262 (1887).

§ 161-6. Appointment of assistant and deputy registers of deeds; authority to sign in name of register of deeds; holdover assistants and deputies.

(a) The registers of deeds of the several counties are hereby authorized to appoint one or more assistant registers of deeds and one or more deputy registers of deeds, whose acts as assistants or deputies shall be valid and for which the registers of deeds shall be officially responsible. The certificate of appointment of an assistant or deputy shall be filed by the appointing register of deeds in the office of the clerk of the superior court, who shall record the same.

(b) Each assistant and deputy register of deeds so appointed shall be authorized, in addition to his other powers and duties, to register and sign instruments and documents in the name and under the title of the appointing register of deeds, by himself as assistant or deputy, as appropriate. Such signing shall be substantially as follows:

John Doe, Register of Deeds

by Richard Roe, Assistant (or Deputy, as appropriate).

(c) Such registering and signing, when regular and sufficient in all other respects, shall be valid for all purposes, and of the same force and effect as if the instrument or document had been registered and signed by the register of deeds personally.

(d) Wherever in the General Statutes reference is made to "the register of deeds and (or) his assistant" or "the register of deeds and (or) his deputy" or words substantially to this effect, or reference is made only to "the assistant register of deeds" or "the deputy register of deeds," such reference to either assistant or deputy, unless the contrary intent is specifically stated in the text, shall also include the other, insofar as such reference pertains to the authority, powers, duties, rights, privileges, or qualifications for office of assistant or deputy register of deeds.

(e) Incumbent assistant and deputy registers of deeds holding over after a vacancy in the office of register of deeds, pursuant to the provisions of G.S. 161-5(b), shall continue to have and exercise all lawful power and authority of office until lawfully relieved of office, including, but not restricted to, all power and authority set forth in subsections (a), (b), (c) and (d), and in Chapter 161 generally, and their acts as assistant or deputy registers of deeds shall be official and valid, and the appointing register of deeds, or his estate, and the official bond under G.S. 161-4 shall be responsible for their acts as assistant or deputy registers of deeds, and such assistant or deputy register of deeds shall also be individually, personally and officially responsible for his own acts. (1909, c. 628, s. 1; C.S., s. 3547; 1949, c. 261; 1959, c. 279; 1963, c. 191; 1965, c. 900.)

Local Modification. — Dare: 1907, c. 393; Durham: 1909, c. 91; Person: 1909, c. 546.

Cross References. — As to validation of acts of assistant and deputy registers of deeds performed pending filling of vacancy in office of

register of deeds, see § 161-28.

Legal Periodicals. — For brief comment on the 1949 amendment to this section, see 27 N.C.L. Rev. 476.

§ 161-7. Office at courthouse.

The register shall keep his office at the courthouse unless the board of county commissioners shall deem it impracticable. (1868, c. 35, s. 5; Code, s. 3650; Rev., s. 2653; C.S., s. 3548.)

§ 161-8. Attendance at office.

The board of county commissioners may fix by order, to be entered on their records, what days of each week, and at what hours of each day, the register of deeds shall attend at his office in person or by deputy, and he shall give his attendance accordingly. (1868, c. 35, s. 6; Code, s. 3651; Rev., s. 2654; C.S., s. 3549.)

§ 161-9. Official seal.

The office of register of deeds for every county shall have and use an official seal or stamp, which shall be provided by the county commissioners. The official seal or stamp shall be round, and the size shall not exceed one and five-eighths inches in diameter. Contained thereon shall be the name of the register of deeds, the county and letters "N.C.," and the words "Register of Deeds." The ink used for the official stamp shall be of the reproducible type; provided, that any register of deeds using a nonconforming seal or stamp prior to July 1, 1969 may continue to use such seal or stamp. (1893, c. 119, s. 1; Rev., s. 2649; C.S., s. 3550; 1969, c. 1028.)

§ 161-10. Uniform fees of registers of deeds.

(a) Except as provided in G.S. 130-40, all fees collected under this section shall be deposited into the county general fund. In the performance of his duties, the register of deeds shall collect the following fees which shall be uniform throughout the State:

- (1) Instruments in General. — For registering or filing any instrument for which no other provision is made by this section, whether written, printed, or typewritten, the fee shall be four dollars (\$4.00) for the first page, which page shall not exceed 8½ inches by 14 inches, plus one dollar and fifty cents (\$1.50) for each additional page or fraction thereof. A page exceeding 8½ inches by 14 inches shall be considered two pages.
- (2) Marriage Licenses. — For issuing a license — ten dollars (\$10.00); for issuing a delayed certificate with one certified copy — five dollars (\$5.00); and for a proceeding for correction of names in application, license or certificate, with one certified copy — five dollars (\$5.00).
- (3) Plats. — For each original or revised plat recorded — twelve dollars and fifty cents (\$12.50); for furnishing a certified copy of a plat — three dollars (\$3.00).
- (4) Right-of-Way Plans. — For each original or amended plan and profile sheet recorded — five dollars (\$5.00). This fee is to be collected from the Board of Transportation.
- (5) Registration of Birth Certificate One Year or More after Birth. — For preparation of necessary papers when birth to be registered in another

county — five dollars (\$5.00); for registration when necessary papers prepared in another county, with one certified copy — five dollars (\$5.00); for preparation of necessary papers and registration in the same county, with one certified copy — ten dollars (\$10.00).

- (6) Amendment of Birth or Death Record. — For preparation of amendment and affecting correction — two dollars (\$2.00).
 - (7) Legitimations. — For preparation of all documents concerned with legitimations — seven dollars (\$7.00).
 - (8) Certified Copies of Birth and Death Certificates and Marriage Licenses. — For furnishing a certified copy of a death or birth certificate or marriage license — three dollars (\$3.00).
 - (9) Certified Copies. — For furnishing a certified copy of an instrument for which no other provision is made by this section — three dollars (\$3.00) for the first page, plus one dollar (\$1.00) for each additional page or fraction thereof.
 - (10) Comparing Copy for Certification. — For comparing and certifying a copy of any instrument filed for registration, when the copy is furnished by the party filing the instrument for registration and at the time of filing thereof — two dollars (\$2.00).
 - (11) Uncertified Copies. — When, as a convenience to the public, the register of deeds supplies uncertified copies of instruments, he may charge fees that in his discretion bear a reasonable relation to the quality of copies supplied and the cost of purchasing and maintaining copying equipment. These fees may be changed from time to time, but the amount of these fees shall at all times be prominently posted in his office.
 - (12) Acknowledgment. — For taking an acknowledgment, oath, or affirmation or for the performance of any notarial act — one dollar (\$1.00). This fee shall not be charged if the act is performed as a part of one of the services for which a fee is provided by this subsection; except that this fee shall be charged in addition to the fees for registering, filing or recording instruments or plats as provided by subdivisions (1) and (3) of this subsection.
 - (13) Uniform Commercial Code. — Such fees as are provided for in Chapter 25, Article 9, Part 4, of the General Statutes.
 - (14) Torrens Registration. — Such fees as are provided in G.S. 43-5.
 - (15) Master Forms. — Such fees as are provided for instruments in general.
 - (16) Probate. — For certification of instruments for registration as provided in G.S. 47-14 — one dollar (\$1.00).
 - (17) Qualification of Notary Public. — For administering the oaths of office to a notary public and making the appropriate record entries as provided in G.S. 10-2 — five dollars (\$5.00).
 - (18) Reinstatement of Articles of Incorporation. — For filing reinstatements of Articles of Incorporation prepared pursuant to G.S. 105-232; such fees as provided for instruments in general. The fee shall be paid by the corporation affected.
- (b) The uniform fees set forth in this section are complete and exclusive and no other fees shall be charged by the register of deeds.
- (c) These fees shall be collected in every case prior to filing, registration, recordation, certification or other service rendered by the register of deeds unless by law it is provided that the service shall be rendered without charge. (Code, ss. 710, 3109, 3751; 1887, c. 283; 1891, c. 324; 1897, cc. 27, 68; 1899, c. 17, s. 2; c. 247, s. 3; cc. 261, 302, 578, 723; 1901, c. 294; 1903, c. 792; 1905, cc. 226, 292, 319; Rev., s. 2776; 1911, c. 55, s. 3; C.S., s. 3906; 1967, c. 639, s. 4; c. 823, s. 33; 1969, c. 80, s. 1; c. 912, s. 3; 1973, c. 507, s. 5; c. 1317; 1975, c. 428; 1977, 2nd Sess., c. 1132; 1981, c. 968, ss. 1, 2.)

Local Modification. — Beaufort: 1949, c. 368, s. 3; Cabarrus: 1945, c. 880, s. 3; Chowan: 1947, c. 490; Gaston: 1951, c. 868; Guilford: 1949, c. 602; Hertford: 1955, c. 619; Iredell: 1959, c. 654; Jones: 1961, c. 569; McDowell: 1953, c. 728; Pender: 1945, c. 430; Perquimans: 1949, c. 664; 1953, c. 660; 1955, c. 108; Richmond: 1951, c. 529.

Editor's Note. — Session Laws 1967, c. 823, s. 34, provides: "It is the intent of this act to establish the office of the register of deeds as the filing office for all of the corporate and related documents now required to be filed with the clerk of the superior court and to transfer all of the duties relating thereto from the clerk of the superior court to the register of deeds. To this end, all relevant sections of the General Statutes of North Carolina not specifically

amended by sections 1 through 33 of this act are hereby amended to the same effect."

Effect of Amendments. — The 1981 amendment, effective Aug. 1, 1981, added the first sentence in subsection (a), increased the fees in subdivisions (1), (3), (5)-(10) and (17) of subsection (a), substituted "8½" for "eight and one-half" both places it appears in subdivision (a)(1), substituted "One Year" for "Four Years" in the heading for subdivision (a)(5), and substituted "such fees as provided for instruments in general" for "two dollars (\$2.00)" in the first sentence of subdivision (a)(18).

Session Laws 1981, c. 968, s. 3, provides: "All local acts or portions of local acts in conflict with any of the provisions of this act are repealed."

CASE NOTES

Free Abstracts Not Required. — While it is the duty of the register of deeds to permit all persons to inspect the records committed to his custody, he will not be required, without the

payment of his proper fees, to allow anyone to make copies or abstracts therefrom. *Newton v. Fisher*, 98 N.C. 20, 3 S.E. 822 (1887).

OPINIONS OF ATTORNEY GENERAL

Subdivision (a)(1) of this section does not vest any discretion in the register of deeds. See opinion of the Attorney General to Miss Frances H. Burwell, Stokes County Register of Deeds, 40 N.C.A.G. 611 (1969).

Register of deeds should charge only one

fee for the probate of instruments to be registered, regardless of the number of notary acknowledgments appearing thereon. See opinion of Attorney General to Miss Frances H. Burwell, Stokes County Register of Deeds, 40 N.C.A.G. 611 (1969).

§ 161-10.1. Exemption of armed forces discharge documents and certain other records needed in support of claims for veterans' benefits.

Any schedule of fees which is now or may be prescribed in Chapter 161 of the General Statutes or in G.S. 161-10 shall not apply to nor shall the same repeal any of the provisions of Article 5 of Chapter 47 of the General Statutes. Any schedule of fees which is now or may be hereafter prescribed in Chapter 161 of the General Statutes or as may appear in G.S. 161-10 shall not apply to nor shall the same repeal any of the provisions of G.S. 165-11. (1971, c. 679.)

§ 161-10.2: Repealed by Session Laws 1969, c. 80, s. 6.

§ 161-11: Repealed by Session Laws 1973, c. 1027.

ARTICLE 2.

The Duties.

§§ 161-12, 161-13: Repealed by Session Laws 1973, c. 1027.

§ 161-14. Registration of instruments.

(a) The register of deeds shall immediately register all written instruments presented to him for registration. When an instrument is presented for registration, the register of deeds shall endorse upon it the day and hour on which it was presented. This endorsement forms a part of the registration of the instrument. All instruments shall be registered in the precise order in which they were presented for registration. Immediately after endorsing the day and hour of presentation upon an instrument, the register of deeds shall index and cross-index it in its proper sequence. He shall then proceed to register it on the day that it is presented unless a temporary index has been established.

The register of deeds may, in his discretion, establish a temporary index in which all instruments presented for registration shall be indexed until they are registered and entered in the permanent indexes. A temporary index shall operate in all respects as the permanent index. All instruments presented for registration shall be registered and indexed and cross-indexed on the permanent indexes not later than 30 days after the date of presentation.

(b) All instruments presented for registration shall be on paper and in ink of a color, quality, size, and condition that will permit the production of legible and permanent reproductions thereof by photographic or microphotographic processes. If an instrument presented for registration is in a condition that will not permit such reproduction, the register of deeds shall endorse thereon the following notation: "Record of poor quality due to condition of original document." He shall then register the instrument in the usual manner. (R.C., c. 37, s. 23; 1868, c. 35, s. 9; Code, s. 3654; Rev., s. 2658; C.S., s. 3553; 1921, c. 114; 1971, c. 657.)

Cross References. — As to requisites and formalities of the registration of deeds and mortgages generally, see § 47-17 et seq. As to

indexing of instruments, see also §§ 161-21, 161-22.

CASE NOTES

This section means a registration which is complete and perfect, so that it may serve all the purposes of the law in protecting the rights of parties directly interested, and truly give notice to the public. *State v. Young*, 106 N.C. 567, 10 S.E. 1019 (1890).

Failure to Register as Breach of Bond. — Failure of the register of deeds to register written instruments properly presented is a breach of the bond required by § 161-4. *Bank of Spruce Pine v. McKinney*, 209 N.C. 668, 184 S.E. 506 (1936).

Filing Has Effect of Registration. — The filing for registration is in law registration; all rights and liabilities accrue from the date of filing and do not depend upon the greater or lesser diligence of the register in performing his duty. *Glanton v. Jacobs*, 117 N.C. 427, 23 S.E. 335 (1895).

Delivery at Proper Office Prerequisite to Valid Filing. — It is required for a valid filing of a mortgage that it be delivered at the official office of the register of deeds, and where such a paper is delivered to the register outside of his office it is ineffectual until he returns and

makes the proper entry. *McHan v. Dorsey*, 173 N.C. 694, 92 S.E. 598 (1917).

Time of Delivery to Proper Officer Determinative. — Where the filing of a paper in the office of the register of deeds is necessary to the title to lands, the time thereof will be considered as that at which the paper was delivered to and received by the proper officers; and while the file mark of the officer is evidence as to the time, it is not essential under the North Carolina statutes. *Carolina-Tennessee Power Co. v. Hiawassee River Power Co.*, 175 N.C. 668, 96 S.E. 99 (1918), appeal dismissed, 252 U.S. 341, 40 S. Ct. 330, 64 L. Ed. 601 (1920).

And Register's Endorsement Is Not Essential. — The endorsement required to be made by register of deeds on mortgages and deeds in trust on the day on which such deeds are presented to him for registration, is not essential to registration; and when made is not conclusive evidence, but only *prima facie* evidence, of the facts therein recited. *Cunninggim v. Peterson*, 109 N.C. 33, 13 S.E. 714 (1891).

But Fees Must Be Timely Paid. — Where a deed was handed to the register for registration, but he refused to register it until his fees were paid several months later, at which time he made an endorsement that it was filed on the day first presented, followed by an explanatory endorsement reciting the facts, it was held that the register was not compelled to register the deed before his fees were paid, and that the facts did not constitute a filing for registration on the day when the deed was first presented to the register. *Cunninggim v. Peterson*, 109 N.C. 33, 13 S.E. 714 (1891).

Indexing and Cross-Indexing Essential. — The indexing and cross-indexing of deeds or other instruments in writing filed with a register of deeds for registration, as required by this section, is essential to their proper registration. *Bank of Spruce Pine v. McKinney*, 209 N.C. 668, 184 S.E. 506 (1936); *Johnson Cotton Co. v. Hobgood*, 243 N.C. 227, 90 S.E.2d 541 (1955).

The indexing of the deeds in the office of the register thereof is an essential part of the registration; and where the grantor's name has been omitted from the book, a subsequent grantee of the same lands from the same grantor acquires the title from him. *Fowle & Son v. Ham*, 176 N.C. 12, 96 S.E. 639 (1918). See also, *Dorman v. Goodman*, 213 N.C. 406, 196 S.E. 352 (1938), commented on in 19 N.C.L. Rev. 77.

Certificates of Registration as Prima Facie Evidence. — The certificates of registration made by registers of deeds are *prima*

facie evidence of the facts therein recited. *Sellers v. Sellers*, 98 N.C. 13, 3 S.E. 917 (1887).

Sufficiency of Acknowledgment. — A certificate by the clerk of the superior court that the officers of the corporation who signed the deed "acknowledged the due execution of the annexed instrument for the purpose therein set forth" was sufficient to warrant the registration of the deed. *Heath, Springs & Co. v. Big Falls Cotton Mills*, 115 N.C. 202, 20 S.E. 369 (1894).

Effect of Clerical Mistake. — A registry of a mortgage is not void because of a clerical mistake made by the register in transcribing, which does not affect the sense and provision as to the amount secured, description of property, etc., or obscure the meaning of the instrument. *Royster v. Lane*, 118 N.C. 156, 24 S.E. 796 (1896).

Omission of Signatures. — The registration of a deed showing the probate, including the separate examination of the wife, and the order of registration, and the names of the grantors, but omitting a copy of their signatures at the end of the instrument is sufficient notice under this section. *Smith v. Ayden Lumber Co.*, 144 N.C. 47, 56 S.E. 555 (1907).

Omission of Corporate Seal. — The failure of the register of deeds to copy the seal of the corporation on his books, or make an imitation copy thereon, does not render the conveyance of the lands invalid where the recitals in the deed signify that the seal was in fact attached, it appears upon the original, and the books show the name of the corporation appearing in brackets therein at its proper location. *Heath, Springs & Co. v. Big Falls Cotton Mills*, 115 N.C. 202, 20 S.E. 369 (1894); *Lockville Power Corp. v. Carolina Power & Light Co.*, 168 N.C. 219, 84 S.E. 398 (1915).

Omission of Great Seal of State. — The fact that it does not appear of record that a scroll or imitation of the great seal of the State was copied thereon does not invalidate the registry of a grant. The recital in the body of the grant, as recorded, of the affixing of the seal is sufficient evidence of its regularity. *Broadwell v. Morgan*, 142 N.C. 475, 55 S.E. 340 (1906).

Correction of Omission or Error. — Where the register has committed an error or omission in the recordation of an instrument he has the power to correct such error. *Brown v. Hutchinson*, 155 N.C. 205, 71 S.E. 302 (1911).

Cited in *Moore v. Ragland*, 74 N.C. 343 (1876); *Fleming v. Graham*, 110 N.C. 374, 14 S.E. 922 (1892).

§ 161-14.01. Registration of instruments for business and other purposes.

(a) The register of deeds is hereby authorized to record and file documents relating to persons, partnerships, and corporations for business and other purposes, including but not limited to certificates of partnerships, assumed business names, incorporations, dissolutions, or amendments thereto, in a consolidated book or record, including books or records used for the filing of deeds, deeds of trust, leases, and similar documents. It is the intent of this section that the register of deeds may file and record some or all of the above instruments and documents and those of a similar nature in one book or record or in a series of books or records consolidated for recording purposes; provided, said instruments and documents shall be indexed as required by law.

(b) All other laws providing for the filing of documents provided for herein shall not be applicable to the county upon adoption by the register of deeds of a consolidated recording and filing system as authorized herein. (1973, c. 1013, ss. 1, 2.)

§ 161-14.1. Recording subsequent entries as separate instruments in counties using microfilm.

In any county in which instruments are recorded in the office of the register of deeds by a microphotographic process or by any other method or process which renders impractical or impossible the subsequent entering of marginal notations upon the records of instruments, the register of deeds may, except as provided in G.S. 45-37.2 and 45-38, record all subsequent entries as separate instruments. Such instruments shall contain the information and notations required by law for the appropriate marginal entry, a reference by book and page number to the record of the instrument modified, and the date of recording the subsequent modifying instrument. There shall also be entered in the alphabetical indexes kept by the register of deeds, opposite the name of each indexed party to the original instrument, a reference by book and page to the record of the subsequent modifying instrument. (1963, c. 1021, s. 3.)

§ 161-14.2. Indexing procedures for instruments and documents filed in the office of the register of deeds.

The following procedure shall be used in making index entries:

- (1) When each word of the signature is legible and it gives the complete name of the party, the signature shall govern.
- (2) When the signature is legible but initials or abbreviations are used, any additional information given by the printed or typed name and not in conflict with the signature shall govern.
- (3) When none of the words in the signature are legible, the printed or typed name shall govern.
- (4) When one or more of the words in the signature are legible, then the words that are legible shall govern; the words that appear in the printed or typed name shall govern over the words of the signature that are not legible.
- (5) When the spelling of any word in a legible signature and the spelling of the corresponding word in the typed or printed name is at variance, and the variance would cause the entries to be made at different places in the index, then the instrument shall be indexed under both spellings.

- (6) When a reasonable interpretation of an illegible word in a signature is at variance with the corresponding word in a typed or printed name, and the variance would cause the entries to be made at different places in the index, then the instrument shall be indexed in both places. (1969, c. 694, s. 1.)

§ 161-15. Certify and register copies.

When a deed, mortgage, or other conveyance conveying real estate situate in two or more counties is presented for registration duly probated and a copy thereof is presented with the same, the register shall compare the copy with the original, and if it be a true copy thereof he shall certify the same, and thereupon the register shall endorse the original deed or conveyance as duly registered in his county, designating the book in which the same is registered, and deliver the original deed to the party entitled thereto and register the same from the certified copy thereof to be retained by him for that purpose. (1899, c. 302; Rev., s. 2657; C.S., s. 3554.)

§ 161-16. Liability for failure to register.

In case of his failure to register any deed or other instrument within the time and in the manner required by G.S. 161-15, the register shall be liable, in an action on his official bond, to the party injured by such delay. (1868, c. 35, s. 10; Code, s. 3660; Rev., s. 2659; C.S., s. 3555.)

Local Modification. — Caswell: 1977, c. 391.

CASE NOTES

Failure to Register or Index as Breach of Bond. — The failure of the register of deeds to register instruments properly presented or his failure to properly index and cross-index them is a breach of his statutory bond, for which, under this section, he and the surety on his bond are liable to the person injured. *Bank of Spruce Pine v. McKinney*, 209 N.C. 668, 184 S.E. 506 (1936).

A register is liable for wrongly recording the amount of a mortgage to a person injured thereby. *State v. Young*, 106 N.C. 567, 10 S.E. 1019 (1890).

As to abatement of action by death, see *Wallace v. McPherson*, 139 N.C. 297, 51 S.E. 897 (1905).

§ 161-17. Papers filed alphabetically.

The register shall keep in files alphabetically labeled all original instruments delivered to him for registration, and on application for such originals by any person entitled to their custody, he shall deliver the same. (1868, c. 35, s. 11; Code, s. 3661; Rev., s. 2660; C.S., s. 3556.)

§ 161-18. Transcribe and index books.

The board of county commissioners, when they deem it necessary, may direct the register of deeds to transcribe and index such of the books in the register's office as from decay or other cause may require to be transcribed and indexed. They may allow him such compensation at the expense of the county for this work as they think just. The books when so transcribed and approved by the board shall be public records as the original books, and copies therefrom may be certified accordingly. (1868, c. 35, s. 12; Code, s. 3662; Rev., s. 2661; C.S., s. 3557.)

§ 161-19. Number of survey in grants registered.

The register of deeds in each county in this State, when grants have been registered without the number of tract or survey, shall place in the registration of the grants the number of the tract or survey, when the same shall be furnished him by the grantee or other person; and in registering any grant he shall register the number of the tract or survey. (1889, c. 522, s. 2; Rev., s. 2662; C.S., s. 3558.)

§ 161-20. Certificate of survey registered.

It shall be the duty of the register of deeds in each county, when any grant is presented for registration with a certificate of survey attached, to register such certificate of survey, together with all endorsements thereon, together with said grant, and a record of any certificate of survey so made shall be read in evidence in any action or proceeding: Provided, the failure to register such certificate of survey shall not invalidate the registration of the grant. (1905, c. 243; Rev., s. 2663; C.S., s. 3559.)

§ 161-21. General index kept.

The board of county commissioners, at the expense of the county, shall cause to be made and consolidated into one book a general index of all the deeds and other documents in the register's office, and the register shall afterwards keep up such index without any additional compensation. The board of county commissioners shall also have the authority to install the modern "Family" index system and wherever the "Family" index system is in use, no instruments shall be lawfully recorded until indexed and cross-indexed under the appropriate family name and the appropriate alphabetical subdivision of said family name, according to the particular system in use. (1868, c. 35, s. 13; Code, s. 3663; Rev., s. 2664; C.S., s. 3560; 1929, c. 327, s. 1.)

CASE NOTES

Cited in Woodley v. Gregory, 205 N.C. 280, 220 N.C. 550, 18 S.E.2d 225 (1942); McKnight 171 S.E. 65 (1933); Dorman v. Goodman, 213 v. M. & J. Fin. Corp., 247 F.2d 112 (4th Cir. N.C. 406, 196 S.E. 352 (1938); Tocci v. Nowfall, 1957).

§ 161-22. Index and cross-index of registered instruments.

The register of deeds shall provide and keep in his office full and complete alphabetical indexes of the names of the parties to all liens, grants, deeds, mortgages, bonds and other instruments of writing required or authorized to be registered; such indexes to be kept in well-bound books, and shall state in full the names of all parties, whether grantors, grantees, vendors, vendees, obligors or obligees, and shall be indexed and cross-indexed, within 24 hours after registering any instrument, so as to show the name of each party under the appropriate letter of the alphabet; and wherever the "Family" index system shall be in use, to also show the name of each party under the appropriate family name and the initials of said party under the appropriate alphabetical arrangement of said index; and all instruments shall be indexed according to the particular system in use in the respective office in which the instrument is filed for record. Reference shall be made, opposite each name to the page, title or number of the book in which is registered any instrument: Provided, that where the "Family" system hereinbefore referred to has not been installed, but there has been installed an indexing system having subdivisions

of the several letters of the alphabet, a registered instrument shall be deemed to be properly indexed only when the same shall have been indexed under the correct subdivision of the appropriate letter of the alphabet: Provided, further, that no instrument shall be deemed to be properly registered until the same has been properly indexed as herein provided: Provided, further, that in all counties where a separate index system is kept for chattel mortgages or other instruments concerning personal property, no instrument affecting the title to real estate shall be deemed to be properly registered until the same has been properly registered and indexed in the books and index system kept for real estate conveyances. A violation of this section shall constitute a misdemeanor.

Notwithstanding any provision to the contrary in this section or elsewhere in the General Statutes of North Carolina, the register of deeds may index deeds of trust in the name of the grantor and the trustee only.

The register of deeds of every county shall index any certificate filed in his office pursuant to G.S. 59-2, the Uniform Limited Partnership Act, only under the name of the partnership and of each of the general partners.

Every register of deeds shall cause a statement to be affixed or printed on the index page of the book or books in which limited partnership agreements are filed that such partnerships are indexed only under the name of the partnership and of each of the general partners. (1876-7, c. 93, s. 1; Code, s. 3664; 1899, c. 501; Rev., ss. 2665, 3600; C.S., s. 3561; 1929, c. 327, s. 2; 1967, cc. 443, 1262; 1973, c. 1136, ss. 1, 2.)

Local Modification. — Alamance: 1963, c. 739; 1965, cc. 17, 150; Buncombe: 1971, c. 1069; Duplin: 1963, c. 739; 1965, cc. 17, 150; Forsyth: 1963, c. 739; 1965, cc. 17, 150; 1971, c. 1069;

Guilford: 1963, c. 739; 1965, cc. 17, 150; Orange: 1971, c. 1069; Wake and Wayne: 1963, c. 739; 1965, cc. 17, 150.

CASE NOTES

The provisions of this section are mandatory. *Woodley v. Gregory*, 205 N.C. 280, 171 S.E. 65 (1933); *Cuthrell v. Camden County*, 254 N.C. 181, 118 S.E.2d 601 (1961).

And Strict Compliance Is Required. — In its interpretation of the recording statutes, the Supreme Court of this State has insisted on strict compliance. *McKnight v. M. & J. Fin. Corp.*, 247 F.2d 112 (4th Cir. 1957).

Section 7A-109 Distinguished. — Section 7A-109 does not require the cross-indexing of liens filed in the clerk's office and is not to be confused with the requirements for registering liens, deeds, etc., in the office of the register of deeds as provided by this section, which does require cross-indexing. *Saunders v. Woodhouse*, 243 N.C. 608, 91 S.E.2d 701 (1956).

Indexing and Cross-Indexing Essential to Proper Registration. — The indexing and cross-indexing of deeds or other instruments in writing filed with a register of deeds for registration, as required by § 161-14, is essential to their proper registration. *Bank of Spruce Pine v. McKinney*, 209 N.C. 668, 184 S.E. 506 (1936); *Johnson Cotton Co. v. Hobgood*, 243 N.C. 227, 90 S.E.2d 541 (1955).

The indexing of the deeds in the office of the register thereof is an essential part of the registration; and where the grantor's name has been

omitted from the book, a subsequent grantee of the same lands from the same grantor acquires the title from him. *Fowle & Son v. Ham*, 176 N.C. 12, 96 S.E. 639 (1918). See also, *Dorman v. Goodman*, 213 N.C. 406, 196 S.E. 352 (1938), commented on in 19 N.C.L. Rev. 77.

Indexing of chattel mortgages is an essential part of their registration. *Whitehurst v. Garrett*, 196 N.C. 154, 144 S.E. 835 (1928).

Priority of Second Mortgage Where First Mortgage Not Indexed. — A mortgage duly filed for registration and spread upon the registry, but not indexed or cross-indexed as required by this section, is not superior to the lien of a duly registered "second mortgage" on the same property. *Story v. Slade*, 199 N.C. 596, 155 S.E. 256 (1930).

Priority of Properly Indexed Chattel Mortgage Over General Mortgage. — Under this section and § 161-21, a duly recorded chattel mortgage which was indexed and cross-indexed in the general chattel mortgage index had priority over a mortgage covering the same personal property and also certain real estate which was previously executed and recorded and indexed in the general real estate mortgage index, but subsequently indexed and cross-indexed in the general chattel mortgage index. *Pruitt v. Parker*, 201 N.C. 696, 161 S.E. 212 (1931).

Effect of Filing at Same Instant of Time.

— Where a purchase-money mortgage and another mortgage given to secure cash payment for land were filed for registration at the same instant of time, neither mortgage had priority over the other, but both constituted a first lien on the land; the fact that one necessarily appeared before the other on the index of the day's transactions did not alter this result, since the record failed to show that the mortgages were not indexed at the same time. *Hood v. Landreth*, 207 N.C. 621, 178 S.E. 222 (1935).

There is no law requiring that cross-index show capacity in which the grantor acted in the making or execution of a deed. *Tocci v. Nowfall*, 220 N.C. 550, 18 S.E.2d 225 (1942).

Recording and indexing a mortgage executed by one not the owner of the property mentioned therein will not give constructive notice binding upon third parties dealing with the true owner. It is, at least as to third parties, as though no mortgage had been made. *McKnight v. M. & J. Fin. Corp.*, 247 F.2d 112 (4th Cir. 1957).

Effect of Failure to Index Mortgage in Name of Wife. — The proper indexing of a mortgage upon lands is an essential part of its registration, and where the husband and wife make a mortgage on her lands which is only indexed by the register of deeds in the name of the husband, it is not good as against a subsequent purchaser for value by deed from the husband and wife that had been properly indexed and registered. *Heaton v. Heaton*, 196 N.C. 475, 146 S.E. 146 (1929).

Index of Mortgage on Land Held by Entireties under "J.H. and Wife". — Where the husband and wife mortgage their lands held by the entireties and the mortgage was indexed and cross-indexed under "J.H. and wife," the name of the wife not appearing on the index although it appeared on the mortgage deed, the index was sufficient to put a reasonable man upon inquiry which would have disclosed the facts, and upon the husband's death and the wife's remarriage, a mortgage given by the wife and her second husband was subject to the first mortgage; the subsequent mortgagee was charged with notice thereof, and could not restrain the first mortgagee from foreclosing his mortgage on the ground of insufficient indexing, although the name of the wife should have appeared on the index. *West v. Jackson*, 198 N.C. 693, 153 S.E. 257 (1930).

Indexing and cross-indexing deed of trust given by tenant and remainderman in name of life tenant only followed by the words "et als.," was not a sufficient compliance with this section, and where another deed of trust was subsequently executed on the same lands

which was registered, indexed and cross-indexed in compliance with this section, the purchaser under foreclosure of the second deed of trust acquired title free from the lien of the improperly indexed prior deed of trust. *Woodley v. Gregory*, 205 N.C. 280, 171 S.E. 65 (1933), distinguishing *Prudential Ins. Co. v. Forbes*, 203 N.C. 252, 165 S.E. 699 (1932), in which the lien was indexed under "S.T. et ux."

Indexing of Chattel Mortgage Held Sufficient. — A proper index of chattel mortgages kept for years in the books wherein the instruments were registered was a substantial compliance with this section and § 161-21, where the record of the instrument could have been found with an ordinary search such as a man of ordinary prudence would have made. *Whitehurst v. Garrett*, 196 N.C. 154, 144 S.E. 835 (1928).

Where a chattel mortgage was duly transcribed upon the records in the office of the register of deeds in the chattel mortgage book and an erroneous book and page were given opposite the name of the grantor in the direct index and opposite the name of the grantee in the cross-index, but within two days of the time the chattel mortgage was transcribed on the records the cross-index was corrected, such indexing constituted a sufficient compliance with this section. *Johnson Cotton Co. v. Hobgood*, 243 N.C. 227, 90 S.E.2d 541 (1955).

Failure to Index as Breach of Bond. — Failure of the register of deeds to properly index and cross-index registered instruments is a breach of the bond required by § 161-4. *Bank of Spruce Pine v. McKinney*, 209 N.C. 668, 184 S.E. 506 (1936).

Liability on Bond for Failure to Index. — The failure of a register of deeds to properly index the registry of a mortgage renders him liable on his official bond to one injured by such neglect. *State v. Grizzard*, 117 N.C. 105, 23 S.E. 93 (1895). See *Watkins v. Simonds*, 202 N.C. 746, 164 S.E. 363 (1932).

Where Failure Is Proximate Cause of Injury. — While the register of deeds and the surety on his official bond are liable for his failure to index and cross-index instruments, such liability does not arise to the individual claiming damages therefor unless the default of the register in these particulars has been the proximate cause of injury to the claimant, and liability will not be imputed to the register of deeds when the negligence of the claimant or his agent has caused or concurred in causing the injury. *State v. Hester*, 177 N.C. 609, 98 S.E. 721 (1919), overruling *Davis v. Whitaker*, 114 N.C. 279, 19 S.E. 699 (1894). See also *Ely v. Norman*, 175 N.C. 294, 95 S.E. 543 (1918); *Fowle & Son v. Ham*, 176 N.C. 12, 96 S.E. 639 (1918).

§ 161-22.1. Index and cross-index of immediate prior owners of land.

Whenever, any deed or other instrument conveying real property by a trustee, mortgagee, commissioner, or other officer appointed by the court, or by the sheriff under execution, is filed with the register of deeds for the purpose of being recorded, it shall be the duty of the register of deeds to index and cross-index as grantors the names of all persons recited in said instrument to be the persons whose interest in such real estate is being conveyed or from whom the title of such real estate was acquired by the grantor in such instrument. (1947, c. 211, ss. 1, 2; 1969, c. 80, s. 5.)

§ 161-22.2. Parcel identifier number indexes.

(a) In lieu of the alphabetical indexes required by G.S. 161-21, 161-22 and 161-22.1, the register of deeds of any county in which unique parcel identifier numbers have been assigned to all parcels of real property may install an index by land parcel identifier numbers. For each instrument filed of record, the entry in a land parcel identifier number index must contain the following information:

- (1) The parcel identifier number of the parcel or parcels affected;
- (2) A brief description of the parcel or parcels, including subdivision block and lot number, if any;
- (3) A description of the type of instrument recorded and the date the instrument was filed;
- (4) The names of the parties to the instrument to the same extent as required by G.S. 161-22 and the legal status of the parties indexed;
- (5) The book and page number, or film reel and frame number, or other file number where the instrument is recorded.

(b) Every instrument affecting real property filed for recording in the office of such register of deeds shall be indexed under the parcel identifier number of the land parcel or parcels affected.

(c) The parcel identifier number index may be maintained in index books, on index cards, on film, or in computers or other automated data-processing machines. If the parcel identifier number index is maintained in a computer or other automated data-processing machine, the register of deeds shall, at least once each month, obtain from the computer or other data-processing machine a printed copy on paper or film of all index entries made since the previous printed copy was obtained. The printed copies shall be retained as security copies and shall not be altered or destroyed.

(d) Before a register of deeds may install a parcel identifier number index in lieu of the alphabetical indexes required by G.S. 161-22, the proposed index must be approved by the Secretary of the North Carolina Department of Administration. Before approving a parcel identifier number index, the Secretary must find that:

- (1) The requirements of this section, G.S. 161-22, and all other applicable indexing requirements of the North Carolina General Statutes and applicable judicial decisions will be met by the index;
- (2) Measures for the protection of the indexed information are such that computer or other machine failure will not cause an irremediable loss of the information;
- (3) Printed forms and index sheets used in the index permit a display of all information required by law and are otherwise adequate;
- (4) Any computer or other data-processing machine used and the program for the use of such machines are adequate to perform the tasks assigned to them;

- (5) Access to the information contained in the index can be obtained by the use of both a parcel identifier number and the name of any party to an instrument filed of record;
- (6) Any parcel identifier number either reflects the State plane coordinates of some point in the parcel, or is keyed to a map of the parcel that shows the location of the parcel within the county;
- (7) The parcel identifier numbering system is designed so that no parcel will be assigned the same number as any other parcel within the county;
- (8) The parcel identifier numbering system shows for parcels of land created by subdivision, the number of the parcel of land subdivided in addition to the numbers of the newly-created parcels;
- (9) The parcel identifier numbering system shows for parcels of land created by the combining of separate parcels, the numbers of the land parcels that were combined in addition to the number of the newly-created parcel;
- (10) The parcel identifier numbering system is capable of identifying condominium units and other separate legal interests that may be created in a single parcel of land;
- (11) The parcel identifier numbering system will meet the needs of the users as well as or better than the alphabetical indexes required by G.S. 161-21, 161-22 and 161-22.1.

The Secretary may require a register of deeds seeking approval of a parcel identifier number index to furnish him with any information concerning the index that is pertinent to the findings required for approval.

- (e) (1) An approved parcel identifier number index shall become effective as the official real property index of the county as of the first day of July following approval by the Secretary of Administration.
- (2) In any county in which a parcel identifier index is the official index, the register of deeds shall post notices in the alphabetical index books and at other appropriate places in his office stating that the parcel identifier number index is the official index and the date when the change became effective. (1977, c. 589; 1979, c. 700, s. 2.)

§ 161-23. Clerk to board of commissioners.

The register of deeds, or such other county officer or employee as the board of county commissioners shall designate in accordance with the provisions of G.S. 153-40, shall be ex officio clerk of the board of county commissioners, and as such shall perform the duties imposed by law or by order of said board. (Const., art. 7, s. 2; 1868, c. 35, s. 15; Code, s. 3656; Rev., s. 2666; C.S., s. 3562; 1955, c. 247, s. 2.)

Local Modification. — Guilford: 1955, c. 143; Wake: 1953, c. 644; 1959, c. 299. in this section, was repealed by Session Laws 1973, c. 822.

Editor's Note. — Section 153-40, referred to

CASE NOTES

The register of deeds is ex officio clerk to the board of county commissioners, and the two positions are not separate offices. *State v. Gouge*, 157 N.C. 602, 72 S.E. 994 (1911).

§ 161-24: Repealed by Session Laws 1973, c. 108, s. 99.

§ 161-25: Repealed by Session Laws 1973, c. 803, s. 36.

§ 161-26. Duties unperformed at expiration of term.

Whenever, upon the termination for any cause of the term of office of the register of deeds, it appears that he has failed to perform any of the duties of his office, the board of commissioners shall cause the same to be performed by another person or the successor of any such defaulting register. Such person or successor shall receive for his compensation the fees allowed for such services, and if any portion of the compensation has been paid to such defaulting register, the same may be recovered by the board of county commissioners, by suit on his official bond, for the benefit of the county or person injured thereby. (1868, c. 35, s. 14; Code, s. 3655; Rev., s. 2669; C.S., s. 3566.)

§ 161-27. Register of deeds failing to discharge duties; penalty.

If any register of deeds fails to perform any of the duties imposed or authorized by law, he shall be guilty of a misdemeanor, and besides other punishments at the discretion of the court, he shall be removed from office. (1868, c. 35, s. 18; Code, s. 3659; Rev., s. 3599; C.S., s. 3567.)

Cross References. — As to misconduct in public office and penalty therefor, see § 14-228 et seq. As to duty of register to issue marriage license, see § 51-8. As to penalty for issuing

license unlawfully, see § 51-17. As to duty of register in regard to strays, see § 79-1. As to duty of register in regard to clerk's bonds, see § 109-28.

CASE NOTES

A register of deeds is not liable under this section for issuing a marriage license for the marriage of an infant female under 18 years of

age without the written consent of her parent or guardian. *State v. Snuggs*, 85 N.C. 541 (1881).

§ 161-28. Validation of acts of assistant and deputy registers of deeds performed pending filling of vacancy in office of register of deeds.

Any and all acts and duties performed by any and all assistant or deputy registers of deeds appointed and acting under the provisions of G.S. 161-6 or any other provisions of law, general, local, or special, after a vacancy may have occurred from any cause in the office of register of deeds, including, but not restricted to, a vacancy occurring as a result of the death in office of any incumbent register of deeds, and before the board of county commissioners shall have filled such vacancy by the appointment of a successor and his qualification for office as required by law, under and pursuant to the provisions of G.S. 161-5 and any other applicable provisions of law, shall be and the same are hereby validated, ratified and confirmed to all intents and purposes as if performed by an incumbent in the office of register of deeds and to all intents and purposes as if performed under and pursuant to specific provisions of law authorizing and empowering the register of deeds, or any assistant or deputy registers of deeds, to perform all such acts and duties. The provisions of this validating act shall include, but not be restricted to, all acts and duties of the office of register of deeds, or of the office of assistant or deputy register of deeds,

as enumerated and set forth under the specific provisions of this Chapter, or under the provisions of any other general laws as set forth in the General Statutes of North Carolina, or in any other provisions of law, private, local or special. (1965, c. 835, s. 1.)

§ 161-29. Validating acts of assistant and deputy registers of deeds in failing to execute instruments in the name of the register of deeds.

(a) Any and all acts and duties performed by any and all assistant or deputy registers of deeds in executing any instrument, while acting under the provisions of G.S. 161-6 or any other provisions of law, general, local or special, which failed to substantially comply with G.S. 161-6(b), shall be and the same are hereby validated, ratified and confirmed to all intents and purposes as if executed in full compliance with G.S. 161-6(b).

(b) The provisions of this validating act shall include all acts and duties of the office of assistant or deputy register of deeds, as enumerated and set forth under the specific provisions of this Chapter, or under the provisions of any general laws as set forth in the General Statutes of North Carolina, or in any other provisions of law, private, local or special. (1973, c. 166, ss. 1, 2.)

§ 161-29.1. Validating acts of assistant and deputy registers of deeds performed before they were sworn into office.

All acts and duties heretofore performed by any and all assistant or deputy registers of deeds, who were appointed but who were not sworn into office or who were sworn into office after their duties commenced, shall be and the same are hereby validated, ratified, and confirmed to all intents and purposes as if performed by assistant or deputy registers of deeds who were theretofore formally appointed and sworn into office, as required by G.S. 161-6, or as required by any other provision of law. (1977, c. 124, s. 1.)

§ 161-30. Modernization of land records.

(a) The county commissioners of any county may require that the register of deeds shall not accept for registration any map or instrument affecting real property unless the following requirements are satisfied:

- (1) The name and address of the person to whom the map or instrument is to be returned is affixed on the face thereof.
- (2) The grantee's or owner's permanent mailing address is affixed on the face thereof.

(b) In any county in which parcel identifiers have been assigned to any of the real property situated within the county, the county commissioners may require that the register of deeds shall not accept for registration any map, deed, deed of trust or other instrument affecting real property unless the parcel identifier for all of the property described and affected is affixed and verified by the county on the face of the map or instrument or affixed and verified by the county as a part of the legal description contained in any instrument.

(c) Failure to comply with the provisions of subsections (a) and (b) above shall not affect the validity of any map or other instrument that is duly recorded. (1973, c. 992.)

Chapter 162.

Sheriff.

Article 1.

The Office.

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- 162-2. Disqualifications for the office.
- 162-3. Sheriff may resign.
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- 162-8. Sheriff to execute two bonds.
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Sec.

- 162-22. Custody of jail.
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- 162-31. [Repealed.]
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- 162-33. Prisoner may furnish necessities.
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- 162-38. Where no jail, courts may commit to jail of adjoining county.
- 162-39. Transfer of prisoners when necessary for safety and security; application of section to municipalities.
- 162-40. When jail destroyed, transfer of prisoners provided for.
- 162-41. [Repealed.]
- 162-42. Counties and towns may hire out certain prisoners.
- 162-43. Person hiring may prevent escape.
- 162-44. Sheriff to have control of prisoners hired out.
- 162-45 to 162-47. [Repealed.]
- 162-48. Taxes may be levied for expenses of convicts.
- 162-49. [Repealed.]

ARTICLE 1.

The Office.

§ 162-1. Election and term of office.

In each county a sheriff shall be elected by the qualified voters thereof, as is prescribed for members of the General Assembly, and shall hold his office for four years. (Const., art. 4, s. 24; Rev., s. 2808; C.S., s. 3925; 1981, c. 504, s. 10.)

Cross References. — As to form of oath required of sheriff before taking office, see § 11-11. As to other oaths required of public officers, see §§ 11-6, 11-7; N.C. Const., Art. VI,

§ 7. As to penalty for failure to take oath, see § 128-5.

Editor's Note. — A purported amendment to this section in Session Laws 1981, c. 504, s. 10,

was made effective upon certification of approval of the constitutional amendments proposed by ss. 1-3 of the act. The constitutional amendments were submitted to the people at an

election held June 29, 1982, and were defeated. Therefore, the 1981 amendment to this section never went into effect.

CASE NOTES

A sheriff is no longer considered to have a vested right in his office, nor is his tenure considered to be based upon a contract with the State. *Mial v. Ellington*, 134 N.C. 131, 46 S.E. 961 (1903), overruling *Hoke v. Henderson*, 15 N.C. 1 (1833) and all cases following it in holding a public office to be private property.

Effect of Constitutional Amendment on Term of Office. — The term of office of sheriffs-elect begins on the first Monday in December next ensuing their election, and the constitutional amendment changing the term of office of sheriffs from two to four years, approved by the voters in the election of 1938,

being in effect on the first Monday in December, the date of the beginning of the term of the sheriffs elected in that election, their term of office was four years in accordance with the amendment then in effect. *Freeman v. Cook*, 217 N.C. 63, 6 S.E.2d 894 (1940).

Proceedings in Nature of Quo Warranto. — An action by the Attorney General in the name of the people of the State, and of the person who claims the office of sheriff, is the proper mode of proceeding against the person who is alleged to be usurping it, to try the question as to which of the parties is entitled to the office. *Loftin v. Sowers*, 65 N.C. 251 (1871).

§ 162-2. Disqualifications for the office.

No person shall be eligible to the office of sheriff who is not of the age of 18 years, and has not resided in the county in which he is chosen for one year immediately preceding his election, or who is a member of the General Assembly, or practicing attorney, or who theretofore has been sheriff of such county and has failed to settle with and fully pay up to every officer the taxes which were due from him. (1777, c. 118, ss. 2, 4, P.R.; 1806, c. 699, s. 2, P.R.; 1829, c. 5, s. 6; 1830, c. 25, ss. 2, 3; R.C., c. 105, ss. 5, 6, 7; Code, ss. 2067, 2068, 2069; Rev., s. 2809; C.S., s. 3926; 1971, c. 1231, s. 1.)

CASE NOTES

Full Settlement of Public Funds Required of Incumbent. — A person, although elected by the qualified voters of a county to the office of sheriff, would not be eligible for said office, if he, having been theretofore sheriff of said county, had failed to settle with, and fully pay up to, every officer the taxes which were due from him. *Lenoir County v. Taylor*, 190 N.C. 336, 130 S.E. 25 (1925).

Incumbent to Produce Receipts. — A former sheriff must exhibit to the board of commissioners the receipts in full of the proper officers, for all public funds which he received, or ought to have received during his preceding official term, before he will be permitted to reenter upon a new term. *Colvard v. Board of*

Comm'rs, 95 N.C. 515 (1886); *Lenoir County v. Taylor*, 190 N.C. 336, 130 S.E. 25 (1925).

The fact that incumbent was able, ready and willing at the time of tendering his bond, to make settlement and payment of any liability on account of funds so received, does not dispense with the requirement that he shall produce receipts in full. *Colvard v. Board of Comm'rs*, 95 N.C. 515 (1886).

Requirement to Produce Receipts Constitutional. — The requirement that a sheriff-elect who has theretofore been sheriff produce his tax receipts is not unconstitutional. *State v. Dunn*, 73 N.C. 595 (1875).

Cited in *Pender County v. King*, 197 N.C. 50, 147 S.E. 695 (1929).

§ 162-3. Sheriff may resign.

Every sheriff may vacate his office by resigning the same to the board of county commissioners of his county; and thereupon the board may proceed to elect another sheriff. (1777, c. 118, s. 1, P.R.; 1808, c. 752, P.R.; R.C., c. 105, s. 15; Code, s. 2077; Rev., s. 2810; C.S., s. 3927.)

Local Modification. — Buncombe, Cabarrus and Iredell: 1981, c. 199.

§ 162-4: Repealed by Session Laws 1979, c. 518.

§ 162-5. Vacancy filled; duties performed by coroner or chief deputy.

If any vacancy occurs in the office of sheriff, the coroner of the county shall execute all process directed to the sheriff until the first meeting of the county commissioners next succeeding such vacancy, when the board shall elect a sheriff to supply the vacancy for the residue of the term, who shall possess the same qualifications, enter into the same bonds, and be subject to removal, as the sheriff regularly elected. If the board should fail to fill such vacancy, the coroner shall continue to discharge the duties of sheriff until it shall be filled.

In those counties where the office of coroner has been abolished, the chief deputy sheriff, or if there is no chief deputy, then the senior deputy in years of service, shall perform all the duties of the sheriff until the county commissioners appoint some person to fill the unexpired term. In all counties the regular deputy sheriffs shall, during the interim of the vacancy, continue to perform their duties with full authority. (1829, c. 5, s. 8; R.S., c. 109, s. 11; R.C., c. 105, s. 11; Code, s. 2071; Rev., s. 2811; C.S., s. 3929; 1973, c. 74.)

Local Modification. — Buncombe, Cabarrus and Iredell: 1981, c. 199.

CASE NOTES

Appointment by Commissioners for Unexpired Term Only. — In case of a vacancy in the sheriff's office, it is within the power of the board of county commissioners to appoint for the unexpired term only. *Worley v. Smith*, 81 N.C. 304 (1879).

Appointment by Commissioners Where Sheriff-Elect Fails to Qualify. — Where a sheriff-elect failed to qualify as sheriff for the term to which he had been elected, it became the duty of the board of commissioners forthwith to elect some suitable person in the county as sheriff for the unexpired term. *Lenoir County v. Taylor*, 190 N.C. 336, 130 S.E. 25 (1925).

As Where Incumbent in Arrears on Reelection. — It is the duty of the county commissioners to declare the sheriff's office vacant, and appoint someone for the unexpired term, whenever the incumbent thereof is found to be, on reelection, in arrears in his settlement of the

public taxes. *People ex rel. McNeill v. Green*, 75 N.C. 329 (1876).

Commissioners' Appointee Held Entitled to Office. — Where S was appointed sheriff in 1875, to fill a vacancy, and held the office until May, 1877, and in November, 1876, an election was held, and upon the result of certain legal proceedings in May, 1877, M was declared to be elected sheriff, but M failed to give bond, and the county commissioners declared a vacancy and appointed B to fill the same, it was held that S had no right to hold over until the next popular election, but that B was entitled to the office, having been elected by the commissioners. *State v. Bullock*, 80 N.C. 132 (1879).

Upon the insanity of the sheriff, his right to exercise the office ceases and the agency of his deputies is terminated, and his committal to a hospital for the insane and the appointment of a guardian for him are certainly at least prima facie evidence of such insanity. *Somers v.*

Board of Comm'rs, 123 N.C. 582, 31 S.E. 873 (1898).

Collection of Taxes When Sheriff Becomes Insane. — Upon the prima facie ascertainment of the insanity of the sheriff, or by inquisition of lunacy, the commissioners may declare the office vacant, under this section, but their failure to do so merely authorizes the coroner to perform the duties of sheriff proper, until such declaration, and does not cast upon him the right to collect the taxes, which goes to the sheriff's bondsmen for the current list, and after that devolves upon a tax collector chosen by the county commissioners. *Somers v.*

Board of Comm'rs, 123 N.C. 582, 31 S.E. 873 (1898). See also, *Greer v. City of Asheville*, 114 N.C. 678, 19 S.E. 635 (1894).

Upon the declaration of insanity, the sureties of the sheriff have no more rights than would have gone to them upon his death to collect the tax list then in his hands, and the commissioners are vested with the power of electing a tax collector for the ensuing year, unless and until the sheriff should be restored to reason. *Somers v. Board of Comm'rs*, 123 N.C. 582, 31 S.E. 873 (1898). See also, *Perry v. Campbell*, 63 N.C. 257 (1869); *Mc Neill v. Sommers*, 96 N.C. 467, 2 S.E. 161 (1887).

§ 162-5.1. Vacancy filled in certain counties; duties performed by coroner or chief deputy.

If any vacancy occurs in the office of sheriff, the coroner of the county shall execute all process directed to the sheriff until the board shall elect a sheriff to supply the vacancy for the residue of the term, who shall possess the same qualifications, enter into the same bonds, and be subject to removal, as the sheriff regularly elected. If the sheriff were elected as a nominee of a political party, the board of commissioners shall consult the county executive committee of that political party before filling the vacancy, and shall elect the person recommended by the county executive committee of that party, if the party makes a recommendation within 30 days of the occurrence of the vacancy. If the board should fail to fill such vacancy, the coroner shall continue to discharge the duties of sheriff until it shall be filled.

In those counties where the office of coroner has been abolished, the chief deputy sheriff, or if there is no chief deputy, then the senior deputy in years of service, shall perform all the duties of the sheriff until the county commissioners appoint some person to fill the unexpired term. In all counties the regular deputy sheriffs shall, during the interim of the vacancy, continue to perform their duties with full authority.

This section shall apply only in the following Counties: Alamance, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Cherokee, Clay, Cleveland, Davidson, Davie, Graham, Guilford, Haywood, Henderson, Jackson, Madison, McDowell, Mecklenburg, Moore, New Hanover, Polk, Randolph, Rockingham, Rutherford, Stanly, Stokes, Transylvania, Wake, and Yancey. (1981, c. 763, ss. 10, 14; c. 830.)

Editor's Note. — Session Laws 1981, c. 763, s. 15, makes the act effective July 1, 1981, and applicable to vacancies occurring on or after that date. Session Laws 1981, c. 763, s. 10, amended § 162-5, but the amendment has been codified as new § 162-5.1.

Session Laws 1981, c. 763, s. 13, provides: "All local acts in conflict with this act are repealed to the extent of the conflict."

Effect of Amendments. — The 1981 amendment made this section applicable to Avery County.

§§ 162-6, 162-7: Repealed by Session Laws 1973, c. 108, s. 99.

ARTICLE 2.

Sheriff's Bonds.

§ 162-8. Sheriff to execute two bonds.

The sheriff shall execute two several bonds, payable to the State of North Carolina, as follows:

One conditioned for the collection and settlement of county and other local taxes according to law, a sum not exceeding the amount of such county and other local taxes for the previous year.

The second bond, for the due execution and return of process, payment of fees and moneys collected, and the faithful execution of his office as sheriff, shall be not more than five thousand dollars (\$5,000), in the discretion of the board of county commissioners, and shall be conditioned as follows:

The condition of the above obligation is such that, whereas the above bounden is elected and appointed sheriff of County; if therefore, he shall well and truly execute and due return make of all process and precepts to him directed, and pay and satisfy all fees and sums of money by him received or levied by virtue of any process into the proper office into which the same, by the tenor thereof, ought to be paid, or to the person to whom the same shall be due, his executors, administrators, attorneys, or agents; and in all other things well and truly and faithfully execute the said office of sheriff during his continuance therein, then above obligation to be void; otherwise to remain in full force and effect. (1777, c. 118, s. 1, P.R.; 1823, c. 1223, P.R.; R.C., c. 105, s. 13; 1879, c. 109; Code, s. 2073; 1895, c. 270, ss. 1, 2; 1899, c. 54, s. 52; c. 207, s. 2; 1903, c. 12; Rev., s. 298; C.S., s. 3930; 1943, c. 543.)

Cross References. — As to statute of limitation on official bond, see § 1-50. As to official bonds generally, see §§ 109-1 et seq., 162-9 and 162-10. As to right of action on official bond, see § 109-34.

Legal Periodicals. — For note, "Extent of Liability on Sheriff's Official Bond," see 12 N.C.L. Rev. 394.

CASE NOTES

I. In General.

II. Liability on Bonds.

I. IN GENERAL.

No Right of Commissioners to Refuse Bonds. — When a sheriff-elect has fulfilled all the statutory requirements as to the execution of bonds, the county commissioners may not refuse said bonds and deprive the rightful holder of his office. *Sikes v. Commissioners of Bladen County*, 72 N.C. 34 (1875).

Where sheriff failed to comply with the requirements of this section, he was not entitled to have the county commissioners induct him into office, notwithstanding the fact that at the beginning of his term there was a tax collector in that county. *Colvard v. Board of Comm'rs*, 95 N.C. 515 (1886).

Ceremony and Registration Not Essential. — The ceremony of acknowledgment in open court, and registration, are not essential to

the validity of a sheriff's bond. *State v. Buchanan*, 53 N.C. 444 (1862).

Bond Held Valid as Voluntary Bond. — Where a bond made payable to the State was given by a sheriff for the discharge of public duties, but was not taken in the manner or by the persons designated by law to take it, it would nevertheless be good as a voluntary bond; being for the benefit of the State, the State would be presumed to have accepted it when it was delivered to third person for its benefit. *State v. McAlpin*, 26 N.C. 140 (1843).

If a sheriff voluntarily gives bond, with sureties, in an amount larger than prescribed by law, they will be liable for a breach thereof. *State Bank v. Twitty*, 9 N.C. 5 (1822); *Governor ex rel. Henderson v. Matlock*, 9 N.C. 366 (1823).

Form of Bond Held Sufficient. — A sheriff's bond to "his Excellency M.S. Captain General and Commander in Chief, in and over the State of North Carolina in the sum of \$10,000 to be paid to his Excellency, the Governor, his successor and assigns:" was a bond payable to the Governor in his official capacity, and was an official bond within the act of 1823, which was in force when it was taken. *Governor ex rel. Huggins v. Montford*, 23 N.C. 155 (1840).

Demand is not necessary before suit by county treasurer on sheriff's bond, as the sheriff is required by law to settle on or before a day certain. *McGuire v. Williams*, 123 N.C. 349, 31 S.E. 627 (1898).

As to proper relators for settlement of school taxes see *Tillery v. Candler*, 118 N.C. 888, 24 S.E. 709 (1896); *State v. Sutton*, 120 N.C. 298, 26 S.E. 920 (1897).

Previous Settlements Prima Facie Correct. — Previous settlements with the sheriff, when approved by the board of commissioners, are prima facie correct, and the burden of proving to the contrary rests upon them. *Commissioners of Iredell County v. White*, 123 N.C. 534, 31 S.E. 670 (1898).

The return of a sheriff that a fieri facias is satisfied is conclusive upon his sureties in an action on his official bond. *Governor ex rel. State Bank v. Twitty*, 12 N.C. 153 (1827).

Failure to Have Insolvent's Allowance Made. — Where a sheriff failed to settle for taxes within the time appointed by law and did not have allowance made him by the commissioners for insolvents at the time and in the manner prescribed by law, he could not have such allowances made by the court in an action brought against him on his official bond for the balance due by him on the tax list. *Board of Comm'rs v. Wall*, 117 N.C. 377, 23 S.E. 358 (1895).

Certified Copy as Evidence. — The office of the clerk of the superior court of the county for which one is sheriff is the proper place of deposit for the bond of such sheriff, and a copy of such bond, certified by such clerk, is competent evidence of its contents, even if the certificate does not state that it has been recorded. *State ex rel. Erwin v. Lowrance*, 64 N.C. 483 (1870).

Generally a plea in bar must be disposed of before a reference for an account can be made. *Commissioners of Iredell County v. White*, 123 N.C. 534, 31 S.E. 670 (1898).

Cited in *Governor ex rel. Arundell v. Jones*, 9 N.C. 359 (1823).

Stated in *State v. Corbett*, 235 N.C. 33, 69 S.E.2d 20 (1952).

II. LIABILITY ON BONDS.

Liability for Wrongs Under Color of Office. — Section 109-34 extends liability on sheriff's general official bond and imposes lia-

bility for wrongs committed under color of office. *Price v. Honeycutt*, 216 N.C. 270, 4 S.E.2d 611 (1939). See also annotations to § 109-34.

For cases formerly holding sureties on sheriff's official bond not liable for wrongs committed under color of office, see *Jones v. Montford*, 20 N.C. 69 (1838); *State v. Long*, 30 N.C. 415 (1848); *State v. Brown*, 33 N.C. 141 (1850); *State ex rel. Bd. of Comm'rs v. Sutton*, 120 N.C. 298, 26 S.E. 920 (1897); *State v. Leonard*, 68 F.2d 228 (4th Cir. 1934).

Only Duties Specifically Described Covered by Bond. — A sheriff and his sureties are liable on his official bond only for a breach of some duty specifically described therein. *Eaton v. Kelly*, 72 N.C. 110 (1875). But see, *Price v. Honeycutt*, 216 N.C. 270, 4 S.E.2d 611 (1939).

For cases construing general words "faithfully execute," etc., as not extending beyond duties specifically described in bond, see *Crumpler v. Governor*, 12 N.C. 52 (1826); *Governor ex rel. County Trustee v. Matlock*, 12 N.C. 214 (1827); *Davis v. Moore*, 215 N.C. 449, 2 S.E.2d 366 (1939).

Liability for Use of Excessive Force in Making Arrest. — Where complaint in an action against a sheriff in his official capacity and against his surety alleged that plaintiff was permanently injured by sheriff's use of excessive force in arresting him and that the arrest was wrongful and unlawful, defendants' demurrer to the complaint should have been overruled. *Price v. Honeycutt*, 216 N.C. 270, 4 S.E.2d 611 (1939).

Bond Held Broad Enough to Cover Money Collected. — A bond to serve process, collect and pay out moneys, etc., is broad enough to cover money collected for a town which it was the sheriff's duty to collect. *State v. Bradshaw*, 32 N.C. 229 (1849); *State v. McNeill*, 77 N.C. 398 (1877).

School Fund Included in County Bond. — It is immaterial whether the school fund is, strictly speaking, State taxes or county taxes, or both, as such funds are included in the "county" bond and the sheriff must account for them in settling his liability on that bond. *Tillery v. Candler*, 118 N.C. 888, 24 S.E. 709 (1896); *State v. Sutton*, 120 N.C. 298, 26 S.E. 920 (1897).

Settlement of One Tax Fund at Expense of Another. — Where a sheriff's settlement of one tax fund is made partially by an amount deducted from another tax fund, the settlement exonerates him and his surety from liability on the bond for the taxes settled; however, he and his sureties are liable in an action on the bond for the taxes misappropriated for such defalcation. *McGuire v. Williams*, 123 N.C. 349, 31 S.E. 627 (1898).

No Recovery of County Taxes Upon Process Bond. — The county tax could not be recovered of the sheriff upon the official bond required by the act of 1777, which was the process bond required by this section. Governor ex rel. Campbell v. Barr, 12 N.C. 65 (1826).

The sureties on the "process" bond are not liable for default as to county taxes. Crumpler v. Governor, 12 N.C. 52 (1826); State v. Sutton, 120 N.C. 298, 26 S.E. 920 (1897).

Bond Held Not to Cover Injury Caused by Prisoner While Unlawfully at Large as Trusty. — Where suit was brought on bond providing for liability if the sheriff failed to properly execute and return all process or properly pay all moneys received by him by virtue of any process, "and in all things well and truly and faithfully execute the said office of sheriff," the general provisions of the bond as to the sheriff's faithful performance of the duties of the office related to the specific obligations therein set out as to service and return of process, and neither the sheriff nor the sureties on his bond was liable thereon in a civil action for damages for a negligent injury inflicted by a prisoner lawfully entrusted to the custody of the sheriff while such prisoner was unlawfully permitted by the sheriff to be at large as a trusty. Sutton v. Williams, 199 N.C. 546, 155 S.E. 160 (1930).

Former Sheriff's Bond Held Not Breached by Act of Duty under Successor. — Where deputy of a sheriff received the note of a married woman for collection within a magistrate's jurisdiction and failed to collect the same during the sheriff's official term, but afterwards, when acting as the deputy of his successor, collected it and failed to pay over the money, there was no breach of the former sheriff's official bond. State v. Buchanan, 60 N.C. 93 (1863).

Commencement of Sureties' Liability. — Where under § 162-10 the board of county commissioners declared the office of sheriff vacant for his failure to give the bond required by this section and after appointing another, who likewise failed to give bond, and again appointed the former sheriff, who gave the necessary bonds and then qualified, his term was by virtue of his appointment by the board of county commissioners, and the liability of the sureties on his official bonds commenced from the time of his appointment. Pender County v. King, 197 N.C. 50, 147 S.E. 695 (1929).

Coverage of Bonds Limited to Years Stated. — Where an action was brought on the bonds of a sheriff given in 1872 and 1873 and conditioned only for those years, such bonds

could not be enlarged to embrace a default occurring in the year 1874 on the ground that the law required a bond for the principal's whole term of office. State v. McNeill, 77 N.C. 398 (1877).

What Sureties Liable for Taxes Received under Lists Furnished Preceding Year. — A sheriff's sureties for one year are not liable for any taxes received by him under the lists furnished in the preceding year; but the sureties of that year are liable. Fitts v. Hawkins, 9 N.C. 394 (1823).

Where sheriff, elected in 1872, continued to exercise duties of office after failure to renew his bond and produce his receipts, and was reelected in 1874, and failed to collect and pay over the taxes for that year, it was held that he was liable on his bond of 1872. State v. Pipkin, 77 N.C. 408 (1877). See also State v. McIntosh, 31 N.C. 307 (1848); State v. Clarke, 73 N.C. 255 (1875); State v. McNeill, 74 N.C. 535 (1876).

Liability on Earlier Bond Not Discharged by Giving of Subsequent Bond. — The various bonds separately required to be given by the sheriff under this section impose a distinct liability on the sureties on each bond separately for the terms of office for which given; hence, where a bond is given by the same surety for the same sheriff for more than one successive term, the giving of the bond for the succeeding term does not discharge the bond previously given, nor release the surety from liability thereon, and a separate cause of action will lie against the surety on the bond for each term. Pender County v. King, 197 N.C. 50, 147 S.E. 695 (1929).

Coverage of Bond When New Duty Added by Statute. — Where a statute requires a bond from an officer for the faithful discharge of his duty, and a new duty is attached to the office by statute, such bond, given subsequently to the latter statute, embraces such new duty, and is a security for its performance, unless when the new duty is attached a bond is required to be given specifically for its performance. State v. Bradshaw, 32 N.C. 229 (1849).

Surety's Liability Not Affected by Change in Sheriff's Compensation. — The liability of a surety on a sheriff's bond given under this section is not affected by the fact that the sheriff, pending the life of the bond, has been put upon a salary instead of a fee basis or that the amount of his salary has been changed under the authority of a statute. Pender County v. King, 197 N.C. 50, 147 S.E. 695 (1929).

§ 162-9. County commissioners to take and approve bonds.

The board of county commissioners in every county shall take and approve the official bonds of the sheriffs, which they shall cause to be registered and the originals deposited with the clerk of the superior court for safekeeping. The bonds shall be taken on the first Monday of December next after the election of sheriffs, but no board shall permit any former sheriff to give bonds for, or reenter upon the duties of the office, until he has produced before the board the receipt in full of every such officer for taxes which he has or should have collected. (1806, c. 699, s. 2, P.R.; 1830, c. 5, s. 5; R.C., c. 105, s. 6; 1868, c. 20, s. 32; 1876-7, c. 276, s. 5; Code, ss. 2066, 2068; Rev., s. 2812; C.S., s. 3931.)

CASE NOTES

Purpose. — The evident purpose of this section is only to protect and safeguard the public revenue and to ensure its honest collection and application. *Hudson v. McArthur*, 152 N.C. 445, 67 S.E. 995 (1910).

Execution and Approval of Bonds Essential. — To entitle a sheriff to be inducted into office, it is essentially necessary that the bonds must be executed by him and approved by the county commissioners. *Dixon v. Commissioners of Beaufort*, 80 N.C. 118 (1879).

Commissioners Held Not Liable to

Sureties for Failure to Demand Receipts. —

County commissioners were not liable to the sureties on the bond of a defaulting sheriff and tax collector whose defalcations they were required to pay for failure to demand sheriff's receipts in full for taxes collected the previous year before permitting him to receive the tax duplicate for the current year. *Hudson v. McArthur*, 152 N.C. 445, 67 S.E. 995 (1910).

Cited in *Pender County v. King*, 197 N.C. 50, 147 S.E. 695 (1929).

§ 162-10. Duty of commissioners when bonds insufficient.

It shall be the duty of the board of county commissioners whenever they shall be of opinion that the bonds of the sheriff of their county are insufficient, to notify the sheriff in writing to appear within 10 days and give other and better sureties, or justify the sureties on his bonds; and in case such sheriff shall fail to appear on notice, or fail to give sufficient bonds, or to justify his bonds, it shall be the duty of the board to elect forthwith some suitable person in the county as sheriff for the unexpired term, who shall give proper and lawful bonds and be subject to like obligations and penalties. (1879, c. 109, s. 2; Code, s. 2074; Rev., s. 2813; C.S., s. 3932.)

Cross References. — As to bonds required of sheriff, see §§ 162-5, 162-8.

CASE NOTES

Power to Fill Vacancy on Sheriff's Failure to Give Bond. — Upon the failure of a sheriff-elect to give bonds required by law, the board has power to elect some suitable person in the county as sheriff for the unexpired term. *Lenoir County v. Taylor*, 190 N.C. 336, 130 S.E. 25 (1925).

Right to Examine Sheriff and Vacate Office. — Under Art. VII, § 2, Const. 1868, the county commissioners had the right to summons the sheriff to justify or renew his official bond, whenever in fact or in their opinion the

sureties had become, or were liable to become insolvent, and it was not only the right but the duty of the commissioners to declare the office of sheriff vacant and appoint another person for the unexpired term whenever the incumbent took no notice of a summons by the commissioners to appear before them and justify or renew his bond. *People ex rel. McNeill v. Green*, 75 N.C. 329 (1876).

Cited in *Pender County v. King*, 197 N.C. 50, 147 S.E. 695 (1929).

§ 162-11. Liability of commissioners.

If any board of county commissioners shall fail to comply in good faith with the provisions of this Article, they shall be liable for all loss sustained in the collection of taxes, on motion to be made by the district attorney of the district. (1868-9, c. 245, s. 3; Code, s. 2075; Rev., s. 2814; C.S., s. 3933; 1973, c. 47, s. 2.)

CASE NOTES

No Power in Court to Compel Approval of Bonds. — The boards of county commissioners are liable in damages if they knowingly accept insufficient bonds; approval or disapproval of such bonds is within their discretion, and the courts cannot compel them to approve and receive bonds which they find to be insolvent or insufficient. *State v. King*, 117 N.C. 117, 23 S.E. 92 (1895).

Liability of Board on Failure to Comply. — If any board of commissioners fail to comply with the provisions of the statute, they shall be liable for all loss sustained in the collection of taxes, on motion to be made by the solicitor (now district attorney) of the district. *Lenoir*

County Bd. of Comm'rs v. Taylor, 190 N.C. 336, 130 S.E. 25 (1925).

Imposition of Only One Penalty. — The statutes requiring sheriff to annually renew his official bonds and, in addition, to produce receipts for the public moneys collected by him, providing that, in default thereof it shall be the duty of the board of county commissioners to declare the office vacant, are intended to effectuate the same purpose; therefore a member of the board of county commissioners is liable for only one penalty for failure to perform his duty in that connection. *Bray v. Barnard*, 109 N.C. 44, 13 S.E. 729 (1891).

§ 162-12. Liability of sureties.

The sureties to a sheriff's bond shall be liable for all fines and amercements imposed on him, in the same manner as they are liable for other defaults in his official duty. (1829, c. 33; R.C., c. 105, s. 14; Code, s. 2076; Rev., s. 2815; C.S., s. 3934.)

Cross References. — As to execution of sheriff's bonds, see § 162-8 and notes thereto.

CASE NOTES

Liability for Amercements. — The sureties to a sheriff's bond, with a condition in the ordinary form, are liable for an amercement of the sheriff for a default committed during his official year, even though the final judgment for the amercement may not have been rendered until after the expiration of the year. *Governor ex rel. Huggins v. Montford*, 23 N.C. 155 (1840).

Records of Proceedings for Amercement as Evidence. — The records of the proceedings against a sheriff for an amercement imposed upon him are not evidence against his sureties to prove his default, but they are admissible against them to prove the fact of the existence

of the amercement itself. *Governor ex rel. Huggins v. Montford*, 23 N.C. 155 (1840).

Judgment of an amercement against a sheriff is not conclusive against sureties on his bond. They may show that the judgment was either fraudulently or improperly obtained against their principal. *State v. Woodside*, 29 N.C. 296 (1847).

Return Conclusive. — A sheriff cannot be heard to deny or contradict his return; as to him it is conclusive, and he and the sureties upon his bond are liable to the plaintiff in the execution for the sums so endorsed. *Walters v. Moore*, 90 N.C. 41 (1884).

ARTICLE 3.

*Duties of Sheriff.***§ 162-13. To receipt for process.**

Every sheriff, coroner or constable shall, when requested, give his receipt for all original and mesne process placed in his hands for execution, to the party suing out the same, his agent or attorney; and such receipt shall be admissible as evidence of the facts therein stated, against such officer and his sureties, in any suit between the party taking the receipt and such officer and his sureties. (1848, c. 97; R.C., c. 105, s. 18; Code, s. 2081; Rev., s. 2816; C.S., s. 3935.)

Cross References. — As to duty when warrant of attachment is directed to sheriff, see § 1-440.12. As to duties and liabilities in claim and delivery, see §§ 1-476, 1-477. As to duty to adjourn court in absence of judge, see § 7A-96. As to attachment for failure to obey writ of

habeas corpus, see § 17-16. As to attachment against sheriff to be directed to coroner, see § 17-18. As to official deed, when sheriff selling or empowered to sell is out of office, see § 39-5. As to collection of inheritance taxes by sheriff and commission therefor, see § 105-17.

CASE NOTES

This section obviously has no reference to final process. *Wyche v. Newsom*, 87 N.C. 142 (1882).

§ 162-14. Execute process; penalty for false return.

Every sheriff, by himself or his lawful deputies, shall execute and make due return of all writs and other process to him legally issued and directed, within his county or upon any river, bay or creek adjoining thereto, or in any other place where he may lawfully execute the same. He shall be subject to the penalty of forfeiting one hundred dollars (\$100.00) for each neglect, where such process shall be delivered to him 20 days before the sitting of the court to which the same is returnable, to be paid to the party aggrieved by order of court, upon motion and proof of such delivery, unless the sheriff can show sufficient cause to the court at the next succeeding session after the order.

For every false return, the sheriff shall forfeit and pay five hundred dollars (\$500.00), one moiety thereof to the party aggrieved and the other to him that will sue for the same, and moreover be further liable to the action of the party aggrieved, for damages. (1777, c. 218, s. 5, P.R.; 1821, c. 1110, P.R.; R.C., c. 105, s. 17; 1874, c. 33; Code, s. 2079; 1899, c. 25; Rev., s. 2817; C.S., s. 3936; 1973, c. 108, s. 98.)

Cross References. — As to service of process and return, see Rule 4 of the Rules of Civil Procedure (§ 1A-1). As to failure to return process or making false return, see also § 14-242. As to penalty for false return to writ of habeas

corpus, see § 17-27. As to return of process by mail, see § 162-16. As to liability of outgoing sheriff for unexecuted process, see § 162-17.

Legal Periodicals. — For a survey of 1977 law on torts, see 56 N.C.L. Rev. 1136 (1978).

CASE NOTES

- I. In General.
- II. Failure to Make Due Return.
- III. False Returns.

I. IN GENERAL.

This section authorizes the following

penalties and remedies: 1) An amercement nisi for \$100.00 on "motion and proof" by the party aggrieved, for failure to "execute and

make due return"; 2) A qui tam action for penalty of \$500.00 for a "false return," one moiety to the party aggrieved, and the other to anyone who will sue for the same; 3) An action for damages by the party aggrieved; 4) An amercement nisi for \$100.00 in justices' courts, on "motion and proof" by the party aggrieved, for "neglect or refusal" to execute process of such court. *Piedmont Mfg. Co. v. Buxton*, 105 N.C. 74, 11 S.E. 264 (1890); *Rollins v. Gibson*, 293 N.C. 73, 235 S.E.2d 159 (1977).

The public policy which prompted the enactment of this section is no less valid today, and the need for such a statute is no less real. *Brogden Produce Co. v. Stanley*, 267 N.C. 608, 148 S.E.2d 689 (1966).

The courts have no "dispensing power" to relieve a sheriff from the penalty imposed by this section. *Swain v. Phelps*, 125 N.C. 43, 34 S.E. 110 (1899); *Brogden Produce Co. v. Stanley*, 267 N.C. 608, 148 S.E.2d 689 (1966).

"Return" Defined. — The term "return" means that the process must be brought back and produced in the court whence it issued with such endorsement as the law requires. *Watson v. Mitchell*, 108 N.C. 364, 12 S.E. 836 (1891).

The term "return" implies that the process is taken back, with such endorsements as the law requires, to the place from which it originated. *Brogden Produce Co. v. Stanley*, 267 N.C. 608, 148 S.E.2d 689 (1966).

This section imposes no undue hardship upon sheriffs. *Brogden Produce Co. v. Stanley*, 267 N.C. 608, 148 S.E.2d 689 (1966).

Section Not Applicable to Federal Marshal. — Motion founded upon this section could not be allowed in federal district court, as such court has no power to enforce against a federal marshal a penalty imposed by the law of this State upon a sheriff for neglect of duty. *Lowry v. Story*, 31 F. 769 (W.D. N.C. 1887).

Who May Issue Process. — Process can be issued by the mayor of a town or city to any lawful officer such as a sheriff, whose duty it then becomes to execute and make due return. *State v. Cainan*, 94 N.C. 880 (1886); *Paul v. Washington*, 134 N.C. 363, 47 S.E. 793 (1904).

Applied in East Carolina Lumber Co. v. West, 247 N.C. 699, 102 S.E.2d 248 (1958).

II. FAILURE TO MAKE DUE RETURN.

Essential Elements. — Delivery of process to officer and his failure to execute its commands and make due return are essential ingredients in the criminal dereliction of duty followed by penal consequences summarily

enforced. *Yeargin v. Wood*, 84 N.C. 326 (1881).

The sheriff must be diligent in both the execution and return of process or suffer the \$100.00 penalty provided in this section. *Rollins v. Gibson*, 293 N.C. 73, 235 S.E.2d 159 (1977).

Making Due Return Is an Affirmative Requirement. — The requirements that an officer having process in hand for service must note on the process the date received by him under § 1A-1, Rule 4 and make due return thereof under § 162-14 are affirmative requirements of these sections. *State v. Moore*, 230 N.C. 648, 55 S.E.2d 177 (1949).

What Constitutes Due Return. — Due return of process means a proper return, made in proper time. *Waugh v. Brittain*, 49 N.C. 470 (1857).

Due Return May Be Mixed Question of Law and Fact. — Whether, in any particular case, a due return has been made, may involve questions both of law and fact. Whether the return is a proper one in form and substance is a question of law to be decided by the court, but whether it was made in proper time is a question of fact to be decided by the jury. *Waugh v. Brittain*, 49 N.C. 470 (1857).

Whether the return was made in proper time is a question of fact to be decided by the jury. *Brogden Produce Co. v. Stanley*, 267 N.C. 608, 148 S.E.2d 689 (1966).

Section Prescribes Exclusive Method of Recovering Penalty. — The method by which a sheriff may be amerced for unlawfully failing to execute a warrant, as prescribed by this section, is alone to be followed in an action for a penalty brought thereunder. *Walker v. Odom*, 185 N.C. 557, 118 S.E. 2 (1923).

This section provides only for an amercement, on motion, for the failure of a sheriff to make due and proper return of process. *Piedmont Mfg. Co. v. Buxton*, 105 N.C. 74, 11 S.E. 264 (1890). See also, *Harrell v. Warren*, 100 N.C. 259, 6 S.E. 777 (1888), overruled on other grounds in *Rollins v. Gibson*, 293 N.C. 73, 235 S.E.2d 159 (1977).

A civil action cannot be resorted to to recover penalty prescribed by this section. *Piedmont Mfg. Co. v. Buxton*, 105 N.C. 74, 11 S.E. 264 (1890).

Controlling Effect of Exemption Laws. — The provisions of the exemption laws (N.C. Const., Art. X, and the statutes passed in pursuance thereof) so modify Battle's Revisal, c. 106, § 15 (now this section) as not to authorize the infliction of the penalty therein imposed for obedience to said exemption laws. *Richardson v. Wicker*, 80 N.C. 172 (1879).

An amercement is a penalty for a fixed sum without regard to the amount of plaintiff's damage. *Thompson v. Berry*, 65 N.C. 484 (1871); *Brogden Produce Co. v. Stanley*, 267 N.C. 608, 148 S.E.2d 689 (1966).

Purpose of Penalty. — The \$100.00 is given to the plaintiff in the execution upon the theory that he is aggrieved, but chiefly as a punishment to the officer and to stimulate him to active obedience. *Brogden Produce Co. v. Stanley*, 267 N.C. 608, 148 S.E.2d 689 (1966).

Sheriff cannot be amerced if he returns an execution within the time prescribed by law, even though he fails to return the money levied thereon into court or pay it to the party or his attorney. *Davis v. Lancaster*, 5 N.C. 255 (1809); *Cockerham v. Baker*, 52 N.C. 288 (1859).

Time for Return. — Executions shall be returnable to the term (session) of the court next after that from which they bear teste; the sheriff is allowed all the days of the term (session) to return an execution, unless he be ruled, upon motion and cause shown, to return it on some intermediate day. *Person v. Newsom*, 87 N.C. 142 (1882); *Turner v. Page*, 111 N.C. 291, 16 S.E. 174 (1892).

A sheriff who fails to make return of process before the adjournment of the court to which it is returnable is subject to the penalty prescribed by statute. *Boyd v. Teague*, 111 N.C. 246, 16 S.E. 338 (1892); *Turner v. Page*, 111 N.C. 291, 16 S.E. 174 (1892).

Process Must Be Delivered 20 Days before Session. — To bring a delinquent officer within the provisions of this section and subject him to its pains, process must be delivered to him 20 days before it is to be returned, and there must be "proof of such delivery." *Yeargin v. Wood*, 84 N.C. 326 (1881).

Delivery of Process by Mail. — The proof was sufficient for an amercement nisi under former rulings where it was shown that the process in an envelope properly directed and with postage prepaid was deposited in the post office in time to enable it to reach its destination in the due course of the mail 20 days before the session of the court to which it was returnable. *State v. Latham*, 51 N.C. 233 (1858); *Yeargin v. Wood*, 84 N.C. 326 (1881).

If a clerk sent a writ to the sheriff of another county, enclosed in a stamped envelope, in due time to reach him in the regular course of the mails, 20 days before the sitting of the court to which it was returnable, it would be sufficient to authorize a judgment nisi for an amercement for the nonreturn of the process. *State v. Latham*, 51 N.C. 233 (1858); *Cockerham v. Baker*, 52 N.C. 288 (1859).

Making Return by Mail. — If the mail can be used as a medium by which process can be transmitted to a sheriff, so as to charge him

with its reception, it would seem that he ought to be allowed to adopt the same means for making his return, at least so far as the due time of the return is involved. In *Waugh v. Brittain*, 49 N.C. 470 (1857), it was intimated that he might do so, and that he would be excused if the letter endorsing the process, with his return upon it, was properly mailed in due time. *Cockerham v. Baker*, 52 N.C. 288 (1859), *aff'd*, *Yeargin v. Wood*, 84 N.C. 326 (1881).

Sheriff who goes out of office before return day of writ is not subject to amercement for failure to return it. *McLin v. Hardie*, 25 N.C. 407 (1843); *State v. Woodside*, 29 N.C. 296 (1847).

Until his fees are paid or tendered, sheriff is not bound to execute process. *Johnson v. Kenneday*, 70 N.C. 435 (1874).

But Is Not Excused Thereby for Failure to Make Return. — Though a sheriff is not required to execute process until his fees are paid or tendered by the person at whose expense the service is to be rendered, he is not excused thereby for a failure to make a return of process; for, if he has any excuse for not executing the writ, he must state it in his return. *Jones v. Gupon*, 65 N.C. 48 (1871).

The highest considerations of public policy require that sheriffs shall not be negligent in the service of process committed to them. Ignorance of the officer is no excuse. Whether any damage was done to the plaintiff is immaterial. The amercement is for failure to discharge an official duty. *Brogden Produce Co. v. Stanley*, 267 N.C. 608, 148 S.E.2d 689 (1966).

It is no excuse that the sheriff has no corrupt or bad intentions and that the plaintiff is saved from any resulting injury by the voluntary appearance of the defendant. *Brogden Produce Co. v. Stanley*, 267 N.C. 608, 148 S.E.2d 689 (1966).

Endorsing Process "Served". — While it is a better practice for officers to make their returns of process show with particularity upon whom and in what manner the process was served, their endorsement "served" implies service as the law requires, and such return, signed by the officer in his official capacity, is sufficient to show prima facie service at least; error in the date of service is immaterial. *State v. Moore*, 230 N.C. 648, 55 S.E.2d 177 (1949).

Endorsing Execution "Satisfied". — Where a sheriff merely endorsed upon an execution the word "satisfied," without stating what disposition he had made of the fund, the return was nevertheless sufficient in law to relieve him from an amercement for not making due return. *Wyche v. Newsom*, 87 N.C. 142 (1882).

Order Restraining Further Prosecution of Action in Which Execution Issued. — Where sheriff failed to serve execution of a judgment against defendant in summary eject-

ment to remove her from land because of an intervening order restraining plaintiff from further prosecuting the summary ejectment, issued in a prior pending action to try title, motion to amerce the sheriff for failure to serve the execution was properly denied, since the sheriff had shown sufficient cause for failing to serve the execution. *Massengill v. Lee*, 228 N.C. 35, 44 S.E.2d 356 (1947).

An agreement to suspend collection of the debt, or to stay the execution, as it is commonly called, even if communicated to the sheriff, gives no authority to the officers not to return the writ. *Brogden Produce Co. v. Stanley*, 267 N.C. 608, 148 S.E.2d 689 (1966).

Where a scire facias was issued on a judgment, the sheriff was liable to amercement for failure to return the process, even though the parties had agreed, while it was in the sheriff's hands, that the collection of the money should be suspended, so as to enable them to make a full settlement. *Morrow v. Allison*, 33 N.C. 217 (1850).

Belief That Lien Was Divested by Subsequent Legislation. — A sheriff is liable to be amerced for a return on a vend. ex. of "no goods," etc., after levy, although made in the belief that the lien has been divested by subsequent legislation. *McKeithan v. Terry*, 64 N.C. 25 (1870).

Erroneous Impression of Return Day. — It is not a defense to an action to recover the penalty prescribed by the section that sheriff had the erroneous impression that the summons was returnable at a later date, and that his failure to make his return within the time required was occasioned by endeavoring to obtain service. *Bell v. Wycoff*, 131 N.C. 245, 42 S.E. 608 (1902).

Refusal or Inability of Clerk to Receive Return. — It is not a sufficient excuse to an officer for neglecting to return a process to the proper term (session) of the court that he had tendered it to the clerk, who had refused to receive it, nor that the clerk had died during the term (session). *Hamlin v. March*, 31 N.C. 35 (1848).

Failure to Collect Where Debtor Had No Property in Excess of Exemptions. — A sheriff was not liable to amercement for failure to have in court the amount of an execution issued on a judgment for a debt contracted prior to 1868, when the judgment debtor had no property in excess of his exemptions, under the applicable law. *Richardson v. Wicker*, 80 N.C. 172 (1879).

Officer Held Liable for Penalty. — A sheriff who had not sold property under execution nor made return on writs of venditioni exponas should be amerced. *Anonymous*, 2 N.C. 415 (1796).

A return by sheriff on a fieri facias that he

had levied on goods subject to older executions, without stating whether he had sold the property seized or still held it, was not a due return, and subjected him to amercement. *Buckley v. Hampton*, 23 N.C. 322 (1840).

A return of a sheriff to a fieri facias that "he had made a levy on personal property and taken a forthcoming bond, but had not sold it, that the obligors did not deliver the property on the day, and that, after the day, it was too late to make a sale," was not such a "due return" of the process as will exempt the sheriff for amercement. *Frost v. Rowland*, 27 N.C. 385 (1845).

Officer Held Not Liable for Penalty. — Where summons sent by mail did not reach officer until six days before the sitting of the court to which it was returnable, and he served it in two days thereafter, he was not liable to amercement. *Yeargin v. Wood*, 84 N.C. 326 (1881).

Where a sheriff endorsed upon an execution the words "debt and interest due to sheriff, costs paid into office", and upon another the word "satisfied," without stating what disposition he had made of the fund, the returns were held to be sufficient in law to relieve the sheriff from amercement for not making "due return." *Person v. Newsom*, 87 N.C. 142 (1882).

Jurisdiction of Superior Court. — Where the sheriff has laid himself liable to the penalty for failure to make due return of process, the superior court has jurisdiction to give the judgment nisi on motion. *Thompson v. Berry*, 64 N.C. 79 (1870).

Party Aggrieved Is Entitled to Judgment Nisi as of Course. — Upon motion and proof that a sheriff has failed to return process delivered to him, as directed in the process and required by law, the party aggrieved is entitled, as of course, to judgment nisi against him. *Brogden Produce Co. v. Stanley*, 267 N.C. 608, 148 S.E.2d 689 (1966).

And Penalty Is Imposed Unless Sheriff Shows Cause at Next Succeeding Term to Vacate Amercement. — The penalty is imposed upon the delinquency of the sheriff for failing to make due return of the execution unless, at the next succeeding term after judgment nisi is entered against him, he shows to the court sufficient cause to vacate the tentative amercement. *Brogden Produce Co. v. Stanley*, 267 N.C. 608, 148 S.E.2d 689 (1966).

Making Judgment Nisi Absolute. — Where judgment nisi for \$100.00 is rendered against a sheriff for failure to make due return of process, and no sufficient reason is shown for such failure, the judgment should be made absolute. *Graham & Co. v. Sturgill*, 123 N.C. 384, 31 S.E. 705 (1898).

Setting Aside Judgment Absolute. — In a proceeding to enforce the statutory penalty against a sheriff for failure to make due return

of process, it is not error to set aside a judgment absolute where it appears that he had no notice of the rule upon him to show cause. *Yeargin v. Wood*, 84 N.C. 326 (1881).

Amercement at Subsequent Session. — A sheriff may be amerced for a nonreturn of process at a term (session) subsequent to that at which the process was returnable. *Hyatte v. Allison*, 48 N.C. 533 (1856).

A sheriff who fails to execute and return process shall be subject to a penalty to be paid to the party aggrieved, by order of the court, on motion and proof that process was delivered to him before the sitting of the court to which it was returnable, unless the sheriff shows sufficient cause to the court for his failure "at the court next succeeding such order." And there is nothing in the statute to prevent a sheriff who does not return process from being amerced at a subsequent term (session) to that to which the return should have been made. *Halcombe v. Rowland*, 30 N.C. 240 (1848).

As to the time of trial, see *Hogg v. Bloodworth*, 1 N.C. 593 (1804).

Effect of Surplusage in Affidavit. — When a prima facie case is made against a sheriff, either upon affidavit or other sufficient proof, a rule nisi is granted as of course, and surplusage in the affidavit will not impair its effect. *Ex parte Schenck*, 63 N.C. 601 (1869).

Trial on Affidavits. — On a scire facias against a sheriff to amerce him for not returning an execution into the Supreme Court, whence it issued, issues of fact must be tried on affidavits, as the court has no power to call a jury. *Kea v. Melvin*, 48 N.C. 243 (1855).

III. FALSE RETURNS.

This section applies to process issued in criminal, as well as civil, proceedings, and *Martin v. Martin*, 50 N.C. 349 (1858) and *Harrell v. Warren*, 100 N.C. 259, 6 S.E. 777 (1888) are hereby overruled. *Rollins v. Gibson*, 293 N.C. 73, 235 S.E.2d 159 (1977).

A return untrue in fact is a false return within the intent and meaning of this section. *Crowder v. Jenkins*, 11 N.C. App. 57, 180 S.E.2d 482 (1971).

The importance of veracity of quasi-judicial records led to adoption of the stringent rule that every untrue return, in fact, is a false return within the purview of this section. *Rollins v. Gibson*, 293 N.C. 73, 235 S.E.2d 159 (1977).

Falseness in Point of Fact Essential to Liability. — For the sheriff to incur the heavy \$500.00 penalty, the return must be false in point of fact, and not false merely as importing, from facts truly stated, a wrong legal conclusion. *Rollins v. Gibson*, 293 N.C. 73, 235 S.E.2d 159 (1977).

To subject one to the heavy penalty of this section, the falseness must be stated as a fact and not merely by way of inference from facts.

Rollins v. Gibson, 293 N.C. 73, 235 S.E.2d 159 (1977).

In order to render a sheriff liable for a false return under the section, falsehood must be found in the statement of facts in the return. *Harrell v. Warren*, 100 N.C. 259, 6 S.E. 777 (1888), overruled on other grounds in *Rollins v. Gibson*, 293 N.C. 73, 235 S.E.2d 159 (1977).

A false inference in a return will render the return false only if the facts are omitted from the return. Where the facts underlying the inference or conclusion are truly stated in the return there can be no liability for a false return, even though the sheriff may still be exposed to a lesser liability for failing to execute the writ or for not making a proper and legal return. *Rollins v. Gibson*, 293 N.C. 73, 235 S.E.2d 159 (1977).

Conclusion that Defendant Cannot Be Found as Basis for False Return. — The conclusion found in a return that the defendant "after a due and diligent search is not to be found," without more, if untrue, may be the basis for a finding of a false return. *Rollins v. Gibson*, 293 N.C. 73, 235 S.E.2d 159 (1977).

A sheriff can be liable under this section for a return of criminal process which states only that a defendant "after due and diligent search is not to be found," when a jury finds, upon sufficient competent evidence, that the return is false. *Rollins v. Gibson*, 293 N.C. 73, 235 S.E.2d 159 (1977).

The return of "Not to be found" on a *capias*, because of defendant's being out of the State at the time the return is made, is not true if the officer had an opportunity of making the arrest previously, while the process was in his hands. *Martin v. Martin*, 50 N.C. 349 (1858), overruled on other grounds in *Rollins v. Gibson*, 293 N.C. 73, 235 S.E.2d 159 (1977). See also, *Tomlinson v. Long*, 53 N.C. 469 (1862); *Harrell v. Warren*, 100 N.C. 259, 6 S.E. 777 (1888), overruled on other grounds in *Rollins v. Gibson*, 293 N.C. 73, 235 S.E.2d 159 (1977).

Damage to Plaintiff Immaterial. — It is immaterial in a civil action for the \$500.00 penalty whether any damage was done to the plaintiff. *Rollins v. Gibson*, 293 N.C. 73, 235 S.E.2d 159 (1977).

The \$500.00 penalty is not intended to be a substitute for damages to an injured party, as this section allows the party aggrieved to bring a separate action for damages. *Rollins v. Gibson*, 293 N.C. 73, 235 S.E.2d 159 (1977).

Mistake, Inadvertence and Intent Immaterial. — Every return untrue in fact is a false return within this section, even though the officer may be mistaken in the matter or insert the fact in his return by inadvertence. It is immaterial that the officer had no selfish purpose to subserve, or was unmoved by any criminal intent. If in returning to the court his action under an execution, his return is false in its

facts or any of the facts touching the things done under it, he is as well exposed to the penalty of \$500.00 as if the false facts were willfully and corruptly inserted. *Crowder v. Jenkins*, 11 N.C. App. 57, 180 S.E.2d 482 (1971); *Rollins v. Gibson*, 293 N.C. 73, 235 S.E.2d 159 (1977).

If a return is false in fact, the officer's inadvertence or mistake is no excuse or protection, even though no intentional deceit was practiced. *Harrell v. Warren*, 100 N.C. 259, 6 S.E. 777 (1888), overruled on other grounds in *Rollins v. Gibson*, 293 N.C. 73, 235 S.E.2d 159 (1977).

A return made by a sheriff that is false in fact, even though the officer was mistaken in the manner as to which he made his return, will nevertheless, subject him to the penalty for a false return. *Albright v. Tapscott*, 53 N.C. 473 (1862).

Officer Held Liable for False Return. — Where a sheriff returned upon a fieri facias two credits for money received thereon at different times, but suppressed a third credit, and marked his return not satisfied, such return was false, and subjected him to the penalty of \$500.00. *Martin v. Martin*, 50 N.C. 346 (1858).

Officer Held Not Liable for False Return. — Where a sheriff endorsed truly the day on which he received a declaration in ejectment, returnable to a county court, and returned on the same "too late to hand," although five days intervened between the day endorsed and the return day, he was not liable for the penalty for making a false return. *Hassel v. Latham*, 52 N.C. 465 (1860).

Where an execution was placed in sheriff's hands and levied by him on the goods of the defendant therein named; defendant in execution, at the time of the levy, demanded that his exemptions be allotted to him and paid the sheriff \$2.50 in partial satisfaction of the execution; and after keeping the goods several days and receiving the \$2.50, the sheriff returned the execution, "Levy made; fees demanded for laying off exemptions and not paid; no further action taken", failure to mention the payment of \$2.50 in the return made the return defective, but did not render the sheriff liable to the penalty imposed for a false return. *Harrell v. Warren*, 100 N.C. 259, 6 S.E. 777 (1888), overruled on other grounds in *Rollins v. Gibson*, 293 N.C. 73, 235 S.E.2d 159 (1977).

Where a deputy sheriff who had an order of arrest to be executed went to the house of the person named therein and, after reading to him the summons in the action, told him that he had an order of arrest for him, but after some talk, left the bond with him, on his promise to call next day and fix the matter up, as the deputy did not have or attempt to have within his control in any way the party named in the order, there was no arrest, and a return of the

order "Not served" did not render the officer liable for a false return. *State v. Buxton*, 102 N.C. 129, 8 S.E. 774 (1889).

Where a sheriff, having in hand an order of arrest against an individual, told him that he "had better come and go with him to Jackson, and fix the matter there", but the individual refused to go with him, and the sheriff left, without taking any further action, what passed did not constitute an arrest, and therefore the sheriff was not liable for a false return in returning "not served" on the order of arrest. *State v. Buxton*, 102 N.C. 129, 8 S.E. 774 (1889).

Penalty to Be Enforced in Civil Action. — The action for \$500.00 penalty for "false return" is properly sought to be maintained by civil action. *Piedmont Mfg. Co. v. Buxton*, 105 N.C. 74, 11 S.E. 264 (1890).

The correct procedure under this section to recover the penalty from a sheriff for making a false return is by civil action. *Crowder v. Jenkins*, 11 N.C. App. 57, 180 S.E.2d 482 (1971).

Any person may sue for the penalty imposed upon sheriffs by this section for a false return, and need not mention in his complaint the other party to whom the statute gives one half of the recovery. *Harrell v. Warren*, 100 N.C. 259, 6 S.E. 777 (1888), overruled on other grounds, *Rollins v. Gibson*, 293 N.C. 73, 235 S.E.2d 159 (1977). See also *Martin v. Martin*, 50 N.C. 346 (1858), overruled on other grounds, *Rollins v. Gibson*, 293 N.C. 73, 235 S.E.2d 159 (1977); *Peebles v. Newsom*, 74 N.C. 473 (1876).

Power of Court to Allow Return to Be Amended. — A sheriff may move to amend his return of process so as to make it speak the truth even after suit has been brought for the penalty imposed for a false return, even though the amendment defeats plaintiff's right to recover such penalty. However, the sheriff does not as a matter of law have the right to amend his return in order to correct his error, but it is within the discretion of the presiding judge to allow such amendments in meritorious cases. *Rollins v. Gibson*, 293 N.C. 73, 235 S.E.2d 159 (1977).

The court has the discretionary power, in proper cases, to allow a sheriff to amend his return of process to speak the truth, even though the amendment will defeat the penalty for a false return. *Crowder v. Jenkins*, 11 N.C. App. 57, 180 S.E.2d 482 (1971).

Where a sheriff to whom a summons issued returned it "served," and was sued for the \$500.00 penalty for false return provided for by this section, the court properly permitted him, for proper reasons set out in his affidavit, to amend this return. *Swain v. Burden*, 124 N.C. 16, 32 S.E. 319 (1899); *Swain v. Phelps*, 125 N.C. 43, 34 S.E. 110 (1899).

Amendment of Return Held Improper. — It was not proper for the trial judge to permit defendants to amend return during course of trial where plaintiff alleged and defendants admitted that the return had been marked "served by delivering a copy thereof to this plaintiff" but that the sheriff "did not serve the original order of court upon the plaintiff," and where the parties stipulated at a pretrial conference that the return showing "that it was delivered to the plaintiff was not correct." *Crowder v. Jenkins*, 11 N.C. App. 57, 180 S.E.2d 482 (1971).

Time For Appeal Where Return Amended. — When, in an action against a sheriff for a false return, the court permits such return to be amended, the plaintiff should note

his exception and, unless the amended return is admitted to be true, proceed to try the issue. An appeal before final judgment on such admission or a verdict is premature and will be dismissed. *Piedmont Mfg. Co. v. Buxton*, 105 N.C. 74, 11 S.E. 264 (1890).

When the falsity of the return was alleged and not controverted, the issue of the truth or falsity of the return was removed from the case. *Crowder v. Jenkins*, 11 N.C. App. 57, 180 S.E.2d 482 (1971).

Statute of Limitations. — Action upon sheriff's official bond to recover the penalty for a false return made more than six years previously was barred by the statute of limitations. *State v. Barefoot*, 104 N.C. 224, 10 S.E. 170 (1889).

§ 162-15. Sufficient notice in case of amercement.

In all cases where any sheriff or other officer shall be amerced for failure to make due return of any execution or other process placed in his hands, or for any default whatsoever in office, and judgment nisi or otherwise for the penalty or forfeiture in such case made and provided shall be entered, it shall be sufficient to give such sheriff notice, according to law, under the hand of the clerk and seal of the court where such judgment may be entered, of a motion for a judgment absolute, or for execution, as the case may be; and no other notice, summons or suit shall be necessary to enforce the same; and such proceedings shall be deemed and held in aid of a suit or other proceedings already instituted in court. (1871-2, c. 74, s. 4; Code, s. 446; Rev., s. 2818; C.S., s. 3937.)

Cross References. — As to penalties for failure to make due return and for false returns, see § 162-14.

CASE NOTES

Amercement as Remedy for Failure to Make Due Return. — Amercement, and not a civil action, is the remedy given against a sheriff for not making "due and proper" return of process. *Piedmont Mfg. Co. v. Buxton*, 105 N.C. 74, 11 S.E. 264 (1890).

Jurisdiction in Court to Which Process Returnable. — An action against a sheriff of a county other than that from which the process issued, for making a false return, is properly brought in the courts of the county to which that process was returnable. *Watson v. Mitchell*, 108 N.C. 364, 12 S.E. 836 (1891).

Sheriff may be amerced at a subsequent term to that at which process was returnable, for not having made his return at a previous term. *Hyatte v. Allison*, 48 N.C. 533 (1856).

Failure to Make Return Not Excused by Nonpayment of Fees. — While a sheriff is not required to execute process until his fees are paid or tendered by the person at whose

instance the service is to be rendered, this does not excuse him for failure to make return of the process. *Jones v. Gupton*, 65 N.C. 48 (1871).

Rule Nisi Granted on Prima Facie Case. — Where a prima facie case is made, either upon affidavit or other sufficient proof, a rule nisi is granted as of course. *Ex parte Schenck*, 63 N.C. 601 (1869).

Return Prima Facie Correct. — The return or certificate of a ministerial officer, as to what he has done out of court, is only to be taken as prima facie true, and is not conclusive; it may be contradicted by any evidence and shown to be false, antedated, etc. *Smith v. Lowe*, 27 N.C. 197 (1844).

Immaterial Evidence. — On the trial of an action for penalty, evidence of the true returns of the proceeds of sale endorsed upon certain other executions was immaterial and properly excluded. *Finley v. Hayes*, 81 N.C. 368 (1879).

For case holding sheriff entitled to relief from judgment for alleged failure to make due return of process, see *Francks v. Sutton*, 86 N.C. 78 (1882).

§ 162-16. Execute summons, order or judgment.

Whenever the sheriff may be required to serve or execute any summons, order or judgment, or to do any other act, he shall be bound to do so in like manner as upon process issued to him, and shall be equally liable in all respects for neglect of duty; and if the sheriff be a party, the coroner shall be bound to perform the service, as he is now bound to execute process where the sheriff is a party; and this Chapter relating to sheriffs shall apply to coroners when the sheriff is a party. Sheriffs and coroners may return process by mail. Their liabilities in respect to the execution of process shall be as prescribed by law.

In those counties where the office of coroner has been abolished, or is vacant, and in which process is required to be served or executed on the sheriff, the authority to serve or execute such process shall be vested in the clerk of court; however, the clerk of court is hereby empowered to designate and direct by appropriate order some person to act in his stead to serve or execute the same. (C.C.P., s. 354; Code, s. 598; Rev., s. 2819; C.S., s. 3938; 1971, c. 653, s. 1.)

CASE NOTES

A constable cannot serve process addressed to the sheriff, nor can a sheriff serve process addressed to a constable. *McGloughan v. Mitchell*, 126 N.C. 681, 36 S.E. 164 (1900).

Service by Coroner Where Sheriff Is a Codefendant. — In an action wherein the sheriff is a party defendant, it is proper that a summons issued against a codefendant should be addressed to and served by the coroner. *Battle v. Baird*, 118 N.C. 854, 24 S.E. 668 (1896).

Authority of Coroner Where Sheriff

Insane. — The county commissioners may declare the office vacant upon the insanity of the sheriff, but their failure to do so merely authorizes the coroner to perform the duties of sheriff proper, and does not cast upon him the right to collect taxes. *Somers v. Board of Comm'rs*, 123 N.C. 582, 31 S.E. 873 (1898).

If a court issuing process has general jurisdiction to issue such process and the want of jurisdiction does not appear upon the face of the paper, a sheriff and his assistants may justify under it. *State v. Ferguson*, 67 N.C. 219 (1872).

§ 162-17. Liability of outgoing sheriff for unexecuted process.

Any sheriff who shall have received a precept, and shall go out of office before the return day thereof, without having executed the same, shall forfeit and pay to the party at whose instance it was issued the sum of one hundred dollars (\$100.00), if such precept shall have remained in his hands for such length of time wherein it might have been well executed by him; unless the same shall have been thereafter executed by the successor of such sheriff and returned at the day and place commanded therein; or unless it shall have been delivered over to the succeeding sheriff time enough to have allowed of its being executed by him; and the penalty aforesaid shall be recoverable by notice against such outgoing sheriff and his sureties. (R.C., c. 105, s. 25; Code, s. 2088; Rev., s. 2820; C.S., s. 3939.)

Cross References. — As to penalties for failure to make due return and false returns, generally, see § 162-14.

CASE NOTES

Sheriff to whom a writ has been delivered, who goes out of office before the return day of the writ, has no power to make the return on it, and therefore is not liable to amercement for not doing so. *State v. Woodside*, 29 N.C. 296 (1847).

Duty to Make Delivery to Successor. — It is the duty of the sheriff, going out of office, to deliver all the processes remaining in his hands to his successor. *State v. Woodside*, 29 N.C. 296 (1847).

§ 162-18. Payment of money collected on execution.

In all cases where a sheriff has collected money upon an execution placed in his hands, if there be no bona fide contest over the application thereof, he shall immediately pay the same to the plaintiff, or into the office of the clerk of the court from which the execution issued, and upon his failure to make such payment upon demand, he shall be liable to a penalty of one hundred dollars (\$100.00), to be collected as other penalties. (Code, s. 2080; Rev., s. 2821; C.S., s. 3940.)

CASE NOTES

Auditing of sheriff's account by county commissioners is prima facie evidence of its correctness, and it is impeachable only for fraud

or special error. *Williamson v. Jones*, 127 N.C. 178, 37 S.E. 202 (1900); *Commissioners v. Kenan*, 127 N.C. 181, 37 S.E. 997 (1900).

§ 162-19: Repealed by Session Laws 1953, c. 973, s. 3.

§ 162-20. Publish list of delinquent taxpayers.

Whenever any sheriff or tax collector shall be credited on settlement with any tax or taxes by him returned as insolvent, dead or removed, he shall forthwith make publication at the courthouse door, and at least one public place in each and every township in his county, of a complete list of the names of such insolvent, dead or removed delinquents, with the amount of the tax due from each, and the sum total so credited. Such list, by order of the board of commissioners, may also be published in any newspaper printed in the county; in which case, the expense of the advertisement, for such time as may be directed, shall be paid by the county. Any sheriff or tax collector failing to comply with the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten (\$10.00) nor more than one hundred dollars (\$100.00). (1876-7, c. 78, ss. 1, 2, 3; Code, s. 2092; Rev., ss. 2826, 3587; C.S., s. 3942.)

§ 162-21. Liability for escape under civil process.

When any sheriff shall take or receive and have in keeping the body of any debtor in execution, or upon attachment, for not performing a judgment for the payment of any sum of money, and shall willfully or negligently suffer such debtor to escape, the person suing out such execution or attachment, his executors or administrators, shall have and maintain an action for the debt against such sheriff and the sureties on his official bond, and in case of his death, against his executors or administrators, for the recovery of all such sums of money as are mentioned in the execution or attachment, and damages for detaining the same. (13 Edw. I, c. 11; 1777, c. 118, ss. 10, 11, P.R.; R.C., c. 105, s. 20; Code, s. 2083; Rev., s. 2823; C.S., s. 3943.)

Cross References. — For constitutional prohibition against imprisonment for debt, except

in cases of fraud, see N.C. Const., Art. I, § 28. As to arrest in civil actions, see § 1-409, et seq.

CASE NOTES

Escape Defined. — An escape is effected when one who is arrested gains his liberty before he is delivered in due course of law. *State v. Ritchie*, 107 N.C. 857, 12 S.E. 251 (1890). See also, *State v. Johnson*, 94 N.C. 924 (1886).

Two Kinds of Escape. — There are only two kinds of escape known to our law of a prisoner confined for debt, one voluntary and the other negligent, except where the prisoner has escaped by act of God or of the enemies of our country. *Adams v. Turrentine*, 30 N.C. 147 (1847).

It would seem that this section is in nowise dependent upon § 162-14. *Washington Toll Bridge Co. v. Commissioners of Beaufort*, 81 N.C. 491 (1879). See also, *Richardson v. Wicker*, 80 N.C. 172 (1879).

General Rule as to Liability. — In all cases of escape after a debtor is committed to jail, the sheriff is liable, however innocent he may be, unless the escape has been occasioned by the act of God or the public enemies. *Rainey v. Dunning*, 6 N.C. 386 (1818).

As to liability of sheriff for escapes under common law, see *State v. Falls*, 63 N.C. 188 (1869).

Recapture as Defense. — Where a prisoner confined for debt escapes, the officer in an action against him for the escape can only excuse himself by showing that he has not only made fresh pursuit, but also that he has actually recaptured the prisoner before suit is brought. Without this, fresh pursuit will not excuse the officer, even if the prisoner dies before the officer has it in his power, by due diligence, to recapture him. *Whicker v. Roberts*, 32 N.C. 485 (1849).

In the case of voluntary escape the officer is liable absolutely, while in the case of negligent escape he has a right to retake the prisoner and, if he does retake him upon fresh pursuit, he is not liable to an action of debt brought after such recapture, when he has the prisoner in custody. *Adams v. Turrentine*, 30 N.C. 147 (1847).

Election to Become Special Bail. — Where individual, after arrest, get at large by the negligence of the sheriff and against his will, he may by his return elect to become special bail. *State v. Falls*, 63 N.C. 188 (1869).

Sheriff is deemed to fail to take bail when the paper returned by him as a bail bond is so defective and imperfect as to be adjudged not to be such. *Adams v. Jones*, 60 N.C. 198 (1864).

Liability for Negligent Escape Absent Actual Negligence. — An action of debt will lie against a sheriff under statute for a negligent escape of a prisoner confined for debt, even

though there was no actual negligence. *Adams v. Turrentine*, 30 N.C. 147 (1847).

Failure to Handcuff Not Negligence Per Se. — A sheriff's liability for permitting an escape depends on the circumstances of the particular case, and failure to handcuff does not constitute negligence per se. *State v. Hunter*, 94 N.C. 829 (1886).

Leaving Prison Door Open. — An escape is not involved where sheriff permits a debtor committed under a ca. sa. to remain in prison with the door of the prison open, unless such debtor passes out of the prison. *Currie v. Worthy*, 47 N.C. 104 (1854).

Escape after Arrest on Mesne Process. — A sheriff having permitted one arrested by him upon mesne process in a civil action to go into an adjoining room, from which he escaped, was guilty of an escape. *Winborne & Bro. v. Mitchell*, 111 N.C. 13, 15 S.E. 882 (1892).

Release after Arrest on Mesne Process and before Commitment. — If the sheriff arrests a person on mesne process and, before commitment to prison, allows him to go at large, this is not an escape, but the sheriff is liable as for special bail. *State v. Falls*, 63 N.C. 188 (1869).

Permission to Go at Large After Commitment on Mesne Process. — A sheriff is not liable as special bail after he has committed a defendant on mesne process, though such defendant be permitted by him to go at large. *Buffalow v. Hussey*, 44 N.C. 237 (1853).

Prisoner Discharged as Insolvent. — Where a scire facias was issued against a sheriff to charge him as special bail for a person sued at the instance of the plaintiff, who had been, for want of bail, committed to jail in the sheriff's county, and afterwards discharged as an insolvent by two magistrates, the sheriff was not liable as special bail. *Buffalow v. Hussey*, 44 N.C. 237 (1853).

Release on Bond to Appear and Take Insolvent's Oath. — Where a defendant was arrested upon mesne process and gave bail and, after judgment, the bail surrendered him to the sheriff, out of term-time, no execution having been issued on the judgment nor any committitur prayed by the plaintiff, and the sheriff released him upon a bond to appear at court and take the benefit of the insolvent law, the sheriff was liable for an escape. *State v. Ellison*, 31 N.C. 261 (1848).

Liability When Directed Not to Serve Ca. Sa. on One Defendant. — When a judgment was obtained against two or more defendants and no bail bond was taken from either of the

defendants in the suit, and the sheriff, who had thus become bail for all, after the rendition of the judgment and the issuing of the ca. sa., was directed by the plaintiff not to serve the ca. sa. on one of the defendants, he was still liable, as bail, for not surrendering the other defendant. *Jackson v. Hampton*, 32 N.C. 579 (1849).

Return Held Sufficient to Charge Sheriff.

— The words "executed P. R. T., D. Sheriff," endorsed on a capias, which was duly issued and came to the hands of the sheriff, were so much a due and legal return as to make the sheriff liable as special bail on the failure of him or his deputy to take a bail bond. *Washington v. Vinson*, 49 N.C. 380 (1857).

Showing Required to Render Sheriff Liable for Escape of Insolvent. — To render a sheriff liable for the escape of an insolvent,

surrendered in open court, it is necessary to show that such insolvent was committed to the sheriff's custody by an order of the court. A mere prayer to that effect will not be sufficient. *State v. McKee*, 47 N.C. 379 (1885).

Exceptions and Notice. — If the sheriff fails to take bail, the plaintiff need not file exceptions nor give notice to fix him as bail. *Adams v. Jones*, 60 N.C. 198 (1864).

Actual Damages. — In an action of debt on a sheriff's bond for the escape of a debtor imprisoned under a ca. sa., the jury is not bound to give the whole sum due from such debtor, but should give the damages really sustained by the escape. *State v. Eure*, 53 N.C. 320 (1861), approving, *Governor v. Matlock*, 8 N.C. 425 (1821).

§ 162-22. Custody of jail.

The sheriff shall have the care and custody of the jail in his county; and shall be, or appoint, the keeper thereof; provided that the board of county commissioners of any county by and with the consent of the sheriff shall have the authority to appoint a person other than the sheriff to serve as jailer; the person appointed by a board of county commissioners as jailer shall have the care and custody of the county jail.

No law-enforcement officer or jailer who shall have the care and custody of any jail shall receive any portion of any jail fee or charge paid by or for any person confined in such jail, nor shall the compensation or remuneration of such officer be affected to any extent by the costs of goods or services furnished to any person confined in such jail. (R.C., c. 105, s. 22; Code, s. 2085; Rev., s. 2824; C.S., s. 3944; 1967, c. 581, s. 3; 1969, c. 1090.)

CASE NOTES

Duties of Jailer. — The duties of a jailer are those prescribed by statute and those recognized at common law. *Gowens v. Alamance County*, 216 N.C. 107, 3 S.E.2d 339 (1939).

Jailer Held Answerable Only to Sheriff.

— Where a sheriff arrested a man on a ca. sa. and committed him to jail in custody of the jailer, and the prisoner escaped, it was held that without a bond of indemnity, the jailer was only bound to the sheriff for want of fidelity or due care in the discharge of his duty. *Turrentine v. Faucett*, 33 N.C. 652 (1850).

Sheriff has a right to take a bond from jailer to indemnify him for all losses to which he may be subjected by the escape of a prisoner while in custody of the jailer. *Turrentine v. Faucett*, 33 N.C. 652 (1850).

Liability of Sheriff for Negligence of Deputy in Charge of Jail. — Where the evidence

was sufficient to be submitted to the jury as to the negligence of a deputy in charge of a jail in causing injury to a prisoner in closing the cell door on the prisoner's thumb, it was sufficient to be submitted to the jury as to the liability of the sheriff, since the act of the deputy was within the scope of his authority and in the line of his duty, and the liability of the sheriff for acts of his deputy is governed by the law applicable to the law of principal and agent. *Davis v. Moore*, 215 N.C. 449, 2 S.E.2d 366 (1939).

Stated in *State v. Jones*, 41 N.C. App. 189, 254 S.E.2d 234 (1979).

Cited in *Sutton v. Williams*, 199 N.C. 546, 155 S.E. 160 (1930); *Wilkie v. Henderson County*, 1 N.C. App. 155, 160 S.E.2d 505 (1968); *Berch v. Stahl*, 373 F. Supp. 412 (W.D.N.C. 1974).

§ 162-23. Prevent entering jail for lynching; county liable.

When the sheriff of any county has good reason to believe that the jail of his county is in danger of being broken or entered for the purpose of killing or injuring a prisoner placed by the law in his custody, it shall be his duty at once to call on the commissioners of the county, or some one of them, for a sufficient guard for the jail, and in such case, if the commissioner or commissioners fail to authorize the employment of necessary guards to protect the jail, and by reason of such failure the jail is entered and a prisoner killed, the county in whose jail the prisoner is confined shall be responsible in damages, to be recovered by the personal representatives of the prisoner thus killed, by action begun and prosecuted before the superior court of any county in this State. (1893, c. 461, s. 7; Rev., s. 2825; C.S., s. 3945.)

§ 162-24. Not to farm office.

No sheriff shall let to farm in any manner, his county, or any part of it, under pain of forfeiting five hundred dollars (\$500.00), one half to the use of the county and the other half to the person suing for the same. (23 Hen. VI, c. 10; R.C., c. 105, s. 21; Code, s. 2084; Rev., s. 2828; C.S., s. 3946.)

CASE NOTES

Traffic in public offices is against good morals and contrary to public policy. *Basket v. Moss*, 115 N.C. 448, 20 S.E. 733 (1894).

This section prohibits a sheriff from letting to farm, in any manner, his county, or any part of it. *Cansler v. Penland*, 125 N.C. 578, 34 S.E. 683 (1899), rehearing dismissed, 126 N.C. 793, 36 S.E. 285 (1900).

Office Cannot Be Subject of Bargain and Sale. — The public has an interest in the proper performance of their duties by public officers, and would be prejudiced by agreements tending to impair an officer's efficiency or in any way to interfere with or disturb the due execution of the duties of the office. The office of sheriff and tax collector is one of public confidence and fidelity to a public trust, and cannot be a matter of bargain and sale. It requires good faith and

duty. *Cansler v. Penland*, 125 N.C. 578, 34 S.E. 683 (1899), rehearing dismissed, 126 N.C. 793, 36 S.E. 285 (1900).

Certain Agreements To Secure Appointment Void. — Not only an agreement by A to pay to B, a public officer, an amount equal to the emoluments of the unexpired term of his office in consideration of his resignation and his influence to secure the appointment of A to the office is void, but likewise an agreement to compensate anyone for or to pay the expenses of anyone in attempting to secure such appointment. *Basket v. Moss*, 115 N.C. 448, 20 S.E. 733 (1894).

A sheriff may employ a deputy to assist him, but he cannot delegate his authority to another. *Cansler v. Penland*, 125 N.C. 578, 34 S.E. 683 (1899), rehearing dismissed, 126 N.C. 793, 36 S.E. 285 (1900).

§ 162-25. Obligations taken by sheriff payable to himself.

The sheriff or his deputy shall take no obligation of or from any person in his custody for or concerning any matter or thing relating to his office otherwise payable than to himself as sheriff and dischargeable upon the prisoner's appearance and rendering himself at the day and place required in the writ (whereupon he was or shall be taken or arrested), and his sureties discharging themselves therefrom as special bail of such prisoner or such person keeping within the limits and rules of any prison; and every other obligation taken by any sheriff in any other manner or form, by color of his office, shall be void, except in any special case and other obligation shall be, by law, particularly and expressly directed; and no sheriff shall demand, exact, take or receive any greater fee or reward whatsoever, nor shall have any allowance, reward or satisfaction from the public, for any service by him done, other than such sum

as the court shall allow for ex officio services and the allowance given and provided by law. (1777, c. 118, s. 8, P.R.; R.C., c. 105, s. 19; Code, s. 2082; Rev., s. 2829; C.S., s. 3947.)

§§ 162-26 to 162-30: Reserved for future codification purposes.

ARTICLE 4.

County Prisoners.

§ 162-31: Repealed by Session Laws 1975, c. 166, s. 26.

§ 162-32. Bond of prisoner committed on *capias* in civil action.

Every bond given by any person committed in arrest and bail, or in custody after final judgment, shall be assigned by the sheriff to the party at whose instance such person was committed to jail, and shall be returned to the office of the clerk of the court where the judgment was rendered, and shall have the force of a judgment. If any person who obtains the rules of any prison, as aforesaid, escapes out of the same before he has paid the debt or damages and costs according to the condition of his bond, the court where the bond is filed, upon motion of the assignee thereof, shall award execution against such person and his sureties for the debt or damages and costs, with interest from the time of escape till payment, and no person committed to jail on such execution shall be allowed the rules of prison: Provided, the obligors have ten days' previous notice of such motion, in writing; but they shall not be admitted to deny the making of the bond in their answer, unless by affidavit they prove the truth of the plea. (1759, c. 65, ss. 2, 3, P.R.; R.C., c. 87, s. 14; Code, s. 3469; Rev., s. 1341; C.S., s. 1345; 1973, c. 822, s. 3.)

Editor's Note. — This Article was formerly Article 15, §§ 153-177 through 153-198, of Chapter 153. It was reenacted and transferred to its present location by Session Laws 1973, c. 822, s. 3.

§ 162-33. Prisoner may furnish necessities.

Prisoners shall be allowed to purchase and procure such necessities, in addition to the diet furnished by the jailer, as they may think proper; and to provide their own bedding, linen and clothing, without paying any perquisite to the jailer for such indulgence. (1795, c. 433, s. 6, P.R.; R.C., c. 87, s. 8; Code, s. 3463; Rev., s. 1344; C.S., s. 1348; 1973, c. 822, s. 3.)

§ 162-34. United States prisoners to be kept.

When a prisoner is delivered to the keeper of any jail by the authority of the United States, such keeper shall receive any prisoner, and commit him accordingly; and every keeper of a jail refusing or neglecting to take possession of a prisoner delivered to him by the authority aforesaid shall be subject to the same pains and penalties as for neglect or refusal to commit any prisoner delivered to him under the authority of the State. The allowance for the maintenance of any prisoner committed as aforesaid shall be equal to that made for prisoners committed under the authority of the State. (1790, c. 322, ss. 1, 2, P.R.; R.C., c. 87, s. 1; Code, s. 3456; Rev., s. 1342; C.S., s. 1349; 1973, c. 822, s. 3.)

§ 162-35. Arrest of escaped persons from penal institutions.

Upon information received from the superintendent of any correctional or any penal institution, established by the laws of the State, that any person confined in such institution or assigned thereto by juvenile or other court under authority of law, has escaped therefrom and is still at large, it shall be the duty of sheriffs of the respective counties of the State, and of any peace officer in whose jurisdiction such person may be found, to take into his custody such escaped person, if to be found in his county, and to cause his return to the custody of the proper officer of the institution from which he has escaped. (1933, c. 105, s. 1; 1973, c. 822, s. 3.)

§ 162-36. Transfer of prisoners to succeeding sheriff.

The delivery of prisoners, by indenture between the late and present sheriff, or the entering on record in court the names of the several prisoners, and the causes of their commitment, delivered over to the present sheriff, shall be sufficient to discharge the late sheriff from all liability for any escape that shall happen. (1777, c. 118, s. 12, P.R.; R.C., c. 87, s. 15; Code, s. 3470; Rev., s. 1348; C.S., s. 1352; 1973, c. 822, s. 3.)

§ 162-37. Where no jail, sheriff may imprison in jail of adjoining county.

The sheriffs and other ministerial officers of any county in which there is no jail have authority to confine any prisoner arrested on process, civil or criminal, and held in custody for want of bail, in the jail of any adjoining county, until bail be given or tendered. And any sheriff or jailer having a prisoner in his custody, by virtue of any mode of commitment provided in this Article, shall be liable, civilly and criminally, for his escape, in the same manner as if such prisoner had been confined in the prison of his proper county. (1835, c. 2, s. 3; R.C., c. 87, s. 4; Code, s. 3459; Rev., s. 1349; C.S., s. 1353; 1973, c. 57, s. 1; c. 822, s. 3.)

§ 162-38. Where no jail, courts may commit to jail of adjoining county.

Whenever there happens to be no jail, or when there is an unfit or insecure jail, in any county, the judicial officers of such county may commit all persons brought before them, whether in a criminal or civil proceeding, to the jail of any adjoining county, for the same causes and under the like regulations that they might have ordered commitments to the usual jail; and the sheriffs and other officers of such county in which there is no jail, or an unfit one, and the sheriffs or keepers of the jails of the adjoining counties, shall obey any order of commitment so made. Any officer failing to obey such order shall be guilty of a misdemeanor. (1835, c. 2, s. 2; R.C., c. 87, s. 3; Code, s. 3458; Rev., s. 1350; C.S., s. 1354; 1973, c. 57, s. 2; c. 822, s. 3.)

Local Modification. — Elizabeth City:
1973, c. 487.

§ 162-39. Transfer of prisoners when necessary for safety and security; application of section to municipalities.

Whenever necessary for the safety of a prisoner held in any county jail or to avoid a breach of the peace in any county, the resident judge of the superior court or any judge holding superior court in the district may order the prisoner transferred to a fit and secure jail in some other county, or to a unit of the State prison system designated by the Secretary of Correction or his authorized representative, where the prisoner shall be held for such length of time as the judge may direct. The sheriff of the county from which the prisoner is removed shall be responsible for conveying the prisoner to the jail or prison unit where he is to be held, and for returning him to the common jail of the county from which he was transferred. The return shall be made at the expiration of the time designated in the court order directing the transfer unless the judge, by appropriate order, shall direct otherwise. The sheriff or keeper of the jail of the county designated in the court order, or the officer in charge of the prison unit designated by the Secretary of Correction, shall receive and release custody of the prisoner in accordance with the terms of the court order. The county from which a prisoner is transferred shall pay to the county receiving the prisoner in its jail, or to the State Department of Correction if he is received in a prison unit, the actual cost of maintaining the prisoner in that jail or prison unit for the time designated by the court.

Whenever prisoners are arrested in such numbers that county jail facilities are insufficient and inadequate for the safekeeping of such prisoners, the resident judge of the superior court or any judge holding superior court in the district may order the prisoners transferred to a unit of the State Department of Correction designated by the Secretary of Correction or his authorized representative, where the prisoners may be held for such length of time as the judge may direct, such detention to be in cell separate from that used for imprisonment of persons already convicted of crimes. The sheriff of the county from which the prisoners are removed shall be responsible for conveying the prisoners to the prison unit or units where they are to be held, and for returning them to the common jail of the county from which they were transferred. However, if due to the number of prisoners to be conveyed the sheriff is unable to provide adequate transportation, he may request the assistance of the Department of Correction, and the Department of Correction is hereby authorized and directed to cooperate with the sheriff and provide whatever assistance is available, both in vehicles and manpower, to accomplish the conveying of the prisoners to and from the county to the designated prison unit or units. The officer in charge of the prison unit designated by the Secretary of Correction or his authorized representative shall receive and release the custody of the prisoners in accordance with the terms of the court order. The county from which the prisoners are transferred shall pay to the State Department of Correction the actual cost of transporting and maintaining the prisoners. However, if the county commissioners shall certify to the Governor that the county is unable to pay the bill submitted by the State Department of Correction to the county for the services rendered, either in whole or in part, the Governor may recommend to the Council of State that the State of North Carolina assume and pay, in whole or in part, the obligation of the county to the Department of Correction, and upon approval of the Council of State the amount so approved shall be paid from Contingency and Emergency Fund to the Department of Correction.

When, due to an emergency, it is not feasible to obtain from a judge of superior court a prior order of transfer, the sheriff of the county and the Department of Correction may exercise the authority hereinafter conferred;

provided, however, that the sheriff shall, as soon as possible after the emergency, obtain an order from the judge authorizing the prisoners to be held in the designated place of confinement for such period as the judge may direct. All provisions of this section shall be applicable to municipalities whenever prisoners are arrested in such numbers that the municipal jail facilities and the county jail facilities are insufficient and inadequate for the safekeeping of the prisoners. The chief of police is hereby authorized to exercise the authority herein conferred upon the sheriff, and the cost of transporting and maintaining the prisoners shall be paid by the municipality unless action is taken by the Governor and Council of State as herein provided for counties which are unable to pay such costs. (1957, c. 1265; 1967, c. 996, ss. 13, 15; 1969, cc. 462, 1130; 1973, c. 822, s. 3; c. 1262, s. 10.)

CASE NOTES

Failure to Furnish Nonelective Medical Care to Safekeepers Upheld. — Failure to furnish nonessential, elective medical care to so-called "safekeepers," prisoners whose terms are not yet fixed by reason of appeals or because they have not yet been tried and who are con-

sidered still to be county prisoners although they may be housed in Department prisons, is both reasonable and rational and free from constitutional infirmity. *Kersh v. Bounds*, 501 F.2d 585 (4th Cir. 1974), cert. denied, 420 U.S. 925, 95 S. Ct. 1120, 43 L. Ed. 2d 394 (1975).

§ 162-40. When jail destroyed, transfer of prisoners provided for.

When the jail of any county is destroyed by fire or other accident, any judge or magistrate of such county may cause all prisoners then confined therein to be brought before him; and upon the production of the process under which any prisoner was confined shall order his commitment to the jail of any adjacent county; and the sheriff or other officer of the county deputized for that purpose shall obey the order; and the sheriff or keeper of the common jail of such adjacent county shall receive such prisoners. Any officer failing to obey such order of commitment shall be guilty of a misdemeanor. (1835, c. 2, s. 1; R.C., c. 87, s. 2; Code, s. 3457; Rev., s. 1351; C.S., s. 1355; 1973, c. 57, s. 3; c. 822, s. 3.)

§ 162-41: Repealed by Session Laws 1977, c. 711, s. 33.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 39, amended

by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

§ 162-42. Counties and towns may hire out certain prisoners.

The board of commissioners of the several counties, within their respective jurisdictions, or such other county authorities therein as may be established, and the mayor and superintendent of the several cities and towns of the State, have power to provide under such rules and regulations as they may deem best for the employment on the public streets, public highways, public works, or other labor for individuals or corporations, of all persons imprisoned in the jails of their respective counties, cities and towns, upon conviction of any crime or misdemeanor, or who may be committed to jail for failure to enter into bond for keeping the peace or for good behavior, and who fail to pay all the costs which they are adjudged to pay, or to give good and sufficient security therefor: Provided, such prisoner or convict shall not be detained beyond the time fixed by the judgment of the court. The amount realized from hiring out such persons shall be credited to them for the fine and bill of costs in all cases of conviction. (1866-7, c. 30; 1872-3, c. 174, s. 10; 1874-5, c. 113; 1876-7, c. 196, s. 1; 1879, c. 218; Code, s. 3448; Rev., s. 1352; C.S., s. 1356; 1973, c. 822, s. 3; 1977, c. 711, s. 31.)

Local Modification. — Chowan, Perquimans, Randolph and Pasquotank: 1979, 2nd Sess., c. 1309.

Editor's Note. — Session Laws 1977, c. 711, s. 39, as amended by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its

provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

§ 162-43. Person hiring may prevent escape.

The party in whose service said convicts may be may use the necessary means to hold and keep them in custody and to prevent their escape. (1876-7, c. 196, s. 3; Code, s. 3454; Rev., s. 1353; C.S., s. 1357; 1973, c. 822, s. 3.)

§ 162-44. Sheriff to have control of prisoners hired out.

All convicts hired or farmed out by the county or other municipal authorities shall at all times be under the supervision and control, as to their government and discipline, of the sheriff, or his deputy, of the county in which they were convicted and imprisoned, and the sheriff, or his deputy, shall be deemed a State officer for the purpose of this section. (1876-7, c. 196, s. 2; Code, s. 3453; Rev., s. 1354; C.S., s. 1358; 1973, c. 822, s. 3.)

§ 162-45: Repealed by Session Laws 1977, c. 711, s. 33.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 39, as amended

by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

§ 162-46: Repealed by Session Laws 1979, c. 760, s. 4, effective July 1, 1981.

Editor's Note. — Session Laws 1979, c. 760, s. 6, as amended by Session Laws 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; and 1981, c. 179, s. 14, provides: "This act shall become

effective on July 1, 1981, and shall apply only to offenses committed on or after that date, unless specific language of the act indicates otherwise."

§ 162-47: Repealed by Session Laws 1977, c. 711, s. 33.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 39, as amended

by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

§ 162-48. Taxes may be levied for expenses of convicts.

The board of county commissioners of the several counties in the State taking advantage of this Article shall levy a special tax annually as other taxes are levied for the purpose of paying the expenses of said convicts, building of stockades, etc., and the expenses shall be paid by the counties. (1887, c. 355, s. 6; Rev., s. 1359; C.S., s. 1364; 1973, c. 822, s. 3.)

§ 162-49: Repealed by Session Laws 1977, c. 711, s. 33.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 39, as amended

by Session Laws 1977, 2nd Sess., c. 1147, s. 32, effective July 1, 1978, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of this act regarding parole shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Chapter 162A.

Water and Sewer Systems.

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ARTICLE 1.

Water and Sewer Authorities.

§ 162A-1. Title.

This Article shall be known and may be cited as the "North Carolina Water and Sewer Authorities Act." (1955, c. 1195, s. 1; 1971, c. 892, s. 1.)

Legal Periodicals. — For a survey of 1977 law on property, see 56 N.C.L. Rev. 1111 (1978).

CASE NOTES

Stated in *Moody v. Town of Carrboro*, 301 N.C. 318, 271 S.E.2d 265 (1980).

§ 162A-2. Definitions.

As used in this Article the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

- (1) The word "authority" shall mean an authority created under the provisions of this Article or, if such authority shall be abolished, the board, body or commission succeeding to the principal functions thereof or to whom the powers given by this Article to the authority shall be given by law.
- (2) The word "Board" shall mean the Board of Water Commissioners of the State of North Carolina or the board, body or commission succeeding to the principal functions thereof or to whom the powers given by this Article to the Board shall be given by law.
- (3) The word "cost" as applied to a water system or a sewer system shall include the purchase price of any such system, the cost of construction, the cost of all labor and materials, machinery and equipment, the cost of improvements, the cost of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction and, if deemed advisable by the authority, for one year after completion of construction, cost of plans and specifications, surveys and estimates of cost and of revenues, cost of engineering and legal services, and all other expenses necessary or incident to determining the feasibility or practicability of such construction, administrative expense and such other expenses, including reasonable provision for working capital, as may be necessary or incident to the financing herein authorized. Any obligation or expense incurred by the authority or by any political subdivision prior to the issuance of bonds under the provisions of this Article in connection with any of the foregoing items or cost may be regarded as a part of such cost.
- (4) The term "governing body" shall mean the board, commission, council or other body, by whatever name it may be known, in which the general legislative powers of the political subdivision are vested.
- (5) The word "improvements" shall mean such repairs, replacements, additions, extensions and betterments of and to a water system or a sewer system as are deemed necessary by the authority to place or to maintain such system in proper condition for its safe, efficient and economic operation or to meet requirements for service in areas which may be served by the authority and for which no existing service is being rendered.
- (6) The word "person" shall mean any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities, or political subdivisions, governmental agencies, or private or public corporations organized and existing under the laws of this State or any other state or country.
- (7) The term "political subdivision" shall mean any county, city, town, incorporated village, sanitary district or other political subdivision or public corporation of this State now or hereafter incorporated.
- (7a) The word "revenues" shall mean all moneys received by an authority from or in connection with any sewer system or water system including, without limitation, any moneys received as interest grants.
- (8) The word "sewage" shall mean the water-carried wastes created in and carried or to be carried away from residences, hotels, schools, hospitals, industrial establishments, commercial establishments or any other private or public building together with such surface or groundwater or household and industrial wastes as may be present.

- (9) The term "sewage disposal system" shall mean and shall include any plant, system, facility, or property used or useful or having the present capacity for future use in connection with the collection, treatment, purification or disposal of sewage (including industrial wastes resulting from any processes of industry, manufacture, trade or business or from the development of any natural resources), or any integral part thereof, including but not limited to septic tank systems or other on-site collection or disposal facilities or systems, treatment plants, pumping stations, intercepting sewers, trunk sewers, pressure lines, mains and all necessary appurtenances and equipment, and all property, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof.
- (10) The word "sewers" shall include mains, pipes and laterals for the reception of sewage and carrying such sewage to an outfall or some part of a sewage disposal system, including pumping stations where deemed necessary by the authority.
- (11) The term "sewer system" shall embrace both sewers and sewage disposal systems and all property, rights, easements and franchises relating thereto.
- (12) The term "water system" shall mean and include all plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply or distribution of water, and any integral part thereof, including but not limited to water supply systems, water distribution systems, sources of water supply including lakes, reservoirs and wells, intakes, mains, laterals, aqueducts, pumping stations, standpipes, filtration plants, purification plants, hydrants, meters, valves, and all necessary appurtenances and equipment and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof. (1955, c. 1195, s. 2; 1969, c. 850; 1971, c. 892, s. 1; 1979, c. 619, s. 8.)

§ 162A-3. Procedure for creation; certificate of incorporation; certification of principal office and officers.

(a) The governing bodies of any two or more political subdivisions may by resolution signify their determination to organize an authority under the provisions of this Article. Each of such resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for such hearing, in a newspaper having a general circulation in the political subdivision. Such notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the authority and shall state the time and place of the public hearing to be held thereof. No such political subdivision shall be required to make any other publication of such resolution under the provisions of any other law.

(b) Each such resolution shall include articles of incorporation which shall set forth:

- (1) The name of the authority;
- (2) A statement that such authority is organized under this Article;
- (3) The names of the organizing political subdivisions; and
- (4) The names and addresses of the first members of the authority appointed by the organizing political subdivisions.

(c) A certified copy of each of such resolutions signifying the determination to organize an authority under the provisions of this Article shall be filed with the Secretary of State of North Carolina, together with proof of publication of the notice of hearing on each of such resolutions. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this Article and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of incorporation under the seal of the State and shall record the same in an appropriate book of record in his office. The issuance of such certificate of incorporation by the Secretary of State shall constitute the authority a public body and body politic and corporate of the State of North Carolina. Said certificate of incorporation shall be conclusive evidence of the fact that such authority has been duly created and established under the provisions of this Article.

(d) When the authority has been duly organized and its officers elected as herein provided the secretary of the authority shall certify to the Secretary of State the names and addresses of such officers as well as the address of the principal office of the authority. (1955, c. 1195, s. 3; 1971, c. 892, s. 1.)

§ 162A-3.1. Alternative procedure for creation.

(a) As an alternative to the procedure set forth in G.S. 162A-3, the governing bodies of any two or more political subdivisions may by resolution signify their determination to organize an authority under the provisions of this section of this Article. Each of such resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for such hearing, in a newspaper having a general circulation in the political subdivision. Such notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the authority and shall state the time and place of the public hearing. No such political subdivision shall be required to make any other publication of such resolution under the provisions of any other law.

(b) Each such resolution shall include articles of incorporation which shall set forth:

- (1) The name of the authority;
- (2) A statement that such authority is organized under this section of this Article;
- (3) The names of the organizing political subdivisions;
- (4) The names and addresses of the members of the authority appointed by the organizing political subdivisions; and
- (5) A statement that members of the authority will be limited to such members as may be appointed from time to time by the organizing political subdivisions.

(c) A certified copy of each of such resolutions signifying the determination to organize an authority under the provisions of this section of this Article shall be filed with the Secretary of State of North Carolina, together with proof of publication of the notice of hearing on each of such resolutions. If the Secretary of State finds that the resolutions, including the articles of incorporation, conform to the provisions of this section of this Article and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of incorporation under the seal of the State and shall record the same in an appropriate book of record in his office. The issuance of such certificate of incorporation by the Secretary of State shall constitute the authority a public body and body politic and corporate of the State of North Carolina. Said certificate of incorporation shall be conclusive evidence of the fact that such authority has been duly created and established under the provisions of this section of this Article.

(d) When the authority has been duly organized and its officers elected as herein provided the secretary of the authority shall certify to the Secretary of State the names and addresses of such officers as well as the address of the principal office of the authority. (1975, c. 224, s. 1.)

§ 162A-4. Withdrawal from authority; joinder of new subdivision.

(a) Whenever an authority has been organized under the provisions of this Chapter, any political subdivision may withdraw therefrom at any time prior to the creation of any obligations by the authority, and any political subdivision not having joined in the original organization may, with the consent of the authority, join the authority; provided, that any political subdivision not having joined the original organization shall have the right upon reasonable terms and conditions, whether the authority shall consent thereto or not, to join the authority if the authority's water system or sewer system, or any part thereof is situated within the boundaries of the political subdivision or of the county within which the political subdivision is located.

(b) Any political subdivision desiring to withdraw from or to join an existing authority shall signify its desire by resolution adopted after a public hearing thereon, notice of which hearing shall be given in the manner and at the time provided in G.S. 162A-3 or 162A-3.1, as appropriate. Such notice shall contain a brief statement of the substance of said resolution and shall state the time and place of the public hearing to be held thereon. In the case of a political subdivision desiring to join the authority, the resolution shall set forth all of the information required under G.S. 162A-3 or 162A-3.1, as appropriate, in connection with the original organization of the authority, including the name and address of the first member of the authority from the joining political subdivision if the authority was organized under G.S. 162A-3.

(c) A certified copy of each such resolution signifying the desire of a political subdivision to withdraw from or to join an existing authority, together with proof of publication of the notice of hearing on each such resolution and, in cases where such resolution provides for the political subdivision joining the authority, certified copies of the resolution of the governing bodies creating the authority consenting to such joining shall be filed with the Secretary of State of North Carolina. If the Secretary of State finds that the resolutions conform to the provisions of this Article and that the notices of hearing were properly published, he shall file such resolutions and proofs of publication in his office and shall issue a certificate of withdrawal, or a certificate of joinder, as the case may be, and shall record the same in an appropriate book of record in his office. The withdrawal or joining shall become effective upon the issuance of such certificate, and such certificate shall be conclusive evidence thereof. (1955, c. 1195, s. 4; 1969, c. 850; 1971, c. 892, s. 1; c. 1093, s. 6; 1975, c. 224, s. 2.)

§ 162A-5. Members of authority; organization; quorum.

Each authority organized under this Article shall consist of the number of members as may be agreed upon by the participating political subdivision, such members to be selected by the respective political subdivision. A proportionate number (as nearly as can be) of members of the authority first appointed shall have terms expiring one year, two years and three years respectively from the date on which the creation of the authority becomes effective. Successor members and members appointed by a political subdivision subsequently joining the authority shall each be appointed for a term of three years, but any person appointed to fill the vacancy shall be appointed to serve only for the unexpired term and any member may be reappointed; provided, however, that a political subdivision subsequently joining an authority created

under G.S. 162A-3.1 shall not have the right to appoint any members to such authority. Appointments of successor members shall, in each instance, be made by the governing body of the political subdivision appointing the member whose successor is to be appointed. Any member of the authority may be removed, with or without cause, by the governing body appointing said member.

Each member of the authority before entering upon his duties shall take and subscribe an oath or affirmation to support the Constitution of the United States and of this State and to discharge faithfully the duties of his office, and a record of each such oath shall be filed with the secretary of the authority.

The authority shall select one of its members as chairman and another as vice-chairman and shall also select a secretary and a treasurer who may but need not be members of the authority. The offices of secretary and treasurer may be combined. The terms of office of the chairman, vice-chairman, secretary and treasurer shall be as provided in the bylaws of the authority.

A majority of the members of the authority shall constitute a quorum and the affirmative vote of a majority of all of the members of the authority shall be necessary for any action taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and perform all of the duties of the authority. The members of the authority may be paid a per diem compensation set by the authority which per diem may not exceed the total amount of two thousand dollars (\$2,000) annually, and shall be reimbursed for the amount of actual expenses incurred by them in the performance of their duties. (1955, c. 1195, s. 5; 1969, c. 850; 1971, c. 892, s. 1; 1975, c. 224, ss. 3, 4.)

§ 162A-6. Powers of authority generally.

Each authority created hereunder shall be deemed to be a public instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and each such authority is, subject to the provisions of G.S. 162A-7, hereby authorized and empowered:

- (1) To adopt bylaws for the regulation of its affairs and the conduct of its business;
- (2) To adopt an official seal and alter the same at pleasure;
- (3) To maintain an office at such place or places as it may designate;
- (4) To sue and be sued in its own name, plead and be impleaded;
- (5) To acquire, lease as lessee or lessor, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any water system or part thereof or any sewer system or part thereof or any combination thereof within or without the participating political subdivisions or any thereof;
- (6) To issue revenue bonds of the authority as hereinafter provided to pay the cost of such acquisition, construction, reconstruction, improvement, extension, enlargement or equipment;
- (7) To issue revenue refunding bonds of the authority as hereinafter provided;
- (8) To combine any water system and any sewer system as a single system for the purpose of operation and financing;
- (9) To fix and revise from time to time and to collect rates, fees and other charges for the use of or for the services and facilities furnished by any system operated by the authority;
- (10) To acquire in the name of the authority by gift, purchase or the exercise of the right of eminent domain in accordance with the General Statutes of North Carolina which may be applicable to the exercise of such powers by municipalities or counties, any lands or rights in land or water rights in connection therewith, and to acquire

- such personal property, as it may deem necessary in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement or operation of any water system or sewer system, and to hold and dispose of all real and personal property under its control; provided, that the taking of water from any stream or reservoir by any authority created under the provisions of this Article shall not vest in the taker any rights by prescription; provided, further, that nothing in this section shall affect rights by prescription, if any, now held by any municipality and which may be later transferred to any authority of which such municipality may become a member;
- (11) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article, including a trust agreement or trust agreements securing any revenue bonds issued hereunder, and to employ such consulting and other engineers, superintendents, managers, construction and financial experts, accountants and attorneys, and such employees and agents as may, in the judgment of the authority be deemed necessary, and to fix their compensation; provided, however, that all such expenses shall be payable solely from funds made available under the provisions of this Article;
 - (12) To enter into contracts with the government of the United States or any agency or instrumentality thereof, or with any political subdivision, private corporation, copartnership, association or individual providing for the acquisition, construction, reconstruction, improvement, extension, enlargement, operation or maintenance of any water system or sewer system or providing for or relating to the treatment and disposal of sewage or providing for or relating to any water system or the purchase or sale of water;
 - (13) To receive and accept from any federal, State or other public agency and any private agency, person or other entity, donations, loans, grants, aid or contributions of any money, property, labor or other things of value for any sewer system or water system, and to agree to apply and use the same in accordance with the terms and conditions under which the same are provided;
 - (14) To enter into contract with any political subdivision by which the authority shall assume the payment of the principal of and interest on indebtedness of such subdivision; and
 - (14a) To make special assessments against benefited property within the area served or to be served by the authority for the purpose of constructing, reconstructing, extending, or otherwise improving water systems or sanitary collection, treatment, and sewage disposal systems, in the same manner that a county may make special assessments under authority of Chapter 153A, Article 9, except that the language appearing in G.S. 153A-185 reading as follows: "A county may not assess property within a city pursuant to subdivision (1) or (2) of this section unless the governing board of the city has by resolution approved the project," shall not apply to assessments levied by Water and Sewer Authorities established pursuant to Chapter 162A, Article 1, of the General Statutes. For the purposes of this paragraph, references in Chapter 153A, Article 9, to the "county," the "board of county commissioners," "the board" or a specific county official or employee are deemed to refer, respectively, to the authority and to the official or employee of the authority who performs most nearly the same duties performed by the specified county official or employee.

Assessment rolls after being confirmed shall be filed for registration in the office of the Register of Deeds of the county in which the property being assessed is located, and the term "county tax collector"

wherever used in G.S. 153A-195 and 153A-196, shall mean the Executive Director or other administrative officer designated by the authority to perform the functions described in said sections of the statute.

- (15) To do all acts and things necessary or convenient to carry out the powers granted by this Article. (1955, c. 1195, s. 6; 1969, c. 850; 1971, c. 892, s. 1; 1979, c. 804.)

CASE NOTES

Procedures for eminent domain governing cities and counties apply to water and sewer authorities created pursuant to this Article. *Orange Water & Sewer Auth. v. Estate of Armstrong*, 34 N.C. App. 162, 237 S.E.2d 486, cert. denied, 293 N.C. 593, 239 S.E.2d 265 (1977).

With additional requirement that a certificate of authorization be obtained before an action in eminent domain is commenced. *Orange Water & Sewer Auth. v. Estate of Armstrong*, 34 N.C. App. 162, 237 S.E.2d 486, cert. denied, 293 N.C. 593, 239 S.E.2d 265 (1977).

As the power of eminent domain under subdivision (10) is subject to the provisions

of § 162A-7(a). *Orange Water & Sewer Auth. v. Estate of Armstrong*, 34 N.C. App. 162, 237 S.E.2d 486, cert. denied, 293 N.C. 593, 239 S.E.2d 265 (1977).

But Authority May Enter and Survey Prior to Instituting Proceedings. — A water and sewer authority's right of eminent domain is not dormant before certification under § 162A-7. Because it has the power of eminent domain possessed by cities, it may enter and survey lands prior to the institution of an eminent domain proceeding. *Orange Water & Sewer Auth. v. Estate of Armstrong*, 34 N.C. App. 162, 237 S.E.2d 486, cert. denied, 293 N.C. 593, 239 S.E.2d 265 (1977).

§ 162A-7. Prerequisites to acquisition of water, etc., by eminent domain.

(a) No authority shall institute proceedings in the nature of eminent domain to acquire water, water rights, or lands having water rights attached thereto without first securing from the Board a certificate authorizing such acquisition.

(b) An authority seeking such certificate shall petition the Board therefor in writing, which petition shall include a description of the waters or water rights involved, the plans for impounding or diverting such waters, and the names of riparian owners affected thereby insofar as known to the authority. Upon receipt of such petition, the Board shall hold public hearing thereon after giving at least 30 days' written notice thereof to known affected riparian owners and notice published at least once each week for two successive weeks in a newspaper or newspapers of general circulation in each county in which lower riparian lands lie.

(c) The Board shall issue certificates only to projects which it finds to be consistent with the maximum beneficial use of the water resources in the State and shall give paramount consideration to the statewide effect of the proposed project rather than its purely local or regional effect. In making this determination, the Board shall specifically consider:

- (1) The necessity of the proposed project;
- (2) Whether the proposed project will promote and increase the storage and conservation of water;
- (3) The extent of the probable detriment to be caused by the proposed project to the present beneficial use of water in the affected watershed and resulting damages to present beneficial users;
- (4) The extent of the probable detriment to be caused by the proposed project to the potential beneficial use of water on the affected watershed;

- (5) The feasibility of alternative sources of supply to the petitioning authority and the comparative cost thereof;
- (6) The extent of the probable detriment to be caused by the use of alternative sources of supply to present and potential beneficial use of water on the watershed or watersheds affected by such alternative sources of supply;
- (7) All other factors as will, in the Board's opinion, produce the maximum beneficial use of water for all in all areas of the State affected by the proposed project or alternatives thereto.

Upon the considerations above set forth, the Board may grant its certificate in whole or in part or it may refuse the same.

(d) At the public hearing provided for in subsection (b) above the Board shall hear evidence from the authority and any others in support of its petition and from all persons opposed thereto.

(e) At any hearing authorized by this section, the Board shall have power to administer oaths; to take testimony; to issue subpoenas and compel the attendance of witnesses, which shall be served in the same manner as subpoenas issued by the superior courts of the State; and to order the taking of depositions in the same manner as depositions are taken for use in the superior court.

(f) Any final order or decision of the Board in administering the provisions of this section shall be subject to judicial review at the instance of any person or authority aggrieved by such order or decision by complying with the provisions of Article 33, Chapter 143 of the General Statutes of North Carolina. (1955, c. 1195, s. 6½.)

Editor's Note. — Article 33 of Chapter 143, referred to in subsection (f) of this section, was

repealed by Session Laws 1973, c. 1331. See now §§ 150A-43 through 150A-52.

CASE NOTES

Procedures for eminent domain governing cities and counties apply to water and sewer authorities created pursuant to this Article. *Orange Water & Sewer Auth. v. Estate of Armstrong*, 34 N.C. App. 162, 237 S.E.2d 486, cert. denied, 293 N.C. 593, 239 S.E.2d 265 (1977).

With additional requirement that a certificate of authorization be obtained before an action in eminent domain is commenced. *Orange Water & Sewer Auth. v. Estate of Armstrong*, 34 N.C. App. 162, 237 S.E.2d 486, cert. denied, 293 N.C. 593, 239 S.E.2d 265 (1977).

But water and sewer authority's right of eminent domain is not dormant before certification under this section. *Orange Water & Sewer Auth. v. Estate of Armstrong*, 34 N.C. App. 162, 237 S.E.2d 486, cert. denied, 293 N.C. 593, 239 S.E.2d 265 (1977).

And Authority May Enter and Survey

Prior to Instituting Proceedings. — A water and sewer authority, having the power of eminent domain possessed by cities, may enter lands for the purpose of making surveys prior to the institution of eminent domain proceedings. *Orange Water & Sewer Auth. v. Estate of Armstrong*, 34 N.C. App. 162, 237 S.E.2d 486, cert. denied, 293 N.C. 593, 239 S.E.2d 265 (1977).

Considerations on Issuance of Certificates. — The Legislature, in granting the Environmental Management Commission authority to issue certificates authorizing land and water rights acquisition, intended that the Commission consider carefully not only the development of water resources, but also the effect of that development on present beneficial users within the watershed. In re *Environmental Mgt. Comm'n*, 53 N.C. App. 135, 280 S.E.2d 520 (1981).

§ 162A-8. Revenue bonds.

A water and sewer authority shall have power from time to time to issue revenue bonds under the Local Government Revenue Bond Act. (1955, c. 1195, s. 7; 1969, c. 850; 1971, c. 780, s. 32; c. 892, s. 1.)

Cross References. — For the Local Government Revenue Bond Act, see Chapter 159, Article 5.

§ 162A-9. Rates and charges; contracts for water or services; deposits; delinquent charges.

Each authority shall fix, and may revise from time to time, reasonable rates, fees and other charges for the use of and for the services furnished or to be furnished by any water system or sewer system or parts thereof owned or operated by such authority. Such rates, fees and charges shall not be subject to supervision or regulation by any bureau, board, commission or other agency of the State or of any political subdivision. Such rates, fees and charges shall be fixed and revised so that the revenues of the authority, together with any other available funds, will be sufficient at all times

- (1) To pay the cost of maintaining, repairing and operating the systems or parts thereof owned or operated by the authority, including reserves for such purposes, and including provision for the payment of principal of and interest on indebtedness of a political subdivision or of political subdivisions which payment shall have been assumed by the authority, and
- (2) To pay the principal of and the interest on all bonds issued by the authority under the provisions of this Article as the same shall become due and payable and to provide reserves therefor.

Notwithstanding any of the foregoing provisions of this section, the authority may enter into contracts relating to the collection, treatment or disposal of sewage or the purchase or sale of water which shall not be subject to revision except in accordance with their terms.

In order to insure the payment of such rates, fees and charges as the same shall become due and payable, the authority may, in addition to any other remedies which it may have

- (1) Require reasonable advance deposits to be made with it to be subject to application to the payment of delinquent rates, fees and charges, and
- (2) At the expiration of 30 days after any such rates, fees and charges become delinquent, discontinue supplying water or the services and facilities of any water system or sewer system of the authority. (1955, c. 1195, s. 8; 1971, c. 892, s. 1.)

CASE NOTES

Cited in Town of Spring Hope v. Bissette, — N.C. —, 287 S.E.2d 851 (1982).

§ 162A.10: Repealed by Session Laws 1971, c. 780, s. 33.

§ 162A-11. Moneys received deemed trust funds.

All moneys received pursuant to the authority of this Article shall be deemed to be trust funds, to be held and applied solely as provided in this Article. The resolution authorizing the issuance of bonds or the trust agreement securing such bonds shall provide that any officer to whom, or bank, trust company or fiscal agent to which, such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this Article and such resolution or trust agreement may provide. (1955, c. 1195, s. 10; 1971, c. 892, s. 1.)

§ 162A-12. Bondholder's remedies.

Any holder of revenue bonds issued under the provisions of this Article or of any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by the resolution authorizing the issuance of such bonds or such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such resolution or trust agreement, and may enforce and compel the performance of all duties required by this Article or by such resolution or trust agreement to be performed by the authority or by any officer thereof, including the fixing, charging and collecting of rates, fees and charges for the use of or for the services and facilities furnished by a water system or sewer system. (1955, c. 1195, s. 11; 1971, c. 892, s. 1.)

§ 162A-13. Refunding bonds.

Each authority is hereby authorized to issue from time to time revenue refunding bonds for the purpose of refunding any revenue bonds of the authority then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The authority is further authorized to issue from time to time revenue bonds of the authority for the combined purpose of

- (1) Refunding any revenue bonds or revenue refunding bonds of the authority then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and
- (2) Paying all or any part of the cost of acquiring or constructing any additional water system or sewer system or part thereof, or any improvements, extensions or enlargements of any water system or sewer system.

The issuance of such bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the authority with respect to the same, shall be governed by the foregoing provisions of this Article insofar as the same may be applicable. (1955, c. 1195, s. 12; 1971, c. 892, s. 1.)

§ 162A-14. Conveyances and contracts between political subdivisions and authority.

The governing body of any political subdivision is hereby authorized and empowered:

- (1) Pursuant to the provisions of G.S. 160A-274 and subject to the approval of the Local Government Commission, except for action taken hereunder by any State agency, to transfer jurisdiction over, and to lease, lend, grant or convey to an authority upon the request of the authority, upon such terms and conditions as the governing body of such political subdivision may agree with the authority as reasonable and fair, the whole or any part of any existing water system or sewer system or such real or personal property as may be necessary or desirable in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, equipment, repair, maintenance or operation of any water system or sewer system or part thereof by the authority, including public roads and other property already devoted to public use;
- (2) To make and enter into contracts or agreements with an authority, upon such terms and conditions and for such periods as are agreed to

- by the governing body of such political subdivision and the authority;
- a. For the collection, treatment or disposal of sewage by the authority or for the purchase of a supply of water from the authority;
 - b. For the collecting by such political subdivision or by the authority of fees, rates or charges for water furnished to such political subdivision or to its inhabitants and for the services and facilities rendered to such political subdivision or to its inhabitants by any water system or sewer system of the authority, and for the enforcement of delinquent charges for such water, services and facilities; and
 - c. For shutting off the supply of water furnished by any water system owned or operated by such political subdivision in the event that the owner, tenant or occupant of any premises utilizing such water shall fail to pay any rates, fees or charges for the use of or for the services furnished by any sewer system of the authority, within the time or times specified in such contract;
- (3) To fix, and revise from time to time, rates, fees and other charges for water and for the services furnished or to be furnished by any water system or sewer system of the authority, or parts thereof, under any contract between the authority and such political subdivision, and to pledge all or any part of the proceeds of such rates, fees and charges to the payment of any obligation of such political subdivision under such contract; and
 - (4) In its discretion, to submit to the qualified electors under the election laws applicable to such political subdivision any contract or agreement which such governing body is authorized to make and enter into with the authority under the provisions of this Article. (1955, c. 1195, s. 13; 1971, c. 892, s. 1; 1975, c. 224, ss. 5, 6.)

§ 162A-15. Services to authority by private water companies; records of water taken by authority; reports to Board of Water Commissioners.

Each private water company which is supplying water to the owners, lessees or tenants of real property which is or will be served by any sewer system of an authority is authorized to act as the billing and collecting agent of the authority for any rates, fees or charges imposed by the authority for the services rendered by such sewer system. Any such company shall, if requested by an authority furnish to the authority copies of its regular periodic meter reading and water consumption records and other pertinent data as may be required for the authority to act as its own billing and collecting agent. The authority shall pay to such water company the reasonable additional cost of clerical services and other expenses incurred by the water company in rendering such services to the authority. The authority shall by means of suitable measuring and recording devices and facilities record the quantity of water taken daily by it from any stream or reservoir and make monthly reports of such daily recordings to the Board of Water Commissioners of the State of North Carolina. (1955, c. 1195, s. 14.)

§ 162A-16. Contributions or advances to authority by political subdivisions.

Any political subdivision is hereby authorized to make contributions or advances to an authority, from any moneys which may be available for such purpose, to provide for the preliminary expenses of such authority in carrying out the provisions of this Article. Any such advances may be repaid to such

political subdivisions from the proceeds of bonds issued by such authority under this Article. (1955, c. 1195, s. 15; 1971, c. 892, s. 1.)

§ 162A-17. Article regarded as supplemental.

This Article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of revenue bonds or revenue refunding bonds under the provisions of this Article need not comply with the requirements of any other law applicable to the issuance of bonds. (1955, c. 1195, s. 16; 1971, c. 892, s. 1.)

§ 162A-18. Actions against authority by riparian owners.

Any riparian owner alleging an injury as a result of any act of an authority created under this Article may maintain an action for relief against the acts of the authority either in the county where the lands of such riparian owner lie or in the county in which the principal office of the authority is maintained. (1955, c. 1195, s. 16½; 1971, c. 892, s. 1.)

§ 162A-19. Inconsistent laws declared inapplicable.

All general, special or local laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this Article. (1955, c. 1195, s. 17; 1971, c. 892, s. 1.)

ARTICLE 2.

Regional Water Supply Planning.

§ 162A-20. Title.

This Article shall be known and may be cited as the "Regional Water Supply Planning Act of 1971." (1971, c. 892, s. 1.)

§ 162A-21. Preamble.

The Legislative Research Commission was directed by Senate Resolution 875 of the 1969 General Assembly to study and report to the 1971 General Assembly on the need for legislation "concerning local and regional water supplies (including sources of water, and organization and administration of water systems)." Pursuant to said Resolution a report was prepared and adopted by the Legislative Research Commission in 1970 concerning local and regional water supplies. In this report the Legislative Research Commission made the following findings concerning the need for planning and developing regional water supply systems in order to provide adequate supplies of high quality water to the citizens of North Carolina, of which the General Assembly hereby takes cognizance:

- (1) The existing pattern of public water supply development in North Carolina is dominated by many small systems serving few customers. Of the 1,782 public water systems of record on July 1, 1970, according to Department of Human Resources statistics, over eighty percent (80%) were serving less than 1,000 people each. These small systems are often underfinanced, inadequately designed and maintained, difficult to coordinate with nearby regional systems, and generally infe-

prior to systems serving larger communities as regards adequacy of source, facilities and quality. The situation which has developed reflects a need for better planning at both State and local levels.

- (2) The State's population balance is steadily changing. Sparsely populated counties are losing residents to the more densely populated counties, while the State's total population is increasing. As this trend continues, small towns and communities will find it increasingly difficult to build and maintain public water supply systems. Also, as urban centers expand, and embrace relatively large geographical areas, economic factors will dictate that regional water systems be developed to serve these centers and to meet the demands of commercial and industrial development. It is estimated that countywide or regional water systems are needed now by 50 counties.
- (3) If the future public water supply needs of the State are to be met, a change in the existing pattern of public water supply development and management must be undertaken. Regional planning and development is an immediate need. The creation of countywide or regional water supplies, with adequate interconnections, is necessary in order to provide an adequate supply of high quality water to the State's citizens, to make supplies less vulnerable to recurring drought conditions, and to have systems large enough to justify the costs of adequate facilities and of proper operation and maintenance.
- (4) The State should provide a framework for comprehensive planning of regional water supply systems, and for the orderly coordination of local actions, so as to make the most efficient use of available water resources and economies of scale for construction, operation and maintenance. The State should also provide financial assistance to local governments and regional authorities in order to assist with the cost of developing comprehensive regional plans, and countywide plans compatible with a regional system. (1971, c. 892, s. 1; 1973, c. 476, s. 128.)

§ 162A-22. Definition of regional water supply system.

For the purposes of this Article "a regional water supply system" is defined as a public water supply system of a municipality, county, sanitary district, or other political subdivision of the State, or combination thereof, which provides, is intended to provide, or is capable of providing an adequate and safe supply of water to a substantial portion of the population within a county, or to a substantial water service area in a region composed of all or parts of two or more counties, or to a metropolitan area in two or more counties. (1971, c. 892, s. 1.)

§ 162A-23. State role and functions relating to local and regional water supply planning.

(a) It should be the role of State government to provide a framework for comprehensive planning of regional water supply systems, and for the orderly coordination of local actions relating to water supply, so as to make possible the most efficient use of water resources and to help realize economies of scale in water supply systems. To these ends, it shall be the function of State government to:

- (1) Identify major sources of raw water supply for regional systems, and raw water interconnections as may be desirable and feasible.
- (2) Identify areas suitable for the development of regional systems.
- (3) Establish priorities for regionalization.

- (4) Develop plans for connecting proposed regional systems to major sources of supply, and for such finished water interconnections as may be desirable and feasible.
- (5) Review and approve plans for proposed regional systems, and for proposed municipal and countywide systems which are compatible with a regional plan.
- (6) Administer a State program of financial assistance to local governments and regional planning agencies for the development of comprehensive plans for regional water systems, or county systems compatible with regional plans.
- (7) Provide technical assistance to local and regional planning agencies, and to consulting engineering firms.

(b) Responsibility for carrying out the role of State government in regional water supply planning shall be assigned to the Department of Human Resources and the Department of Water and Air Resources [Department of Natural Resources and Community Development]. Promotion and coordination of regional water supply systems shall be a shared function of the Department of Water and Air Resources [Department of Natural Resources and Community Development] and the Department of Human Resources, with primary responsibility with regard to sources of raw water supply and transbasin or transwatershed diversions of water being allocated to the Department of Water and Air Resources [Department of Natural Resources and Community Development], and with primary responsibility with regard to other aspects of regional water supply systems being allocated to the Department of Human Resources. (1971, c. 892, s. 1; 1973, c. 476, s. 128.)

Editor's Note. — Under Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources, the functions of the former Department of Water and Air Resources devolved upon the Department of Natural and Economic Resources. Session Laws 1977, c. 771, s. 4, changed the title of the

Department of Natural and Economic Resources to the Department of Natural Resources and Community Development. Therefore, the editors have inserted "Department of Natural Resources and Community Development" in brackets in subsection (b) of this section as set out above.

§ 162A-24. Regional Water Supply Planning Revolving Fund established; conditions and procedures.

(a) There is established under the control and direction of the Department of Administration a Regional Water Supply Planning Revolving Fund, to consist of any moneys that may be appropriated for use through the fund by the General Assembly or that may be made available to it from any other source. The Department may make advances from the fund to any county, municipality, sanitary district, or to counties and municipalities acting collectively or jointly as a regional water authority, for the purpose of meeting the cost of advance planning and engineering work necessary or desirable for the development of a comprehensive plan for a regional water supply system as defined in this Article. Such advances shall be subject to repayment by the recipient to the Department from the proceeds of bonds or other obligations for the regional water supply system, or from other funds available to the recipient including grants, except when, in the judgment of the Department of Human Resources and of the Department of Water and Air Resources [Department of Natural Resources and Community Development], a proposed plan for development and construction of a countywide or other regional water system is not feasible because of design and construction factors or because available sources of raw water supply are inadequate or because construction of a proposed system is not economically feasible, (but not if the applicant decides

not to proceed with construction that has been planned and which the Department of Human Resources and the Department of Water and Air Resources [Department of Natural Resources and Community Development] have declared to be feasible).

(b) The Department of Administration shall not make any advance pursuant to this section without first referring the application and proposal to the Department of Human Resources, the State agency responsible for public water supplies, for determination as to whether the conditions set forth below have been met. In making such determinations, the Department of Human Resources shall obtain and be guided by the recommendations of the Department of Water and Air Resources [Department of Natural Resources and Community Development] on matters for which that Department has responsibility by law:

- (1) The proposed area is suitable for development of a regional water supply system from the standpoint of present and projected populations, industrial growth potential, and present and future sources of raw water.
- (2) The applicant proposes to undertake long-range comprehensive planning to meet present and projected needs for high quality water service through the construction of a regional water supply system as defined in this Article. The determination by the Department of Human Resources that the proposed system would be a "regional system," as defined by this Article, shall be conclusive.
- (3) The applicant proposes to coordinate planning of the regional water supply with land-use planning in the area, in order that both planning efforts will be compatible.
- (4) The applicant proposes to employ an engineer licensed to practice in the State of North Carolina to prepare a comprehensive regional water supply plan, which plan will provide detailed information on source or sources of water to meet projected domestic and industrial water demands; proposed system, including raw water intake(s), treatment plant, storage facilities, distribution system, and other waterworks appurtenances; proposed interconnections with existing systems, and provisions for interconnections with other county, municipal and regional systems; phased development of systems to achieve ultimate objectives if economic feasibility is in question; projected water service areas; proposed equipment; estimates of cost and projected revenues; and methods of financing.

(c) In addition to the above conditions, the Department of Administration shall not make any advance to any applicant until the following conditions have also been met:

- (1) The Department has determined that there is a reasonable prospect of federal (or State) aid in the financing of the projected work if the undertaking is one that will be dependent upon federal (or State) aid.
- (2) The Department has received firm assurances from the applicant that the works or project, if feasible, will be undertaken.

(d) All advances made pursuant to this section shall be repaid in full, within one year of the start of construction on the projected system, or within six months after the issuance of bonds for the financing of construction of the system, or within six years from the date of the making of the advance, whichever comes first. The Department may, in its discretion, require the repayment of any advance in installments.

(e) The Department of Administration may adopt such rules and regulations with respect to the making of applications or the receipt of advances as are consistent with the terms and purpose of this section.

(f) The provisions of Chapter 159 of the General Statutes of North Carolina (Local Government Acts) shall not apply to advances made from the Regional

Water Supply Planning Revolving Fund as authorized in this Article. (1971, c. 892, s. 1; 1973, c. 476, s. 128.)

Editor's Note. — Under Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources, the functions of the former Department of Water and Air Resources devolved upon the Department of Natural and Economic Resources. Session Laws 1977, c. 771, s. 4, changed the title of the

Department of Natural and Economic Resources to the Department of Natural Resources and Community Development. Therefore, the editors have inserted "Department of Natural Resources and Community Development" in brackets in subsections (a) and (b) of this section as set out above.

§ 162A-25. Construction of Article.

This Article shall be construed as providing supplemental authority in addition to the powers of the Department of Human Resources under General Statutes Chapter 130, the powers of the North Carolina Utilities Commission under General Statutes Chapter 62, and the powers of the Department of Water and Air Resources [Department of Natural Resources and Community Development] under Articles 21 and 38 of General Statutes Chapter 143, and any other provisions of law concerning local and regional water supplies. (1971, c. 892, s. 1; 1973, c. 476, s. 128.)

Editor's Note. — Under Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources, the functions of the former Department of Water and Air Resources devolved upon the Department of Natural and Economic Resources. Session Laws 1977, c. 771, s. 4, changed the title of the

Department of Natural and Economic Resources to the Department of Natural Resources and Community Development. Therefore, the editors have inserted "Department of Natural Resources and Community Development" in brackets in this section as set out above.

ARTICLE 3.

Regional Sewage Disposal Planning.

§ 162A-26. Title.

This Article shall be known and may be cited as the "Regional Sewage Disposal Planning Act of 1971." (1971, c. 870, s. 1.)

§ 162A-27. Definitions of "regional sewage disposal system" and "comprehensive planning."

For the purposes of this Article "regional sewage disposal system" is defined as a public sewage disposal system of a municipality, county, sanitary district, or other political subdivision of the State, or combination thereof, which provides, is intended to provide, or is capable of providing adequate collection, treatment, purification and disposal of sewage to a substantial portion of the population within a county, or a region composed of all or parts of two or more counties, or to a metropolitan area in two or more counties. "Comprehensive planning" is defined as that planning which is a prerequisite for qualifying for receipt of federal and/or State grant funds for preparation of plans and specifications and for actual construction of regional sewage disposal systems. (1971, c. 870, s. 1; 1975, c. 251, s. 1.)

§ 162A-28. Role and function of Environmental Management Commission.

The North Carolina Environmental Management Commission, in order to provide a framework for comprehensive planning of regional sewage disposal systems and for orderly coordination of local actions relating to sewage disposal, to make possible the most efficient disposal of sewage and to help realize economies of scale in sewage disposal systems, shall perform the following functions:

- (1) Identify major sources of sewage for regional systems and sewer system interconnections as may be desirable and feasible.
- (2) Identify geographical areas of the State suitable for the development of regional sewage disposal systems that meet federal and State grant requirements.
- (3) Establish priorities for regionalization.
- (4) Develop plans for connecting proposed regional sewage disposal systems to major sources of sewage and for such sewer system interconnections as may be desirable and feasible.
- (5) Review and approve plans for proposed regional sewage disposal systems and for proposed municipal and countywide systems which are compatible with a regional plan.
- (6) Administer a State program of financial assistance to local governments and regional planning agencies for the development of comprehensive plans for regional sewage disposal systems or county systems compatible with regional plans.
- (7) Provide technical assistance to local and regional planning agencies and to consulting engineering firms. (1971, c. 870, s. 1; 1973, c. 1262, s. 23; 1975, c. 251, s. 2.)

§ 162A-29. Regional Sewage Disposal Planning Revolving Fund established; conditions and procedures.

(a) There is established under the control and direction of the Department of Administration a Regional Sewage Disposal Planning Revolving Fund, to consist of any moneys that may be appropriated for use through the fund by the General Assembly or that may be made available to it from any other source. The Department may make advances from the fund to any county, municipality, or sanitary district, or to counties and municipalities acting collectively or jointly as a regional sewer authority, for the purpose of meeting the cost of advance planning and engineering work necessary or desirable for the development of a comprehensive plan for a regional sewage disposal system as defined in this Article. Such advances shall be subject to repayment by the recipient to the Department from the proceeds of bonds or other obligations for the regional sewage disposal system, or from other funds available to the recipient including grants, except when, in the judgment of the Department of Water and Air Resources [Department of Natural Resources and Community Development], a proposed plan for development and construction of a countywide or other regional sewage disposal system is not feasible because of design and construction factors, or because of the effect that the sewage disposal system discharge will have upon water quality standards, or because construction of a proposed system is not economically feasible, (but not if the applicant decides not to proceed with construction that has been planned and which the Department of Water and Air Resources [Department of Natural Resources and Community Development] has declared to be feasible).

(b) The Department of Administration shall not make any advance pursuant to this section without first referring the application and proposal to the

State Department of Water and Air Resources [Department of Natural Resources and Community Development], the State agency responsible for water pollution control, for determination as to whether the conditions set forth below have been met:

- (1) The proposed area is suitable for development of a regional sewage disposal system from the standpoint of present and projected populations, industrial growth potential, and present and future sources of sewage.
- (2) The applicant proposes to undertake long-range comprehensive planning to meet present and projected needs for high quality sewage disposal through the construction of a regional sewage disposal system as defined in this Article. The determination by the Department of Water and Air Resources [Department of Natural Resources and Community Development], that the proposed system would be a "regional system," as defined by this Article, shall be conclusive.
- (3) The applicant proposes to coordinate planning of the regional sewage disposal system with land-use planning in the area, in order that both planning efforts will be compatible.
- (4) The applicant proposes to employ an engineer licensed to practice in the State of North Carolina to prepare a comprehensive regional sewage disposal plan, which plan will provide detailed information on the source or sources of sewage; the proposed system, including all facilities and appurtenances thereto for the collection, transmission, treatment, purification and disposal of sewage; any proposed interconnection with existing systems, and provisions for interconnections with other county, municipal and regional systems; the phased development of systems to achieve ultimate objectives if economic feasibility is in question; projected sewage disposal service areas; proposed equipment; estimates of cost and projected revenues; and methods of financing.

(c) In addition to the above conditions, the Department of Administration shall not make any advance to any applicant until the following conditions have also been met:

- (1) The Department has determined that there is a reasonable prospect of federal (or State) aid in the financing of the projected work if the undertaking is one that will be dependent upon federal (or State) aid.
- (2) The Department has received firm assurances from the applicant that the work or project, if feasible, will be undertaken.
- (3) The applicant has furnished evidence that it does not have funds available to finance the plan.

(d) All advances made pursuant to this section shall be repaid in full, upon receipt of any sewage disposal facilities planning grant funds from federal or State sources, or within one year of the start of construction on the projected system, or within six months after the issuance of bonds for the financing of construction of the system, or within six years from the date of the making of the advance, whichever comes first. The Department may, in its discretion, require the repayment of any advance in installments.

(e) The Department of Administration may adopt such rules and regulations with respect to the making of applications or the receipt of advances as are consistent with the terms and purpose of this section.

(f) The provisions of Chapter 159 of the General Statutes of North Carolina (Local Government Acts) shall not apply to advances made from the Regional Sewage Disposal Planning Revolving Fund as authorized in this Article. (1971, c. 870, s. 1; 1975, c. 251, ss. 3, 4.)

Editor's Note.— Under Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources, the functions of the former Department of Water and Air Resources devolved upon the Department of Natural and Economic Resources. Session Laws 1977, c. 771, s. 4, changed the title of the

Department of Natural and Economic Resources to the Department of Natural Resources and Community Development. Therefore, the editors have inserted "Department of Natural Resources and Community Development" in brackets in subsections (a) and (b) of this section as set out above.

§ 162A-30. Construction of Article.

This Article shall be construed as providing supplemental authority in addition to the powers of the North Carolina Utilities Commission under Chapter 62 of the North Carolina General Statutes, the North Carolina Environmental Management Commission under Articles 21 and 38 of Chapter 143 of the North Carolina General Statutes, and the North Carolina Department of Human Resources under General Statutes Chapter 130, and any other provisions of law concerning local and regional sewage disposal. (1971, c. 870, s. 1; 1973, c. 476, s. 128; c. 1262, s. 23.)

ARTICLE 4.

Metropolitan Water Districts.

§ 162A-31. Short title.

This Article shall be known and may be cited as the Metropolitan Water Districts Act. (1971, c. 815, s. 1.)

§ 162A-32. Definitions; description of boundaries.

(a) As used in this Article the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

- (1) "Board of commissioners" or "commissioners" shall mean the duly elected board of commissioners of the county in which a metropolitan water district shall be created under the provisions of this Article.
- (2) "City council" or "council" shall mean the duly elected city council of any municipality located within the State.
- (3) "Cost" as applied to a water system or sewerage system shall mean the cost of acquiring, constructing, reconstructing, improving, extending, enlarging, repairing and equipping any such system, and shall include the cost of all labor and materials, machinery and equipment, lands, property, rights, easements and franchises, plans and specifications, surveys and estimates of cost and of revenues, and planning, engineering, financial advice, and legal services, financing charges, interest prior to and during construction and, if deemed advisable by a district board, for one year after the estimated date of completion of construction, and all other expenses necessary or incident to determining the feasibility or practicability of any such undertaking, administrative expense and such other expenses, including reasonable provision for working capital and a reserve for debt service, as may be necessary or incident to the financing herein authorized, and may also include any obligation or expense incurred by a district or by any political subdivision prior to the issuance of bonds under the provisions of this Article in connection with any such undertaking or any of the foregoing items of cost.

- (4) "District" shall mean a metropolitan water district created under the provisions of this Article.
- (5) "District board" shall mean the district board of the metropolitan water district created under the provisions of this Article.
- (6) "General obligation bonds" shall mean bonds of a metropolitan water district for the payment of which and the interest thereon all the taxable property within said district is subject to the levy of an ad valorem tax without limitation of rate or amount.
- (7) "Governing body" shall mean the board, board of trustees, commission, board of commissioners, council or other body, by whatever name it may be known, of a political subdivision including, but without limitation, other water or sewer districts or the trustees thereof within the State of North Carolina in which the general legislative powers thereof are vested.
- (8) "Person" shall mean any and all persons including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies or private or public corporations organized and existing under the laws of the State or any other state or county.
- (9) "Political subdivision" shall mean any county, city, town, incorporated village, sanitary district, water district, sewer district, special purpose district or other political subdivision or public corporation of this State now or hereafter created or established.
- (10) "Revenue bonds" shall mean bonds the principal of and the interest on which are payable solely from revenues of a water system or systems or a sewerage system or systems or both owned or operated by a metropolitan water district created under the provisions of this Article.
- (11) "Revenues" shall mean all moneys received by a metropolitan water district from, in connection with, or as a result of its ownership or control or operation of a water system or systems or a sewerage system or systems, or both, including, without limitation and as deemed advisable by the district board, moneys received from the United States of America or any agency thereof, pursuant to an agreement with the district board pertaining to the water system or the sewerage system or both.
- (12) "Sewerage system" shall embrace sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems and any part or parts thereof, either within or without the limits of a district, all property, rights, easements and franchises relating thereto, and any and all buildings and other structures deemed necessary or useful by a district board in connection with the operation or maintenance thereof.
- (13) "Sewers" shall mean any mains, pipes and laterals, including pumping stations for the reception of sewage and carrying such sewage to an outfall or some part of a sewage disposal system, and all property, rights, easements, and franchises related thereto and deemed necessary or convenient by a district board for the operation and maintenance thereof.
- (14) "Water distribution system" shall include aqueducts, mains, laterals, pumping stations, distributing reservoirs, standpipes, tanks, hydrants, services, meters, valves, and all necessary appurtenances, and all property, rights, easements, and franchises related thereto and deemed necessary or convenient by a district board for the operation and maintenance thereof.
- (15) "Water system" shall mean and include all plants, systems, facilities or properties used or useful or having the present capacity for future

use in connection with the supply or distribution of water, and any integral part thereof, including but not limited to water supply systems, water distribution systems, sources of water supply including lakes, reservoirs and wells, intakes, mains, laterals, aqueducts, pumping stations, standpipes, filtration plants, purification plants, hydrants, meters, valves, and all necessary appurtenances and equipment and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by a district board for the operation or maintenance thereof.

- (16) "Water treatment or purification plant" shall mean any plant, system, facility, or property, used or useful or having the present capacity for future use in connection with the treatment or purification of water, or any integral part thereof; and all necessary appurtenances or equipment, and all property, rights, easements and franchises relating thereto and deemed necessary or convenient by a district board for the operation thereof.

(b) Whenever this Article requires that the boundaries of an area be described, it shall be sufficient if the boundaries are described in a manner which conveys an understanding of the location of the land and may be

- (1) By reference to a map,
- (2) By metes and bounds,
- (3) By general description referring to natural boundaries, boundaries of political subdivisions, existing water or sewer districts, or portions thereof, or boundaries of particular tracts or parcels of land, or
- (4) Any combination of the foregoing. (1971, c. 815, s. 2; 1979, c. 619, s. 9.)

§ 162A-33. Procedure for creation; resolutions and petitions for creation; notice to and action by Commission for Health Services; notice and public hearing; resolutions creating districts; actions to set aside proceedings.

Any two or more political subdivisions in a county, or any political subdivision or subdivisions, including any existing water or sewer district, and any unincorporated area or areas located within the same county, which political subdivisions or areas need not be contiguous, may petition the board of commissioners for the creation of a metropolitan water district under the provisions of this Article by filing with the board of commissioners:

- (1) A resolution of the governing body of each such political subdivision stating the necessity for the creation of a metropolitan water district under the provisions of this Article in order to preserve and promote the public health and welfare within the area of the proposed district, and requesting the creation of a metropolitan water district having the boundaries set forth in said resolution, and
- (2) If any unincorporated area is to be included in such district, a petition, signed by not less than fifteen per centum (15%) of the voters resident within such area, defining the boundaries of such area, stating the necessity for the creation of a metropolitan water district under the provisions of this Article in order to preserve and promote the public health and welfare within the proposed district, and requesting the creation of a metropolitan water district having the boundaries set forth in such petition for such district.

If any water district, sewer district or special purpose district shall encompass wholly or in part within its boundaries a city or town, no such water district, sewer district or special purpose district may petition for inclusion

within a metropolitan water district unless the governing body of such city or town shall approve such petition or shall also petition for its inclusion within such metropolitan water district.

Upon the receipt of such resolutions and petitions requesting the creation of a metropolitan water district, the board of commissioners, through its chairman shall notify the Commission for Health Services of the receipt of such resolutions and petitions, and shall request that a representative of the Commission for Health Services hold a joint public hearing with the board of commissioners concerning the creation of the proposed metropolitan water district. The Director of the Commission for Health Services and the chairman of the board of commissioners shall name a time and place within the proposed district at which the public hearing shall be held. The chairman of the board of commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county and also by publication in a newspaper circulating in the proposed district at least once a week for four successive weeks, the first publication to be at least 30 days prior to such hearing. In the event all matters pertaining to the creation of such metropolitan water district cannot be concluded at such hearing, such hearing may be continued to a time and place within the proposed district determined by the board of commissioners with the concurrence of the representative of the Commission for Health Services.

If, after such hearing, the Commission for Health Services and the board of commissioners shall deem it advisable to comply with the request of such resolutions and petitions, and determine that the preservation and promotion of the public health and welfare in the area or areas described in such resolutions and petitions require that a metropolitan water district should be created and established, the Commission for Health Services shall adopt a resolution to that effect, defining the boundaries of such district and declaring the territory within such boundaries to be a metropolitan water district under the name and style of "..... Metropolitan Water District of County"; provided that the Commission for Health Services may make minor deviations in the boundaries from those prescribed in the resolutions and petitions upon the Commission for Health Services determining that such deviations are advisable in the interest of the public health, provided no such district shall include any political subdivision which has not petitioned for inclusion as provided for in this Article.

The Commission for Health Services shall cause copies of the resolution creating the metropolitan water district to be sent to the board of commissioners and to the governing body of each political subdivision included in the district. The board of commissioners shall cause a copy of such resolution of the Commission for Health Services to be published in a newspaper circulating within the district once in each of two successive weeks, and a notice substantially in the following form shall be published with such resolution:

"The foregoing resolution was passed by the Commission for Health Services on the day of, 19. . . ., and was first published on the . . . day of, 19. . . .

Any action or proceeding questioning the validity of said resolution or the creation of the metropolitan water district therein described must be commenced within 30 days after the first publication of said resolution.

.....
Clerk, Board of Commissioners for
..... County."

Any action or proceeding in any court to set aside a resolution creating a metropolitan water district or to obtain any other relief upon the ground that such resolution or any proceeding or action taken with respect to the creation of such district is invalid, must be commenced within 30 days after the first

publication of the resolution and said notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the resolution or the creation of the metropolitan water district therein described shall be asserted, nor shall the validity of the resolution or of the creation of such metropolitan water district be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period.

Notwithstanding the provisions of G.S. 160-2(6), after the creation of a water district pursuant to the provisions of this Article a municipality or other political subdivision which owns or operates an existing water system or sewer system may lease, contract, assign or convey such system or systems to the district under and subject to such terms and conditions and for such considerations as it may deem advisable for the general welfare and benefit of its citizens. (1971, c. 815, s. 3; 1973, c. 476, s. 128.)

Editor's Note. — Section 160-2, referred to in this section, was repealed by Session Laws 1971, c. 698, s. 2.

§ 162A-34. District board; composition, appointment, term, oaths and removal of members; organization; meetings; quorum; compensation and expenses of members.

(a) Immediately after the creation of the district, the board of commissioners shall appoint three members of the district board and the governing body of each political subdivision included in the district shall appoint one member, except that if any city or town has a population, according to the latest decennial census, in excess of the total population of the remaining cities and towns within the district, or where there are no other cities or towns involved, if the census population is in excess of the total population of the remainder of the district, the governing body shall appoint three members. No appointment of a member of the district board shall be made by or in behalf of any political subdivision of which the board of commissioners shall be the governing body, the three appointees designated by the board of commissioners shall be selected from within the district and shall be deemed to represent all such political subdivisions. The members of the district board first appointed shall have terms expiring one year, two years and three years, respectively, from the date of adoption of the resolution of the Commission for Health Services creating the district, as the board of commissioners shall determine, provided that of the three members appointed by any governing body, not more than one such member shall be appointed for a three-year term. Successive members shall each be appointed to serve only for the unexpired term and any member of the district board may be reappointed. Appointments of successor members shall, in each instance, be made by the governing body making the initial appointment or appointments. All members shall serve until their successors have been duly appointed and qualified, and any member of the district board may be removed for cause by the governing body appointing him.

Each member of the district board before entering upon his duties shall take and subscribe an oath or affirmation to support the Constitution and laws of the United States and of this State and to discharge faithfully the duties of his office, and a record of each such oath shall be filed with the clerk of the board of commissioners.

The district board shall elect one of its members as chairman and another as vice-chairman and shall appoint a secretary and a treasurer who may but need

not be members of the district board. The offices of secretary and treasurer may be combined. The terms of office of the chairman, vice-chairman, secretary and treasurer shall be as provided in the bylaws of the district board.

The district board shall meet regularly at such places and dates as determined by the board. Special meetings may be called by the chairman on his own initiative and shall be called by him upon request of two or more members of the board. All members shall be notified in writing at least 24 hours in advance of such meeting. A majority of the members of the district board shall constitute a quorum and the affirmative vote of a majority of the members of the district board present at any meeting thereof shall be necessary for any action taken by the district board. No vacancy in the membership of the district board shall impair the right of a quorum to exercise all the rights and perform all the duties of the district board. Each member including the chairman shall be entitled to vote on any question. The members of the district board may receive compensation in an amount to be determined by the board, but not to exceed ten dollars (\$10.00) for each meeting attended, and may be reimbursed the amount of actual expenses incurred by them in the performance of their duties.

(b) Any metropolitan water district wholly within the corporate limits of two or more municipalities shall be governed by a district board consisting of members appointed by the governing body of each political subdivision (municipal corporation) included wholly or partially in the district and an additional at-large member appointed by the other members of the district board as provided in this subsection. The governing body of each constituent municipality shall initially appoint two members from its qualified electors, one for a term expiring the first day of July after the first succeeding regular election in which municipal officers shall be elected by the municipality from which he is appointed, and the other for a term expiring the first day of July after the second succeeding regular election of municipal officers in the municipality. Thereafter, subsequent to each ensuing regular election of municipal officers the governing body of each municipal corporation composing any part of the metropolitan water district shall appoint one member to the district board for a term of four years beginning on the first day of July. The one additional at-large member of the district board shall be a qualified elector of a constituent municipality of the district and appointed initially and quadrennially thereafter by majority vote of the other district board membership for a term of four years which shall expire on the first day of August in every fourth calendar year thereafter.

Any vacancy in district board membership shall be filled by appointment of the original appointing authority for the remainder of the unexpired term.

The provisions of subsection (a) in particular and of this Article generally not inconsistent with this subsection shall also apply.

(c) In those cases where a district is created which includes a municipality which owns an existing water and sewer system and where the county commissioners are acting as or have been appointed as trustees of a separate water or sewer system, or both which will be included within the district along with an existing municipal system, the district board shall be comprised of seven members designated as follows: three county commissioners and three members of the city council of the municipality, said members to be selected by majority vote of the governing body on which they serve. These six members of the district board shall appoint a seventh member who shall also serve as chairman of the district board and whose term shall automatically expire upon the seating of either a new board of commissioners, or of a new council of the municipality.

The chairman of the district board will be eligible, however, for reappointment, upon the expiration of his or her current term, by the next district board selected upon and after the seating of either a new board of

commissioners or new council of the municipality. The chairman of the district board shall take and subscribe an oath or affirmation to support the Constitution and laws of the United States and of this State, and to discharge faithfully the duties of his office, and a record of each such oath shall be filed with the clerk of the board of commissioners and the clerk of the municipality. The other six members will serve upon said board corollary to the responsibilities and duties of their respective elective offices and such service upon the district board will not constitute the holding of a public office. No compensation shall be paid to any member of the district board except for the chairman, and his compensation shall be fixed by the remaining six members. Except as provided above, no additional oath or affirmation shall be required of the members of the district board. No county commissioner or member of the council of the municipality shall continue to serve upon the district board subsequent to the termination of his or her current elective term, except upon reelection to said office.

The district board shall appoint a secretary and a treasurer who will not be members of the district board. The terms of office of the secretary and treasurer shall be as provided in the bylaws of the district board and the compensation of said officers shall be fixed by the district board. The treasurer shall furnish bond in some security company authorized to do business in North Carolina, the amount to be fixed by the district board in a sum not less than five thousand dollars (\$5,000), which bond shall be approved by the district board and shall be continued upon the faithful performance of his duties. Every official, employee or agent of the district who handles or has custody of more than one hundred dollars (\$100.00) of such district funds at any time, shall before assuming his duties as such be required to furnish bond in some security company authorized to do business in North Carolina, the amount to be fixed by the district board, which bond shall be approved by the district board and shall be continued upon the faithful performance of his duties in an amount sufficient to protect the district. All bonds required by this section shall be filed with the clerk of the municipality.

The district board shall meet regularly and no less than monthly, at such places and dates as determined by the board. Special meetings may be called by the chairman on his own initiative and shall be called by him upon request of two or more members of the board. All members shall be notified in writing at least 24 hours in advance of any meeting. A majority of the members of the district board shall constitute a quorum and the affirmative vote of a majority of the district board present at any meeting thereof shall be necessary for any action taken by the district board. No vacancy in the membership of the district board shall impair the right of a quorum to exercise all the rights and perform all the duties of the district board. Each member, including the chairman, shall be entitled to vote upon any question.

Any vacancy in district board membership, except that of the chairman, shall be filled by appointment of the original appointing authority for the remainder of the unexpired term. Each governing body may, by majority vote, replace at any time its representatives on said district board. (1971, c. 815, s. 4; 1973, c. 476, s. 128.)

§ 162A-35. Procedure for inclusion of additional political subdivision or unincorporated area; notice and hearing; elections; actions questioning validity of elections.

If, at any time subsequent to the creation of a district, there shall be filed with the district board a resolution of the governing body of a political subdivision, or a petition, signed by not less than fifteen per centum (15%) of the

voters resident within an unincorporated area, requesting inclusion in the district of such political subdivision or unincorporated area, and if the district board shall favor the inclusion in the district of such political subdivision or unincorporated area, the district board shall notify the board of commissioners and the board of commissioners, through its chairman, shall thereupon request that a representative of the Commission for Health Services hold a joint public hearing with the board of commissioners concerning the inclusion of such political subdivision or unincorporated area in the district. The Secretary of Human Resources and the chairman of the board of commissioners shall name a time and place within the district at which the public hearing shall be held. The chairman of the board of commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county and also by publication in a newspaper circulating in the district and in any such political subdivision or unincorporated area at least once a week for four successive weeks, the first publication to be at least 30 days prior to such hearing. In the event all matters pertaining to the inclusion of such political subdivision or unincorporated area cannot be included at such hearing, such hearing may be continued to a time and place within the district determined by the board of commissioners with the concurrence of the representative of the Commission for Health Services.

If, after such hearing, the Commission for Health Services and the board of commissioners shall determine that the preservation and promotion of the public health and welfare require that such political subdivision or unincorporated area be included in the district, the Commission for Health Services shall adopt a resolution to that effect, defining the boundaries of the district including such political subdivision or unincorporated area which has filed a resolution or petition as provided for in this section, and declaring such political subdivision or unincorporated area to be included in the district, subject to the approval, as to the inclusion of such political subdivision, of a majority of the qualified voters of such political subdivision, or as to the inclusion of such unincorporated area, of a majority of the qualified voters of such unincorporated area, voting at an election thereon to be called and held in such political subdivision or unincorporated area. When an election is required to be held within both a political subdivision and an unincorporated area, a separate election shall be called and held for the unincorporated area and a separate election shall be called and held for the political subdivision. Such separate elections, although independent one from the other, shall be called and held within each political subdivision and within the unincorporated area simultaneously on the same date.

If, at or prior to such public hearing, there shall be filed with the district board a petition signed by not less than fifteen percent (15%) of the registered voters of the district requesting an election to be held on the question of including the political subdivision or unincorporated area in the district, the district board shall certify the petition and if found adequate, shall request the county board of elections to hold the election in the district. The election in the district may be held at the same time as the election in the political subdivision or unincorporated area seeking to become a part of the district.

The county board of elections shall give notice of the elections as required in G.S. 163-33(8) and shall conduct the election in the unincorporated area and within the political subdivision unless there is a municipal board of elections which conducts the elections for the municipality.

The cost of the election in the district shall be paid by the district board and the cost of the municipal election by the municipality. The county shall pay the cost of an election in the unincorporated area. The governing body of the political subdivision shall file an accurate description of its boundaries, and those persons signing the petition for an unincorporated area shall file an accurate description of its boundaries with the board of elections at the time the petition is filed with the district board.

The elections shall be held and conducted in accordance with the applicable provisions of Articles 23 and 24 of Chapter 163 of the General Statutes.

The ballot shall contain the words:

"FOR inclusion in the Metropolitan Water District of County that area known as"
 "AGAINST inclusion in the Metropolitan Water District of County that area known as"

If a majority of the votes cast in a political subdivision or unincorporated areas proposed to be included are in favor of inclusion, and a majority of the votes cast in the district favor inclusion, then from and after the date of the certification of the results such area or areas shall be a part of the district and subject to the debts of the district.

The results of the elections shall be certified to the district board.

If no election is required to be held in the district, then a favorable vote for inclusion in the political subdivision or unincorporated area shall be deemed to include such area or political subdivision as a part of the district and they shall be subject to the debts of the district.

No right of action or defense founded upon the invalidity of any such election shall be asserted, or open to question in any court upon any grounds unless the action or proceeding is commenced within 30 days after the results have been certified by the board of elections. (1971, c. 815, s. 5; 1973, c. 476, s. 128; 1981, c. 185.)

Effect of Amendments. — The 1981 amendment substituted all the language following the second paragraph for the former third through

tenth paragraphs, which concerned the same subject matter.

§ 162A-36. Powers generally; fiscal year.

(a) Each district shall be deemed to be a public body and body politic and corporate, exercising public and essential governmental functions, to provide for the preservation and promotion of the public health and welfare, and said district is hereby authorized and empowered:

- (1) To adopt bylaws for the regulation of its affairs and the conduct of its business not in conflict with this or other law;
- (2) To adopt an official seal and alter the same at pleasure;
- (3) To maintain an office or offices at such place or places in the district as it may designate;
- (4) To sue and be sued in its own name, plead and be impleaded;
- (5) To acquire, lease as lessor or lessee, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any water system or part thereof, and any sewerage system or part thereof, except interceptors, treatment plants and facilities constituting a system operated by a metropolitan sewage district within or without the district; provided, however, that no such water or sewerage system or part thereof, shall be located in any city, town or incorporated village except with the consent of the governing body thereof, and each such governing body is hereby authorized to grant such consent;
- (6) To issue general obligation bonds and revenue bonds of the district as hereinafter provided, to pay the costs of a water or sewerage system or systems;
- (7) To issue general obligation refunding bonds and revenue refunding bonds of the district as hereinafter provided;
- (8) To fix and revise from time to time and to collect rents, rates, fees and other charges for the use of the services and facilities furnished by any water or sewerage system;

- (9) To cause taxes to be levied and collected upon all taxable property within the district sufficient to meet the obligations of the district, to pay the costs of maintaining, repairing and operating any water or sewerage system or systems, and to pay all obligations incurred by the district in the performance of its legal undertakings and functions;
 - (10) To acquire in the name of the district, either within or without the corporate limits of the district, by gift, purchase, lease or the exercise of the right of eminent domain, which right shall be exercised in accordance with the provisions of Chapter 40A of the General Statutes, any improved or unimproved lands or rights in lands, and to acquire by lease or purchase such personal property as it may deem necessary in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, repair, equipment, maintenance or operation of any water or sewerage system or systems, and to hold and dispose of real and personal property under its control;
 - (11) To make and enter into all contracts, leases and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article, including a trust agreement or trust agreements securing any revenue bonds issued hereunder;
 - (12) To employ such consulting and other engineers, superintendents, managers, construction and financial experts, accountants, attorneys, employees and agents as may, in the judgment of the district board, be deemed necessary, and to fix their compensation; provided, however, that the provisions of G.S. 159-20 shall be complied with to the extent that the same shall be applicable;
 - (13) To receive and accept from the United States of America or the State of North Carolina, or any agency or instrumentality thereof loans, grants, advances or contributions for or in aid of the planning, acquisition, construction, reconstruction, improvement, extension, enlargement, repair, equipment, maintenance or operation of any water or sewerage system or systems, to agree to such reasonable conditions or requirements as may be imposed, and to receive and accept contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes of which such loans, grants, advances or contributions may be made;
 - (14) To negotiate and pay close-out costs involved in the acquisition or lease of existing water supply or sewerage systems;
 - (15) To determine the extent to which local water distribution system and local sewerage system improvements will be financed out of district revenues and to contract with other political subdivisions for construction of facilities to be jointly financed and whose title would be vested in the district;
 - (16) To lease from any city or town or any other municipal corporation, or from any water or sewage district, any water or sewerage system or portions thereof upon such terms and conditions and for such considerations as may to the district board be deemed fair and reasonable;
 - (17) The metropolitan water district is authorized and empowered, through its district board, officers, agents and employees, to cause any user of water who shall fail to pay promptly his water rent or use bill for any month to be cut off, and his right to further use of water from said district to be discontinued until payment of any water rent or use arrearages;
 - (18) To do all acts and things necessary or convenient to carry out the powers granted by this Article.
- (b)(1) Each metropolitan water district shall publish an annual financial report and its books shall be open for public inspection.

- (2) Each district shall keep its accounts on the basis of a fiscal year commencing on the first day of July and ending on the thirtieth day of June of the following year.
- (3) District revenues shall be used solely for the operation, improvement or benefit of the district's water and sewerage systems and the leasing of any portion thereof and to pay the principal and interest on bonds issued by the district. Said revenues shall not be used for the payment of interest or amortization of any utility bonds previously issued by any city, town or water or sewerage district.
- (4) A district may provide water to a city or county or portion thereof within the district for governmental purposes without charge or at reduced rates. (1971, c. 815, s. 6; 1981, c. 919, s. 31.)

Editor's Note. — Former § 159-20, referred to in subsection (a)(12) of this section, was rewritten by Session Laws 1971, c. 780. For similar provisions, see § 159-131.

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, substituted "Chapter 40A" for "Chapter 40" in subdivision (10) of subsection (a).

§ 162A-37. Bonds and notes authorized.

A metropolitan water district may from time to time issue bonds and notes under the Local Government Finance Act. (1971, c. 780, s. 37.5; c. 815, s. 7; 1973, c. 494, s. 46.)

§§ 162A-38 to 162A-44: Repealed by Session Laws 1971, c. 780, s. 37.5; 1973, c. 494, s. 46.

§ 162A-45. Determination of tax rate by district board; levy and collection of tax; remittance and deposit of funds.

After each assessment for taxes following the creation of the district, the board of commissioners shall file with the district board the valuation of assessable property within the district. The district board shall then determine the amount of funds to be raised by taxation for the ensuing year in excess of available funds to provide for the payment of the interest on and the principal of all outstanding general obligation bonds as the same shall become due and payable, to pay the cost of maintaining, repairing and operating any water system or sewerage system or both, and to pay all obligations incurred by the district in the performance of its lawful undertakings and functions.

The district board shall determine the number of cents per one hundred dollars (\$100.00) necessary to raise said amount and certify such rate to the board of commissioners. The board of commissioners in its next annual levy shall include the number of cents per one hundred dollars (\$100.00) certified by the district board in the levy against all taxable property within the district, which tax shall be collected as other county taxes are collected, and every month the amount of tax so collected shall be remitted to the district board and deposited by the district board in a separate account in a bank in the State of North Carolina. Such levy may include an amount for reimbursing the county for the additional cost to the county of levying and collecting such taxes, pursuant to such formula as may be agreed upon by the district board and the board of commissioners, to be deducted from the collections and stated with each remittance to the district board. The officer or officers having charge or custody of the funds of the district shall require such bank to furnish security for protection of such deposits as provided in G.S. 159-31. (1971, c. 815, s. 15; 1973, c. 1446, s. 13.)

§§ 162A-46 to 162A-48: Repealed by Session Laws 1971, c. 780, s. 37.5; 1973, c. 494, s. 46.

§ 162A-49. Rates and charges for services.

The district board may fix, and may revise from time to time, rents, rates, fees and other charges for the use of land for the services furnished or to be furnished by any water system or sewerage system or both. Such rents, rates, fees and charges shall not be subject to supervision or regulation by any bureau, board, commission, or other agency of the State or of any political subdivision. Any such rents, rates, fees and charges pledged to the payment of revenue bonds of the district shall be fixed and revised so that the revenues of the water system or sewerage system or both, together with any other available funds, shall be sufficient at all times to pay the cost of maintaining, repairing and operating the water system or the sewerage system or both, the revenues of which are pledged to the payment of such revenue bonds, including reserves for such purposes, and to pay the interest on and the principal of such revenue bonds as the same shall become due and payable and to provide reserves therefor. If any such rents, rates, fees and charges are pledged to the payment of any general obligation bonds issued under this Article, such rents, rates, fees and charges shall be fixed and revised so as to comply with the requirements of such pledge. The district board may provide methods for collection of such rents, rates, fees and charges and measures for enforcement of collection thereof, including penalties and the denial or discontinuance of service. (1971, c. 815, s. 19.)

§§ 162A-50 to 162A-52: Repealed by Session Laws 1971, c. 780, s. 37.5; 1973, c. 494, s. 46.

§ 162A-53. Authority of governing bodies of political subdivisions.

The governing body of any political subdivision is hereby authorized and empowered:

- (1) Subject to the approval of the Local Government Commission, to transfer jurisdiction over, and to lease, lend, sell, grant or convey to a district, upon such terms and conditions as the governing body of such political subdivision may agree upon with the district board, the whole or any part of any water system or sewerage system or both, and such real or personal property as may be necessary or useful in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, equipment, repair, maintenance or operation of any new water system or sewerage system or both by the district, including public roads and other property already devoted to public use;
- (2) To make and enter into contracts or agreements with a district, upon such terms and conditions and for such periods as such governing body and the district board may determine:
 - a. For the collection, treatment or disposal of sewage;
 - b. For the collecting by such political subdivision or by the district of rents, rates, fees or charges for the services and facilities provided to or for such political subdivision or its inhabitants by any water system or sewerage system or both and for the enforcement of collection of such rents, rates, fees and charges; and
 - c. For the imposition of penalties, including the shutting off of the supply of water furnished by any water system owned or operated

by such political subdivision, in the event that the owner, tenant or occupant of any premises utilizing such water shall fail to pay any such rents, rates, fees or charges;

- d. For the supply of raw or treated water on a regular retail or wholesale basis;
 - e. For the supply of raw or treated water on a standby wholesale basis;
 - f. For the construction of jointly financed facilities whose title shall be vested in the district.
- (3) To fix, and revise from time to time, rents, rates, fees and other charges for the services furnished or to be furnished by a water system or sewerage system or both under any contract between the district and such political subdivision, and to pledge all or any part of the proceeds of such rents, rates, fees and charges to the payment of any obligation of such political subdivision to the district under such contract;
 - (4) To pay any obligation of such political subdivision to the district under such contract from any available funds of the political subdivision and to levy and collect a tax ad valorem for the making of any such payment; and
 - (5) In its discretion or if required by law, to submit to its qualified electors under the election laws applicable to such political subdivision any contract or agreement which such governing body is authorized to make and enter into with the district under the provisions of this Article.

Any such election upon a contract or agreement, may, at the discretion of the governing body, be called and held under the election laws applicable to the issuance of bonds by such political subdivision. (1971, c. 815, s. 23.)

§ 162A-54. Rights-of-way and easements in streets and highways.

A right-of-way or easement in, along, or across any State highway system road, or street, and along or across any city or town street within a district is hereby granted to a district in case such right-of-way is found by the district board to be necessary or convenient for carrying out any of the work of the district. Any work done in, along, or across any State highway system, road, street, or property shall be done in accordance with the rules and regulations and any reasonable requirements of the Department of Transportation, and any work done in, along, or across any municipal street or property shall be done in accordance with any reasonable requirements of the municipal governing body. (1971, c. 815, s. 24; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)

§ 162A-55. Submission of preliminary plans to planning groups; cooperation with planning agencies.

Prior to the time final plans are made for the location and construction of any water system or sewerage system or both, the district board shall present preliminary plans for such improvement to the county, municipal or regional planning board for their consideration, if such facility is to be located within the planning jurisdiction of any such county, municipal or regional planning group. The district board shall make every effort to cooperate with the planning agency, if any, in the location and construction of a proposed facility authorized under this Article. The district board created under the authority of this Article is hereby directed, wherever possible, to coordinate its plans for the construction of a water system or sewerage system or both, with the overall plans for the development of the planning area, if such district is located wholly or in part within a county, municipal or regional planning area; provided,

however, that the approval of any such county, municipal or regional planning board as to any such plan of the district shall not be required: (1971, c. 815, s. 25.)

§ 162A-56. Advances by political subdivisions for preliminary expenses of districts.

Any political subdivision is hereby authorized to make advances, from any moneys that may be available for such purpose, in connection with the creation of such district and to provide for the preliminary expenses of such district. Any such advances may be repaid to such political subdivision from the proceeds of bonds issued by said district or from other available funds of said district. (1971, c. 815, s. 26.)

§ 162A-57. Article regarded as supplemental.

This Article shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of bonds under the provisions of this Article need not comply with the requirements of any other law applicable to the issuance of bonds except as herein provided. (1971, c. 815, s. 27.)

§ 162A-58. Inconsistent laws declared inapplicable.

All general, special or local laws, or parts thereof inconsistent herewith are hereby declared to be inapplicable, unless otherwise specified, to the provisions of this Article. It is specifically provided that Chapter 399 of the 1933 Public-Local and Private Laws of North Carolina shall not be applicable to any metropolitan water district created pursuant to the provisions of this Article. (1971, c. 815, s. 28.)

§§ 162A-59 to 162A-63: Reserved for future codification purposes.

ARTICLE 5.

Metropolitan Sewerage Districts.

§ 162A-64. Short title.

This Article shall be known and may be cited as the "North Carolina Metropolitan Sewerage Districts Act." (1961, c. 795, s. 1; 1973, c. 822, s. 4.)

Editor's Note. — This Article, comprising §§ 162A-64 through 162A-80, was formerly Article 25, §§ 153-295 through 153-324, of Chapter 153. It was reenacted and transferred to its present location by Session Laws 1973, c. 822, s. 4.

§ 162A-65. Definitions; description of boundaries.

(a) Definitions. — As used in this Article the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

- (1) The term "board of commissioners" shall mean the board of commissioners of the county in which a metropolitan sewerage district shall be created under the provisions of this Article.

- (2) The word "cost" as applied to a sewerage system shall mean the cost of acquiring, constructing, reconstructing, improving, extending, enlarging, repairing and equipping any such system, and shall include the cost of all labor and materials, machinery and equipment, lands, property, rights, easements and franchises, plans and specifications, surveys and estimates of cost and of revenues, and engineering and legal services, financing charges, interest prior to and during construction and, if deemed advisable by the district board, for one year after the estimated date of completion of construction, and all other expenses necessary or incident to determining the feasibility or practicability of any such undertaking, administrative expense and such other expenses, including reasonable provision for working capital and a reserve for interest, as may be necessary or incident to the financing herein authorized, and may also include any obligation or expense incurred by the district or by any political subdivision prior to the issuance of bonds under the provisions of this Article in connection with any such undertaking or any of the foregoing items of cost.
- (3) The word "district" shall mean a metropolitan sewerage district created under the provisions of this Article.
- (4) The term "district board" shall mean a sewerage district board established under the provisions of this Article as the governing body of a district or, if such sewerage district board shall be abolished, any board, body, or commission succeeding to the principal functions thereof or upon which the powers given by this Article to the sewerage district board shall be given by law.
- (5) The term "general obligation bonds" shall mean bonds of a district for the payment of which and the interest thereon all the taxable property within such district is subject to the levy of an ad valorem tax without limitation of rate or amount.
- (6) The term "governing body" shall mean the board, commission, council or other body, by whatever name it may be known, of a political subdivision in which the general legislative powers thereof are vested, including, but without limitation, as to any political subdivision other than the county, the board of commissioners for the county when the general legislative powers of such political subdivision are exercised by such board.
- (7) The word "person" shall mean any and all persons including individuals, firms, partnerships, associations, public or private institutions, municipalities, or political subdivisions, governmental agencies, or private or public corporations organized and existing under the laws of this State or any other state or county.
- (8) The term "political subdivision" shall mean any county, city, town, incorporated village, sanitary district, water district, sewer district, special purpose district or other political subdivision or public corporation of this State now or hereafter created or established.
- (9) The term "revenue bonds" shall mean bonds the principal of and the interest on which are payable solely from revenues of a sewerage system or systems.
- (9a) The word "revenues" shall mean all moneys received by a district from, in connection with or as a result of its ownership or operation of a sewerage system, including, without limitation and if deemed advisable by the district board, moneys received from the United States of America, or any agency thereof, pursuant to an agreement with the district board pertaining to the sewerage system.
- (10) The word "sewage" shall mean the water-carried wastes created in and carried or to be carried away from residences, hotels, schools,

hospitals, industrial establishments, commercial establishments or any other private or public buildings, together with such surface or groundwater or household and industrial wastes as may be present.

- (11) The term "sewage disposal system" shall mean any plant, system, facility or property, either within or without the limits of the district, used or useful or having the present capacity for future use in connection with the collection, treatment, purification or disposal of sewage, or any integral part thereof, including but not limited to septic tank systems or other on-site collection or disposal facilities or systems, treatment plants, pumping stations, intercepting sewers, trunk sewers, pressure lines, mains and all necessary appurtenances and equipment, and all property, rights, easements and franchises relating thereto and deemed necessary or convenient by the district board for the operation thereof.
- (12) The term "sewerage system" shall embrace both sewers and sewage disposal systems and any part or parts thereof, either within or without the limits of the district, all property, rights, easements and franchises relating thereto, and any and all buildings and other structures necessary or useful in connection with the ownership, operation or maintenance thereof.
- (13) The word "sewers" shall mean any mains, pipes and laterals, including pumping stations, either within or without the limits of the district, for the reception of sewage and carrying such sewage to an outfall or some part of a sewage disposal system.

(b) Description of Boundaries. — Whenever this Article requires that the boundaries of an area be described, it shall be sufficient if the boundaries are described in a manner which conveys an understanding of the location of the land and may be

- (1) By reference to a map,
- (2) By metes and bounds,
- (3) By general description referring to natural boundaries, boundaries of political subdivisions, or boundaries of particular tracts or parcels of land, or
- (4) Any combination of the foregoing. (1961, c. 795, s. 2; 1969, c. 993, s. 1; 1973, c. 822, s. 4; 1979, c. 619, s. 10.)

§ 162A-66. Procedure for creation; resolutions and petitions for creation; notice to and action by the Environmental Management Commission; notice and public hearing; resolutions creating districts; actions to set aside proceedings.

Any two or more political subdivisions in one or more counties, or any political subdivision or subdivisions and any unincorporated area or areas located within one or more counties, which political subdivisions or areas need not be contiguous, may petition for the creation of a metropolitan sewerage district under the provisions of this Article by filing with the board or boards of commissioners of the county or counties within which the proposed district will lie:

- (1) A resolution of the governing body of each such political subdivision stating the necessity for the creation of a metropolitan sewerage district under the provisions of this Article in order to preserve and promote the public health and welfare within the area of the proposed district, and requesting the creation of a metropolitan sewerage district having the boundaries set forth in said resolution, and

- (2) If any unincorporated area is to be included in such district, a petition, signed by not less than fifty-one per centum (51%) of the qualified voters resident within such area, defining the boundaries of such area, stating the necessity for the creation of a metropolitan sewerage district under the provisions of this Article in order to preserve and promote the public health and welfare within the proposed district, and requesting the creation of a metropolitan sewerage district having the boundaries set forth in such petition for such district.

Upon the receipt of such resolutions and petitions requesting the creation of a metropolitan sewerage district, the board or boards of commissioners, through the chairman thereof, shall notify the North Carolina Environmental Management Commission of the receipt of such resolutions and petitions, and shall request that a representative of the Environmental Management Commission hold a joint public hearing with the board or boards of commissioners concerning the creation of the proposed metropolitan sewerage district. The chairman of the Environmental Management Commission and the chairman or chairmen of the board or boards of commissioners shall name a time and place within the proposed district at which the public hearing shall be held; provided, however, that where a proposed district lies within more than one county, the public hearing shall be held in the county within which the greater portion of the proposed district lies. The chairman or chairmen of the board or boards of commissioners shall give prior notice of such hearing by posting a notice at least 30 days prior to the hearing at the courthouse of the county or counties within which the district will lie and also by publication at least once a week for four successive weeks in a newspaper having general circulation in the proposed district, the first publication to be at least 30 days prior to such hearing. In the event all matters pertaining to the creation of such metropolitan sewerage district cannot be concluded at such hearing, such hearing may be continued to a time and place within the proposed district determined by the board or boards of commissioners with the concurrence of the representative of the Environmental Management Commission.

If, after such hearing, the Environmental Management Commission and the board or boards of commissioners shall deem it advisable to comply with the request of such resolutions and petitions, and determine that the creation of a metropolitan sewerage district would preserve and promote the public health and welfare in the area or areas described in such resolutions and petitions, the Environmental Management Commission shall adopt a resolution to that effect, defining the boundaries of such district and declaring the territory within such boundaries to be a metropolitan sewerage district under the name and style of "..... Metropolitan Sewerage District of [County] [Counties]"; provided, that the Environmental Management Commission may make minor deviations in the boundaries from those prescribed in the resolutions and petitions upon determination by the Environmental Management Commission that such deviations are advisable in the interest of the public health, and provided no such district shall include any political subdivision which has not petitioned for inclusion as provided in this Article.

The Environmental Management Commission shall cause copies of the resolution creating the metropolitan sewerage district to be sent to the board or boards of commissioners and to the governing body of each political subdivision included in the district. The board or boards of commissioners shall cause a copy of such resolution of the Environmental Management Commission to be published in a newspaper circulating within the district once in each of two successive weeks, and a notice substantially in the following form shall be published with such resolution:

The foregoing resolution was passed by the North Carolina Environmental Management Commission on the day of, 19...., and was first published on the day of, 19....

Any action or proceeding questioning the validity of said resolution or the creation of the metropolitan sewerage district therein described must be commenced within 30 days after the first publication of said resolution.

Clerk, Board of Commissioners for
County.

Any action or proceeding in any court to set aside a resolution creating a metropolitan sewerage district, or to obtain any other relief upon the ground that such resolution or any proceeding or action taken with respect to the creation of such district is invalid, must be commenced within 30 days after the first publication of the resolution and said notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the resolution or the creation of the metropolitan sewerage district therein described shall be asserted, nor shall the validity of the resolution or of the creation of such metropolitan sewerage district be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (1961, c. 795, s. 3; 1973, c. 512, s. 1; c. 822, s. 4; c. 1262, s. 23; 1977, c. 764, s. 1.)

CASE NOTES

The legislature has the sole power to create municipal corporations. The courts do not have that power. *State ex rel. Dyer v. City of Leaksville*, 275 N.C. 41, 165 S.E.2d 201 (1969).

Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. *State ex rel. Dyer v. City of Leaksville*, 275 N.C. 41, 165 S.E.2d 201 (1969).

The number, nature, and duration of the powers conferred upon municipal corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. The State, therefore, at its pleasure, may modify or withdraw all such powers, expand or contract the territorial area, unite the whole or

a part of it with another municipality, or repeal the charter and destroy the corporation. In all these respects the State is supreme, and its legislative body, conforming its action to the State Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. *State ex rel. Dyer v. City of Leaksville*, 275 N.C. 41, 165 S.E.2d 201 (1969).

The governing body acts for the subdivision. *Scarborough v. Adams*, 264 N.C. 631, 142 S.E.2d 608 (1965).

If No Subdivision, Majority of Freeholders Must Sign Petition. — If there is no subdivision and no governing body to act for the subdivision, a majority of the freeholders must sign the petition. *Scarborough v. Adams*, 264 N.C. 631, 142 S.E.2d 608 (1965).

§ 162A-67. District board; composition, appointment, terms, oaths and removal of members; organization; meetings; quorum; compensation and expenses of members.

(a) Appointment of Board for District Lying Wholly or Partly outside City or Town Limits. — The district board of a metropolitan sewerage district lying in whole or in part outside the corporate limits of a city or town shall be appointed immediately after the creation of the district in the following manner:

- (1) If the district lies entirely within one county, the board of commissioners shall appoint to the district board three members who are qualified voters residing within the district. The members so appointed shall have terms expiring one year, two years and three years, respectively, from the date of adoption of the resolution of the

Environmental Management Commission creating the district, and the board of commissioners shall designate the length of the term of each member. Successor members shall be appointed for a term of three years.

- (2) If the district lies in two counties, the board of commissioners of the county in which the largest portion of the district lies shall appoint to the district board two qualified voters residing in the county and district to serve for terms of one year and three years, respectively. The board of commissioners of the county in which the lesser portion of the district lies shall appoint to the district board one qualified voter residing in the county and district to serve for a term of two years. All successor members shall be appointed for a term of three years.
- (3) If the district lies in three or more counties, the board of commissioners of each such county shall appoint one member of the district board. Each member so appointed shall be a qualified voter residing in the district and of the county from which he is appointed and shall serve for a term of three years. Successor members shall be appointed for a term of three years.
- (4) The governing body of each political subdivision, other than counties, lying in whole or in part within the district, shall appoint one member of the district board. No appointment of a member of the district board shall be made by or in behalf of any political subdivision of which the board or boards of commissioners shall be the governing body. If any city or town within the district shall have a population, as determined from the latest decennial census, greater than that of all other political subdivisions (other than counties) and unincorporated areas within the district, the governing body of any such city or town shall appoint three members. All members and their successors appointed by the governing bodies of political subdivisions other than counties shall serve for a term of three years and shall be qualified voters residing in the district and the political subdivision from which they are appointed.

(b) Appointment of Board for District Lying Wholly within City or Town Limits. — Any district lying entirely within the corporate limits of two or more cities or towns shall be governed by a district board consisting solely of members appointed by the governing bodies of such cities or towns and, in addition, one member elected by the appointed members of the district board. The governing body of each constituent city or town of the district shall appoint to the district board two qualified voters residing in the district and the city or town. The members so appointed shall elect, by majority vote, one additional member who shall be a qualified voter residing in the district and one of the constituent cities or towns.

One of the two members initially appointed by the governing body of each constituent city or town shall serve for a term which shall expire 30 days following the next regular election held for election of the governing body by which the member was appointed; and the other member shall serve for a term which shall expire two years thereafter. Successor members shall serve for a term of four years.

The member elected by the district board and his successors in office shall serve for a term of four years.

(c) Reappointment; Vacancies; Removal; Term. — Members of a district board may be reappointed. If a vacancy shall occur on a district board, the governing body which appointed the member who previously filled the vacancy shall appoint a new member who shall serve for the remainder of the unexpired term. Any member of a district board may be removed for cause by the governing board that appointed him. All members shall serve until their successors have been duly appointed and qualified.

(d) District Board Procedures. — Each member of the district board, before entering upon his duties, shall take and subscribe an oath or affirmation to support the Constitution and laws of the United States and of this State and to discharge faithfully the duties of his office; and a record of each such oath shall be filed with the clerk or clerks of the board or boards of commissioners.

The district board shall elect one of its members as chairman and another as vice-chairman and shall appoint a secretary and a treasurer who may, but need not, be members of the district board. The officers [offices] of secretary and treasurer may be combined. The terms of office of the chairman, vice-chairman, secretary and treasurer shall be as provided in the bylaws of the district board.

The district board shall meet regularly at such places and dates as are determined by the board. Special meetings may be called by the chairman on his own initiative and shall be called by him upon request of two or more members of the board. All members shall be notified in writing at least 24 hours in advance of such meeting. A majority of the members of the district board shall constitute a quorum, and the affirmative vote of a majority of the members of the district board present at any meeting thereof shall be necessary for any action taken by the district board. No vacancy in the membership of the district board shall impair the right of a quorum to exercise all the rights and perform all the duties of the district board. Each member, including the chairman, shall be entitled to vote on any question. The members of the district board may receive compensation in an amount to be determined by the board, but not to exceed twenty-five dollars (\$25.00) for each meeting attended. In addition, the board may increase its compensation above twenty-five dollars (\$25.00) per meeting, if the increase is approved by the governing board of each political subdivision that appoints members to the board. The members of the district board may also be reimbursed the amount of actual expenses incurred by them in the performance of their duties. (1961, c. 795, s. 4; 1963, c. 471; 1973, c. 512, s. 2; c. 822, s. 4; c. 1262, s. 23; 1979, c. 471.)

§ 162A-68. Procedure for inclusion of additional political subdivision or unincorporated area; notice and hearing; elections; actions to set aside proceedings.

If, at any time subsequent to the creation of a district, there shall be filed with the district board a resolution of the governing body of a political subdivision, or a petition, signed by not less than fifty-one per centum (51%) of the qualified voters resident within an unincorporated area, requesting inclusion in the district of such political subdivision or unincorporated area, and if the district board shall favor the inclusion in the district of such political subdivision or unincorporated area, the district board shall notify the board or boards of commissioners of the county or counties within which the district lies and shall file with the board or boards of commissioners and with the Environmental Management Commission a report setting forth the plans of the district for extending sewerage service to the political subdivision or unincorporated area. The report shall include:

- (1) A map or maps of the district and adjacent territory showing the present and proposed boundaries of the district; the existing major sewer interceptors and outfalls; and the proposed extension of such interceptors and outfalls.
- (2) A statement setting forth the plans of the district for extending sewerage services to the territory proposed to be included, which plans shall:
 - a. Provide for extending sewerage service to the territory included on substantially the same basis and in the same manner as such

services are provided within the rest of the district prior to inclusion of the new territory.

- b. Set forth a proposed time schedule for extending sewerage service to the territory proposed to be included.
- c. Set forth the estimated cost of extending sewerage service to the territory proposed to be included; the method by which the district proposes to finance the extension; the outstanding existing indebtedness of the district, if any; and the valuation of assessable property within the district and within the territory proposed to be included.
- d. Contain a declaration of intent of the district board to conform with the plans set forth in the report in extending sewerage services to the territory proposed to be included; and a certification by the chairman of the district board to the effect that the matters and things set forth in the report are true to his knowledge or belief.

The board or boards of commissioners, through the chairmen thereof, shall thereupon request that a representative of the Environmental Management Commission hold a joint public meeting with the board or boards of commissioners concerning the inclusion of such political subdivision or unincorporated area in the district. The chairman of the Environmental Management Commission and the chairman or chairmen of the board or boards of commissioners shall name a time and place within the district at which the public hearing shall be held. The chairman or chairmen of the board or boards of commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county or counties at least 30 days prior to the hearing and also by publication at least once a week for four successive weeks in a newspaper having general circulation in the district and in any such political subdivision or unincorporated area, the first publication to be at least 30 days prior to such hearing. In the event all matters pertaining to the inclusion of such political subdivision or unincorporated area cannot be included at such hearing, such hearing may be continued to a time and place within the district determined by the board or boards of commissioners with the concurrence of the representative of the Environmental Management Commission.

If, after such hearing, the Environmental Management Commission and the board or boards of commissioners shall determine that the inclusion of such political subdivision or unincorporated area in the district will preserve and promote the public health and welfare, the Environmental Management Commission shall adopt a resolution to that effect, defining the boundaries of the district, including such political subdivision or unincorporated area which has filed a resolution or petition as provided for in this section, and declaring such political subdivision or unincorporated area to be included in the district.

If, at or prior to such public hearing, there shall be filed with the district board a petition, signed by not less than ten per centum (10%) of the qualified voters residing in the district, requesting an election to be held therein on the question of including any such political subdivision or unincorporated area, the district board shall certify a copy of such petition to the board or boards of commissioners, and the board or boards of commissioners shall request the county board or boards of elections to submit such question to the qualified voters within the district in accordance with the applicable provisions of Chapter 163 of the General Statutes; provided, that the election shall not be held unless the Environmental Management Commission has adopted a resolution approving the inclusion of the political subdivision or unincorporated area in the district.

Notice of such election, which shall contain a statement of the boundaries of the territory proposed to be included in the district and the boundaries of the district after inclusion, shall be given by publication once a week for three successive weeks in a newspaper or newspapers having general circulation

within the district, the first publication to be at least 30 days prior to the election.

Notice of the resolution of the Environmental Management Commission, or in the event that an election pursuant to this section is held, notice of the results of the election, approving the inclusion of the political subdivision or unincorporated area within the district shall be published as provided in G.S. 162A-66.

Any action or proceeding in any court to set aside a resolution of the Environmental Management Commission or an election approving the inclusion of a political subdivision or unincorporated area within a district or to obtain any other relief upon the ground that such resolution or election or any proceeding or action taken with respect to the inclusion of the political subdivision or unincorporated area within the district is invalid, must be commenced within 30 days after the first publication of the notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the resolution or the election or the inclusion of the political subdivision or unincorporated area in the district shall be asserted, nor shall the validity of the resolution or the election or the inclusion of the political subdivision or unincorporated area be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period.

Any political subdivision or unincorporated area included within an existing district by resolution of the Environmental Management Commission or by such resolution and election shall be subject to all debts of the district.

The annexation by a city or town within a metropolitan sewerage district of an area lying outside such district shall not be construed as the inclusion within the district of an additional political subdivision or unincorporated area within the meaning of the provisions of this section; but any such areas so annexed shall become a part of the district and shall be subject to all debts thereof.

Immediately following the inclusion of any additional political subdivision or unincorporated area within an existing district, members representing such additional political subdivision or unincorporated area shall be appointed to the district board in the manner provided in G.S. 162A-67. The terms of office of the members first appointed to represent such additional subdivision or area may be varied for a period not to exceed six months from the terms provided for in G.S. 162A-67, so that the appointment of successors to such members may more nearly coincide with the appointment of successors to members of the existing board; and all successor members shall be appointed for the terms provided for in G.S. 162A-67. (1961, c. 795, s. 5; 1973, c. 512, s. 3; c. 822, s. 4; c. 1262, s. 23; 1977, c. 764, s. 2.)

§ 162A-69. Powers generally; fiscal year.

Each district shall be deemed to be a public body and body politic and corporate exercising public and essential governmental functions to provide for the preservation and promotion of the public health and welfare, and each district is hereby authorized and empowered:

- (1) To adopt bylaws for the regulation of its affairs and the conduct of its business not in conflict with this or other law;
- (2) To adopt an official seal and alter the same at pleasure;
- (3) To maintain an office at such place or places in the district as it may designate;
- (4) To sue and be sued in its own name, plead and be impleaded;
- (5) To acquire, lease as lessor or lessee, construct, reconstruct, improve, extend, enlarge, equip, repair, maintain and operate any sewerage system or part thereof within or without the district; provided, however, that no such sewerage system or part thereof shall be located in

- any city, town or incorporated village outside the district except with the consent of the governing body thereof, and each such governing body is hereby authorized to grant such consent;
- (6) To issue general obligation bonds and revenue bonds of the district as hereinafter provided to pay the cost of a sewerage system or systems;
 - (7) To issue general obligation refunding bonds and revenue refunding bonds of the district as hereinafter provided;
 - (8) To fix and revise from time to time and to collect rents, rates, fees and other charges for the use of or for the services and facilities furnished by any sewerage system;
 - (9) To cause taxes to be levied and collected upon all taxable property within the district sufficient to meet the obligations of the district, to pay the cost of maintaining, repairing and operating any sewerage system or systems, and to pay all obligations incurred by the district in the performance of its lawful undertakings and functions;
 - (10) To acquire in the name of the district, either within or without the corporate limits of the district, by gift, purchase or the exercise of the right of eminent domain, which right shall be exercised in accordance with the provisions of Chapter 40A of the General Statutes of North Carolina, any improved or unimproved lands or rights in land, and to acquire such personal property, as it may deem necessary in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, repair, equipment, maintenance or operation of any sewerage system, and to hold and dispose of all real and personal property under its control;
 - (11) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article, including a trust agreement or trust agreements securing any revenue bonds issued hereunder;
 - (12) To employ such consulting and other engineers, superintendents, managers, construction and financial experts, accountants, attorneys, employees and agents as may, in the judgment of the district board be deemed necessary, and to fix their compensation; provided, however, that the provisions of G.S. 159-20 shall be complied with to the extent that the same shall be applicable;
 - (13) To receive and accept from the United States of America or the State of North Carolina or any agency or instrumentality thereof loans, grants, advances or contributions for or in aid of the planning, acquisition, construction, reconstruction, improvement, extension, enlargement, repair, equipment, maintenance or operation of any sewerage system or systems, to agree to such reasonable conditions or requirements as may be imposed, and to receive and accept contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such loans, grants, advances or contributions may be made; and
 - (14) To do all acts and things necessary or convenient to carry out the powers granted by this Article.

Each district shall keep its accounts on the basis of a fiscal year commencing on the first day of July and ending on the thirtieth day of June of the following year. (1961, c. 795, s. 6; 1973, c. 822, s. 4; 1981, c. 919, s. 32.)

Editor's Note. — The reference in subdivision (12) of this section to § 159-20 is to that section in Chapter 159 before its revisions by Session Laws 1971, c. 780. The corresponding

section in the revised Chapter is § 159-131.

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1982, substituted "Chapter 40A" for "Chapter 40" in subdivision (10).

CASE NOTES

Applied in *Scarborough v. Adams*, 264 N.C. 631, 142 S.E.2d 608 (1965).

§ 162A-70. Bonds and notes authorized.

A metropolitan sewerage district shall have power from time to time to issue bonds and notes under the Local Government Finance Act. (1961, c. 795, s. 7; 1971, c. 780, s. 30; 1973, c. 822, s. 4.)

Editor's Note. — See the Editor's note under § 162A-64.

§ 162A-71. Determination of tax rate by district board; levy and collection of tax; remittance and deposit of funds.

After each assessment for taxes following the creation of the district, the board or boards of commissioners shall file with the district board the valuation of assessable property within the district. The district board shall then determine the amount of funds to be raised by taxation for the ensuing year in excess of available funds to provide for the payment of interest on and the principal of all outstanding general obligation bonds as the same shall become due and payable, to pay the cost of maintaining, repairing and operating any sewerage system or systems, and to pay all obligations incurred by the district in the performance of its lawful undertakings and functions.

The district board shall determine the number of cents per one hundred dollars (\$100.00) necessary to raise said amount and certify such rate to the board or boards of commissioners. The board or boards of commissioners shall include the number of cents per one hundred dollars (\$100.00) certified by the district board in its next annual levy against all taxable property within the district, which tax shall be collected as other county taxes are collected, and every month the amount of tax so collected shall be remitted to the district board and deposited by the district board in a separate account in a bank in the State of North Carolina. Such levy may include an amount for reimbursing the county for the additional cost to the county of levying and collecting such taxes, pursuant to such formula as may be agreed upon by the district board and the board or boards of commissioners, to be deducted from the collections and stated with each remittance to the district board. The officer or officers having charge or custody of the funds of the district shall require said bank to furnish security for protection of such deposits as provided in G.S. 159-28 and, after June 30, 1973, G.S. 159-31. (1961, c. 795, s. 15; 1973, c. 512, s. 4; c. 822, s. 4.)

§ 162A-72. Rates and charges for services.

The district board may fix, and may revise from time to time, rents, rates, fees and other charges for the use of and for the services furnished or to be furnished by any sewerage system. Such rents, rates, fees and charges shall not be subject to supervision or regulation by any bureau, board, commission, or other agency of the State or of any political subdivision. Any such rents, rates, fees and charges pledged to the payment of revenue bonds of the district shall be fixed and revised so that the revenues of the sewerage system, together with any other available funds, shall be sufficient at all times to pay the cost of maintaining, repairing and operating the sewerage system the revenues of

which are pledged to the payment of such revenue bonds, including reserves for such purposes, and to pay the interest on and the principal of such revenue bonds as the same shall become due and payable and to provide reserves therefor. If any such rents, rates, fees and charges are pledged to the payment of any general obligation bonds issued under this Article, such rents, rates, fees and charges shall be fixed and revised so as to comply with the requirements of such pledge. The district board may provide methods for collection of such rents, rates, fees and charges and measures for enforcement of collection thereof, including penalties and the denial or discontinuance of service. (1961, c. 795, s. 19; 1973, c. 822, s. 4.)

§ 162A-73. Authority of governing bodies of political subdivisions.

The governing body of any political subdivision is hereby authorized and empowered:

- (1) Subject to the approval of the Local Government Commission, to transfer jurisdiction over, and to lease, lend, sell, grant or convey to a district, upon such terms and conditions as the governing body of such political subdivision may agree upon with the district board, the whole or any part of any existing sewerage system or systems or such real or personal property as may be necessary or useful in connection with the acquisition, construction, reconstruction, improvement, extension, enlargement, equipment, repair, maintenance or operation of any sewerage system by the district, including public roads and other property already devoted to public use;
- (2) To make and enter into contracts or agreements with a district, upon such terms and conditions and for such periods as such governing body and the district board may determine:
 - a. For the collection, treatment or disposal of sewage;
 - b. For the collecting by such political subdivision or by the district of rents, rates, fees or charges for the services and facilities provided to or for such political subdivision or its inhabitants by any sewerage system, and for the enforcement of collection of such rents, rates, fees and charges; and
 - c. For the imposition of penalties, including the shutting off of the supply of water furnished by any water system owned or operated by such political subdivision, in the event that the owner, tenant or occupant of any premises utilizing such water shall fail to pay any such rents, rates, fees or charges;
- (3) To fix, and revise from time to time, rents, rates, fees and other charges for the services furnished or to be furnished by a sewerage system under any contract between the district and such political subdivision, and to pledge all or any part of the proceeds of such rents, rates, fees and charges to the payment of any obligation of such political subdivision to the district under such contract;
- (4) To pay any obligation of such political subdivision to the district under such contract from any available funds of the political subdivision and to levy and collect a tax ad valorem for the making of any such payment; and
- (5) In its discretion or if required by law, to submit to its qualified electors under the election laws applicable to such political subdivision any contract or agreement which such governing body is authorized to make and enter into with the district under the provisions of this Article.

Any such election upon a contract or agreement may, at the discretion of the governing body, be called and held under the election laws applicable to the issuance of bonds by such political subdivision. (1961, c. 795, s. 23; 1973, c. 822, s. 4.)

CASE NOTES

Subdivisions May Contract to Cut Off Water from Delinquent Sewerage Accounts. — A provision in contracts between a sewerage district and certain subdivisions

that the latter would cut off water from users who were delinquent in their sewerage accounts was valid. *Scarborough v. Adams*, 264 N.C. 631, 142 S.E.2d 608 (1965).

§ 162A-74. Rights-of-way and easements in streets and highways.

A right-of-way or easement in, along, or across any State highway system, road, or street, and along or across any city or town street within a district is hereby granted to a district in case such right-of-way is found by the district board to be necessary or convenient for carrying out any of the work of the district. Any work done in, along, or across any State highway system, road, street, or property shall be done in accordance with the rules and regulations and any reasonable requirements of the Department of Transportation, and any work done in, along, or across any municipal street or property shall be done in accordance with any reasonable requirements of the municipal governing body. (1961, c. 795, s. 24; 1973, c. 507, s. 5; c. 822, s. 4; 1977, c. 464, s. 34.)

§ 162A-75. Submission of preliminary plans to planning groups; cooperation with planning agencies.

Prior to the time final plans are made for the location and construction of any sewerage system, the district board shall present preliminary plans for such improvement to the county, municipal or regional planning board for their consideration, if such facility is to be located within the planning jurisdiction of any such county, municipal or regional planning group. The district board shall make every effort to cooperate with the planning agency, if any, in the location and construction of a proposed facility authorized under this Article. Any district board created under the authority of this Article is hereby directed, wherever possible, to coordinate its plans for the construction of sewerage system improvements with the overall plans for the development of the planning area, if such district is located wholly or in part within a county, municipal or regional planning area; provided, however, that the approval of any such county, municipal or regional planning board as to any such plan of the district shall not be required. (1961, c. 795, s. 25; 1973, c. 822, s. 4.)

§ 162A-76. Water system acting as billing and collecting agent for district; furnishing meter readings.

The owner or operator, including any political subdivision, of a water system supplying water to the owners, lessees or tenants of real property which is or will be served by any sewerage system owned or operated by a district is authorized to act as the billing and collecting agent of the district for any rents, rates, fees or charges imposed by the district for the services and facilities provided by such sewerage system, and such district is authorized to arrange

with such owner or operator to act as the billing and collecting agent of the district for such purpose. Any such owner or operator shall, if requested by a district, furnish to the district copies of such regular periodic meter reading and water consumption records and other pertinent data as the district may require to do its own billing and collecting. The district shall pay to such owner or operator the reasonable additional expenses incurred by such owner or operator in rendering such services to the district. (1961, c. 795, s. 26; 1973, c. 822, s. 4.)

§ 162A-77. District may assume sewerage system indebtedness of political subdivision; approval of voters; actions founded upon invalidity of election; tax to pay assumed indebtedness.

A district may assume all outstanding indebtedness of any political subdivision in the district lawfully incurred for paying all or any part of the cost of a sewerage system, subject to approval thereof by a majority of the qualified voters of the district voting at an election thereon. Any such election shall be called and held in accordance with the provisions of the Local Government Finance Act, insofar as the same may be made applicable, and the returns of such election shall be canvassed and a statement of the result thereof prepared, recorded and published as provided in the Local Government Finance Act. No right of action or defense founded upon the invalidity of the election shall be asserted nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within 30 days after the publication of such statement of result. In the event that any such indebtedness of a political subdivision is assumed by the district, there shall be annually levied and collected a tax ad valorem upon all the taxable property in the district sufficient to pay such assumed indebtedness and the interest thereon as the same become due and payable; provided, however, that such tax may be reduced by the amount of other moneys actually available for such purpose. Such tax shall be determined, levied and collected in the manner provided by G.S. 162A-71 and subject to the provisions of said section.

Nothing herein shall prevent any political subdivision from levying taxes to provide for the payment of its debt service requirements as to indebtedness incurred for paying all or any part of the cost of a sewerage system if such debt service requirements shall not have been otherwise provided for. (1961, c. 795, s. 27; 1973, c. 512, s. 5; c. 822, s. 4.)

§ 162A-77.1. Special election upon the question of the merger of metropolitan sewerage districts into cities or towns.

Any district lying entirely within the corporate limits of a city or town may be merged into such city or town in accordance with the provisions of this section.

The governing body of a city or town, with the approval of the district board, shall call and conduct a special election within such city or town on the question of the merger of the district into the city or town. A vote in favor of such merger shall constitute a vote for such city or town to assume the obligations of the district. Such special election may be called and conducted by the governing body of a city or town upon its own motion after passage of a resolution of the district board requesting or approving the special election.

A new registration of voters shall not be required for the special election. The special election shall be conducted in accordance with the provisions of law applicable to regular elections in the city or town.

If a majority of the votes are in favor of the merger, then:

- (1) All property, real and personal and mixed, including accounts receivable, belonging to such district shall vest in, belong to, and be the property of, such city or town. All district boards are hereby authorized to take such actions and to execute such documents as will carry into effect the provisions and the intent of this section.
- (2) All judgments, liens, rights of liens, and causes of action of any nature in favor of such district shall vest in and remain and inure to the benefit of such city or town.
- (3) All taxes, assessments, sewer charges, and any other debts, charges or fees, owing to such district shall be owed to and collected by such city or town.
- (4) All actions, suits and proceedings pending against, or having been instituted by, such district shall not be abated by this section or by the merger herein provided for, but all such actions, suits, and proceedings shall be continued and completed in the same manner as if merger had not occurred, and such city or town shall be a party to all such actions, suits, and proceedings in the place and stead of the district and shall pay or cause to be paid any judgments rendered against the district in any such actions, suits, or proceedings. No new process need be served in any such action, suit, or proceeding.
- (5) All obligations of the district, including outstanding indebtedness, shall be assumed by such city or town, and all such obligations and outstanding indebtedness shall constitute obligations and indebtedness of such city or town, and the full faith and credit of such city or town shall be deemed to be pledged for the punctual payment of the principal of and the interest on any general obligation bonds or bond anticipation notes of such district, and all the taxable property within such city or town, as well as that formerly located within the district, shall be and remain subject to taxation for such payment.
- (6) All ordinances, rules, regulations, and policies of such district shall continue in full force and effect until repealed or amended by the governing body of such city or town.
- (7) Such district shall be abolished, and shall no longer be constituted a public body or a body politic and corporate, except for the purposes of carrying into effect the provisions and the intent of this section.

If a majority of the votes are against the merger, then such merger shall not be effective unless approved by a majority of the qualified voters who vote thereon in a subsequent special election conducted under authority of this section.

Any action or proceeding in any court to set aside a special election held under authority of this section or the result thereof, or to obtain any other relief upon the ground that such election or any proceeding or action taken with respect to the holding of such election is invalid, must be commenced within 30 days after the day of such special election. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the election or the result thereof shall be asserted, nor shall the validity of the election or of the result thereof be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (1975, c. 448.)

§ 162A-78. Advances by political subdivisions for preliminary expenses of districts.

Any political subdivision is hereby authorized to make advances, from any moneys that may be available for such purpose, in connection with the creation of such district and to provide for the preliminary expenses of such district. Any such advances may be repaid to such political subdivision from the proceeds of bonds issued by such district or from other available funds of the district. (1961, c. 795, s. 28; 1973, c. 822, s. 4.)

§ 162A-79. Article regarded as supplemental.

This Article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of bonds under the provisions of this Article need not comply with the requirements of any other law applicable to the issuance of bonds except as herein provided. (1961, c. 795, s. 29; 1973, c. 822, s. 4.)

§ 162A-80. Inconsistent laws declared inapplicable.

All general, special or local laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable, unless otherwise specified, to the provisions of this Article. (1961, c. 795, s. 30; 1973, c. 822, s. 4.)

CASE NOTES

Applied in *Scarborough v. Adams*, 264 N.C. 631, 142 S.E.2d 608 (1965).

§§ 162A-81 to 162A-85: Reserved for future codification purposes.

ARTICLE 6.*County Water and Sewer Districts.***§ 162A-86. Formation of district; hearing.**

(a) The board of commissioners of any county may create a county water and sewer district.

(b) Before creating such a district, the board of commissioners shall hold a public hearing. Notice of the hearing shall state the date, hour, and place of the hearing and its subject and shall set forth a description of the territory to be included within the proposed district. The notice shall be published once a week for three weeks in a newspaper that circulates in the proposed district and in addition shall be posted in at least three public places in the district. The notice shall be posted and published the first time not less than 20 days before the hearing.

(c) At the public hearing, the commissioners shall hear all interested persons and may adjourn the hearing from time to time. (1977, c. 466, s. 1; 1979, c. 624, ss. 2, 3.)

Editor's Note. — Session Laws 1979, c. 624, ss. 6, 7, provide:

"Sec. 6. Nothing in this act is intended to affect in any way any public or private rights or interests (i) now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law amended by this act or (ii) derived from or which might be sustained or preserved

in reliance upon action heretofore taken, including the adoption of orders, ordinances, or resolutions, pursuant to or within the scope of any provision of law amended by this act.

"Sec. 7. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act [May 23, 1979]."

§ 162A-87. Creation of district; standards; limitation of actions.

(a) Following the public hearing, the board of commissioners may, by resolution, create a county water and sewer district if the board finds that:

- (1) There is a demonstrable need for providing in the district water services, or sewer services, or both;
- (2) The residents of all the territory to be included in the district will benefit from the district's creation; and
- (3) It is economically feasible to provide the proposed service or services in the district without unreasonable or burdensome annual tax levies.

Territory lying within the corporate limits of a city or town may not be included in the district unless the governing body of the city or town agrees by resolution to such inclusion. Otherwise, the board of commissioners may define as the district all or any portion of the territory described in the notice of the public hearing.

(b) Upon adoption of a resolution creating a county water and sewer district, the board of commissioners shall cause the resolution to be published once in each of two successive weeks in the newspaper in which the notices of the hearing were published. In addition, the commissioners shall cause to be published with the resolution a notice in substantially the following form:

"The foregoing resolution was adopted by the County Board of Commissioners on and was first published on

Any action or proceeding questioning the validity of this resolution or the creation of the Water and Sewer District of County or the inclusion in the district of any of the territory described in the resolution must be commenced within 30 days after the first publication of the resolution.

Clerk, County Board of
Commissioners"

Any action or proceeding in any court to set aside a resolution creating a county water and sewer district, or questioning the validity of such a resolution, the creation of such a district, or the inclusion in such a district of any of the territory described in the resolution creating the district must be commenced within 30 days after the first publication of the resolution and notice. After the expiration of this period of limitation, no right of action or defense founded upon the invalidity of the resolution, the creation of the district, or the inclusion of any territory in the district may be asserted, nor may the validity of the resolution, the creation of the district, or the inclusion of the territory be open to question in any court upon any ground whatever, except in an action or proceeding commenced within that period. (1977, c. 466, s. 1; 1979, c. 624, s. 4.)

Editor's Note. — Session Laws 1979, c. 624, ss. 6, 7, provide:

"Sec. 6. Nothing in this act is intended to affect in any way any public or private rights or

interests (i) now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law amended by this act or (ii) derived

from or which might be sustained or preserved in reliance upon action heretofore taken, including the adoption of orders, ordinances, or resolutions, pursuant to or within the scope of any provision of law amended by this act.

"Sec. 7. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act [May 23, 1979]."

§ 162A-88. District is a municipal corporation.

The inhabitants of a county water and sewer district created pursuant to this Article are a body corporate and politic by the name specified by the board of commissioners. Under that name they are vested with all the property and rights of property belonging to the corporation; have perpetual succession; may sue and be sued; may contract and be contracted with; may acquire and hold any property, real and personal, devised, bequeathed, sold, or in any manner conveyed, dedicated to, or otherwise acquired by them, and from time to time may hold, invest, sell, or dispose of the same; may have a common seal and alter and renew it at will; may establish, revise and collect rates, fees or other charges and penalties for the use of or the services furnished or to be furnished by any sanitary sewer system, water system or sanitary sewer and water system of the district; and may exercise those powers conferred on them by this Article. (1977, c. 466, s. 1; 1979, c. 624, s. 5.)

Editor's Note. — Session Laws 1979, c. 624, ss. 6, 7, provide:

"Sec. 6. Nothing in this act is intended to affect in any way any public or private rights or interests (i) now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law amended by this act or (ii) derived from or which might be sustained or preserved

in reliance upon action heretofore taken, including the adoption of orders, ordinances, or resolutions, pursuant to or within the scope of any provision of law amended by this act.

"Sec. 7. Nothing in this act shall be construed to impair the obligation of any bond, note or coupon outstanding on the effective date of this act [May 23, 1979]."

§ 162A-89. Governing body of district; powers.

The board of commissioners of the county in which a county water and sewer district is created is the governing body of the district. (1977, c. 466, s. 1.)

§ 162A-89.1. Eminent domain power authorized.

A county water and sewer district shall have the power of eminent domain, to be exercised in accordance with Article 9 of Chapter 136, over the acquisition of any improved or unimproved lands or rights in land. (1977, c. 466, s. 1.)

§ 162A-90. Bonds and notes authorized.

A county water and sewer district may from time to time issue general obligation and revenue bonds and bond anticipation notes pursuant to the Local Government Finance Act, for the purposes of providing sanitary sewer systems or water systems or both.

A county water and sewer district may from time to time issue tax and revenue anticipation notes pursuant to Chapter 159, Article 9, Part 2. (1977, c. 466, s. 1.)

§ 162A-91. Taxes authorized.

The governing body of a county water and sewer district may levy property taxes within the district in order to finance the operation and maintenance of the district's water system or sewer system or both and in order to finance debt service on any general obligation bonds or notes issued by the district. No voter approval is necessary in order for such taxes to be levied. (1977, c. 466, s. 1.)

§ 162A-92. Special assessments authorized.

A county water and sewer district may make special assessments against benefited property within the district for all or part of the costs of:

- (1) Constructing, reconstructing, extending, or otherwise building or improving water systems;
- (2) Constructing, reconstructing, extending, or otherwise building or improving sewage disposal systems.

A district shall exercise the authority granted by this section according to the provisions of Chapter 153A, Article 9. For the purposes of this section references in that Article to the "county" and the "board of commissioners" are deemed to refer, respectively, to the "district" and the "governing body of the district." (1977, c. 466, s. 1.)

Chapter 162B.

Continuity of Local Government in Emergency.

Article 1.

In General.

Sec.

- 162B-1. Designated emergency location of government.
 162B-2. Emergency meetings.
 162B-3. Emergency public business; nature and conduct.
 162B-4. Provisions of Article control over local law.

Article 2.

Emergency Interim Succession to Local Offices.

- 162B-5. Short title.

Sec.

- 162B-6. Policy and purpose.
 162B-7. Definitions.
 162B-8. Enabling authority for emergency interim successors for local offices.
 162B-9. Emergency interim successors for local officers.
 162B-10. Formalities of taking office.
 162B-11. Period in which authority may be exercised.
 162B-12. Removal of designees.
 162B-13. Disputes.

ARTICLE 1.

In General.

§ 162B-1. Designated emergency location of government.

The governing body of each political subdivision of this State is hereby authorized to designate by ordinance, resolution or other manner, alternate sites or places, within or without the territorial limits of such political subdivision and within or without this State, as the emergency location of government. (1959, c. 349.)

§ 162B-2. Emergency meetings.

Whenever the Governor and Council of State acting together declare an emergency to exist by reason of actual or impending hostile attack upon the State of North Carolina and, due to the emergency so declared, it becomes imprudent or impossible to conduct the affairs of local government at the regular or usual place or places thereof, the governing body of each political subdivision of this State is hereby authorized to meet from time to time upon call of the presiding officer or a majority of the members thereof at the designated emergency location of government during the period of the emergency and until the emergency is declared terminated by the Governor and Council of State. (1959, c. 349.)

§ 162B-3. Emergency public business; nature and conduct.

Whenever the public business of any political subdivision is being conducted at a designated emergency location outside the territorial limits thereof, the members of the governing body may exercise such executive and legislative powers and functions as are pertinent to continued operation of the local government upon return to within the respective political subdivision. Any action taken by any local governing body at a designated emergency location shall apply and be effective only within the territorial limits of the political subdivision which such governing body represents. During the period of time in which the public business is being conducted at a designated emergency location, the governing body may, when emergency conditions make impossible

compliance with legally prescribed procedural requirements relating to the conduct of meetings and transaction of business, waive such compliance by adoption of an ordinance or resolution reciting the facts and conditions showing the impossibility of compliance. (1959, c. 349.)

§ 162B-4. Provisions of Article control over local law.

The provisions of this Article shall be effective in the event it shall be employed notwithstanding any statutory, charter or ordinance provision to the contrary or in conflict herewith. (1959, c. 349.)

ARTICLE 2.

Emergency Interim Succession to Local Offices.

§ 162B-5. Short title.

This Article shall be known and may be cited as the North Carolina "Emergency Interim Local Government Executive Succession Act of 1959." (1959, c. 314, s. 1.)

§ 162B-6. Policy and purpose.

Because of the existing possibility of attack upon the State of North Carolina of unprecedented size and destructiveness, and in order, in the event of such an attack, to assure continuity of local government through legally constituted leadership, authority and responsibility in offices of political subdivisions of the State of North Carolina; to provide for the effective operation of local governments during an emergency; and to facilitate the early resumption of functions temporarily suspended, it is found and declared to be necessary to provide for emergency interim succession to governmental offices of political subdivisions in the event the incumbents thereof and their deputies, assistants or other subordinate officers authorized, pursuant to law, to exercise all of the powers and discharge the duties of such offices (hereinafter referred to as deputies) are unavailable to perform the duties and functions of such offices. (1959, c. 314, s. 2.)

§ 162B-7. Definitions.

Unless otherwise clearly required by the context, as used in this Article:

- (1) "Attack" means any attack or series of attacks by an enemy of the United States upon the State of North Carolina causing, or which may cause, substantial damage or injury to civilian property or persons in the State in any manner by sabotage or by the use of bombs, missiles, shellfire, or atomic, radiological, chemical, bacteriological or biological means or other weapons or processes.
- (2) "Emergency interim successor" means a person designated pursuant to this Article, in the event the officer is unavailable, to exercise the powers and discharge the duties of an office until a successor is appointed or elected and qualified as may be provided by the statutes, charters and ordinances or until the lawful incumbent is able to resume the exercise of the powers and discharge the duties of the office.
- (3) "Office" includes all local offices, the powers and duties of which are defined by statutes, charters and ordinances.

- (4) "Political subdivision" includes counties, cities, towns, townships, districts, authorities and other municipal corporations and entities whether organized and existing under charter or general law.
- (5) "Unavailable" means either that a vacancy in office exists and there is no deputy authorized to exercise all of the powers and discharge the duties of the office, or that the lawful incumbent of the office (including any deputy exercising the powers and discharging the duties of an office because of a vacancy) and his duly authorized deputy are absent or unable to exercise the powers and discharge the duties of the office. (1959, c. 314, s. 3.)

§ 162B-8. Enabling authority for emergency interim successors for local offices.

With respect to local offices for which the governing bodies of cities, towns, townships, and counties may enact resolutions or ordinances relative to the manner in which vacancies will be filled or temporary appointments to office made, such governing bodies are hereby authorized to enact resolutions or ordinances providing for emergency interim successors to offices of the aforementioned governmental units. Such resolutions and ordinances shall not be inconsistent with the provisions of this Article. (1959, c. 314, s. 4.)

§ 162B-9. Emergency interim successors for local officers.

The provisions of this section shall be applicable to officers of political subdivisions (including, but not limited to counties, cities, towns and townships as well as school, fire, drainage and other municipal corporate districts) not included in G.S. 162B-8. Such governing bodies, pursuant to such regulations as they may adopt, shall upon approval of this Article, designate by title (if feasible) or by named person, emergency interim successors and specify their order of succession. The local governing body shall review and revise, as necessary, designations made pursuant to this Article to insure their current status. The governing body will designate a sufficient number of persons so that there will be not less than three, nor more than seven, deputies or emergency interim successors or combination thereof at any time. In the event that any officer of any political subdivision (or his deputy provided for pursuant to law) is unavailable, the powers of the office shall be exercised and duties shall be discharged by his designated emergency interim successors in the order specified. The emergency interim successor shall exercise the powers and discharge the duties of the office to which designated until such time as a vacancy which may exist shall be filled in accordance with the Constitution or statutes; or until the officer (or his deputy or a preceding emergency interim successor) again becomes available to exercise the powers and discharge the duties of his office. (1959, c. 314, s. 5.)

§ 162B-10. Formalities of taking office.

At the time of their assumption of office, emergency interim successors shall take such oath as may be required for them to exercise the powers and discharge the duties of the office to which they may succeed. Notwithstanding any other provision of law, no person, as a prerequisite to the exercise of the powers or discharge of the duties of an office to which he succeeds, shall be required to comply with any other provision of law relative to taking office. (1959, c. 314, s. 6.)

§ 162B-11. Period in which authority may be exercised.

Emergency interim successors, authorized to act pursuant to this Article, are empowered to exercise the powers and discharge the duties of an office as herein authorized only after an attack upon the State of North Carolina, as defined herein, has occurred. The local governing body, by a duly adopted resolution, may at any time terminate the authority of said emergency interim successors to exercise the powers and discharge the duties of office as herein provided. (1959, c. 314, s. 7.)

§ 162B-12. Removal of designees.

Until such time as the persons designated as emergency interim successors are authorized to exercise the powers and discharge the duties of an office in accordance with this Article, including G.S. 162B-11 hereof, said persons shall serve in their designated capacities at the pleasure of the designating authority and may be removed or replaced by said designating authority at any time, with or without cause. (1959, c. 314, s. 8.)

§ 162B-13. Disputes.

Any dispute concerning a question of fact arising under this Article with respect to an office in any political subdivision shall be adjudicated by the local governing body and their decision shall be final. (1959, c. 314, s. 9.)

Chapter 163.

Elections and Election Laws.

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- 163-1. Time of regular elections and primaries.
- 163-2. Hours of primaries and elections.
- 163-3 to 163-7. [Reserved.]

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- 163-8. Filling vacancies in State executive offices.
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- 163-19. State Board of Elections; appointment; term of office; vacancies; oath of office.
- 163-20. Meetings of Board; quorum; minutes.
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- 163-41. Precinct registrars and judges of election; special registration commissioners; appointment; terms of office; qualifications; vacancies; oaths of office.
- 163-41.1. Certain relatives prohibited from serving together.
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- 163-43. Ballot counters; appointment; qualifications; oath of office.
- 163-44. [Repealed.]
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163-135. Applicability of Article.

163-136. Preparation, distribution and financing of ballots.

163-137. General, special and primary election ballots; names and questions to be printed thereon; distribution.

163-138. Instructions for printing names on primary and election ballots.

163-139. Reprinting ballots when substitute candidate is named.

163-140. Kinds of ballots; what they shall contain; arrangement.

163-140.1. Political party alignment on ballots.

163-141. Sample ballots.

163-142. Number of ballots to be furnished each voting place; packaging; date of delivery; receipt for ballots; accounting for ballots.

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163-171. Preservation of ballots; locking and sealing ballot boxes; signing certificates.

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163-175. County board of elections to canvass returns.

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163-188. Meeting of State Board of Elections to canvass returns of primary and election.

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- 163-191. Contested primaries and elections; how tie broken.
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- 163-278.41. Appropriations in general election years and other years.
- 163-278.42. Distribution of campaign funds; legitimate expenses permitted.
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- 163-286. Conduct of municipal and special district elections; application of Chapter 163.
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SUBCHAPTER I. TIME OF PRIMARIES AND ELECTIONS.

ARTICLE 1.

Time of Primaries and Elections.

§ 163-1. Time of regular elections and primaries.

(a) Unless otherwise provided by law, elections for the officers listed in the tabulation contained in this section shall be conducted in all election precincts of the territorial units specified in the column headed "Jurisdiction" on the dates indicated in the column headed "Date of Election." Unless otherwise provided by law, officers shall serve for the terms specified in the column headed "Term of Office."

(b) On Tuesday next after the first Monday in May preceding each general election to be held in November for the officers referred to in subsection (a) of this section, there shall be held in all election precincts within the territory for which the officers are to be elected a primary election for the purpose of nominating candidates for each political party in the State for those offices.

(c) On Tuesday next after the first Monday in November in the year 1968, and every four years thereafter, or on such days as the Congress of the United States shall direct, an election shall be held in all of the election precincts of the State for the election of electors of President and Vice-President of the United States. The number of electors to be chosen shall be equal to the number of Senators and Representatives in Congress to which this State may be entitled. Presidential electors shall not be nominated by primary election; instead, they shall be nominated in a State convention of each political party as defined in G.S. 163-96 unless otherwise provided by the plan of organization of the political party. One presidential elector shall be nominated from each congressional district and two from the state-at-large.

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
Governor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Lieutenant Governor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Secretary of State	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Auditor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Treasurer	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Superintendent of Public Instruction	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Attorney General	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Commissioner of Agriculture	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Commission of Labor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
Commissioner of Insurance	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
All other State officers whose terms last for four years	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
All other State officers whose terms are not specified by law	State	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from first day of January next after election
State Senator	Senatorial district	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
Member of State House of Representatives	Representative district	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
Justices and Judges of Appellate Division	State	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Eight years, from first day of January next after election
Judges of the superior courts	State	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Eight years, from first day of January next after election
Judges of the district courts		At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years from the first Monday in December next after election

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
District Attorney	District Attorney district	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from first day of January next after election
Members of House of Representatives of the Congress of the United States	Congressional district, except as modified by G.S. 163-104	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
United States Senators	State	At the regular election immediately preceding the termination of each regular term	Six years
County commissioners	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Two years, from the first Monday in December next after election
Clerk of superior court	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Register of deeds	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Sheriff	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Coroner	County	At the regular election for members of the General Assembly immediately preceding the termination of a regular term	Four years, from the first Monday in December next after election

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
County treasurer (in counties in which elected)	County	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from the first Monday in December next after election
All other county officers to be elected by the people	County	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from the first Monday in December next after election

(Const., art. 4, s. 24; 1901, c. 89, ss. 1, 2, 3, 4, 73, 74, 77; Rev., ss. 4293, 4294, 4296, 4297, 4298, 4299; 1915, c. 101, s. 1; 1917, c. 218; C.S., ss. 5914, 5915, 5917, 5918, 5919, 5920, 6018; 1935, c. 362; 1939, c. 196; 1943, c. 134, s. 4; 1947, c. 505, s. 1; 1951, c. 1009, s. 2; 1953, c. 1191, s. 1; 1967, c. 775, s. 1; cc. 1264, 1271; 1969, c. 44, s. 80; 1971, c. 170; 1973, c. 793, s. 93; 1977, c. 265, s. 1; c. 661, s. 1; 1981, c. 504, ss. 11-13.)

Local Modification to Former §§ 163-118 to 163-147. — Session Laws 1945, c. 894, repealed former Article 19, relating to primaries, insofar as its provisions apply to the nomination of Democratic candidates for the General Assembly and county offices in Mitchell County.

Session Laws 1957, c. 826, as amended by Session Laws 1959, c. 621, s. 2, provided that the former Article should not apply to nominations of Democratic candidates for county offices and members of the House of Representatives in Cherokee County, but such candidates should be nominated by convention of the Democratic Party.

Session Laws 1961, c. 484, provided that the former Article should not apply to nominations of Republican candidates for county offices and members of the General Assembly in Cherokee County, but such candidates should be nominated by conventions of the Republican Party.

Session Laws 1953, c. 1069, as amended by Session Laws 1959, c. 238, made the former Article applicable to Watauga County. Session Laws 1955, c. 439, to the extent provided, made the former Article applicable to Yancey County. Session Laws 1955, c. 442, made the former Article applicable to the Counties of Avery, Madison, Mitchell and Yancey for the purpose of nominating Democratic candidates for the State Senate.

Session Laws 1971, c. 50, made the provisions of the primary laws as contained in this Chapter applicable to Yancey County, and repealed Session Laws 1955, cc. 439 and 442, insofar as they conflict with the 1971 act.

Session Laws 1975, c. 246, provides that the

provisions of the general primary laws of this Chapter shall be applicable in Mitchell County for the purpose of nominating the candidates of the Republican Party for all county offices.

Local Modification to Former § 163-129. — Avery: 1933, c. 327; 1935, c. 141; 1937, c. 263; Stanly: 1945, c. 958.

Cross References. — As to election of Superintendent of Public Instruction, see § 115C-18. As to election of members of county boards of education, see § 115C-37. As to election of executive officers of the State government, see § 147-4.

Editor's Note. — Session Laws 1967, c. 775, which rewrote this Chapter, provides in s. 2 for the repeal of all laws and clauses of laws in conflict with the act, "except local and special acts relating to primaries and elections."

A purported amendment to this section in Session Laws 1981, c. 504, ss. 11-13, was made effective upon certification of approval of the constitutional amendments proposed by ss. 1-3 of the act. The constitutional amendments were submitted to the people at an election held June 29, 1982, and were defeated. Therefore, the 1981 amendment to this section never went into effect.

For special provisions for 1982 primary elections, see Session Laws 1982, 2nd Ex. Sess., c. 3., ss. 1 through 19, as amended by Session Laws 1981 (Reg. Sess., 1982), c. 1265, s. 1.

Legal Periodicals. — For case law survey on elections, see 41 N.C.L. Rev. 433 (1963). For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

CASE NOTES

Election Following Creation of New Township upon Reasonable Notice. — Under an earlier statute it was held that, where the legislature had created a new township and the time for election had passed, as the public good required the offices to be immediately

filled, the commissioners could order an election upon reasonable notice. *Grady v. County Comm'rs*, 74 N.C. 101 (1876).

Cited in *Greaves v. State Bd. of Elections*, 508 F. Supp. 78 (E.D.N.C. 1980).

§ 163-2. Hours of primaries and elections.

In all primaries, general elections, special elections, and referenda held in this State, including those held in and for municipalities and special districts, the polls shall be open at 6:30 A.M., and shall be closed at 7:30 P.M.: Provided, however, that at all voting places at which voting machines are used the responsible county board of elections may permit the polls to remain open until 8:30 P.M. (1929, c. 164, s. 33; 1937, cc. 258, 457; 1941, c. 222; 1955, c. 1064; 1967, c. 775, s. 1; 1971, c. 416; c. 1093, s. 18.1; 1973, c. 793, s. 1.)

§§ 163-3 to 163-7: Reserved for future codification purposes.

ARTICLE 2.

Time of Elections to Fill Vacancies.

§ 163-8. Filling vacancies in State executive offices.

If the office of Governor or Lieutenant Governor shall become vacant, the provisions of G.S. 147-11.1 shall apply. If the office of any of the following officers shall be vacated by death, resignation, or otherwise than by expiration of term, it shall be the duty of the Governor to appoint another to serve until his successor is elected and qualified: Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance. Each such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than 30 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired four-year term: Provided, that when a vacancy occurs in any of the offices named in this section and the term expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office.

Upon the occurrence of a vacancy in the office of any one of these officers for any of the causes stated in the preceding paragraph, the Governor may appoint an acting officer to perform the duties of that office until a person is appointed or elected pursuant to this section and § 13, article III, of the State Constitution, to fill the vacancy and is qualified. (1901, c. 89, ss. 4, 73; Rev., s. 4299; C.S., s. 5920; 1967, c. 775, s. 1; 1981, c. 504, s. 14.)

Editor's Note. — A purported amendment to this section in Session Laws 1981, c. 504, s. 14, was made effective upon certification of approval of the constitutional amendments proposed by ss. 1-3 of the act. The constitutional amendments were submitted to the people at an election held June 29, 1982, and were defeated.

Therefore, the 1981 amendment to this section never went into effect.

The reference in the second paragraph of this section is to Art. III, § 13, Const. 1868. For present provisions, see N.C. Const., Art. III, § 7.

§ 163-9. Filling vacancies in State and district judicial offices.

Vacancies occurring in the offices of Justice of the Supreme Court, judge of the Court of Appeals, and judge of the superior court for causes other than expiration of term shall be filled by appointment of the Governor. An appointee shall hold his place until the next election for members of the General Assembly that is held more than 30 days after the vacancy occurs, at which time an election shall be held to fill the unexpired term of the office: Provided, that when the unexpired term of the office in which the vacancy has occurred expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office.

Vacancies in the office of district judge which occur before the expiration of a term shall not be filled by election. Vacancies in the office of district judge shall be filled in accordance with G.S. 7A-142. (1901, c. 89, ss. 4, 73; Rev., s. 4299; C.S., s. 5920; 1967, c. 775, s. 1; 1969, c. 44, s. 81; 1979, c. 494; 1981, c. 504, s. 15; c. 763, s. 3.)

Editor's Note. — A purported amendment to this section in Session Laws 1981, c. 504, s. 15, was made effective upon certification of approval of the constitutional amendments proposed by ss. 1-3 of the act. The constitutional amendments were submitted to the people at an election held June 29, 1982, and were defeated. Therefore, the 1981 amendment to this section in Session Laws 1981, c. 504, s. 15, never went into effect.

Effect of Amendments. — The 1981 amendment in Session Laws, 1981, c. 763, s. 3, effective

July 1, 1981, substituted the second sentence of the second paragraph for the former second and third sentences, which provided for the filing of a vacancy by the Governor with or without nominations submitted by the bar.

Session Laws 1981, c. 763, s. 15, provides that the act shall apply to vacancies occurring on or after July 1, 1981.

Session Laws 1981, c. 763, s. 13 provides: "All local acts in conflict with this act are repealed to the extent of the conflict."

163-10. Filling vacancy in office of district attorney.

Any vacancy occurring in the office of district attorney for causes other than expiration of term shall be filled by appointment of the Governor. An appointee shall hold his place until the next election for members of the General Assembly that is held more than 30 days after the vacancy occurs, at which time an election shall be held to fill the unexpired term of the office: Provided, that when the unexpired term of the office in which the vacancy has occurred expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. (1901, c. 89, ss. 4, 73; Rev., s. 4299; C.S., s. 5920; 1967, c. 775, s. 1; 1973, c. 47, s. 2; 1977, c. 265, s. 2; 1981, c. 504, s. 16.)

Editor's Note. — A purported amendment to this section in Session Laws 1981, c. 504, s. 16, was made effective upon certification of approval of the constitutional amendments proposed by ss. 1-3 of the act. The constitutional

amendments were submitted to the people at an election held June 29, 1982, and were defeated. Therefore, the 1981 amendment to this section never went into effect.

§ 163-11. Filling vacancies in the General Assembly.

(a) If a vacancy shall occur in the General Assembly by death, resignation, or otherwise than by expiration of term, the Governor shall immediately appoint for the unexpired part of the term the person recommended by the political party executive committee provided by this section. The Governor shall make the appointment within seven days of receiving the recommendation of the appropriate committee. If the Governor fails to make the appointment within the required period, he shall be presumed to have made the appointment and the legislative body to which the appointee was recommended is directed to seat the appointee as a member in good standing for the duration of the unexpired term.

(b) If the district consists solely of one county and includes all of that county, the Governor shall appoint the person recommended by the county executive committee of the political party with which the vacating member was affiliated when elected, it being the party executive committee of the county which the vacating member was resident.

(c) If the district consists solely of one county but includes less than all of the county, the Governor shall appoint the person recommended by the county executive committee of the political party with which the vacating member was affiliated when elected, it being the county executive committee of the county which the vacating member was resident, provided that in voting only those county executive committee members who reside in the district shall be eligible to vote.

(d) If the district consists of more than one county, the Governor shall appoint for the unexpired portion of the term the person recommended by the State House of Representatives district committee or the Senatorial district committee of the political party with which the vacating member was affiliated when elected. In the case where all of a county is included within a district, the county convention or county executive committee of that political party shall elect or appoint at least one member from that county to serve on the State House of Representatives district executive committee or State Senatorial district executive committee. In the case where only part of a county is included within a district, the county convention or county executive committee of that political party shall elect or appoint at least one member from that county to serve on the State House of Representatives district committee or the State Senatorial district committee, but only the delegates to the county convention or the members of the county executive committee who reside in the district may vote in electing the district committee member. When the State House of Representatives district committee or the State Senatorial district committee meets, a member shall be entitled to cast for his county (or the part of his county within the district) one vote for each 300 persons or major fraction thereof residing within that county, or in the case where less than the whole county is in the district one vote for each 300 persons or major fraction thereof residing in that part of the district within the county.

A county convention or county executive committee may elect more than one member to the district committee but in the event that more than one member is selected from that county, then each member shall cast an equal share of the votes allotted to the county. (1901, c. 89, s. 74; Rev., s. 4298; C.S., s. 5919; 1947, c. 505, s. 1; 1953, c. 1191, s. 1; 1967, c. 775, s. 1; 1973, c. 35; 1981, c. 504, s. 17; 1981 (Reg. Sess., 1982), c. 1265, s. 3.)

Editor's Note. — A purported amendment to this section in Session Laws 1981, c. 504, s. 17, was made effective upon certification of approval of the constitutional amendments proposed by ss. 1-3 of the act. The constitutional amendments were submitted to the people at an election held June 29, 1982, and were defeated.

Therefore, the 1981 amendment to this section in Session Laws 1981, c. 504, s. 17, never went into effect.

Effect of Amendments. — The 1981 (Reg. Sess., 1982) amendment rewrote this section to the extent that a detailed comparison is not possible.

§ 163-12. Filling vacancy in United States Senate.

Whenever there shall be a vacancy in the office of United States Senator from this State, whether caused by death, resignation, or otherwise than by expiration of term, the Governor shall appoint to fill the vacancy until an election shall be held to fill the office. The Governor shall issue his writ for the election of a Senator to be held at the time of the first election for members of the General Assembly that is held more than 30 days after the vacancy occurs. The person elected shall hold the office for the remainder of the unexpired term. The election shall take effect from the date of the canvassing of the returns. (1913, c. 114, ss. 1, 2; C.S., ss. 6002, 6003; 1929, c. 12, s. 2; 1955, c. 871, s. 6; 1967, c. 775, s. 1; 1981, c. 504, s. 18.)

Editor's Note. — A purported amendment to this section in Session Laws 1981, c. 504, s. 18, was made effective upon certification of approval of the constitutional amendments proposed by ss. 1-3 of the act. The constitutional

amendments were submitted to the people at an election held June 29, 1982, and were defeated. Therefore, the 1981 amendment to this section never went into effect.

§ 163-13. Filling vacancy in United States House of Representatives.

(a) Special Election. — If at any time after expiration of any Congress and before another election, or if at any time after an election, there shall be a vacancy in this State's representation in the House of Representatives of the United States Congress, the Governor shall issue a writ of election, and by proclamation fix the date on which an election to fill the vacancy shall be held in the appropriate congressional district.

(b) Nominating Procedures. — If a congressional vacancy occurs within eight months preceding the next succeeding general election, candidates for the special election to fill the vacancy shall not be nominated in primaries. Instead, nominations may be made by the political party congressional district executive committees in the district in which the vacancy occurs. The chairman and secretary of each political party congressional district executive committee nominating a candidate shall immediately certify his name and party affiliation to the State Board of Elections so that it may be printed on the special election ballots.

If the congressional vacancy occurs more than eight months prior to the next succeeding general election, the Governor shall call a special primary for the purpose of nominating candidates to be voted on in a special election called by the Governor in accordance with the provisions of subsection (a) of this section. Such a primary election shall be conducted in accordance with the general laws governing primaries, except that the closing date for filing notices of candidacy with the State Board of Elections shall be fixed by the Governor in his call for the special primary. (1901, c. 89, s. 60; Rev., s. 4369; C.S., s. 6007; 1947, c. 505, s. 5; 1967, c. 775, s. 1.)

§§ 163-14 to 163-18: Reserved for future codification purposes.

SUBCHAPTER II. ELECTION OFFICERS.

ARTICLE 3.

State Board of Elections.

§ 163-19. State Board of Elections; appointment; term of office; vacancies; oath of office.

All of the terms of office of the present members of the State Board of Elections shall expire on May 1, 1969, or when their successors in office are appointed and qualified.

The State Board of Elections shall consist of five registered voters whose terms of office shall begin on May 1, 1969, and shall continue for four years, and until their successors are appointed and qualified. The Governor shall appoint the members of this Board and likewise shall appoint their successors every four years at the expiration of each four-year term. Not more than three members of the Board shall be members of the same political party.

Any vacancy occurring in the Board shall be filled by the Governor, and the person so appointed shall fill the unexpired term.

At the first meeting held after new appointments are made, the members of the State Board of Elections shall take the following oath:

"I,, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities

which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, and that I will well and truly execute the duties of the office of member of the State Board of Elections according to the best of my knowledge and ability, according to law, so help me, God."

After taking the prescribed oath, the Board shall organize by electing one of its members chairman and another secretary.

No person shall be eligible to serve as a member of the State Board of Elections who holds any elective or appointive office under the government of the United States, or of the State of North Carolina or any political subdivision thereof. No person who holds any office in a political party, or organization, or who is a candidate for nomination or election to any office, or who is a campaign manager or treasurer of any candidate in a primary or election shall be eligible to serve as a member of the State Board of Elections. (1901, c. 89, ss. 5, 7; Rev., ss. 2760, 4300, 4301; C.S., ss. 5921, 5922; 1933, c. 165, s. 1; 1953, c. 428; 1967, c. 775, s. 1; 1975, c. 286.)

Cross References. — For provision that no person shall serve as a member of the State Board of Elections who holds any elective public office or is a candidate for any office in the primary or election, see § 163-30.

State Government Reorganization. — The State Board of Elections was transferred to the Department of the Secretary of State by § 143A-22, enacted by Session Laws 1971, c. 864.

§ 163-20. Meetings of Board; quorum; minutes.

(a) **Call of Meeting.** — The State Board of Elections shall meet at the call of the chairman whenever necessary to discharge the duties and functions imposed upon it by this Chapter. The chairman shall call a meeting of the Board upon the written application or applications of any two members thereof. If there is no chairman, or if the chairman does not call a meeting within three days after receiving a written request or requests from two members, any three members of the Board shall have power to call a meeting of the Board, and any duties imposed or powers conferred on the Board by this Chapter may be performed or exercised at that meeting, although the time for performing or exercising the same prescribed by this Chapter may have expired.

(b) **Place of Meeting.** — Except as provided in subsection (c), below, the State Board of Elections shall meet in its offices in the City of Raleigh, or at another place in Raleigh to be designated by the chairman. However, subject to the limitation imposed by subsection (c), below, upon the prior written request of any four members, the State Board of Elections shall meet at any other place in the State designated by the four members.

(c) **Meetings to Investigate Alleged Violations of This Chapter.** — When called upon to investigate or hear sworn alleged violations of this Chapter, the State Board of Elections shall meet and hear the matter in the county in which the violations are alleged to have occurred.

(d) **Quorum.** — A majority of the members constitutes a quorum for the transaction of business by the State Board of Elections. If any member of the Board fails to attend a meeting, and by reason thereof there is no quorum, the members present shall adjourn from day to day for not more than three days, by the end of which time, if there is no quorum, the Governor may summarily remove any member failing to attend and appoint his successor.

(e) **Minutes.** — The State Board of Elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the office of the Board in Raleigh. (1901, c. 89, s. 7; Rev., ss. 2760, 4301, 4302; C.S., ss. 5922, 5923; 1933, c. 165, s. 1; 1945, c. 982; 1967, c. 775, s. 1; 1973, c. 793, s. 3; c. 1223, s. 1.)

CASE NOTES

Cited in *Lloyd v. Babb*, 296 N.C. 416, 251 S.E.2d 843 (1979).

§ 163-21. Compensation of Board members.

The members of the State Board of Elections shall be compensated for the time they are actually engaged in the discharge of their duties and for their traveling and other expenses necessary and incidental to the discharge of their duties in accordance with the provisions of Chapter 138 of the General Statutes. (1901, c. 89, s. 7; Rev., ss. 2760, 4301; C.S., s. 5922; 1933, c. 165, s. 1; 1967, c. 775, s. 1.)

§ 163-22. Powers and duties of State Board of Elections.

(a) The State Board of Elections shall have general supervision over the primaries and elections in the State, and it shall have authority to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable so long as they do not conflict with any provisions of this Chapter.

(b) From time to time, the Board shall publish and furnish to the county and municipal boards of elections and other election officials a sufficient number of indexed copies of all election laws and Board rules and regulations then in force. It shall also publish, issue, and distribute to the electorate such materials explanatory of primary and election laws and procedures as the Board shall deem necessary.

(c) The State Board of Elections shall appoint, in the manner provided by law, all members of the county boards of elections and advise them and municipal elections board members as to the proper methods of conducting primaries and elections. The Board shall require such reports from the county and municipal boards and election officers as are provided by law, or as are deemed necessary by the Board, and shall compel observance of the requirements of the election laws by county and municipal boards of elections and other election officers. In performing these duties, the Board shall have the right to hear and act on complaints arising by petition or otherwise, on the failure or neglect of a county or municipal board of elections to comply with any part of the election laws imposing duties upon such a board. The State Board of Elections shall have power to remove from office any member of a county or municipal board of elections for incompetency, neglect or failure to perform duties, fraud, or for any other satisfactory cause. Before exercising this power, the State Board shall notify the county or municipal board member affected and give him an opportunity to be heard. When any county board member shall be removed by the State Board of Elections, the vacancy occurring shall be filled by the State Board of Elections. When any municipal board member shall be removed by the State Board of Elections, the vacancy occurring shall be filled by the city council of the city appointing members of that board.

(d) The State Board of Elections shall investigate when necessary or advisable, the administration of election laws, frauds and irregularities in elections in any county and municipality and special district, and shall report violations of the election laws to the Attorney General or district attorney or prosecutor of the district for further investigation and prosecution.

(e) The State Board of Elections shall determine, in the manner provided by law, the form and content of ballots, instruction sheets, pollbooks, tally sheets, abstract and return forms, certificates of election, and other forms to be used in primaries and elections. The Board shall furnish to the county and munic-

ipal boards of elections the registration application forms required pursuant to G.S. 163-67. The State Board of Elections shall direct the county boards of elections to purchase a sufficient quantity of all forms attendant to the registration and elections process. In addition, the State Board shall provide a source of supply from which the county boards of elections may purchase the quantity of pollbooks needed for the execution of its responsibilities. In the preparation of ballots, pollbooks, abstract and return forms, and all other forms, the State Board of Elections may call to its aid the Attorney General of the State, and it shall be the duty of the Attorney General to advise and aid in the preparation of these books, ballots and forms.

(f) The State Board of Elections shall prepare, print, distribute to the county and municipal boards of elections all ballots for use in any primary or election held in the State which the law provides shall be printed and furnished by the State to the counties. The Board shall instruct the county boards of elections as to the printing of county and local ballots.

(g) The State Board of Elections shall certify to the appropriate county boards of elections the names of candidates for district offices who have filed notice of candidacy with the Board and whose names are required to be printed on county ballots.

(h) It shall be the duty of the State Board of Elections to tabulate the primary and election returns, to declare the results, and to prepare abstracts of the votes cast in each county in the State for offices which, according to law, shall be tabulated by the Board.

(i) The State Board of Elections shall make recommendations to the Governor and legislature relative to the conduct and administration of the primaries and elections in the State as it may deem advisable.

(j) Notwithstanding the provisions of any other section of this Chapter, the State Board of Elections is empowered to have access to any ballot boxes and their contents, any voting machines and their contents, any registration records, pollbooks, voter authorization cards or voter lists, any lists of absentee voters, any lists of presidential registrants under the Voting Rights Act of 1965 as amended, and any other voting equipment or similar records, books or lists in any precinct, county, municipality or electoral district over whose elections it has jurisdiction or for whose elections it has responsibility.

(k) Notwithstanding the provisions contained in Article 20 or Article 21 of Chapter 163 the State Board of Elections shall be authorized, by resolution adopted prior to the printing of the primary ballots, to reduce the time by which absentee ballots are required to be printed and distributed for the primary election from 60 days to 45 days. This authority shall not be authorized for absentee ballots to be voted in the general election.

(l) Notwithstanding any other provision of law, in order to obtain judicial review of any decision of the State Board of Elections rendered in the performance of its duties or in the exercise of its powers under this Chapter, the person seeking review must file his petition in the Superior Court of Wake County. (1901, c. 89, ss. 7, 11; Rev., ss. 4302, 4305; 1913, c. 138; C.S., ss. 5923, 5926; 1921, c. 181, s. 1; 1923, c. 196; 1933, c. 165, ss. 1, 2; 1945, c. 982; 1953, c. 410, s. 2; 1967, c. 775, s. 1; 1973, c. 47, s. 2; c. 793, s. 2; 1975, c. 19, s. 65; 1977, c. 661, s. 6; 1979, c. 411, s. 1; 1981, c. 556.)

Effect of Amendments. — The 1981 amendment added subsection (l).

CASE NOTES

Supervisory and Other Powers. — The State Board of Elections has general supervision over the primaries and elections in the State, with authority to promulgate legally consistent rules and regulations for their conduct and to compel the observance of the election laws by county boards of elections, and the duty of the Board to canvass the returns and declare the county does not affect its supervisory power, which performance must be exercised prior to the final acceptance of the returns made by the county boards. *Burgin v. North Carolina State Bd. of Elections*, 214 N.C. 140, 198 S.E. 592 (1938).

The General Assembly has given the State Board of Elections power to supervise primaries and general elections to the end that, insofar as possible, the results in primary and general elections in this State will not be influenced or tainted with fraud, corruption or other illegal conduct on the part of election officials or others. *Ponder v. Joslin*, 262 N.C. 496, 138 S.E.2d 143 (1964).

Power to Make Rules and Regulations Not in Conflict with Law. — The General Assembly has conferred upon the State Board of Elections power to make reasonable rules and regulations for carrying into effect the law it was created to administer, but has annexed to the grant of this power the express limitation that such rules and regulations must not conflict with any provisions of such law. This specific restriction would have been inseparably wedded to the authority granted even if the statutes had been silent with respect to it, because the Constitution forbids the legislature to delegate the power to make law to any other body. *States' Rights Democratic Party v. State Bd. of Elections*, 229 N.C. 179, 49 S.E.2d 379 (1948).

Authority to Hear and Act on Complaints. — The legislature has mandated that the State Board of Elections shall compel observance of the election laws. To do so, the State Board of Elections must have authority to hear and act on complaints, whether they arise by petitions filed in accordance with the rules and regulations promulgated by the Board or otherwise. *In re Judicial Review by Republican Candidates*, 45 N.C. App. 556, 264 S.E.2d 338, cert. denied, 299 N.C. 736, 267 S.E.2d 672 (1980).

The authority of the State Board to conduct a public inquiry into an election in a certain county and enter an order calling for a new election was not dependent upon a protest having been previously filed. *In re Judicial Review by Republican Candidates*, 45 N.C. App. 556, 264 S.E.2d 338, cert. denied, 299 N.C. 736, 267 S.E.2d 672 (1980).

Investigation of Frauds Is Not Limited to Reporting Them for Further Investigation.

— Subdivision (11) of former § 163-10 (subsection (d) of this section) does not limit the authority of the State Board of Elections merely to an investigation of alleged "frauds and irregularities in elections in any county" for the sole purpose of making a report of such frauds and irregularities to the Attorney General or district attorney for further investigation and prosecution. *Ponder v. Joslin*, 262 N.C. 496, 138 S.E.2d 143 (1964).

And State Board May Direct County Board to Amend Returns. — The State Board of Elections, which is a quasi-judicial agency, may, in a primary or election in a multiple county district, investigate alleged frauds and irregularities in elections in any county upon appeal from a county board or upon a protest filed in apt time with the State Board of Elections, may take such action as the findings of fact may justify, and may direct a county board of elections to amend its returns in accordance therewith. *Ponder v. Joslin*, 262 N.C. 496, 138 S.E.2d 143 (1964).

Persons Entitled to Notice of Inquiry. — The procedure contemplated by subsection (d) of this section is not the type of procedure contemplated by Article 3 of the Administrative Procedure Act, § 150A-23 et seq.; however there can be no doubt but that persons elected to county offices in the election to be inquired into are entitled to notice. *In re Judicial Review by Republican Candidates*, 45 N.C. App. 556, 264 S.E.2d 338, cert. denied, 299 N.C. 736, 267 S.E.2d 672 (1980).

Notice of Hearing Held Sufficient. — Notice published in a newspaper and provided to each member of the county board of elections and each candidate whose name appeared on the ballot for a county office that a public hearing would be held at a specified time and place to inquire into the processes relative to a general election conducted in the county, particularly the processes involving absentee ballots, was sufficient to comply with due process, it not being necessary for the State Board of Elections to particularize any charges in the notice of public hearing. *In re Judicial Review by Republican Candidates*, 45 N.C. App. 556, 264 S.E.2d 338, cert. denied, 299 N.C. 736, 267 S.E.2d 672 (1980).

Decision of Board Held Not Made on Unlawful Procedure. — A decision of the State Board of Elections ordering a new election for certain offices in Clay County was not made on "unlawful procedure" without findings of fact where the chairman orally announced the Board's decision on December 6, 1978, to order a new election because of irregularities in assis-

tance rendered to persons who voted by absentee ballots and in the collection and return of voted absentee ballots; a written decision was filed on the same day incorporating the oral decision; an order was entered December 14, 1978, setting a date for the new election and setting out the rules and procedure for its conduct; and on February 13, 1979, the

State Board filed a written order containing its findings of fact and conclusions of law. In re Judicial Review by Republican Candidates, 45 N.C. App. 556, 264 S.E.2d 338, cert. denied, 299 N.C. 736, 267 S.E.2d 672 (1980).

Stated in Clayton v. North Carolina State Bd. of Elections, 317 F. Supp. 915 (E.D.N.C. 1970).

§ 163-22.1. Power of State Board to order new elections.

If the State Board of Elections, acting upon the agreement of at least four of its members, and after holding public hearings on election contests, alleged election irregularities or fraud, or violations of elections laws, determines that a new primary, general or special election should be held, the Board may order that a new primary, general or special election be held, either statewide, or in any counties, electoral districts, special districts, or municipalities over whose elections it has jurisdiction.

Any new primary, general or special election so ordered shall be conducted under applicable constitutional and statutory authority and shall be supervised by the State Board of Elections and conducted by the appropriate elections officials.

The State Board of Elections has authority to adopt rules and regulations and to issue orders to carry out its authority under this section. (1973, c. 793, s. 5.)

Legal Periodicals. — For comment on election contests in North Carolina, see 55 N.C.L. Rev. 1228 (1977).

CASE NOTES

Authority to Order New Election for Absentee Ballot Irregularities. — The State Board of Elections had authority under this section to order a new election for certain public offices in a county because of numerous irregularities connected with absentee ballots in the

past general election without finding that such irregularities affected the outcome of the past election. In re Judicial Review by Republican Candidates, 45 N.C. App. 556, 264 S.E.2d 338, cert. denied, 299 N.C. 736, 267 S.E.2d 672 (1980).

§ 163-22.2. Power of State Board to promulgate temporary rules and regulations.

In the event any portion of Chapter 163 of the General Statutes or any State election law or form of election of any county board of commissioners is held unconstitutional or invalid by a State or Federal Court or is unenforceable because of objection interposed by the United States Justice Department under the Voting Rights Act and such ruling adversely affects the conduct and holding of any pending primary or election, the State Board of Elections shall have authority to make reasonable interim rules and regulations with respect to the pending primary or election as it deems advisable so long as they do not conflict with any provisions of Chapter 163 of the General Statutes and such rules and regulations shall become null and void upon the convening of the next session of the General Assembly. The State Board of Elections shall also be authorized, upon recommendation of the Attorney General, to enter into agreement with the courts in lieu of protracted litigation until such time as the General Assembly convenes. (1981, c. 741; 1982, 2nd Ex. Sess., c. 3, s. 19.1.)

Effect of Amendments. — The 1982, 2nd Ex. Sess. amendment inserted "or any State election law or form of election of any county board of commissioners" and "or is unenforceable because of objection interposed by the United States Justice Department under the Voting Rights Act" near the beginning of the first sentence.

Session Laws 1981 (Reg. Sess., 1982), c. 1265, s. 2, amends Session Laws 1982 (2nd Ex. Sess.), c. 3, s. 18, by adding a proviso to the effect that the amendment to this section in s. 19.1 of the 1982, 2nd Ex. Sess., act shall expire March 1, 1983.

§ 163-23. Powers of chairman in execution of Board duties.

In the performance of the duties enumerated in this Chapter, the chairman of the State Board of Elections shall have power to administer oaths, issue subpoenas, summon witnesses, and compel the production of papers, books, records and other evidence. Upon the written request or requests of two or more members of the State Board of Elections, he shall issue subpoenas for designated witnesses or identified papers, books, records and other evidence. In the absence of the chairman or upon his refusal to act, any two members of the State Board of Elections may issue subpoenas, summon witnesses, and compel the production of papers, books, records and other evidence. In the absence of the chairman or upon his refusal to act, any member of the Board may administer oaths. (1901, c. 89, s. 7; Rev., s. 4302; C.S., s. 5923; 1933, c. 165, s. 1; 1945, c. 982; 1967, c. 775, s. 1; 1973, c. 793, s. 4.)

§ 163-24. Power of State Board of Elections to maintain order.

The State Board of Elections shall possess full power and authority to maintain order, and to enforce obedience to its lawful commands during its sessions, and shall be constituted an inferior court for that purpose. If any person shall refuse to obey the lawful commands of the State Board of Elections or its chairman, or by disorderly conduct in its hearing or presence shall interrupt or disturb its proceedings, it may, by an order in writing, signed by its chairman, and attested by its secretary, commit the person so offending to the common jail of the county for a period not exceeding 30 days. Such order shall be executed by any sheriff or constable to whom the same shall be delivered, or if a sheriff or constable shall not be present, or shall refuse to act, by any other person who shall be deputed by the State Board of Elections in writing, and the keeper of the jail shall receive the person so committed and safely keep him for such time as shall be mentioned in the commitment: Provided, that any person committed under the provisions of this section shall have the right to post a two hundred dollar (\$200.00) bond with the clerk of the superior court and appeal to the superior court for a trial on the merits of his commitment. (1901, c. 89, s. 72; Rev., s. 4376; C.S., s. 5977; 1955, c. 871, s. 4; 1967, c. 775, s. 1.)

§ 163-25. Authority of State Board to assist in litigation.

The State Board of Elections shall possess authority to assist any county or municipal board of elections in any matter in which litigation is contemplated or has been initiated, provided, the county or municipal board of elections in such county petitions, by majority resolution, for such assistance from the State Board of Elections and, provided further, that the State Board of Elections determines, in its sole discretion by majority vote, to assist in any such matter. It is further stipulated that the State Board of Elections shall not be authorized under this provision to enter into any litigation in assistance to counties, except in those instances where the uniform administration of Chap-

ter 163 of the General Statutes of North Carolina has been, or would be threatened.

The Attorney General shall provide the State Board of Elections with legal assistance in execution of its authority under this section or, in his discretion, recommend that private counsel be employed. (1969, c. 408, s. 1; 1973, c. 793, s. 6.)

§ 163-26. Executive Secretary-Director of State Board of Elections.

There is hereby created the position of Executive Secretary-Director of the State Board of Elections, who shall perform all duties imposed upon him by statute and such duties as might be assigned to him by the State Board of Election [Elections]. (1973, c. 1272, s. 4.)

Editor's Note. — For special provisions for 1982 primary elections, see Session Laws 1982, 2nd Ex. Sess., c. 3., ss. 1 through 19, as amended by Session Laws 1981 (Reg. Sess., 1982), c. 1265, s. 1.

§ 163-27. Executive Secretary-Director to be appointed by Board.

The appointment of the Executive Secretary-Director of the State Board of Elections is extended to May 15, 1977, unless removed for proper cause, and thereafter the Board shall appoint an Executive Secretary-Director for a term of four years with compensation to be determined by the Department of Personnel. He shall serve, unless removed for cause, until his successor is appointed. Such Executive Secretary-Director shall be responsible for staffing, administration, execution of the Board's decisions and orders and shall perform such other responsibilities as may be assigned by the Board. In the event of a vacancy, the vacancy shall be filled for the remainder of the term. (1973, c. 1409, s. 3.)

Editor's Note. — For special provisions for 1982 primary elections, see Session Laws 1982, 2nd Ex. Sess., c. 3., ss. 1 through 19, as amended by Session Laws 1981 (Reg. Sess., 1982), c. 1265, s. 1.

§ 163-28. State Board of Elections independent agency.

The State Board of Elections shall be and remain an independent regulatory and quasi-judicial agency and shall not be placed within any principal administrative department. The State Board of Elections shall exercise its statutory powers, duties, functions, authority, and shall have all powers and duties conferred upon the heads of principal departments under G.S. 143B-10. (1973, c. 1409, s. 2.)

Editor's Note. — For special provisions for 1982 primary elections, see Session Laws 1982, 2nd Ex. Sess., c. 3, ss. 1 through 19, as amended by Session Laws 1981 (Reg. Sess., 1982), c. 1265, s. 1.

§ 163-29: Reserved for future codification purposes.

ARTICLE 4.

County Boards of Elections.

§ 163-30. County boards of elections; appointments; terms of office; qualifications; vacancies; oath of office; instructional meetings.

In every county of the State there shall be a county board of elections, to consist of three persons of good moral character who are registered voters in the county in which they are to act. Members of county boards of elections shall be appointed by the State Board of Elections on the Tuesday following the first Monday in June, 1975, and every two years thereafter, and their terms of office shall continue for two years from the specified date of appointment and until their successors are appointed and qualified. Not more than two members of the county board of elections shall belong to the same political party.

No person shall be eligible to serve as a member of a county board of elections who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

No person who holds any office in a state, congressional district, county or precinct political party or organization, or who is a campaign manager or treasurer of any candidate or political party in a primary or election, shall be eligible to serve as a member of a county board of elections, provided however that the position of delegate to a political party convention shall not be considered an office for the purpose of this section.

No person shall be eligible to serve as a member of a county board of elections who is a candidate for nomination or election.

No person shall be eligible to serve as a member of a county board of elections who is the wife, husband, son, daughter, mother, father, sister, or brother of any candidate for nomination or election.

The State chairman of each political party shall have the right to recommend to the State Board of Elections three registered voters in each county for appointment to the board of elections for that county. If such recommendations are received by the Board 15 or more days before the Tuesday following the first Monday in June, 1975, and each two years thereafter, it shall be the duty of the State Board of Elections to appoint the county boards from the names thus recommended.

Whenever a vacancy occurs in the membership of a county board of elections for any cause the State chairman of the political party of the vacating member shall have the right to recommend two registered voters of the affected county for such office, and it shall be the duty of the State Board of Elections to fill the vacancy from the names thus recommended.

At the meeting of the county board of elections required by G.S. 163-31 to be held on Tuesday following the third Monday in June in the year of their appointment the members shall take the following oath of office:

"I,, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States; and that I will well and truly execute the duties of the office of member of the County Board of Elections to the best of my knowledge and ability, according to law; so help me God."

Each member of the county board of elections shall attend each instructional meeting held pursuant to G.S. 163-46, unless excused for good cause by the chairman of the board, and shall be paid the sum of twenty-five dollars (\$25.00) per day for attending each of those meetings. (1901, c. 89, ss. 6, 11; Rev., ss. 4303, 4304, 4305; 1913, c. 138; C.S., ss. 5924, 5925, 5926; 1921, c. 181, s. 1; 1923, c. 111, s. 1; c. 196; 1933, c. 165, s. 2; 1941, c. 305, s. 1; 1945, c. 758, ss. 1, 2; 1949, c. 672, s. 1; 1953, c. 410, ss. 1, 2; c. 1191, s. 2; 1955, c. 871, s. 1; 1957, c. 182, s. 1; 1959, c. 1203, s. 1; 1967, c. 775, s. 1; 1969, c. 208, s. 1; 1973, c. 793, s. 7; c. 1094; c. 1344, s. 4; 1975, c. 19, s. 66; c. 159, s. 1; 1981, c. 954, s. 1.)

Effect of Amendments. — The 1981 amendment, in the second paragraph, inserted "be eligible," substituted "a" for "the" preceding "county," deleted "public" following "elective" and substituted "under the government of the United States, or of the State of North Carolina or any political subdivision thereof" for "or who is a candidate for any office in the primary or

election." The amendment also substituted the third, fourth and fifth paragraphs for a former paragraph which read "No person, while acting as a member of a county board of elections, shall serve as a State, district or county campaign manager or treasurer of any candidate in a primary or election or as a chairman of any State, district or county political organization."

OPINIONS OF ATTORNEY GENERAL

Member of County Board of Elections May Not Also Hold an Elective Office. —

See opinion of Attorney General to Mr. John D. Mackie, 41 N.C.A.G. 793 (1972).

§ 163-31. Meetings of county boards of elections; quorum; minutes.

In each county of the State the members of the county board of elections shall meet at the courthouse or board office at noon on the Tuesday following the third Monday in June in the year of their appointment by the State Board of Elections and, after taking the oath of office provided in G.S. 163-30, they shall organize by electing one member chairman and another member secretary of the county board of elections. On the Tuesday following the first Monday in August of the year in which they are appointed the county board of elections shall meet and appoint precinct registrars and judges of elections. The board may hold other meetings at such times as the chairman of the board, or any two members thereof, may direct, for the performance of duties prescribed by law. A majority of the members shall constitute a quorum for the transaction of board business. The chairman shall notify, or cause to be notified, all members regarding every meeting to be held by the board.

The county board of elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the board office and it shall be the responsibility of the secretary, elected by the board, to keep the required minute book current and accurate. The secretary of the board may designate the supervisor of elections to record and maintain the minutes under his supervision. (1901, c. 89, s. 11; Rev., ss. 4304, 4306; C.S., ss. 5925, 5927; 1921, c. 181, s. 2; 1923, c. 111, s. 1; 1927, c. 260, s. 1; 1933, c. 165, s. 2; 1941, c. 305, s. 1; 1945, c. 758, s. 2; 1953, c. 410, s. 1; c. 1191, s. 2; 1957, c. 182, s. 1; 1959, c. 1203, s. 1; 1966, Ex. Sess., c. 5, s. 2; 1967, c. 775, s. 1; 1969, c. 208, s. 2; 1975, c. 159, s. 2; 1977, c. 626.)

§ 163-32. Compensation of members of county boards of elections.

In full compensation of their services, members of the county board of elections (including the chairman) shall be paid by the county twenty-five dollars (\$25.00) per day for the time they are actually engaged in the discharge of their duties, together with reimbursement of expenditures necessary and incidental to the discharge of their duties. The per diem payment shall be prorated if a board member is not actually engaged in the discharge of his duties for a full day. For the purposes of this section, a full day consists of five hours. In its discretion, the board of county commissioners of any county may pay the chairman and members of the county board of elections compensation in addition to the per diem and expense allowance provided in this paragraph.

In all counties the board of elections shall pay its clerk, assistant clerks, and other employees such compensation as it shall fix within budget appropriations. Counties which adopt full-time and permanent registration shall have authority to pay supervisors of elections and special registration commissioners whatever compensation they may fix within budget appropriations. (1901, c. 89, s. 11; Rev., s. 4303; C.S., s. 5925; 1923, c. 111, s. 1; 1933, c. 165, s. 2; 1941, c. 305, s. 1; 1945, c. 758, s. 2; 1953, c. 410, s. 1; c. 843; c. 1191, s. 2; 1955, c. 800; 1957, c. 182, s. 1; 1959, c. 1203, s. 1; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1971, c. 1166, s. 1; 1973, c. 793, s. 8; c. 1344, s. 5; 1977, c. 626, s. 1.)

Local Modification to Former § 163-12. —
Hyde, Iredell and Nash: 1941, c. 305, s. 2.

§ 163-33. Powers and duties of county boards of elections.

The county boards of elections within their respective jurisdictions shall exercise all powers granted to such boards in this Chapter, and they shall perform all the duties imposed upon them by law, which shall include the following:

- (1) To make and issue such rules, regulations, and instructions, not inconsistent with law or the rules established by the State Board of Elections, as it may deem necessary for the guidance of election officers and voters.
- (2) To appoint all registrars, judges, assistants, and other officers of elections, and designate the precinct in which each shall serve; and, after notice and hearing, to remove any registrar, judge of elections, assistant, or other officer of election appointed by it for incompetency, failure to discharge the duties of office, failure to qualify within the time prescribed by law, fraud, or for any other satisfactory cause. In exercising the powers and duties of this subdivision, the board may act only when a majority of its members are present at any meeting at which such powers or duties are exercised.
- (3) To investigate irregularities, nonperformance of duties, and violations of laws by election officers and other persons, and to report violations to the State Board of Elections. In exercising the powers and duties of this subdivision, the board may act only when a majority of its members are present at any meeting at which such powers or duties are exercised.
- (4) As provided in G.S. 163-128, to establish, define, provide, rearrange, discontinue, and combine election precincts as it may deem expedient, and to fix and provide for places of registration and for holding primaries and elections.

- (5) To review, examine, and certify the sufficiency and validity of petitions and nomination papers.
- (6) To advertise and contract for the printing of ballots and other supplies used in registration and elections; and to provide for the delivery of ballots, pollbooks, and other required papers and materials to the voting places.
- (7) To provide for the purchase, preservation, and maintenance of voting booths, ballot boxes, registration and pollbooks, maps, flags, cards of instruction, and other forms, papers, and equipment used in registration, nominations, and elections; and to cause the voting places to be suitably provided with voting booths and other supplies required by law.
- (8) To provide for the issuance of all notices, advertisements, and publications concerning elections required by law. In addition, the county board of elections shall give notice at least 20 days prior to the date on which the registration books or records are closed that there will be a primary, general or special election, the date on which it will be held, and the hours the voting places will be open for voting in that election. The notice also shall describe the nature and type of election, and the issues, if any, to be submitted to the voters at that election. Notice shall be given by advertisement at least once weekly during the 20-day period in a newspaper having general circulation in the county and by posting a copy of the notice at the courthouse door. This subdivision shall not apply in the case of bond elections called under the provisions of Chapter 159.
- (9) To receive the returns of primaries and elections, canvass the returns, make abstracts thereof, transmit such abstracts to the proper authorities, and to issue certificates of election to county officers and members of the General Assembly except those elected in districts composed of more than one county.
- (10) To appoint and remove the board's clerk, assistant clerks, and other employees.
- (11) To prepare and submit to the proper appropriating officers a budget estimating the cost of elections for the ensuing fiscal year.
- (12) To perform such other duties as may be prescribed by this Chapter or the rules of the State Board of Elections.
- (13) Notwithstanding the provisions of any other section of this Chapter, to have access to any ballot boxes and their contents, any voting machines and their contents, any registration records, pollbooks, voter authorization cards or voter lists, any lists of absentee voters, any lists of presidential registrants under the Voting Rights Act of 1965 as amended, and any other voting equipment or similar records, books or lists in any precinct or municipality over whose elections it has jurisdiction or for whose elections it has responsibility. (1901, c. 89, s. 11; Rev., s. 4306; C.S., s. 5927; 1921, c. 181, s. 2; 1927, c. 260, s. 1; 1933, c. 165, s. 2; 1966, Ex. Sess., c. 5, s. 2; 1967, c. 775, s. 1; 1973, c. 793, ss. 9-11.)

CASE NOTES

Board Must Act as Body. — When the State Board of Elections instructs certain county boards of elections to amend their respective returns in accordance with the State Board's rulings on protests challenging the validity of certain ballots, it is necessary for the

county boards to hear the challenges and make the amended returns acting as a body in a duly assembled legal session; action taken and amended returns made by two members of the county board of each county, respectively, without notice to the third member, are void as

a matter of law. *Burgin v. North Carolina State Bd. of Elections*, 214 N.C. 140, 198 S.E. 592 (1938).

§ 163-33.1. Power of chairman to administer oaths.

The chairman of the county board of elections is authorized to administer to election officials specified in G.S. 163-80 the required oath, and may also administer the required oath to witnesses appearing before the county board at a duly called public hearing. (1981, c. 154.)

§ 163-33.2. Chairman and county board to examine voting machines.

Prior to each primary and general election the chairman and members of the county board of elections, in counties where voting machines are used, shall test vote, in a reasonable number of combinations, no less than ten percent (10%) of all voting machines programmed for each primary or election, such machines to be selected at random by the board after programming has been completed, and further, the board shall record the serial numbers of the machines test voted in the official minutes of the board. In the alternative, the board may cause the test voting required herein to be performed by persons qualified to program and test voting equipment. (1981, c. 303.)

§ 163-34. Power of county board of elections to maintain order.

Each county board of elections shall possess full power to maintain order, and to enforce obedience to its lawful commands during its sessions, and shall be constituted an inferior court for that purpose. If any person shall refuse to obey the lawful commands of any county board of elections, or by disorderly conduct in its hearing or presence shall interrupt or disturb its proceedings, it may, by an order in writing, signed by its chairman, and attested by its secretary, commit the person so offending to the common jail of the county for a period not exceeding 30 days. Such order shall be executed by any sheriff or constable to whom the same shall be delivered, or if a sheriff or constable shall not be present, or shall refuse to act, by any other person who shall be deputed by the county board of elections in writing, and the keeper of the jail shall receive the person so committed and safely keep him for such time as shall be mentioned in the commitment: Provided, that any person committed under the provisions of this section shall have the right to post a two hundred dollar (\$200.00) bond with the clerk of the superior court and appeal to the superior court for a trial on the merits of his commitment. (1901, c. 89, s. 72; Rev., s. 4376; C. S., s. 5977; 1955, c. 871, s. 4; 1967, c. 775, s. 1.)

§ 163-35. Supervisor of elections to county board of elections; appointment; compensation; duties; dismissal.

(a) In the event a vacancy occurs in the office of county supervisor of elections in any of the county boards of elections in this State, the county board of elections shall submit the name of the person it recommends to fill the vacancy, in accordance with provisions specified in this section, to the Executive Secretary-Director of the State Board of Elections who shall issue a letter of appointment. A person shall not serve as a supervisor of elections if he:

- (1) Holds any elective public office;
- (2) Is a candidate for any office in a primary or election;
- (3) Holds any office in a political party or committee thereof;
- (4) Is a campaign chairman or finance chairman for any candidate for public office or serves on any campaign committee for any candidate;
- (5) Has been convicted of a felony in any court unless his rights of citizenship have been restored pursuant to the provisions of Chapter 13 of the General Statutes of North Carolina;
- (6) Has been removed at any time by the State Board of Elections following a public hearing; or
- (7) Is a member or a spouse, child, spouse of child, parent, sister, or brother of a member of the county board of elections by whom he would be employed.

(b) Appointment, Duties; Termination. — Upon receipt of a nomination from the county board of elections stating that the nominee for supervisor of elections is submitted for appointment upon majority selection by the county board of elections the Executive Secretary-Director shall issue a letter of appointment of such nominee to the chairman of the county board of elections within 10 days after receipt of the nomination. Thereafter, the county board of elections shall enter in its official minutes the specified duties, responsibilities and designated authority assigned to the supervisor by the county board of elections. A copy of the specified duties, responsibilities and designated authority assigned to the supervisor shall be filed with the State Board of Elections.

Termination of employment of a supervisor of elections shall be upon a majority vote by the county board of elections following notice of 15 days to the supervisor.

(c) Compensation in Modified Counties. — The supervisor of elections shall be paid compensation as recommended by the county board of elections and approved by the board of county commissioners. Beginning July 1, 1981 in any county operating under modified registration plan A, B, C, or D, the board of county commissioners shall compensate the supervisor of elections with a minimum of five dollars (\$5.00) per hour for the hours required by law for the supervisor to be in attendance to her prescribed duties. In addition to the minimum compensation required herein, the supervisor of elections to the county board of elections shall be granted the same vacation leave, sick leave and petty leave as granted to all other county employees. It shall also be the responsibility of the board of county commissioners to appropriate sufficient funds to compensate a replacement for the supervisor of elections when authorized leave is taken.

(d) Duties. — The supervisor of elections may be empowered by the county board of elections to perform such administrative duties as might be assigned by the board and the chairman. In addition to any administrative duties the supervisor of elections shall be authorized to receive applications for registration and in pursuit of such authority shall be given the oath required of all registrars. In addition, the supervisor of elections may be authorized by the chairman to execute the responsibilities devolving upon the chairman provided such authorization by any chairman shall in no way transfer the responsibility for compliance with the law. The chairman shall remain liable for proper execution of all matters specifically assigned to him by law.

The county board of elections shall have authority, by resolution adopted by majority vote, to delegate to its supervisor of elections so much of the administrative detail of the election functions, duties, and work of the board, its officers and members, as is now, or may hereafter be vested in the board or its members as the county board of elections may see fit: Provided, that the board shall not delegate to a supervisor of elections any of its quasi-judicial or policy-making duties and authority. Within the limitations imposed upon him by the resolution of the county board of elections the acts of a properly appointed

supervisor of elections shall be deemed to be the acts of the county board of elections, its officers and members. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1971, c. 1166, s. 2; 1973, c. 859, s. 1; 1975, c. 211, ss. 1, 2; c. 713; 1977, c. 265, s. 21; c. 626, s. 1; c. 1129, s. 1; 1981, cc. 84, 221.)

Effect of Amendments. — The first 1981 amendment substituted "it recommends" for "they recommend," inserted "in accordance with provisions specified in this section" and substituted "who shall issue a letter of appointment" for "and the procedure for employment thereafter shall be the same as the procedure hereinafter set out for termination of employment" in the first sentence of subsection (a), substituted the second sentence of subsection (a) for one which read "Persons who shall not serve as a supervisor of elections include the following:", deleted "Any person who" at the beginning of subdivisions (a)(1) through (a)(7) and substituted semicolons for periods at the end of such subdivisions, deleted "who" preceding "serve" in subdivision (a)(4), substituted "his rights of citizenship have" for "such person's citizenship has" in subdivision (a)(5), inserted "at any time" following "removed" and deleted "at any time" following "hearing" in subdivision (a)(6) and inserted "or" at the end of that subdivision. The amendment inserted "member or a" and "parent," substituted "a" for "any" following "brother of," substituted "he" for "such person" and deleted "or any person who is a member of said board" following

"employed" in subdivision (a)(7), and, in subsection (b) substituted the present subsection heading for one which read "Termination of Employment."

The second 1981 amendment, effective July 1, 1981, inserted "in modified counties" in the heading of subsection (c), substituted "board" for "respective boards" preceding "of county" in the first sentence of subsection (c), substituted "1981 in any county operating under modified registration plan A, B, C, or D," for "1975," deleted "in every county" following "commissioners," deleted "of the county board of elections" following "elections," deleted "payment" following "minimum," and substituted "five dollars (\$5.00) per hour for the hours required by law for the supervisor to be" for "twenty dollars (\$20.00) per day for each day the supervisor of election is" in the second sentence of subsection (c). The amendment deleted a former third sentence which read "For the purposes of this section not less nor more than eight hours shall constitute one day" and substituted "to" for "of" preceding "the county" and deleted "in similar positions" following "employees" in the present third sentence of subsection (c).

CASE NOTES

The authority to determine the level of compensation above the statutory minimum is in the board of county commissioners, not the board of elections which had only the power to recommend. *Goodman v. Wilkes County Bd. of Comm'rs*, 37 N.C. App. 226, 245 S.E.2d 590 (1978), decided prior to 1977 amendments.

This section does not specifically provide for compensation for overtime work. The legisla-

tive intent of subsection (c), however, requires that once the minimum payment of \$20.00 per day is attained, additional compensation or employment benefits, if any, be determined by the respective boards of county commissioners. *Goodman v. Wilkes County Bd. of Comm'rs*, 37 N.C. App. 226, 245 S.E.2d 590 (1978), decided prior to 1977 amendments.

§§ 163-36 to 163-40: Reserved for future codification purposes.

ARTICLE 5.

Precinct Election Officials.

§ 163-41. Precinct registrars and judges of election; special registration commissioners; appointment; terms of office; qualifications; vacancies; oaths of office.

(a) Appointment of Registrar and Judges. — At the meeting required by G.S.

163-31 to be held on the Tuesday following the first Monday in August of the year in which they are appointed, the county board of elections shall appoint one person to act as registrar and two other persons to act as judges of election for each precinct in the county. Their terms of office shall continue for two years from the specified date of appointment and until their successors are appointed and qualified. It shall be their duty to conduct the primaries and elections within their respective precincts. Persons appointed to these offices must be registered voters and residents of the precinct for which appointed, of good repute, and able to read and write. Not more than one judge in each precinct shall belong to the same political party as the registrar, provided, however, that in a primary election in which only one political party participates, only the judge and assistants, appointed pursuant to G.S. 163-42, of the political party participating in said primary shall serve, along with the registrar, for that particular primary. For purposes of this section, the second primary provided for in G.S. 163-111 shall be considered part of the first primary and not a separate primary election.

The term "precinct official" shall mean registrars and judges appointed pursuant to this section, and all assistants appointed pursuant to G.S. 163-42, unless the context of a statute clearly indicates a more restrictive meaning.

No person shall be eligible to serve as a precinct official, as that term is defined above, who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

No person shall be eligible to serve as a precinct official who is a candidate for nomination or election.

No person shall be eligible to serve as a precinct official who holds any office in a state, congressional district, county, or precinct political party or political organization, or who is a manager or treasurer for any candidate or political party, provided however that the position of delegate to a political party convention shall not be considered an office for the purpose of this subsection.

The chairman of each political party in the county where possible shall recommend three registered voters in each precinct who are otherwise qualified, are residents of the precinct, have good moral character, and are able to read and write, for appointment as registrar in the precinct, and he shall also recommend where possible the same number of similarly qualified voters for appointment as judges of election in that precinct. If such recommendations are received by the county board of elections no later than the fifth day preceding the date on which appointments are to be made, it must make precinct appointments from the names of those recommended.

If, at any time other than on the day of a primary or election, a registrar or judge of election shall be removed from office, or shall die or resign, or if for any other cause there be a vacancy in a precinct election office, the chairman of the county board of elections shall appoint another in his place, promptly notifying him of his appointment. In filling such a vacancy, the chairman shall appoint a person who belongs to the same political party as that to which the vacating member belonged when appointed.

If any person appointed registrar shall fail to be present at the voting place at the hour of opening the polls on primary or election day, or if a vacancy in that office shall occur on primary or election day for any reason whatever, the precinct judges of election shall appoint another to act as registrar until such time as the chairman of the county board of elections shall appoint to fill the vacancy. If a judge of election shall fail to be present at the voting place at the hour of opening the polls on primary or election day, or if a vacancy in that office shall occur on primary or election day for any reason whatever, the registrar shall appoint another to act as judge until such time as the chairman of the county board of elections shall appoint to fill the vacancy. Persons

appointed to fill vacancies shall, whenever possible, be chosen from the same political party as the person whose vacancy is being filled, and all such appointees shall be sworn before acting.

Before entering upon his duties each registrar shall take and subscribe the following oath of office to be administered by an officer authorized to administer oaths and file it with the county board of elections:

"I,, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State not inconsistent with the Constitution of the United States; that I will administer the duties of my office as registrar of precinct, County, without fear or favor; that I will not in any manner request or seek to persuade or induce any voter to vote for or against any particular candidate or proposition; and that I will not keep or make any memorandum of anything occurring within a voting booth, unless I am called upon to testify in a judicial proceeding for a violation of the election laws of this State; so help me, God."

Before the opening of the polls on the morning of the primary or election, the registrar shall administer the oath set out in the preceding paragraph to each judge of election and assistant, substituting for the word "registrar" the words "judge of elections in" or "assistant in," whichever is appropriate.

(b) Appointment of Special Registration Commissioners. — The county board of elections in those counties having 15 or more voting precincts shall appoint, in addition to registrars and judges, at least two persons of good repute and qualifications to act as special registration commissioners. In counties with less than 15 voting precincts the county board of elections may, in its discretion, appoint special registration commissioners. Persons appointed as special registration commissioners shall be appointed on the date on which registrars and judges are appointed pursuant to G.S. 163-41 or within 60 days thereafter and shall serve for two years, but the county board of elections may terminate their authority at any time without cause. In counties having 15 or more voting precincts the county chairman of each of the two political parties having the greatest voter registration in the State shall have the right to recommend two or more registered voters who are residents of the county for appointment as special registration commissioners. If such recommendations are received by the county board of elections at least five days prior to the date on which appointments of registrars and judges must be made, the county board of elections shall make one appointment from each list of names recommended.

No person shall be eligible to serve as a special registration commissioner, who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

No person shall be eligible to serve as a special registration commissioner, who serves as chairman of any state, congressional district, county, or precinct political party or political organization.

No person shall be eligible to serve as a special registration commissioner who is a candidate for nomination or election.

No special registration commissioner who is the wife, husband, mother, father, son, daughter, brother or sister of any candidate for nomination or election may serve as special registration commissioner during the period beginning when the person files a notice of candidacy or otherwise obtains ballot access and ending on the date of the primary if the candidate is on the primary ballot or ending on the day of the general election if the candidate is on the general election ballot. The county board of elections shall temporarily disqualify the special registration commissioner for that period and shall have authority to appoint a temporary substitute who is a member of the same

political party, to serve until the special registration commissioner is no longer disqualified.

If the commissioner being temporarily replaced was appointed from a list of names which the board of elections was required to appoint one of, then the board of elections must appoint the temporary substitute from a list of two names submitted by the chairman of that political party.

In all counties authorized to appoint special registration commissioners the chairman of each political party shall have the right to recommend registered voters who are residents of the county for appointment as special registration commissioners. If such recommendations are received by the county board of elections at least five days prior to the date on which such appointments must be made the county board should make appointments from the names thus recommended, although it shall not be required to do so.

Before entering upon his duties each special registration commissioner shall take and subscribe the following oath of office to be administered by an officer authorized to administer oaths and file it with the county board of elections:

"I,, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States; that I will administer the duties of my office as special registration commissioner for County without fear or favor, to the best of my knowledge and ability, according to law; so help me, God."

(b1) Appointment of Additional Commissioners. — At any time after the expiration of the period stated in subsection (b) for the appointment of special registration commissioners the county board of elections may appoint additional commissioners, as follows:

- (1) Within the period of the two-year term prescribed in subsection (b) for special registration commissioners, no more than ten additional may be appointed under this subsection;
- (2) The county board of elections shall specify the terms of commissioners appointed under this subsection, but in no event shall the end of a term extend beyond the expiration of the two-year term prescribed in subsection (b) for commissioners appointed under that subsection;
- (3) In its discretion the board of elections may terminate, at any time and without cause, the authority of commissioners appointed under this subsection; and
- (4) The qualifications for special registration commissioners appointed under this subsection shall be the same as for commissioners appointed under subsection (b).

(c) Publication of Names of Precinct Officials. — Immediately after appointing registrars, judges, and special registration commissioners as herein provided, the county board of elections shall publish the names of the persons appointed in some newspaper having general circulation in the county or, in lieu thereof, at the courthouse door, and shall notify each person appointed of his appointment, either by letter or by having a notice served upon him by the sheriff. (1901, c. 89, ss. 8, 9, 16; Rev., ss. 4307, 4308, 4309; C.S., ss. 5928, 5929, 5930; 1923, c. 111, s. 2; 1929, c. 164, s. 18; 1933, c. 165, s. 3; 1947, c. 505, s. 2; 1953, c. 843; c. 1191, s. 3; 1955, c. 800; 1957, c. 784, s. 1; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 435; c. 1223, s. 2; 1975, c. 159, ss. 3, 4; c. 711; c. 807, s. 1; 1979, c. 766, s. 1; c. 782; 1981, c. 628, ss. 1, 2; c. 954, ss. 2, 4; 1981 (Reg. Sess., 1982), c. 1265, s. 7.)

Local Modification to Former § 163-15. — Durham: 1937, c. 299.

Effect of Amendments. — The first 1981 amendment, effective July 1, 1981, substituted "in those counties having 15 or more voting precinct shall appoint," for "may, in its discretion," in the first sentence of the first paragraph of subsection (b), substituted "and judges, at least two" for "select" in the first sentence of the first paragraph of subsection (b), inserted "and qualifications" near the end of that sentence, added the second sentence in the first paragraph of subsection (b), substituted "on" for "no later than 60 days following" in the third sentence of the first paragraph of subsection (b),

inserted "and judges" and "or within 60 days thereafter" in that sentence, added the fourth and fifth sentences in the first paragraph of subsection (b), and added "all" near the beginning of the first sentence of the second paragraph of subsection (b).

The second 1981 amendment substituted the second through fifth paragraphs of subsection (a) for the former second and third paragraphs which dealt with similar subject matter, and added the second through sixth paragraphs of subsection (b).

The 1981 (Reg. Sess., 1982) amendment, effective Sept. 1, 1982, added subsection (b1).

CASE NOTES

The board of elections had no authority to appoint two registrars from the same party in the same voting precinct. *Mullen v. Morrow*, 123 N.C. 773, 31 S.E. 1003 (1898).

Irregular Appointments Held Insufficient to Void Election. — Where neither the regular registrar of a precinct nor the person appointed registrar for one day under former § 163-17 resided in the area in which the spe-

cial annexation election was held, nevertheless, they were at least de facto registrars during the time they served as such, and in the absence of any evidence that the result of the election was affected thereby, their appointments would be deemed irregularities but insufficient to void the election. *McPherson v. City Council*, 249 N.C. 569, 107 S.E.2d 147 (1959).

§ 163-41.1. Certain relatives prohibited from serving together.

(a) The following categories of relatives are prohibited from serving as precinct officials of the same precinct: spouse, child, spouse of a child, sister or brother.

(b) No precinct official who is the wife, husband, mother, father, son, daughter, brother or sister of any candidate for nomination or election may serve as precinct official during any primary or election in which such candidate participates. The county board of elections shall temporarily disqualify any such official for the specific primary or election involved and shall have authority to appoint a substitute official, from the same political party, to serve only during the primary or election at which such conflict exists. (1975, c. 745; 1979, c. 411, s. 2.)

§ 163-42. Assistants at polls; appointment; term of office; qualifications; oath of office.

Each county and municipal board of elections is authorized, in its discretion, to appoint two or more assistants for each precinct to aid the registrar and judges. Not more than two assistants shall be appointed in precincts having 500 or less registered voters. Assistants shall be qualified voters of the precinct for which appointed. When the board of elections determines that assistants are needed in a precinct an equal number shall be appointed from different political parties, unless the requirement as to party affiliation cannot be met because of an insufficient number of voters of different political parties within a precinct.

The chairman of each political party in the county shall have the right to recommend from three to 10 registered voters in each precinct for appointment

as precinct assistants in that precinct. If the recommendations are received by it before the seventh Saturday before the primary is to be held, the board shall make appointments of the precinct assistants for each precinct from the names thus recommended.

Before entering upon the duties of the office, each assistant shall take the oath prescribed in G.S. 163-41(a) to be administered by the registrar of the precinct for which the assistant is appointed. (1929, c. 164, s. 35; 1933, c. 165, s. 24; 1953, c. 1191, s. 3; 1967, c. 775, s. 1; 1973, c. 793, s. 95; c. 1359, ss. 1-3; 1975, c. 19, s. 67; 1977, c. 95, ss. 1, 2; 1981, c. 954, s. 3.)

Effect of Amendments. — The 1981 amendment deleted the former third paragraph, which provided: "No person who is a candidate

for nomination or election shall be eligible to serve as an assistant."

OPINIONS OF ATTORNEY GENERAL

Appointment of Assistants in Each Precinct. — See opinion of Attorney General to Mr.

Alex Brock, Executive Secretary, State Board of Elections, 40 N.C.A.G. 291 (1970).

§ 163-43. Ballot counters; appointment; qualifications; oath of office.

The county board of elections of any county may authorize the use of precinct ballot counters to aid the registrars and judges of election in the counting of ballots in any precinct or precincts within the county. The county board of elections shall appoint the ballot counters it authorizes for each precinct or, in its discretion, the board may delegate authority to make such appointments to the precinct registrar, specifying the number of ballot counters to be appointed for each precinct.

No person shall be eligible to serve as a ballot counter, who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

No person shall be eligible to serve as a ballot counter, who serves as chairman of a state, congressional district, county, or precinct political party or political organization.

No person who is the wife, husband, mother, father, son, daughter, brother or sister of any candidate for nomination or election may serve as ballot counter during any primary or election in which such candidate qualifies.

No person shall be eligible to serve as a ballot counter who is a candidate for nomination or election.

Upon acceptance of appointment, each ballot counter shall appear before the precinct registrar at the voting place immediately at the close of the polls on the day of the primary or election and take the following oath to be administered by the registrar:

"I, , do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State not inconsistent with the Constitution of the United States; that I will honestly discharge the duties of ballot counter in precinct, County for primary (or election) held this day, and that I will fairly and honestly tabulate the votes cast in said primary (or election); so help me, God." The names and addresses of all ballot counters serving in any precinct, whether appointed by the county board of elections or by the registrar, shall be reported

by the registrar to the county board of elections at the county canvass following the primary or election. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1981, c. 954, s. 5.)

Effect of Amendments. — The 1981 amendment added the second through fifth paragraphs.

§ 163-44: Repealed by Session Laws 1973, c. 793, s. 13.

§ 163-45. Observers; appointment.

The chairman of each political party in the county shall have the right to designate two observers to attend each voting place at each primary and election and such observers may, at the option of the designating party chairman, be relieved during the day of the primary or election after serving no less than four hours and provided the list required by this section to be filed by each chairman contains the names of all persons authorized to represent such chairman's political party. Not more than two observers from the same political party shall be permitted in the voting enclosure at any time. This right shall not extend to the chairman of a political party during a primary unless that party is participating in the primary. In any election in which an unaffiliated candidate is named on the ballot, he or his campaign manager shall have the right to appoint two observers for each voting place consistent with the provisions specified herein. Persons appointed as observers must be registered voters of the precinct for which appointed and must have good moral character. Observers shall take no oath of office.

Individuals authorized to appoint observers must submit in writing to the registrar of each precinct a signed list of the observers appointed for that precinct. Individuals authorized to appoint observers must, prior to 10:00 A.M. on the fifth day prior to any primary or general election, submit in writing to the chairman of the county board of elections two signed copies of a list of observers appointed by them, designating the precinct for which each observer is appointed. Before the opening of the voting place on the day of a primary or general election, the chairman shall deliver one copy of the list to the registrar for each affected precinct. He shall retain the other copy. The chairman, or the registrar and judges for each affected precinct, may for good cause reject any appointee and require that another be appointed. The names of any persons appointed in place of those persons rejected shall be furnished in writing to the registrar of each affected precinct no later than the time for opening the voting place on the day of any primary or general election, either by the chairman of the county board of elections or the person making the substitute appointment.

An observer shall do no electioneering at the voting place, and he shall in no manner impede the voting process or interfere or communicate with or observe any voter in casting his ballot, but, subject to these restrictions, the registrar and judges of elections shall permit him to make such observation and take such notes as he may desire. (1929, c. 164, s. 36; 1953, c. 843; 1955, c. 800; c. 871, s. 7; 1959, c. 616, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 14, 94; 1977, c. 453.)

§ 163-46. Compensation of precinct officials and assistants.

The precinct registrar shall be paid the state minimum wage for his services on the day of a primary, special or general election. Judges of election shall each be paid the state minimum wage for their services on the day of a primary, special or general election. Assistants, appointed pursuant to G.S. 163-42, shall

each be paid the state minimum wage for their services on the day of a primary, special or general election. Ballot counters appointed pursuant to G.S. 163-43 shall be paid a minimum of five dollars (\$5.00) for their services on the day of a primary, general or special election.

Registrars shall be paid the sum of twenty dollars (\$20.00) per day and judges shall be paid the sum of fifteen [dollars] (\$15.00) per day for attendance at the county canvass, pursuant to G.S. 163-173; or for attending the polling place for the purpose of registering voters upon instruction from the chairman of the county board of elections.

The chairman of the county board of elections, along with the supervisor of elections, shall conduct an instructional meeting prior to each primary and general election which shall be attended by each registrar and judge of election, unless excused by the chairman, and such precinct election officials shall be paid the sum of fifteen dollars (\$15.00) for attending the instructional meetings required by this section.

In its discretion, the board of county commissioners of any county may provide funds with which the county board of elections may pay registrars, judges, assistants, and ballot counters in addition to the amounts specified in this section. Observers shall be paid no compensation for their services.

A person appointed to serve as registrar or judge of election when a previously appointed registrar or judge fails to appear at the voting place or leaves his post on the day of an election or primary shall be paid the same compensation as the registrar or judge appointed prior to that date.

For the purpose of this section, the phrase "the State minimum wage," means the amount set by G.S. 95-25.3(a). For the purpose of this section, no other provision of Article 2A of Chapter 95 of the General Statutes shall apply. (1901, c. 89, s. 42; Rev., s. 4311; C.S., s. 5932; 1927, c. 260, s. 2; 1931, c. 254, s. 16; 1933, c. 165, s. 3; 1935, c. 421, s. 1; 1939, c. 264, s. 1; 1941, c. 304, s. 1; 1945, c. 758, s. 3; 1947, c. 505, s. 11; 1951, c. 1009, s. 1; 1953, c. 843; 1955, c. 800; 1957, c. 182, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1969, c. 24; 1971, c. 604; 1973, c. 793, ss. 15, 16, 94; 1977, c. 626, s. 1; 1979, c. 403; 1981, c. 796, ss. 1, 2.)

Local Modification. — Richmond: 1969, c. 507.

Local Modification to Former § 163-20. — Beaufort, Chowan, Person: 1941, c. 304, s. 2; Bladen, Wake: 1935, c. 421; Hyde: 1935, c. 421; 1941, c. 304, s. 2; Lincoln: 1963, c. 874; Mecklenburg: 1937, c. 382; Watauga: 1939, c. 264.

Effect of Amendments. — The 1981 amendment, effective July 1, 1982, changed the rate of pay of precinct registrars from \$35.00 per day to the State minimum wage, of election judges from \$30.00 per day to the State minimum wage, of election assistants from \$25.00 per day to the State minimum wage, and added the last paragraph in the section.

§ 163-47. Powers and duties of registrars and judges of election.

(a) The registrars and judges of election shall conduct the primaries and elections within their respective precincts fairly and impartially, and they shall enforce peace and good order in and about the place of registration and voting. On the day of each primary and general and special election, the precinct registrar and judges shall remain at the voting place from the time fixed by law for the commencement of their duties there until they have completed all those duties, and they shall not separate nor shall any one of them leave the voting place except for unavoidable necessity.

(b) The registrar shall have in his charge the actual registration of voters within his precinct and shall not delegate this responsibility. On the days required by law, he shall attend the voting place for the registration of new voters and for hearing challenges, but in the performance of these duties the

registrar shall be subject to the observance of such reasonable rules and regulations as the county board of elections may prescribe, not inconsistent with law. On the day of an election or primary, the registrar shall have charge of the registration book for the purpose of passing on the registration of persons who present themselves at the polls to vote.

(c) The registrars and judges shall hear challenges of the right of registered voters to vote as provided by law.

(d) The registrars and judges shall count the votes cast in their precincts and make such returns of the same as is provided by law.

(e) The registrars and judges shall make such an accounting to the chairman of the county board of elections for ballots and for election supplies as is required by law.

(f) The registrar and judges of election shall act by a majority vote on all matters not assigned specifically by law to the registrar or to a judge. (1901, c. 89, s. 41; Rev., s. 4312; C.S., s. 5933; 1933, c. 165, s. 3; 1939, c. 263, s. 3½; 1947, c. 505, s. 3; 1967, c. 775, s. 1; 1973, c. 793, s. 17.)

CASE NOTES

Absence of Judges. — Under former statute, in the absence of fraud it was not material to the validity of an election that the persons appointed judges to hold it electioneered or

were absent from their posts at different times during the day. *Wilson v. Peterson*, 69 N.C. 113 (1873).

§ 163-48. Maintenance of order at place of registration and voting.

The registrar and judges of election shall enforce peace and good order in and about the place of registration and voting. They shall especially keep open and unobstructed the place at which voters or persons seeking to register or vote have access to the place of registration and voting. They shall prevent and stop improper practices and attempts to obstruct, intimidate, or interfere with any person in registering or voting. They shall protect challenger and witnesses against molestation and violence in the performance of their duties, and they may eject from the place of registration or voting any challenger or witness for violation of any provisions of the election laws. They shall prevent riots, violence, tumult, or disorder.

In the discharge of the duties prescribed in the preceding paragraph of this section, the registrar and judges may call upon the sheriff, the police, or other peace officers to aid them in enforcing the law. They may order the arrest of any person violating any provision of the election laws, but such arrest shall not prevent the person arrested from registering or voting if he is entitled to do so. The sheriff, constables, police officers, and other officers of the peace shall immediately obey and aid in the enforcement of any lawful order made by the precinct election officials in the enforcement of the election laws. The registrar and judges of election of any precinct, or any two of such election officials, shall have the authority to deputize any person or persons as police officers to aid in maintaining order at the place of registration or voting. (1901, c. 89, s. 72; Rev., s. 4376; C. S., s. 5977; 1955, c. 871, s. 4; 1967, c. 775, s. 1.)

§§ 163-49 to 163-53: Reserved for future codification purposes.

SUBCHAPTER III. QUALIFYING TO VOTE.

ARTICLE 6.

*Qualifications of Voters.***§ 163-54. Registration a prerequisite to voting.**

Only such persons as are legally registered shall be entitled to vote in any primary or election held under this Chapter. (1901, c. 89, s. 12; Rev., s. 4317; C. S., s. 5938; 1967, c. 775, s. 1.)

CASE NOTES

Statute requiring registration must be complied with to constitute one a qualified voter. *Smith v. City of Wilmington*, 98 N.C. 343, 4 S.E. 489 (1887); *Pace v. Raleigh*, 140 N.C. 65, 52 S.E. 277 (1905).

When duly made, registration is prima facie evidence of the right to vote. *State ex rel. DeBerry v. Nicholson*, 102 N.C. 465, 9 S.E. 545 (1889); *State ex rel. Hampton v. Waldrop*, 104 N.C. 453, 10 S.E. 694 (1889).

§ 163-55. Qualifications to vote; exclusion from electoral franchise.

Every person born in the United States, and every person who has been naturalized, and who shall have resided in the State of North Carolina and in the precinct in which he offers to register and vote for 30 days next preceding the ensuing election, shall, if otherwise qualified as prescribed in this Chapter, be qualified to register and vote in the precinct in which he resides: Provided, that removal from one precinct to another in this State shall not operate to deprive any person of the right to vote in the precinct from which he has removed until 30 days after his removal.

The following classes of persons shall not be allowed to register or vote in this State:

- (1) Persons under 18 years of age.
- (2) Any person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, unless that person shall be first restored to the rights of citizenship in the manner prescribed by law. (19th amendt. U. S. Const.; amendt. State Const., 1920; 1901, c. 89, ss. 14, 15; Rev., ss. 4315, 4316; C.S., ss. 5936, 5937; Ex. Sess. 1920, c. 18, s. 1; 1933, c. 165, s. 4; 1945, c. 758, s. 7; 1955, c. 871, s. 2; 1967, c. 775, s. 1; 1971, c. 1231, s. 1; 1973, c. 793, s. 18.)

Cross References. — As to restoration of citizenship, see Chapter 13.

Legal Periodicals. — For note on the constitutionality of denying voting rights to convicted criminals, see 50 N.C.L. Rev. 903 (1972).

For comment, "State Durational Residence Requirements as a Violation of the Equal Protection Clause," see 3 N.C. Cent. L.J. 233 (1972).

For survey of 1972 case law on student suffrage, see 51 N.C.L. Rev. 1060 (1973).

CASE NOTES

A state may constitutionally continue the "historic exclusion" of felons from the franchise without regard to whether such exclusion can pass muster under the equal protection clause, because the Fourteenth Amendment of the United States Constitution expressly allows the exclusion of felons from the franchise without reduction of representation. *Fincher v. Scott*, 352 F. Supp. 117 (M.D.N.C. 1972), *aff'd*, 411 U.S. 961, 93 S. Ct. 2151, 36 L. Ed. 2d 681 (1973).

Argument that denial of right to vote for being a convicted felon is cruel and unusual punishment is without merit. *Fincher v. Scott*, 352 F. Supp. 117 (M.D.N.C. 1972).

Former One Year Residency Requirement Unconstitutional. — The former one-year durational residency requirement necessary in order to register to vote in a local North Carolina election was violative of the equal protection clause of the Fourteenth Amendment. *Andrews v. Cody*, 327 F. Supp. 793 (M.D.N.C. 1971), *aff'd*, 405 U.S. 1034, 92 S. Ct. 1306, 31 L. Ed. 2d 576 (1972).

As to effect of conviction of infamous crime, see *In re Reid*, 119 N.C. 641, 26 S.E. 337 (1896).

As to imprisonment for misdemeanor, see *People ex rel. Boyer v. Teague*, 106 N.C. 576, 11 S.E. 665 (1890).

The General Assembly cannot in any way change the constitutional qualifications of voters in State, county, township, city or town

elections. *People v. Canaday*, 73 N.C. 198, 21 Am. R. 465 (1875).

Qualifications for voting in a municipal election are the same as in a general election. *People v. Canaday*, 73 N.C. 198, 21 Am. R. 465 (1875); *State ex rel. Echerd v. Viele*, 164 N.C. 122, 80 S.E. 408 (1913); *Gower v. Carter*, 194 N.C. 293, 139 S.E. 604 (1927).

Residence of University Student for Voting Purposes. — The fact that one is a student in a university does not entitle him to vote where the university is situated, nor does it of itself prevent his voting there. He may vote at the seat of the university if he has his residence there and is otherwise qualified. *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 187 S.E.2d 52 (1972).

A student who intends to remain in his college community only until graduation should not for that reason alone be denied the right to vote in that community. Insofar as *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 187 S.E.2d 52 (1972), may be interpreted to the contrary, it is modified accordingly. *Lloyd v. Babb*, 296 N.C. 416, 251 S.E.2d 843 (1979).

Where X was under age of majority and Y was a citizen of Syria, not of North Carolina, they were disqualified to vote in an election for mayor. *State ex rel. Gower v. Carter*, 195 N.C. 697, 143 S.E. 513 (1928).

Stated in *Glover v. North Carolina*, 301 F. Supp. 364 (E.D.N.C. 1969).

§ 163-56: Repealed by Session Laws 1973, c. 793, s. 19.

§ 163-57. Residence defined for registration and voting.

All registrars and judges, in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may apply:

- (1) That place shall be considered the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.
- (2) A person shall not be considered to have lost his residence who leaves his home and goes into another state or county of this State, for temporary purposes only, with the intention of returning.
- (3) A person shall not be considered to have gained a residence in any county of this State, into which he comes for temporary purposes only, without the intention of making such county his permanent place of abode.
- (4) If a person removes to another state or county within this State, with the intention of making such state or county his permanent residence, he shall be considered to have lost his residence in the state or county from which he has removed.
- (5) If a person removes to another state or county within this State, with the intention of remaining there an indefinite time and making such

state or county his place of residence, he shall be considered to have lost his place of residence in this State or the county from which he has removed, notwithstanding he may entertain an intention to return at some future time.

- (6) If a person goes into another state or county, or into the District of Columbia, and while there exercises the right of a citizen by voting in an election, he shall be considered to have lost his residence in this State or county.
- (7) School teachers who remove to a county for the purpose of teaching in the schools of that county temporarily and with the intention or expectation of returning during vacation periods to live in the county in which their parents or other relatives reside, and who do not have the intention of becoming residents of the county to which they have moved to teach, for purposes of registration and voting shall be considered residents of the county in which their parents or other relatives reside.
- (8) If a person removes to the District of Columbia or other federal territory to engage in the government service, he shall not be considered to have lost his residence in this State during the period of such service unless he votes there, and the place at which he resided at the time of his removal shall be considered and held to be his place of residence.
- (9) If a person removes to a county to engage in the service of the State government, he shall not be considered to have lost his residence in the county from which he removed, unless he demonstrates a contrary intention.
- (10) For the purpose of voting a spouse shall be eligible to establish a separate domicile. (19th amendt. U.S. Const.; amendt. State Const., 1920; 1901, c. 89, s. 15; Rev., s. 4316; C.S., s. 5937; Ex. Sess. 1920, c. 18, s. 1; 1933, c. 165, s. 4; 1945, c. 758, s. 7; 1955, c. 871, s. 2; 1967, c. 775, s. 1; 1981, c. 184.)

Effect of Amendments. — The 1981 amendment added subdivision (10).

Legal Periodicals. — For survey of 1972

case law on student suffrage, see 51 N.C.L. Rev. 1060 (1973).

CASE NOTES

I. In General.

II. Residence of Students.

I. IN GENERAL.

This section defines residence for registration and voting, and incorporates the caselaw on the subject of domicile. Hall v. Wake County Bd. of Elections, 280 N.C. 600, 187 S.E.2d 52 (1972).

"Residence" Is Synonymous with Domicile. — Residence as a prerequisite to the right to vote in this State, within the purview of N.C. Const., Art. VI, § 2, is synonymous with domicile, which denotes a permanent dwelling place to which a person, when absent, intends to return. State ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12, rehearing denied, 229 N.C. 797, 48 S.E.2d 37 (1948). See also, State ex rel. Hannon v. Grizzard, 89 N.C. 115 (1883).

"Residence," when used in the election law, means domicile. Hall v. Wake County Bd. of

Elections, 280 N.C. 600, 187 S.E.2d 52 (1972).

Meaning of "Residence" Is Judicial Question. — The meaning of the term "residence" for voting purposes, as used in N.C. Const., Art. VI, § 2, is a judicial question, and cannot be made a matter of legislative construction, because the legislature cannot prescribe any qualifications for voters different from those found in the organic law. State ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12, rehearing denied, 229 N.C. 797, 48 S.E.2d 37 (1948).

Test of Domicile. — A person has domicile for voting purposes at a given place if he (1) has abandoned his prior home, (2) has a present intention to make that place his home, and (3) has no intention presently to leave that place. Lloyd v. Babb, 296 N.C. 416, 251 S.E.2d 843 (1979).

Evidence of Domicile. — A person's testimony regarding his intention with respect to acquiring a new domicile or retaining his old one is competent evidence, but it is not conclusive of the question. All of the surrounding circumstances and the conduct of the person must be taken into consideration. *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 187 S.E.2d 52 (1972).

Domicile can be proved by various kinds of direct and circumstantial evidence. *Lloyd v. Babb*, 296 N.C. 416, 251 S.E.2d 843 (1979).

As to evidence of length of residence and domicile, see *People ex rel. Boyer v. Teague*, 106 N.C. 576, 11 S.E. 665 (1890).

Right of teachers in a locality to vote therein depends on whether they were residents therein only for the scholastic year. A question is incompetent that asks them of their intention to make the locality their legal residence, since the answer involves a question of law as to what constitutes a sufficient legal residence to qualify them to vote. *State ex rel. Gower v. Carter*, 195 N.C. 697, 143 S.E. 513 (1928).

Indefiniteness of intention to return to county of domicile is insufficient to establish loss of voting residence, where no other has been acquired or intended. *State ex rel. Owens v. Chaplin*, 229 N.C. 797, 48 S.E.2d 37 (1948).

Evidence Held Insufficient to Show Loss of Domicile. — Uncontroverted testimony which disclosed that electors whose votes were challenged on the ground of nonresidence left their homes and moved to another state or to another county in this State for temporary purposes, but that at no time did they intend to make the other state or the other county in this State a permanent home, was insufficient to support a finding that they had lost their domicile in the county for the purpose of voting. *State ex rel. Owens v. Chaplin*, 228 N.C. 705, 47 S.E.2d 12 (1948), rehearing denied, 229 N.C. 797, 48 S.E.2d 37 (1948).

Applied in *Webb v. Nolan*, 361 F. Supp. 418 (M.D.N.C. 1972).

II. RESIDENCE OF STUDENTS.

There is a rebuttable presumption that a student who leaves his parents' home for college is not a resident for voting purposes of the place where the college is located. The effect of this presumption is to place the burden of going forward with some proof of residence on a student seeking to register to vote. As with other persons, the student has the burden of persuasion on the issue. *Lloyd v. Babb*, 296 N.C. 416, 251 S.E.2d 843 (1979).

The presumption is that a student who leaves his parents' home to enter college is not domiciled in the college town to which he goes; however, this presumption is rebuttable. *Hall v.*

Wake County Bd. of Elections, 280 N.C. 600, 187 S.E.2d 52 (1972).

Rebuttable presumption regarding student's domicile does not treat students differently from the rest of the population, but is merely a specialized statement of the general rule that the burden of proof is on one alleging a change in domicile. *Lloyd v. Babb*, 296 N.C. 416, 251 S.E.2d 843 (1979).

And there is no denial of equal protection in the use of the rebuttable presumption that a student who leaves his parents' home to go to college is not domiciled in the place where the college is located. *Lloyd v. Babb*, 296 N.C. 416, 251 S.E.2d 843 (1979).

Student need not intend to stay in college community beyond graduation to establish domicile there. — A student who intends to remain in college community only until graduation should not for that reason alone be denied the right to vote in that community. Insofar as *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 187 S.E.2d 52 (1972), may be interpreted to the contrary, it is modified accordingly. *Lloyd v. Babb*, 296 N.C. 416, 251 S.E.2d 843 (1979).

Test of Student's Domicile. — A student is entitled to register to vote at the place where he is attending school if he can show by his declarations and by objective facts that he (1) has abandoned his prior home, (2) has a present intention of making the place where he is attending school his home, and (3) intends to remain in the college town at least as long as he is a student there and until he acquires a new domicile. *Lloyd v. Babb*, 296 N.C. 416, 251 S.E.2d 843 (1979).

A student's residence for voting purposes is a question of fact dependent upon the circumstances of each individual's case. There is no permissible manner for making group determinations of residence. *Lloyd v. Babb*, 296 N.C. 416, 251 S.E.2d 843 (1979).

Whether a student's voting residence is at the location of the college he is attending or at the location where he lived before he entered college is a question of fact which depends upon the circumstances of each individual case. *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 187 S.E.2d 52 (1972).

Registrar is not bound by student's mere statements as to his intent, no more than he is bound by the statements of anyone seeking to register to vote. *Lloyd v. Babb*, 296 N.C. 416, 251 S.E.2d 843 (1979).

It is reasonable for election officials to inquire of students seeking to register more thoroughly than of other persons. This additional screening procedure is not an impermissible attempt to "fence out" a segment of the community because of the way they may vote, but is instead a permissible attempt to determine who are members of the relevant

community. *Lloyd v. Babb*, 296 N.C. 416, 251 S.E.2d 843 (1979).

In order to determine whether in fact a student has abandoned his prior home and presently intends to make the college town his home and intends to remain in the college town at least as long as he is a student there, a registrar should make inquiry of students more searching and extensive than may generally be necessary with respect to other residents. The kinds of questions that should be asked are generally set out in *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 187 S.E.2d 52 (1972). A registrar is not limited to these questions. One that should be asked of all persons seeking to register is "Are you now registered to vote, and, if so, where?" *Lloyd v. Babb*, 296 N.C. 416, 251 S.E.2d 843 (1979).

Constitutionality of Inquiry. — The use of direct and circumstantial evidence, including the results of inquiries into a student's ownership of property, vacation plans, etc., to determine the domicile of the student is not an unjustifiable intrusion into the private affairs of students attempting to register to vote, and is not an attempt to make unconstitutional classi-

fications on the basis of wealth, travel, and property ownership. *Lloyd v. Babb*, 296 N.C. 416, 251 S.E.2d 843 (1979).

Constitutionality of Use of Questionnaire. — The use of a questionnaire and the application of a presumption of nonresidency in order to place the burden of producing some evidence of residency upon student seeking to register is constitutionally permissible, where the practices and guidelines utilized are not devices to keep students who are legal residents from voting, but rather are designed to help registrars obtain the necessary facts to determine whether a student is entitled to vote in a particular locality. *Lloyd v. Babb*, 296 N.C. 416, 251 S.E.2d 843 (1979).

Courts May Order That Inquiries of Students Follow a Set Questionnaire. — If necessary to ensure that registrars comply with the law and make the necessary inquiries as to residence, a court may order that their inquiries be in the form of a questionnaire to be devised by the court or by the county board of elections under the court's supervision. *Lloyd v. Babb*, 296 N.C. 416, 251 S.E.2d 843 (1979).

§ 163-58. Literacy.

Only such persons as are able to read and write any section of the Constitution of North Carolina in the English language shall be entitled to register and vote in any primary or election held under this Chapter. (1901, c. 89, s. 12; Rev., s. 4318; C.S., s. 5939; 1927, c. 260, s. 3; 1957, c. 287, s. 1; 1967, c. 775, s. 1.)

CASE NOTES

Constitutionality of Former § 163-28. — Requirement that prospective voter "be able to read and write any section of the Constitution of North Carolina in the English language" was a fair way of determining whether a person was literate, and could not be condemned on its face as a device unrelated to the desire of North Carolina to raise the standards for people of all races who cast the ballot. *Lassiter v. Northampton County Bd. of Elections*, 360 U.S. 45, 79 S. Ct. 985, 3 L. Ed. 2d 1072 (1959).

The provision of former § 163-28 requiring all persons applying for registration to be able to read and write any section of the Constitution as an educational qualification to the right to vote was authorized, and since it applied alike to all persons who presented themselves for registration to vote, it made no discrimination based on race, creed or color, and therefore did not conflict with the 14th, 15th or 17th Amendments to the Constitution of the United States. *Lassiter v. Northampton County Bd. of Elections*, 248 N.C. 102, 102 S.E.2d 853 (1958),

aff'd, 360 U.S. 45, 79 S. Ct. 985, 3 L. Ed. 2d 1072 (1959).

The provisions of former § 163-28, similar to this section, were valid, since such qualification is prescribed by the Constitution, Art. VI, § 4, and authority is granted the legislature by Art. VI, § 3, to enact general legislation to carry out the provisions of the Article. *Allison v. Sharp*, 209 N.C. 477, 184 S.E. 27 (1936).

Test Requiring Writing from Dictation of Another Held Unreasonable. — Under the provisions of former § 163-28, a test of literacy that required an applicant for registration to write a section or sections of the Constitution from the reading and dictation of another was unreasonable and beyond the clear intent of the statute. *Nazemore v. Bertie County Bd. of Elections*, 254 N.C. 398, 119 S.E.2d 637 (1961).

When Literacy Test May Have Effect of Denying Right to Vote. — Use of literacy test as a prerequisite to registering to vote has the effect of denying or abridging the right to vote on account of race or color where it places an

onerous burden on the Negroes for whom a county has maintained separate and inferior schools. *Gaston County v. United States*, 395 U.S. 285, 89 S. Ct. 1720, 28 L. Ed. 2d 309 (1969).

In an action brought under § 4(a) of the Voting Rights Act of 1965 (42 U.S.C. § 1973b(a)) by Gaston County, seeking to reinstate literacy test in the county, it was appropriate for the three-judge district court to consider whether such literacy or educational requirement had the "effect of denying the . . . right to vote on account of race or color" because of the maintenance of separate and inferior schools for Negro residents now of voting age. *Gaston County v. United States*, 395 U.S. 285, 89 S. Ct. 1720, 28 L. Ed. 2d 309 (1969), upholding the district court's conclusion that the county had not met its burden of proof under § 4(a).

Meaning of "Read and Write". — The General Assembly intended the words "read and write," as used in former § 163-28, to have those meanings commonly attributed to them in ordinary usage. *Bazemore v. Bertie County Bd. of Elections*, 254 N.C. 398, 119 S.E.2d 637 (1961).

Utmost Proficiency Not Contemplated. — The utmost proficiency in reading and writing sections of the Constitution was not contemplated by former § 163-28, nor was perfection

the measure of qualification. The standard was reasonable proficiency in reading and writing any section of the Constitution in the English language, and occasional misspelling and mispronouncing of more difficult words should not necessarily disqualify. *Bazemore v. Bertie County Bd. of Elections*, 254 N.C. 398, 119 S.E.2d 637 (1961).

Exhaustion of State Remedies. — The question of whether former § 163-28 should be declared void and its enforcement enjoined by a federal court on the ground that it was violative of rights under the federal Constitution would not be considered until plaintiff's administrative remedies had been exhausted and the North Carolina Supreme Court had interpreted the provisions of the section in the light of the North Carolina Constitution. *Lassiter v. Taylor*, 152 F. Supp. 295 (E.D.N.C. 1957).

Administration of Former Section by Registrar. — The provision of former § 163-28 placing the duty upon the registrar to administer the section was logical and reasonable, and did not constitute class legislation, since its provisions applied to all classes, and there was an adequate remedy at law if a registrar, in bad faith or in abuse of power or discretion, refused to register a person duly qualified. *Allison v. Sharp*, 209 N.C. 477, 184 S.E. 27 (1936).

§ 163-59. Right to participate or vote in party primary.

No person shall be entitled to vote or otherwise participate in the primary election of any political party unless he

- (1) Is a registered voter, and
- (2) Has declared and has had recorded on the registration book or record the fact that he affiliates with the political party in whose primary he proposes to vote or participate, and
- (3) Is in good faith a member of that party.

Any person who will become qualified by age or residence to register and vote in the general election or regular municipal election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general or regular municipal election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the twenty-first day prior to the primary. (1915, c. 101, s. 5; 1917, c. 218; C.S., s. 6027; 1959, c. 1203, s. 6; 1967, c. 775, s. 1; 1971, c. 1166, s. 4; 1973, c. 793, s. 20; 1981, c. 33, s. 1.)

Cross References. — As to records of political party affiliation or unaffiliated status, and change of recorded affiliation, see § 163-74. As to challenges on the day of a primary or election, see § 163-87. As to definition of "political party" and creation of new parties, see § 163-96.

Effect of Amendments. — The 1981 amendment substituted "the twenty-first day prior to the primary" for "21 days prior to the primary" at the end of the section.

CASE NOTES

Cited in *Hooks v. Eure*, 423 F. Supp. 55 (W.D.N.C. 1976).

§§ 163-60 to 163-64: Reserved for future codification purposes.

ARTICLE 7.

*Registration of Voters.***§ 163-65. Registration books and records.**

(a) Precinct Records. — The county board of elections shall furnish each precinct registrar with a proper book or books in which to record registration. This book shall be prepared to contain all of the information pertaining to a registered voter required by G.S. 163-72, including the registrant's political party affiliation, if any. On each page of the book shall be printed a column index giving the first two letters of the surnames and the pages on which persons bearing those names are registered.

In lieu of a bound book, the county boards of elections shall install a loose-leaf registration book system in all of the precincts of the county prior to January 1, 1970; provided that nothing herein shall alter the power of the county board of elections, with the approval of the county board of commissioners, to establish by resolution a full-time system of registration as provided in G.S. 163-67(b). The necessary binders for the loose-leaf registration book system shall be purchased by each county. The State Board of Elections shall have authority to approve types, sizes and kinds of binders to be used for the loose-leaf registration book system. Uniform registration sheets of paper approved by the State Board of Elections which are necessary for the binders shall be furnished by the State Board of Elections from funds provided by the State from the Contingency and Emergency Fund. One or more duplicate sets of registration sheets shall be maintained by the chairman of the county board of elections at all times in a safe place.

(b) Repealed by Session Laws 1973, c. 793, s. 21.

(c) Registration Records. — The applicant's application to register, when approved by the county board of elections, as provided in G.S. 163-67, shall become an official registration certificate. All original registration certificates shall be kept by the county board of elections in a safe place to be provided by the board of county commissioners. The county board of elections shall place an exact duplicate or copy of each original registration certificate in the proper precinct registration book, and certify each such book as containing the registration certificates of all persons entitled to vote in that precinct. Duplicate registration certificates filed in the precinct registration books, when properly certified by the county board of elections, shall be used in the precincts for purposes of all primaries and elections; provided, however, that the original registration certificates shall at all times be the official and final evidence of registration, and the county board of elections shall have the power to correct the duplicates in the precinct registration books to conform to the original registration certificates at any time, including the day of any primary or election. (1939, c. 263, s. 1; 1949, c. 916, s. 1; 1953, c. 843; 1955, c. 800; 1961, c. 381; 1963, c. 303, s. 1; 1967, c. 761, ss. 1, 2; c. 775, s. 1; 1973, c. 793, s. 21.)

Local Modification. — Ashe: 1969, c. 298; city of Rocky Mount: 1969, c. 1051; town of Arlington: 1969, c. 824.

Local Modification to Former §§ 163-43 and 163-43.1. — Town of Whitakers: 1965, c. 996, s. 1.

CASE NOTES

Stated in *Hurow v. Miller*, 45 N.C. App. 58, 262 S.E.2d 287 (1980).

OPINIONS OF ATTORNEY GENERAL

Loose-Leaf Registration Required in Municipality Where Local Act Contains No Provisions Regarding Registration. — See opinion of Attorney General to Mr. Herman Edwards, Murphy Town Attorney, 40 N.C.A.G. 465 (1970).

County Board of Commissioners Must Provide Adequate Funds to Ensure that Registration Records Are Kept in a Safe Place. — See opinion of Attorney General to Mr. Alex K. Brock, Executive Secretary, State Board of Elections, 40 N.C.A.G. 76 (1969).

§ 163-66. Custody of registration records and pollbooks; access; obtaining copies.

In all counties the registration records, books, registration certificates, indexes, computer lists, discs, labels and tapes and other records of registration and voting shall be and remain in the possession of the county board of elections. The county board of elections shall keep all such records in a safe and secure place where they may not be tampered with, stolen or destroyed. If possible, the board shall keep them in a fireproof vault or file. The board may exercise supervision and control of these records through its properly designated officers and employees. It shall be the duty of the county board of elections, on application of any candidate, or the county chairman of any political party, or any other person, to furnish a list of the persons registered to vote in the county or in any precinct or precincts therein. No registrar shall furnish lists of registered voters or permit the registration records of his precinct to be copied. The county board of elections shall furnish such lists and upon request, it may furnish selective lists according to party affiliation, sex, race, date of registration, or any other reasonable category. In all instances, however, the county board of elections shall require persons to whom any list is furnished to make full reimbursement for the expense incurred in preparing it. Notwithstanding the above, however, the chairman of each political party in the county, as defined in G.S. 163-96, shall be entitled biennially, upon written request, to one free list of all registered voters in his county showing the name, address, sex, political affiliation and precinct of each registered voter, provided, that in counties having voter records maintained on electronic data processing equipment, such lists shall not be furnished biennially but instead on the following schedule: once in each odd-numbered year, once during the first six calendar months of each even-numbered year, and once during the last six months of each even-numbered year. In addition to the typed, mimeographed, xeroxed or computer print-out lists required hereinabove, each county that provides voters' lists from computers shall, upon written request from the State chairman of each political party, provide at least 120 days prior to each general election a computer disc or tape containing the name, address, sex, race, age, political affiliation and precinct of each registered voter and it shall be the responsibility of each State chairman receiving such discs or tapes to provide them to candidates for election who are candidates of their respective political parties and who request the discs or tapes in writing. The free list to be furnished to the county chairman of each political party shall group the regis-

tered voters by precinct and shall be furnished as soon as practicable but no later than 30 days after said request. (1901, c. 89, s. 83; Rev., s. 4382; C.S., s. 6016; 1931, c. 80; 1939, c. 263, s. 3½; 1949, c. 916, ss. 6, 7; 1953, c. 843; 1955, c. 800; 1959, c. 883; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 793, s. 22; 1975, c. 12; 1979, 2nd Sess., c. 1242; 1981, c. 656.)

Local Modification. — City of Rocky Mount: 1969, c. 1051.

Effect of Amendments. — The 1981 amendment inserted "computer lists, discs, labels and tapes" in the first sentence, substituted "all such records" for "these books" in the second sentence, added "or file" at the end of the third

sentence, inserted "in the county" and "written" in the ninth sentence, added the tenth sentence, and inserted "to be" following "free list," "to" following "furnished" and "county" preceding "chairman" near the beginning of the last sentence.

OPINIONS OF ATTORNEY GENERAL

County Board of Commissioners Must Provide Adequate Funds to Ensure that Registration Records Are Kept in a Safe

Place. — See opinion of Attorney General to Mr. Alex K. Brock, Executive Secretary, State Board of Elections, 40 N.C.A.G. 76 (1969).

§ 163-67. Full-time registration; application to register.

(a) The county boards of elections shall establish, prior to January 1, 1971, a full-time system of registration, as prescribed by the State Board of Elections, under which the registration books, process, and records shall be open continuously for the acceptance of registration applications and for the registration of voters at all reasonable hours and time consistent with the daily function of all other county offices. In such counties no registration shall entitle a registrant to vote in any primary, general or special election unless the registrant shall have made application not later than the twenty-first day, excluding Saturdays and Sundays, immediately preceding such primary, general or special election, provided that nothing shall prohibit registrants from registering to vote in future elections during such period.

When full-time registration has been established in a county, the official record of registration shall be made and kept in the form of an application to register which, as prescribed by the State Board of Elections, shall contain all information necessary to show the applicant's qualifications to register. In such a county, no person shall be registered to vote without first making a written, sworn, and signed application to register upon the form prescribed by the State Board of Elections. If the applicant cannot write because of physical disability, his name shall be written on the application for him by the election official to whom he makes application, but the specific reason for the applicant's failure to sign shall be clearly stated upon the face of the application.

Registrars and special registration commissioners appointed under the provisions of G.S. 163-41 may take registration applications from and administer registration oaths to qualified applicants without regard to the precinct residence of the registrar, special registration commissioner, or applicant.

Applications to register which have been completed by persons who have taken the required oath shall be forwarded promptly to the county board of elections. An application to register shall constitute a valid registration unless the county board of elections shall notify the applicant of its rejection within 30 days after its completion; provided that where the application is completed during the last 51 days prior to the election but at least 21 days, excluding Saturdays and Sundays, prior to the election, the notification of rejection shall be made no less than 14 days prior to the election or the application shall constitute a valid registration. If the application is rejected after the close of

the registration books as provided in G.S. 163-67(a) the board shall notify the applicant at least 14 days before the election that it has rejected his application. The applicant may appear before the board and, if he establishes his qualifications to register prior to the election, he shall be permitted to vote. The loose-leaf binders containing the precinct records and the duplicate registration record, required by G.S. 163-65(a), shall be kept at all times in a safe place.

For the purpose of receiving registration applications, registrars shall attend the voting places in their precincts only on such days and at such hours as may be fixed by the county board of elections: Provided, the county board of elections shall not require registrars to be present at the voting places for this purpose on any day later than the twenty-first day, excluding Saturdays and Sundays, prior to a primary or election. In its discretion, the county board of elections may require no attendance by registrars at the voting places for the purpose of receiving registration applications.

The county board of elections is authorized to make reasonable rules and regulations, not inconsistent with law and State Board regulations, to insure full-time registration as provided in this section.

(b) In counties which have less than 14,001 registered voters the State Board of Elections shall prescribe reasonable regulations permitting such counties to operate a modified full-time office to the extent that the operation of such full-time office will not necessarily be required to be open such as is required in counties with total registered voters in excess of 14,000; provided, that nothing herein shall preclude such counties from maintaining office hours for registration consistent with the hours observed by all other offices within said county.

(c) No Registration on Day of Primary or Election; Exception. — No person shall be permitted to register on the day of an election or primary, unless he shall have become qualified to register and vote between the date the registration period expired and the date of the succeeding primary or election. No one shall be permitted to register on the day of a second primary unless he shall have become qualified to register and vote between the date of the first primary and the date of the succeeding second primary.

(d) The cost of maintaining the registration and election processes required by this section and G.S. 163-67.1 shall be allocated by the respective boards of county commissioners upon approval of budget requirements submitted by the respective county board of elections. The respective boards of county commissioners shall appropriate reasonable and adequate funds necessary for the legal functions of the county boards of elections, including reasonable and just compensation of the supervisor of elections. (1901, c. 89, ss. 18, 21; Rev., ss. 4322, 4323; C.S., ss. 5946, 5947; 1923, c. 111, s. 3; 1933, c. 165, s. 5; 1947, c. 475; 1953, c. 843; 1955, c. 800; 1957, c. 784, ss. 3, 4; 1961, c. 382; 1963, c. 303, ss. 1, 2; 1967, c. 761, s. 3; c. 775, s. 1; 1969, c. 750, ss. 1, 2; 1977, c. 626, s. 1; 1979, c. 539, s. 5; c. 766, s. 2; 1981, c. 33, s. 2; 1981 (Reg. Sess., 1982), c. 1265, s. 6.)

Local Modification. — City of Rocky Mount: 1969, c. 1051.

Local Modification to Former § 163-31. — Randolph: 1965, c. 1123; town of Whitakers: 1965, c. 996, s. 1.

Local Modification to Former § 163-43.1. — Town of Whitakers: 1965, c. 996, s. 1.

Editor's Note. — Section 163-67.1, cited in subsection (d) of this section, was repealed by Session Laws 1973, c. 859, s. 2. For present provision covering same subject matter, see § 163-35.

Effect of Amendments. — The 1981 amend-

ment substituted "later than the twenty-first day" for "less than 21 days" in the second sentence of the first paragraph of subsection (a), and in the proviso in the fifth paragraph in subsection (a).

The 1981 (Reg. Sess., 1982) amendment, effective Sept. 1, 1982, deleted a former proviso in the third paragraph of subsection (a), which read: "Provided, however, the county board of elections shall have power to limit the areas in which registrars and special registration commissioners may exercise the authority conferred in this paragraph."

CASE NOTES

Time for Books to Remain Open Under Former Law. — Where the charter of a city or town provided that for the issuance of bonds an election should be held "under the rules and regulations presented by law for regular elections," it referred to former § 163-31, requiring that the books of registration should be kept open for twenty days, and construing that section in connection with § 160-37 (now repealed) it was held that the former was for the purpose of a new and original registration, and the latter, in providing for only seven days, was for the purpose of revising the registration books so that electors might be registered whose names were not on the former books. *Hardee v. City of Henderson*, 170 N.C. 572, 87 S.E. 498 (1916).

Registration on Day of Election. — Where a person otherwise legally qualified, who had not been allowed to register because at that time he had not been a resident of the State for one year, but who became qualified in that respect on or before the day of election, asked to be allowed to register on election day and tendered his ballot, such vote should have been received. *State ex rel. Quinn v. Lattimore*, 120 N.C. 426, 26 S.E. 638 (1897).

Compliance Held Sufficient. — The statu-

tory requirement that the registration be kept open and accessible for a specified time is regarded as essential by the courts in passing upon the validity of bonds to be issued by a municipality; but where it appeared that the books were afterwards opened for a time actually sufficient to afford all an opportunity to register, though short of the legal period, and it further appeared that the election had been hotly contested by both sides, it would be deemed sufficient. *Hill v. Skinner*, 169 N.C. 405, 86 S.E. 351 (1915).

Failure to keep registry open for twenty days, as required by former § 163-31, for the purposes of issuance of bonds in a special school district, did not of itself render invalid the issuance of the bonds accordingly approved, when it appeared that the matter was fully known and discussed, opportunity was offered every voter to register, there was nothing to show that every elector desiring to vote had not done so, and there was no opposition to the measure manifested. *Hammond v. McRae*, 182 N.C. 747, 110 S.E. 102 (1921).

Stated in *Hurow v. Miller*, 45 N.C. App. 58, 262 S.E.2d 287 (1980).

OPINIONS OF ATTORNEY GENERAL

County Board of Commissioners Must Provide Adequate Funds to Ensure that Registration Records Are Kept in a Safe

Place. — See opinion of Attorney General to Mr. Alex K. Brock, Executive Secretary, State Board of Elections, 40 N.C.A.G. 76 (1969).

§ 163-67.1: Repealed by Session Laws 1973, c. 859, s. 2.

Cross References. — For present provisions covering the subject matter of the repealed section, see § 163-35.

§ 163-68: Repealed by Session Laws 1973, c. 793, s. 24.

§ 163-69. Permanent registration.

The registration certificates shall be a permanent public record of registration and qualification to vote, and they shall not thereafter be cancelled except as otherwise provided in this Chapter. No new registration shall be ordered pursuant to G.S. 163-78 either by precinct, or countywide, unless the permanent registration certificates have been lost or destroyed by theft, fire, or other hazard.

In the event of any division of precincts or changes in precinct boundaries, the board of elections shall not cancel the existing registration or order a new registration, but it shall immediately correct the existing precinct registration certificates to conform to the division or change.

To the end that the permanent registration records shall be purged of the names of registrants who have died or who have become disqualified to vote since registration, the Department of Human Resources, on or before the fifteenth day of the months of March, June, September and December, shall furnish free of charge to each county board of elections a certified list of the names of deceased persons who were residents of that county, such certified list to be based upon the information supplied by death certificates received by the Department of Human Resources during the preceding quarter. Upon the receipt of such a certification from the health director, the county board of elections shall cause to be removed from its permanent registration records the name of any person appearing on the death certification.

Any voter who neither voted in the first nor the second of the two most recent consecutive presidential elections and who failed to vote in any other election conducted in the period between the two presidential elections shall be purged.

In addition, beginning no later than January 2, 1981, following the presidential election in 1980 and thereafter in the period beginning no later than 30 days after each subsequent presidential election, the county board of elections shall not remove from the permanent registration records the name of any person who voted, according to the poll or other record of voting, in either:

- (1) One of the two most recent successive presidential elections, or
- (2) In any other election conducted in the period between the two presidential elections. Also, at any time, including the time required by this section for mandatory purging of persons who have not voted for the specified period, the county board of elections shall remove from the permanent registration records the names of all persons who have moved their residence from the county as indicated by cancellation notices received from other counties and other states and shall remove the names of those persons who have died according to the certified list received from the Department of Human Resources. Prior to removing any person's name from the registration records for failure to vote as specified in the mandatory purge provision, the county board of elections shall cause to be mailed to the person affected, at the address shown on the permanent registration records, a notice to show cause why his registration should not be voided. If such person shall appear at the county board of elections office, or shall furnish evidence by mail, and show that his qualifications to register and vote in the precinct in which he is registered remain the same, or if he has moved within the county and he shall transfer his registration to the precinct in which he resides in accordance with G.S. 163-72.2, his name shall not be removed from the permanent registration records. Any person whose name has been removed from these records for failure to vote for four consecutive years or for removal of residence from the county shall be permitted to reregister at any time he can demonstrate that he is qualified to register and vote.

Nothing in this section shall prohibit the county board of elections from restoring to the permanent registration records the name of any person upon proof that he is not dead, or that he has voted in the county within the four-year period, or has not removed his residence from the county. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1965, c. 1116, s. 1; 1967, c. 775, s. 1; 1973, c. 793, s. 25; 1975, c. 395; 1981, c. 39, s. 1; c. 87, s. 1; c. 308, s. 1.)

Local Modification. — Orange County: "The board of elections of Orange County is authorized and empowered to transfer the names of all persons registering during the registration period prior to the May, 1969, general municipal election of the town of Chapel Hill,

and the election for terms on the Chapel Hill city board of education, to the permanent registration books of Orange County. The registrars appointed by said board of elections for the election precincts lying within the corporate limits of the town of Chapel Hill and the boundaries of

the Chapel Hill city administrative school district, are directed to place the names of all persons who presented themselves for registration during such registration period, and who were duly registered on the supplementary registration books of said precinct on the permanent registration books of Orange County." 1969, c. 823.

Local Modification to Former § 163-31.2.

— Alamance, Columbus, Forsyth, Franklin, Gaston, Harnett, Hertford, Johnston, Martin, Northampton, Randolph, Robeson, Rowan, Scotland and Washington: 1965, c. 1116, s. 1½, as amended by 1969, cc. 576, 927; Wayne: 1965, c. 1070; city of Rocky Mount: 1969, c. 1051; town of Whitakers: 1965, c. 996, s. 1.

Effect of Amendments. — The first 1981 amendment rewrote the next-to-last sentence of the present fifth paragraph, which sentence formerly read: "If such a person shall appear and show that his qualifications to register and vote remain as they were when he was first registered, his name shall not be removed from the permanent registration records." Session Laws 1981, c. 39, s. 2 provides: "All purges previously processed in accordance with provisions contained in this act are validated."

The second 1981 amendment substituted the

present fourth paragraph and the first sentence of the present fifth paragraph for the first sentence of the former fourth paragraph, which sentence read: "In addition, beginning in the 12-month period following the presidential election in 1972 and thereafter in the period beginning no later than thirty days after each subsequent presidential election, the county board of elections shall remove from the permanent registration records the names of all persons who have failed to vote, according to the poll or other record of voting, for a period of four years." Session Laws 1981, c. 87, s. 2, provides: "All purges previously processed in accordance with provisions contained in this act are hereby validated."

The third 1981 amendment deleted "other" following "at any" near the beginning of the second sentence of the present fifth paragraph and substituted "the specified period" for "a period of four years" and "shall" for "may" and added the language beginning "as indicated by" at the end of that sentence. In the third sentence of the present fifth paragraph, the amendment substituted "as specified in the mandatory purge provision" for "for four consecutive years or for removal of residence from the county as authorized by this section."

CASE NOTES

Stated in *Hurow v. Miller*, 45 N.C. App. 58, 262 S.E.2d 287 (1980).

§ 163-69.1. Change of voter's name.

(a) If the name of a voter is changed in accordance with G.S. 48-36, 50-12, or Chapter 101 of the General Statutes, or if a married voter assumes the last name of her spouse, the voter shall not be required to re-register, but shall report the change of name in accordance with subsection (b) of this section before voting.

(b) A voter whose name has been changed shall report such change of name to an official authorized to register voters under G.S. 163-80 no later than the twenty-first day (excluding Saturdays and Sundays) prior to an election, primary, or special election in order to vote in said election if the name change occurred on or before that date. Alternatively, the voter may report such change to the registrar at the polls, and, if otherwise eligible, may vote.

Any report made under this section shall be made under oath, and on a form prescribed by the county board of elections. (1979, c. 480; 1981, c. 33, s. 3.)

Effect of Amendments. — The 1981 amendment substituted "no later than the

twenty-first day" for "no later than 21 days" in the first sentence of subsection (b).

§ 163-70. Chairman to certify to State Board of Elections number of registered voters in county.

The chairman of a county or municipal board of elections shall certify to the State Board of Elections the number of registered voters in the county or municipality. The certification shall be made on such forms as the State Board may prescribe and at such times as the State Board may fix. (1967, c. 775, s. 1; 1971, c. 1116, s. 5; 1973, c. 793, s. 26.)

§ 163-71. Municipal corporations authorized to use county registration records.

Upon such terms as may be mutually agreed to by the governing body of any city, town, or other municipality and the boards of commissioners and elections of the county in which the municipality is situated, the municipality is authorized to use the registration books, process, or records of the county as the official record of registration of persons qualified to vote in municipal elections. If such an agreement is reached, the provisions of law applicable to the registration of voters in the county shall also apply to the city, town, or other municipal corporation for the purpose of its primary, general, regular, and special elections.

All elections heretofore held or ordered to be held by any city, town, or other municipal corporation in which the registration books, process, or records of the county in which the municipal corporation is located were used or ordered to be used are hereby in all respects ratified, validated, and confirmed. (1955, c. 763; 1967, c. 775, s. 1.)

Local Modification. — City of Rocky Mount: 1969, c. 1051.

§ 163-72. Registration procedure; oath.

(a) Before questioning any applicant for registration as to his qualifications, the registrar shall present to the applicant a certification which shall be read by or to the applicant on his request and then signed by the applicant: "I hereby certify that the information I shall give with respect to my qualifications and identity is true and correct to the best of my knowledge.

.....
(Signature of applicant)"

After signing the certification, the applicant shall state as accurately as possible his name, age, place of birth, place of residence, political party affiliation, if any, under the provisions of G.S. 163-74, the name of any municipalities in which he resides, and any other information which may be material to a determination of his identity and qualification to be admitted to registration. The applicant shall also present to the registrar written or documentary evidence that he is the person he represents himself to be. The registrar, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to him as to the applicant's qualifications.

(b) If the registrar finds the applicant duly qualified and entitled to be registered, he shall administer the following registration oath to him, omitting the words in parentheses if the applicant does not claim residence in any municipality:

I,, do solemnly swear (or affirm) that I will support the Constitutions of the United States and the State of North Carolina; that I will have been a resident of this State and this precinct for 30 days by the date of the next election; that I have not registered, nor will I vote in any other county or State, so help me, God.

If the registrar finds the applicant qualified and entitled to be registered, and if the applicant has taken the oath prescribed in the preceding paragraph, the registrar shall register him by recording his name, age, race, residence, place of birth, municipality in which entitled to vote, and the precinct, municipality, county, or state from which he has removed in the event of a removal, in the appropriate columns of the registration book or other registration record.

The registration book or other record containing the information required by the preceding paragraph shall be evidence against the applicant in any court of law in a proceeding for false or fraudulent registration.

(c) Repealed by Session Laws 1979, c. 135.

(d) Officers authorized by G.S. 163-80(a) to register voters shall personally examine the applicant and administer the oaths prescribed in G.S. 163-72(a) and (b) to each individual applying to register, and the officer shall sign the individual's application in the presence of the applicant at the time he takes the application.

(e) Any individual not authorized by G.S. 163-80 to register voters shall complete the registration application on behalf of any applicant only in the physical presence of an authorized registration officer, who shall in such case examine the applicant and administer the oaths required in G.S. 163-72(a) and (b). The registration officer shall sign the application in the presence of the applicant at the time he takes the application.

(f) The application of any individual who is registered by a procedure other than as set out in subsections (d) and (e) of this section shall be void. (1901, c. 89, s. 12; Rev., s. 4319; C.S., s. 5940; Ex. Sess. 1920, c. 93; 1933, c. 165, s. 5; 1951, c. 984, s. 1; 1953, c. 843; 1955, c. 800; c. 871, s. 2; 1957, c. 784, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1971, c. 1166, s. 6; 1973, c. 793, s. 27; c. 1223, s. 3; 1975, c. 234, s. 2; 1979, c. 135, s. 1; c. 539, ss. 1-3; c. 797, ss. 1, 2; 1981, c. 222; c. 308, s. 2.)

Effect of Amendments. — The first 1981 amendment inserted "subsections (d) and (e) of" in subsection (f).

The second 1981 amendment substituted "After signing the certification" for "After being sworn" at the beginning of the second paragraph of subsection (a). The second 1981

amendatory act directed that the substitution be made "in the second sentence of the first paragraph." The first sentence of the second paragraph was plainly intended, and the amendment has been given effect in accordance with this intent.

CASE NOTES

Power of General Assembly to Enact Registration Laws. — While the General Assembly cannot add to the qualifications prescribed by the Constitution for voters, it has the power, and it is its duty, to enact such registration laws as will protect the rights of duly qualified voters, and no person is entitled to vote until he has complied with the requirements of those laws. *Harris v. Scarborough*, 110 N.C. 232, 14 S.E. 737 (1892).

Requirements of the registration act are mandatory. *Harris v. Scarborough*, 110 N.C. 232, 14 S.E. 737 (1892).

Denial of registration and voting to persons qualified to vote vitiates the election, particularly where it would affect the result, even though the denial was by accident or mistake. *McDowell v. Massachusetts & S. Constr. Co.*, 96 N.C. 514, 2 S.E. 351 (1887). See

also, *Perry v. Whitaker*, 17 N.C. 475 (1833); *People ex rel. Bokkelen v. Canaday*, 73 N.C. 198, 21 Am. R. 465 (1875).

Effect of Irregularities. — Where the disregard of constitutional or statutory directions does not affect the result, it does not warrant a rejection of the vote. If none are incompetent to vote, the registration must be accepted as the act of a public officer, which entitles the electors to vote, notwithstanding irregularities as to administering the oath, the registrar's appointment, etc. *State ex rel. DeBerry v. Nicholson*, 102 N.C. 465, 9 S.E. 545 (1889).

Registration by Other than Registrar. — The fact that a qualified voter was registered by a third person, with whom the registrar had left the books, does not disqualify him to vote, where such registration has been accepted as

sufficient by the registrar. *Quinn v. Lattimore*, 120 N.C. 326, 26 S.E. 638 (1897).

Article VI, § 2, Const., 1868, was satisfied by an oath to support the federal and state Constitutions. All valid laws, whether State or national, were included by implication. *State ex rel. DeBerry v. Nicholson*, 102 N.C. 465, 9 S.E. 545 (1889).

Failure to administer oath would not invalidate a school tax election to determine whether such tax should be levied, in the absence of fraud or improper motive. *Gibson v. Board of Comm'rs*, 163 N.C. 510, 79 S.E. 976 (1913).

It will be presumed that the oath was taken with uplifted hand in the absence of direct evidence to the contrary. *State ex rel. DeBerry v. Nicholson*, 102 N.C. 465, 9 S.E. 545 (1889).

Inquiry as to Qualifications of Voters. — Registrars of election may ask an elector if he had resided in the State 12 months next preceding the election (now 30 days) and four months in the district in which he offers to vote

(now also 30 days). They may ask an elector as to his age and residence, as well as the township and county from whence he removed, in the case of a removal since the last election, and as to the name by which he is commonly known. If, in reply to such questions, the elector answers that he is 21 (now 18) years old, and has resided in the State 12 months (now 30 days) and in the county four months (now also 30 days) preceding the election, it is the duty of the registrar, upon his taking the prescribed oath, to record his name as a voter; but bystanders may require him to be sworn as to his residence. *In re Reid*, 119 N.C. 641, 26 S.E. 337 (1896).

Sufficiency of Response as to Residence. — In answer to the question of residence the designation of the county of residence is sufficient, but the designation of the state merely is insufficient. *Harris v. Scarborough*, 110 N.C. 232, 14 S.E. 737 (1892).

Quoted in *Lloyd v. Babb*, 296 N.C. 416, 251 S.E.2d 843 (1979).

Cited in *Hooks v. Eure*, 423 F. Supp. 55 (W.D.N.C. 1976).

§ 163-72.1. Cancellation of prior registration.

(a) After having accepted the application for registration, and after advising the applicant that he is still bound by the oath first administered pursuant to G.S. 163-72, the registrar shall ask the applicant whether he is, at that time, also registered to vote in any other county, municipality or state. If the applicant answers in the affirmative, the registrar shall obtain from him a signed authorization (in duplicate) to cancel all prior registrations. The authorization shall set forth the name under which the person previously was registered, his prior address (including state, county, street address, and precinct, if known), and the name under which he is applying to register. It shall be addressed to the appropriate election officials in the other county, municipality or state and shall request them to cancel his voting registration in that county or state. It also shall direct the county board of elections to which he is currently applying for registration to transmit a signed copy of the authorization to the appropriate election officials in the other county, municipality or state.

(b) The registrar shall deliver all copies of the signed authorization, together with the person's application for registration, to the county board of elections. If the person, having stated that he is registered in another county or state, refuses to sign the authorization, the registrar shall complete the authorization as completely as possible without obtaining the person's signature and shall transmit it, together with the person's application for registration, to the county board of elections, noting in the appropriate place on the authorization that the person refused to sign it after having stated that he is registered in another county or state.

(c) If the person's application for registration is rejected pursuant to G.S. 163-67, and upon exhaustion of any appeal from rejection that does not result in the granting of registration, the chairman of the county board of elections shall promptly destroy all copies of the person's authorization.

(d) If the person's application for registration is not rejected, the chairman of the county board of elections forthwith shall mail a signed copy of the authorization to the appropriate elections officials in the county, municipality or state where the person previously was registered.

(e) When a county or municipal board of elections in this State receives from another county or municipal board of elections in this State, or from appropriate elections officials of another state or political subdivision in another state, a signed authorization directing the removal of a person's name from the county's or municipality's permanent registration records, the board, 20 days after giving written notice of receipt of the authorization to the person at the local address shown in the county's registration records and in the authorization, shall remove the person's name from its registration records.

If within 10 days after giving notice to the person affected the board is notified by the person that he objects to the removal of his name from the records, the chairman of the board shall enter a challenge to the person's qualifications to remain registered or vote. The challenge may be based on the person's removal of residence from the county or municipality or any other sufficient ground for objecting to the right of the person to remain registered or vote, and the challenge shall be heard as provided in Chapter 163, Article 8.

(f) The board of elections is responsible for the safekeeping of the authorization and any other documents relating to the cancellation of prior registration pursuant to this section. Except as provided in subsection (c), the board shall retain them for a period of at least one year after obtaining the authorization.

(g) The authorization form and the form for written notice of receipt of authorization shall be prescribed or approved by the State Board of Elections. No county or municipality may use any other such forms.

(h) For the purposes of this section, the word "state" includes the District of Columbia. (1973, c. 793, s. 28; c. 1223, s. 4; 1977, c. 265, s. 3.)

§ 163-72.2. Change of address within a county.

(a) No registered voter shall be required to reregister upon moving from one precinct to another in the same county.

(b) In lieu thereof, the voter may in person, or by returnable first class mail, file a written report with the county board of elections, signed in his own hand, setting forth:

- (1) His full name,
- (2) His former residence address,
- (3) His new residence address, and
- (4) The date he moved to the new address.

The voter shall sign his name himself and shall not cause or allow his signature to be signed by any other person unless he is unable to sign his name himself.

(c) If the request is in proper form, and the board is satisfied as to the facts asserted and the signature, it shall immediately transfer the voter's registration to his new precinct, and notify the voter in person or by returnable mail of his new voting place and precinct. The board shall also correct his registration for municipal elections, if necessary.

(d) If a written report is submitted but does not contain sufficient information, the board shall request further information before acting.

(e) No report filed under this section shall be effective for a primary or election unless received by the board of elections on or before the twenty-first day (excluding Saturdays and Sundays) before the primary or election, except that if the report is submitted before the deadline but more information is requested, such report shall be effective for the primary or election if sufficient information is received more than 14 days before the primary or election.

(f) For the purpose of this section, a report in person shall be considered filed with the county board of elections if filed with any election official of that county authorized to register voters under G.S. 163-80.

(g) A county board of elections may make available printed forms containing spaces for the information required by this section. (1979, c. 135, s. 2.)

§ 163-73: Repealed by Session Laws 1973, c. 793, s. 29.

§ 163-74. Record of political party affiliation or unaffiliated status; changing recorded affiliation; correcting erroneous record.

(a) Statement of Party Affiliation or Unaffiliated Status; Record Thereof. — Every person who registers to vote shall, at the time application is made, (i) state his desired political party affiliation or (ii) state that he wishes to be recorded as an “unaffiliated” voter. The person before whom the voter is registering shall record the affiliation requested by the voter. Such recorded party affiliation, or unaffiliated designation, shall thereafter be permanent unless, or until, the registrant changes it under the provisions of subsection (b) of this section.

If the applicant (registrant) refuses to declare his party affiliation upon request, or if the applicant refuses further to state that he desires to be recorded as unaffiliated, then the registrar or other officer shall inform the applicant that although he may register, his record shall be designated “unaffiliated” and he shall not be eligible to vote in any political party primary but may vote in any general election.

(b) Change of Party Affiliation or Unaffiliated Status. — No registered elector shall be permitted to change the record of his party affiliation or unaffiliated status for a primary, second primary or special or general election after the close of the registration books immediately prior to any such election. Any registrant who desires to have the record of his party affiliation or unaffiliated status changed on the registration book shall, no later than the twenty-first day (not including Saturdays and Sundays) before the election go to the chairman or the supervisor of elections of the county board of elections or to other registration officials specified in G.S. 163-80 and request that the change be made. Before being permitted to have the change made, the chairman, supervisor of elections or other registration official shall require the registrant to take the following oath, and it shall be the duty of the elections officer to administer it:

- (1) If the voter desires to change from one political party to another, or from unaffiliated to a political party:

I,, do solemnly swear (or affirm) that I desire in good faith to change my party affiliation from the Party (or from unaffiliated status) to the Party, and that such change of affiliation be made on the registration records in the manner provided by law, so help me, God.

- (2) If the voter desires to change his affiliation with any political party to unaffiliated status:

I,, do solemnly swear (or affirm) that I desire in good faith to change my party affiliation with the Party to unaffiliated and that such change of affiliation be made on the registration records in the manner provided by law, so help me, God.

Upon receipt of the required oath, the county board of elections shall immediately change the record of the registrant’s party affiliation, or unaffiliated status, to conform to that stated in the oath. Thereafter the voter shall be considered registered and qualified to vote in accordance with the effected change.

Party affiliation may also be changed as provided in G.S. 163-96(c).

(c) **Correction of Erroneous Record of Party Affiliation.** — If at any time the chairman or supervisor of elections of the county board of elections shall be satisfied that an error has been made in designating the party affiliation of any voter on the registration records, then the chairman or supervisor of elections of the county board of elections shall make the necessary correction after first administering to the voter the following oath:

I,, do solemnly swear (or affirm) that I desire in good faith to have the erroneous entry of my affiliation with the Party, or my unaffiliated status on the registration records corrected in the manner provided by law to show that I affiliate with the Party (or that I elect to be recorded as an unaffiliated voter), so help me, God. (1939, c. 263, s. 6; 1949, c. 916, ss. 4, 8; 1953, c. 843; 1955, c. 800; c. 871, s. 3; 1957, c. 784, s. 5; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 30, 31; c. 1223, s. 5; 1975, c. 234, s. 2; 1977, c. 130, s. 1; c. 626, s. 1; 1981, c. 33, s. 4; c. 219, s. 4.)

Editor's Note. — Session Laws 1977, c. 130, which amended this section, provides in s. 2: "All persons who are recorded on the registration books as "Independent" or "No Party" designees, as of the date of ratification of this act, shall be presumed to be recorded as "unaffiliated" unless and until such persons request, in the manner provided by law, that their registration record be changed. The State Board of Elections shall issue appropriate directives to each county board of elections to effect compliance with this section."

For special provisions for 1982 primary elections, see Session Laws 1982, 2nd Ex. Sess., c. 3, ss. 1 through 19, as amended by Session Laws 1981 (Reg. Sess., 1982), c. 1265, s. 1.

Effect of Amendments. — The first 1981 amendment substituted "no later than the twenty-first day" for "not less than 21 days" in the second sentence of subsection (b).

The second 1981 amendment, effective July 1, 1981, added the last paragraph in subsection (b).

CASE NOTES

Requiring oath to support future candidates violates the principle of freedom of conscience. *Clark v. Meyland*, 261 N.C. 140, 134 S.E.2d 168 (1964).

The legislature is without power to shackle a voter's conscience by requiring an oath requiring an elector to vote for future candidates as a price to pay for his right to participate in his party's primary. *Clark v. Meyland*, 261 N.C. 140, 134 S.E.2d 168 (1964).

And Denies Free Ballot. — An oath to support future candidates denies a free ballot, one that is cast according to the dictates of the voter's judgment. *Clark v. Meyland*, 261 N.C. 140, 134 S.E.2d 168 (1964).

And Participation in Primary Cannot Be Denied for Refusal to Take Unconstitutional Oath. — Membership in a party and a right to participate in its primary may not be denied an elector simply because he refuses to take an oath to vote in a manner

which violates the constitutional provision that elections shall be free. *Clark v. Meyland*, 261 N.C. 140, 134 S.E.2d 168 (1964).

Any elector who offers sufficient proof of his intent, in good faith, to change his party affiliation, cannot be required to bind himself by an oath, the violation of which, if not sufficient to brand him as a felon, would certainly be sufficient to operate as a deterrent to his exercising a free choice among available candidates in the election, even by casting a write-in ballot. *Clark v. Meyland*, 261 N.C. 140, 134 S.E.2d 168 (1964).

Good Faith of Party Change Subject to Challenge. — When a member of either party desires to change his party affiliation, the good faith of the change is a proper subject of inquiry and challenge. *Clark v. Meyland*, 261 N.C. 140, 134 S.E.2d 168 (1964).

Cited in *Hooks v. Eure*, 423 F. Supp. 55 (W.D.N.C. 1976).

§ 163-75. Appeal from denial of registration.

Any person who is denied registration for any reason shall be notified in writing by the county board of elections by certified mail or by notice served by the sheriff. The registration officer specified in G.S. 163-80 before whom the applicant appeared shall submit the name and address of any voter denied registration to the chairman or supervisor of the county board of elections in

order that the chairman shall be able to notify the applicant promptly of his denial. Any person who receives a notice of denial of registration may appeal the denial to the county board of elections within five days following receipt of the notice required herein. The county board of elections shall promptly set a date for a public hearing. The notice of appeal shall be in writing and signed by the appealing party and shall set forth the name, age and address of the appealing party; it shall also state the reasons for the appeal. (1957, c. 287, s. 2; 1967, c. 775, s. 1; 1981, c. 542, s. 1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, rewrote this section.

CASE NOTES

Applied in *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 187 S.E.2d 52 (1972).

§ 163-76. Hearing on appeal before county board of elections.

The county board of elections shall set a date and time for a public hearing and shall notify the appealing party. Every person appealing to the county board of elections from denial of registration shall be entitled to a prompt and fair hearing on the question of the denied applicant's right and qualifications to register as a voter. All cases on appeal to a county board of elections shall be heard de novo.

Two members of the county board of elections shall constitute a quorum for the purpose of hearing appeals on questions of registration. The decision of a majority of the members of the board shall be the decision of the board. The board shall be authorized to subpoena witnesses and to compel their attendance and testimony under oath, and it is further authorized to subpoena papers and documents relevant to any matters pending before the board.

If at the hearing the board shall find that the person appealing from a denial of registration meets all requirements of law for registration as a voter in the county, the board shall enter an order directing that the appellant be registered and assign the appellant to the appropriate precinct. Not later than five days after an appeal is heard before the county board of elections, the board shall give written notice of its decision to the appealing party. (1957, c. 287, s. 3; 1967, c. 775, s. 1; 1981, c. 542, s. 2.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, rewrote the first sentence of the first paragraph, substituted "the denied applicant's" for "his" in the second sentence of the first paragraph, substituted "shall be" for "is" in the third sentence of the second paragraph, substituted "a denial of registration meets all requirements of law for registration as a voter in the county" for "the decision of the registrar is able to read and write any section of the Constitution of North Carolina in the English language, and if the board further finds that the appellant meets all other requirements of law for registration as a voter in the precinct in which application was

made" in the first sentence of the third paragraph, deleted "to the precinct registrar" preceding "directing that" in the first sentence of the third paragraph, substituted "and assign the appellant to the appropriate precinct" for "as a voter in the precinct from which the appeal was taken" at the end of the first sentence of the third paragraph, deleted the former second sentence of the third paragraph which provided that the applicant was not to be registered in any precinct other than that from which the appeal was taken, and inserted "written" preceding "notice of" in the present second sentence of the third paragraph.

CASE NOTES

Applied in *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 187 S.E.2d 52 (1972).

§ 163-77. Appeal from county board of elections to superior court.

Any person aggrieved by a final decision of a county board of elections denying registration may at any time within 10 days from the date on which he receives notice of the decision appeal therefrom to the superior court of the county in which the board is located. Upon such an appeal, the appealing party shall be the plaintiff and the county board of elections shall be the defendant, and the matter shall be heard de novo in the superior court in the manner in which other civil actions are tried and disposed of therein.

If the decision of the court be that the order of the county board of elections shall be set aside, then the court shall enter its order so providing and adjudging that the plaintiff is entitled to be registered as a qualified voter in the precinct in which he originally made application to register, and in such case the plaintiff's name shall be entered in the registration book of that precinct. The court shall not order the registration of any person in a precinct in which he did not apply to register prior to the proceeding in court.

From the judgment of the superior court an appeal may be taken to the appellate division in the same manner as other appeals are taken from judgments of that court in civil actions. (1957, c. 287, s. 4; 1967, c. 775, s. 1; 1969, c. 44, s. 82.)

Legal Periodicals. — For comment on election contests in North Carolina, see 55 N.C.L. Rev. 1228 (1977).

CASE NOTES

Applied in *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 187 S.E.2d 52 (1972).

§ 163-78. New registration; when permanent registration certificates lost or destroyed.

If all of the permanent registration certificates, required by G.S. 163-65, for any precinct, for the entire county, or for any municipality, are, prior to 30 days preceding any primary, general or special elections, lost or destroyed by theft, fire, or other hazard, the county or municipal board of elections shall promptly provide the precinct registrar of each affected precinct with new loose-leaf registration books and new applications for registration, and shall order a new registration of qualified persons in each affected precinct. The new registration shall be conducted at the times and places in the manner prescribed by G.S. 163-67(a). The board of elections shall give notice that a new registration is in process by advertisement in a newspaper having general circulation in the county and by posting notice at the courthouse door. The notice shall state that a new registration is in process, and the location of the voting place and the name of the registrar in each affected precinct.

If the destruction or mutilation of the precinct registration book occurs less than 30 days before any primary, general, or special election, the board of elections shall, insofar as time will permit, adhere to the provisions of the first

paragraph of this section. If the time available makes it impossible to conduct a new registration in the affected precinct, each person presenting himself to vote in the precinct on the day of the ensuing general or special election shall be allowed to cast his ballot after signing and delivering to the registrar an affidavit in the following form:

"I,, do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of North Carolina not inconsistent therewith; that I have been a resident of the State of North Carolina and of this precinct or municipality for 30 days; that I am at least 18 years of age; and that I have not registered to vote in any other precinct, county, municipality or state, so help me, God."

If the ensuing election is a primary rather than a general or special election, the following affidavit shall be used:

"I,, do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of North Carolina not inconsistent therewith; that I have been or will have been a resident of the State of North Carolina and of this precinct or municipality for 30 days by the date of the next general election; that I am at least 18 years of age or will be by the date of the next general election; and that I have not registered to vote in any other precinct, county, municipality, or state, so help me, God."

Persons permitted to vote under this procedure may be challenged in accordance with the provisions of G.S. 163-87 and G.S. 163-88. The registrar shall deliver all affidavits deposited with him to the board of elections on canvass day. The affidavits shall not be deemed to constitute a new record of registration for the precinct, county or municipality for subsequent primaries and elections. (1901, c. 89, s. 18; 1905, c. 510; Rev., ss. 4314, 4323; 1909, c. 894; C.S., ss. 5935, 5947; 1921, c. 181, s. 3; 1923, c. 111, s. 3; 1933, c. 165, ss. 3, 5; 1947, c. 475; 1953, c. 843; 1955, c. 800; 1957, c. 784, s. 3; 1961, c. 382; 1963, c. 303, s. 2; 1967, c. 775, s. 1; 1971, c. 1231, s. 1; 1973, c. 793, s. 32.)

Local Modification to Former § 163-23. —
Graham: 1957, c. 119.

§ 163-79. Alternate oaths by voters and registrants.

In the event any person taking any of the oaths in G.S. 163-72, G.S. 163-74(a), G.S. 163-74(b), G.S. 163-74(c), and G.S. 163-78(b) objects to the phrase "so help me, God" appearing at the end of said oaths, the words "I do so affirm" may be substituted therefor. (1973, c. 184.)

Editor's Note. — Section 163-78, referred to in this section, no longer contains a subsection (b).

§ 163-80. Officers authorized to register voters.

- (a) Only the following election officials shall be authorized to register voters:
 - (1) Any member of a county board of elections who has been duly appointed pursuant to G.S. 163-22(c) and properly installed as required by G.S. 163-30 and 163-31.
 - (2) The supervisor of elections of a county board of elections appointed pursuant to the provisions of G.S. 163-35.
 - (3) Precinct registrars and judges of election appointed pursuant to the provisions of G.S. 163-41.

- (4) Special registration commissioners appointed pursuant to the authority and limitation contained in G.S. 163-41(b).
- (5) Full-time and salaried deputy supervisors of elections employed by the county board of elections and who work under the direct supervision of the board's supervisor of elections appointed pursuant to the provisions contained in G.S. 163-35.
- (6) Local public library employees designated by the governing board of such public library to be appointed by the county board of elections as special library registration deputies. Persons appointed under this subsection shall be given the oath contained in G.S. 163-41(b), and shall be authorized to accept applications to register on those days and during those hours said special deputies are on duty with their respective libraries.

(b) All election officials authorized to register voters under authority of this section shall not be authorized to register voters who reside outside the boundaries of their respective counties except in those specific instances involving municipalities which lie within the boundaries of two or more counties. The State Board of Elections shall have authority to promulgate rules for the processing of voters in such instances.

(c) All election officials authorized by this section to register voters shall register any qualified voter without regard to political party affiliation and without discrimination in any manner whatsoever.

(d) The State Board of Elections shall promulgate rules for the proper training of those persons qualifying under this section as registrars. (1975, c. 234, s. 1; 1977, c. 626, s. 1.)

Cross References. — As to administration of oath to election officials, see § 163-33.1.

§§ 163-81 to 163-83: Reserved for future codification purposes.

ARTICLE 8.

Challenges.

§ 163-84. Time for challenge other than on day of primary or election.

The registration records of each county shall be open to inspection by any registered voter of the county, including any registrar or judge of elections, during the normal business hours of the county board of elections on the days when the board's office is open pursuant to G.S. 163-67. At those times the right of any person to register, remain registered, or vote shall be subject to objection and challenge. (1901, c. 89, s. 19; Rev., s. 4339; C.S., s. 5972; 1929, c. 164, s. 36; 1953, c. 843; 1955, c. 800; c. 871, s. 7; 1959, c. 616, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 793, s. 33.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Remedy for Irregular Registration. —

Where it was alleged that the registration of voters in a primary municipal election was irregular and fraudulent, and the statute and charter of the city under which the election was to be held provided for challenge to voters so

registered, mandamus to compel a proper registration would not be issued, as there was an adequate remedy at law by way of challenge provided by statute. *Glenn v. Culbreth*, 197 N.C. 675, 150 S.E. 332 (1929).

§ 163-85. Challenge procedure other than on day of primary or election.

(a) Right to Challenge; When Challenge May Be Made. — Any registered voter of the county may challenge the right of any person to register, remain registered or vote in such county. No such challenge may be made after the close of the registration books, pursuant to G.S. 163-67, before each primary, general, or special election.

(b) Challenges Shall Be Made to the County Board of Elections. — Each challenge shall be made separately, in writing, under oath and on forms prescribed by the State Board of Elections, and shall specify the reasons why the challenged voter is not entitled to register, remain registered, or vote. When a challenge is made, the board of elections shall cause the word "challenged" to be written in pencil on the registration records of the voter challenged. The challenge shall be signed by the challenger and shall set forth the challenger's address.

(c) Grounds for Challenge. — Such challenge may be made only for one or more of the following reasons:

- (1) That a person is not a resident of the State of North Carolina, or
- (2) That a person is not a resident of the county in which the person is registered, or
- (3) That a person is not a resident of the precinct in which the person is registered, or
- (4) That a person is not 18 years of age, or if the challenge is made within 60 days before a primary, that the person will not be 18 years of age by the next general election, or
- (5) That a person has been adjudged guilty of a felony and is ineligible to vote under G.S. 163-55(2), or
- (6) That a person is disqualified from voting under G.S. 122-55.2(c) because such person has been adjudicated incompetent under the provisions of Chapter 35 of the General Statutes and has not been restored to legal capacity, or
- (7) That a person has been disqualified from voting under G.S. 163-276 and the period of disqualification has not expired, or
- (8) That a person is not a citizen of the United States, or
- (9) With respect to municipal registration only, that a person is not a resident of the municipality in which the person is registered.

(d) Preliminary Hearing. — When a challenge is made, the county board of election shall schedule a preliminary hearing on the challenge, and shall take such testimony under oath and receive such other evidence proffered by the challenger as may be offered. The burden of proof shall be on the challenger, and if no testimony is presented, the board shall dismiss the challenge. If the challenger presents evidence and if the board finds that probable cause exists that the person challenged is not qualified to vote, then the board shall schedule a hearing on the challenge.

(e) Prima Facie Evidence That Voter No Longer Resides in Precinct. — The presentation of a letter mailed by returnable first-class mail to the voter at the

address listed on the voter registration card and returned because the person does not live at the address shall constitute prima facie evidence that the person no longer resides in the precinct. (1901, c. 89, s. 19; Rev., s. 4339; C.S., s. 5972; 1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 793, s. 34; 1979, c. 357, s. 1.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

An action for malicious prosecution would not lie where defendants challenged plaintiff's right to vote under subsection (a) of this section, as actions for malicious prosecution based on administrative proceedings have been limited to instances where there is a type

of confinement or interference with the right to earn a livelihood. *Hurow v. Miller*, 45 N.C. App. 58, 262 S.E.2d 287 (1980).

Stated in *Lloyd v. Babb*, 296 N.C. 416, 251 S.E.2d 843 (1979).

§ 163-86. Hearing on challenge.

(a) A challenge made under G.S. 163-85 shall be heard and decided before the date of the next primary or election, except that if the board finds that because of the number of challenges, it cannot hold all hearings before the date of the election, it may order the challenges to be heard and decided at the next time the challenged person appears and seeks to vote, as if the challenge had been filed under G.S. 163-87. Unless the hearing is ordered held under G.S. 163-87, it shall be heard and decided by the board of elections.

(b) At least 10 days prior to the hearing scheduled under G.S. 163-86(c), the board of elections shall mail by first-class mail, a written notice of the challenge to the challenged voter, to the address of the voter listed in the registration records of the county. The notice shall state succinctly the grounds asserted, and shall state the time and place of the hearing. If the hearing is to be held at the polls, the notice shall state that fact and shall list the date of the next scheduled election, the location of the voter's polling place, and the time the polls will be open. A copy of the notice shall be sent to the person making the challenge and to the chairman of each political party in the county.

(c) At the time and place set for the hearing on a challenge entered prior to the date of a primary or election, the county board of elections shall explain to the challenged registrant the qualifications for registration and voting in this State. The board chairman, or in his absence the board secretary, shall then administer the following oath to the challenged registrant:

"You swear (or affirm) that the statements and information you shall give in this hearing with respect to your identity and qualifications to be registered and to vote shall be the truth, the whole truth, and nothing but the truth, so help you, God."

After swearing the challenged registrant, the board shall examine him as to his qualifications to be registered and to vote. If the challenged registrant insists that he is qualified, the board shall tender to him the following oath or affirmation:

"You do solemnly swear (or affirm) that you are a citizen of the United States; that you are at least 18 years of age or will become 18 by the date of the next general election; that you have or will have resided in this State and in the precinct for which registered for 30 days by the date of the next general election; that you are not disqualified from voting by the Constitution or the laws of this State; that your name is, and that in such name you

were duly registered as a voter of precinct; and that you are the person you represent yourself to be, so help you, God.” If the challenged registrant refuses to take the tendered oath, or submit to the board the affidavit required by subsection (d), below, the challenge shall be sustained. If the challenged registrant takes the tendered oath, the board may, nevertheless, sustain the challenge if it finds the challenged registrant is not a legal voter.

The board, in conducting hearings on challenges, shall have authority to subpoena any witnesses it may deem appropriate, and administer the necessary oaths or affirmations to all witnesses brought before it to testify to the qualifications of the persons challenged.

(d) Appearance by Challenged Registrant. — The challenged registrant shall appear in person at the challenge hearing. If he is unable to appear in person, he may be represented by another person and must tender to the county board of elections an affidavit that he is a citizen of the United States, is at least 18 years of age or will become 18 by the date of the next general election, has or will have resided in this State and in the precinct for which registered for 30 days by the date of the next general election, is not disqualified from voting by the Constitution or laws of this State, is named and was duly registered as a voter of precinct in such name, and is the person represented to be by the affidavit. (1901, c. 89, s. 22; Rev., s. 4340; C.S., s. 5973; 1955, c. 871, s. 2; 1967, c. 775, s. 1; 1971, c. 1231, s. 1; 1973, c. 793, s. 35; 1979, c. 357, s. 2.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Stated in *Lloyd v. Babb*, 296 N.C. 416, 251 S.E.2d 843 (1979).

§ 163-87. Challenges allowed on day of primary or election.

On the day of a primary or election, at the time a registered voter offers to vote, any other registered voter of the precinct may exercise the right of challenge, and when he does so may enter the voting enclosure to make the challenge, but he shall retire therefrom as soon as the challenge is heard.

On the day of a party primary, any voter of the precinct who is registered as a member of the political party conducting the primary may, at the time any registrant proposes to vote, challenge his right to vote upon the ground that he does not affiliate with the party conducting the primary or does not in good faith intend to support the candidates nominated in that party's primary, and it shall be the duty of the registrar and judges of election to determine whether or not the challenged registrant has a right to vote in that primary according to the procedures prescribed in G.S. 163-88. (1915, c. 101, s. 11; 1917, c. 218; C.S., s. 6031; 1921, c. 181, s. 6; 1923, c. 111, s. 14; 1929, c. 164, s. 36; 1953, c. 843; 1955, c. 800; c. 871, s. 7; 1959, c. 616, s. 2; c. 1203, s. 7; 1963, c. 303, s. 1; 1967, c. 775, s. 1.)

Legal Periodicals. — For comment on election contests in North Carolina, see 55 N.C.L. Rev. 1228 (1977).

For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Voter Not Compelled to Continue to Support Candidates of Party in Whose Primary He Voted. — The right of a qualified elector to vote in party primaries is confined to the primary of the existing political party with which he affiliates at the time of the holding of the primary. But the voter is not deprived of complete liberty of conscience or conduct in the future, in the event he rightly or wrongly comes

to the conclusion subsequent to the primary that it is no longer desirable for him to support the candidates of the party in whose primary he has voted. *States' Rights Democratic Party v. State Bd. of Elections*, 229 N.C. 179, 49 S.E.2d 379 (1948).

Cited in *Lloyd v. Babb*, 296 N.C. 416, 251 S.E.2d 843 (1979).

§ 163-88. Hearing on challenge made on day of primary or election.

A challenge entered on the day of a primary or election shall be heard and decided by the registrar and judges of election of the precinct in which the challenged registrant is registered before the polls are closed on the day the challenge is made. When the challenge is heard the precinct officials conducting the hearing shall explain to the challenged registrant the qualifications for registration and voting in this State, and shall examine him as to his qualifications to be registered and to vote. If the challenged registrant insists that he is qualified, and if, by the sworn testimony of at least one registered voter of the precinct, he shall prove his identity with the person in whose name he offers to vote and his continued residence in the precinct since he was registered, one of the judges of election or the registrar shall tender to him the following oath or affirmation, omitting the portions in brackets if the challenge is heard on the day of an election other than a primary:

"You do solemnly swear (or affirm) that you are a citizen of the United States; that you are at least 18 years of age [or will become 18 by the date of the next general election]; that you have [or will have] resided in this State and in the precinct for which registered for 30 days [by the date of the next general election]; that you are not disqualified from voting by the Constitution and laws of this State; that your name is, and that in such name you were duly registered as a voter of this precinct; that you are the person you represent yourself to be; [that you are affiliated with the party]; and that you have not voted in this [primary] election at this or any other voting place. So help you, God."

If the challenged registrant refuses to take the tendered oath, the challenge shall be sustained, and the precinct officials conducting the hearing shall mark the registration records to reflect their decision, and they shall erase the challenged registrant's name from the pollbook if it has been entered therein. If the challenged registrant takes the tendered oath, the precinct officials conducting the hearing may, nevertheless, sustain the challenge unless they are satisfied that the challenged registrant is a legal voter. If they are satisfied that he is a legal voter, they shall overrule the challenge and permit him to vote. Whenever any person's vote is received after having taken the oath prescribed in this section, the registrar or one of the judges of election shall write on the registration record and on the pollbook opposite the registrant's name the word "sworn."

Precinct election officials conducting hearings on challenges on the day of a primary or election shall have authority to administer the necessary oaths or affirmations to all witnesses brought before them to testify to the qualifications of the person challenged. (1901, c. 89, s. 22; Rev., s. 4340; C.S., s. 5973; 1955, c. 871, s. 2; 1967, c. 775, s. 1; 1971, c. 1231, s. 1; 1973, c. 1223, s. 6.)

Legal Periodicals. — For comment on election contests in North Carolina, see 55 N.C.L. Rev. 1228 (1977).

For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 163-88.1. Request for challenged ballot.

(a) If the decision of the registrar and judges pursuant to G.S. 163-88 is to sustain the challenge, the challenged voter may request a challenged ballot by submitting an application to the registrar, such application shall include as part thereof an affidavit that such person possesses all the qualifications for voting and is entitled to vote at the election. The form of such affidavit shall be prescribed by the State Board of Elections and shall be available at the polls.

(b) Any person requesting a challenged ballot shall have the letter "C" entered at the appropriate place on the voter's permanent registration record. The voter's name shall be entered on a separate page in the pollbook entitled "Challenged Ballot," and serially numbered. The challenged ballot shall be the same type of ballot used for absentee voters, and the registrar shall write across the top of the ballot "Challenged Ballot #," and shall insert the same serial number as entered in the pollbook. The registrar shall deliver to such voter a challenged ballot together with an envelope marked "Challenged Ballot" and serially numbered. The challenged voter shall forthwith mark the ballot in the presence of the registrar in such manner that the registrar shall not know how the ballot is marked. He shall then fold the ballot in the presence of the registrar so as to conceal the markings and deposit and seal it in the serially numbered envelope. He shall then deliver such envelope to the registrar. The registrar shall retain all such envelopes in an envelope provided by the county board of elections, which he shall seal immediately after the polls close, and deliver to the board chairman at the canvass.

(c) The chairman of the county board of elections shall preserve such ballots in the sealed envelopes for a period of six months after the election. However, in the case of a contested election, either party to such action may request the court to order that the sealed envelopes containing challenged ballots be delivered to the board of elections by the chairman. If so ordered, the board of elections shall then convene and consider each challenged ballot and rule as to which ballots shall be counted. In such consideration, the board may take such further evidence as it deems necessary, and shall have the power of subpoena. If any ballots are ordered to be counted, they shall be added to the vote totals. (1979, c. 357, s. 3.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 163-89. Procedures for challenging absentee ballots.

(a) Time for Challenge. — The absentee ballot of any voter may be challenged on the day of any statewide primary or general election or county bond election beginning no earlier than noon and ending no later than 5:00 P.M., or by the registrar at the time of closing of the polls as provided in G.S. 163-233 [163-232] and G.S. 163-251(b).

(b) Who May Challenge. — Any registered voter of the same precinct as the absentee voter may challenge that voter's absentee ballot.

(c) Form and Nature of Challenge. — Each challenged absentee ballot shall be challenged separately. The burden of proof shall be on the challenger. Each challenge shall be made in writing and, if they are available, shall be made on forms prescribed by the State Board of Elections. Each challenge shall specify

the reasons why the ballot does not comply with the provisions of this Article or why the absentee voter is not legally entitled to vote in the particular primary or election. The challenge shall be signed by the challenger.

(d) To Whom Challenge Addressed; to Whom Challenge Delivered. — Each challenge shall be addressed to the county board of elections. It may be filed with the board at its offices or with the registrar of the precinct in which the challenger and absentee voter are registered. If it is delivered to the registrar, the registrar shall personally deliver the challenge to the chairman of the county board of elections on the day of the county canvass.

(e) Hearing Procedure. — All challenges filed under this section shall be heard by the county board of elections on the day set for the canvass of the returns. All members of the board shall attend the canvass and all members shall be present for the hearing of challenges to absentee ballots.

Before the board hears a challenge to an absentee ballot, the chairman shall mark the word "challenged" after the voter's name in the register of absentee ballot applications and ballots issued and in the pollbook of absentee voters.

The board then shall hear the challenger's reasons for the challenge, and it shall make its decision without opening the container-return envelope or removing the ballots from it.

The board shall have authority to administer the necessary oaths or affirmations to all witnesses brought before it to testify to the qualifications of the voter challenged or to the validity or invalidity of the ballot.

If the challenge is sustained, the chairman shall mark the word "sustained" after the word "challenged" following the voter's name in the register of absentee ballot applications and ballots issued and in the pollbook of absentee voters; the voter's ballots shall not be counted; and the container-return envelope shall not be opened but shall be marked "Challenge Sustained." All envelopes so marked shall be preserved intact by the chairman for a period of six months from canvass day or longer if any contest then is pending concerning the validity of any absentee ballot.

If the challenge is overruled, the absentee ballots shall be removed from the container-return envelopes and counted by the board of elections, and the board shall adjust the appropriate abstracts of returns to show that the ballots have been counted and tallied in the manner provided for unchallenged absentee ballots.

If the challenge was delivered to the board by the registrar of the precinct and was sustained, the board shall reopen the appropriate ballot boxes, remove such ballots, determine how those ballots were voted, deduct such ballots from the returns, and adjust the appropriate abstracts of returns.

Any voter whose ballots have been challenged may, either personally or through an authorized representative, appear before the board at the hearing on the challenge and present evidence as to the validity of the ballot. (1939, c. 159, ss. 8, 9; 1945, c. 758, s. 8; 1953, c. 1114; 1963, c. 547, s. 8; 1965, c. 871; 1967, c. 775, s. 1; 1973, c. 536, s. 4.)

Editor's Note. — Section 163-233, referred to in subsection (a) of this section, was rewritten by Session Laws 1977, c. 469, and the subject matter of the section as it stood before

the amendment is now covered by § 163-232.

Legal Periodicals. — For comment on election contests in North Carolina, see 55 N.C.L. Rev. 1228 (1977).

CASE NOTES

Stated in *Hurow v. Miller*, 45 N.C. App. 58, 262 S.E.2d 287 (1980).

§ 163-90. Challenge as felon; answer not to be used on prosecution.

If any registered voter is challenged as having been convicted of any crime which excludes him from the right of suffrage, he shall be required to answer any question in relation to the alleged conviction, but his answers to such questions shall not be used against him in any criminal prosecution. (1901, c. 89, s. 71; Rev., s. 3388; C.S., s. 5974; 1967, c. 775, s. 1.)

§ 163-90.1. Burden of proof.

(a) Challenges shall not be made indiscriminately and may only be made if the challenger knows, suspects or reasonably believes such a person not to be qualified and entitled to vote.

(b) No challenge shall be sustained unless the challenge is substantiated by affirmative proof. In the absence of such proof, the presumption shall be that the voter is properly registered or affiliated. (1979, c. 357, s. 4.)

§ 163-90.2. Action when challenge sustained, overruled, or dismissed.

(a) When any challenge is sustained for any cause listed under G.S. 163-85(c), the board shall cancel the voter registration of the voter and shall remove his card from the book, but shall maintain such record for at least six months and during the pendency of any appeal.

(b) When any challenge heard under G.S. 163-88 or 163-89 is sustained on the ground that the voter is not affiliated with the political party shown on his registration record, the board shall change the voter's party affiliation to "unaffiliated."

(c) When any challenge made under G.S. 163-85 is overruled or dismissed, the board shall erase the word "challenged" which appears on the person's registration records. (1979, c. 357, s. 4.)

§ 163-90.3. Making false affidavit perjury.

Any person who shall knowingly make any false affidavit or shall knowingly swear or affirm falsely to any matter or thing required by the terms of this Article to be sworn or affirmed shall be guilty of perjury. (1979, c. 357, s. 4.)

§§ 163-91 to 163-95: Reserved for future codification purposes.

SUBCHAPTER IV. POLITICAL PARTIES.

ARTICLE 9.

Political Party Definition.

§ 163-96. "Political party" defined; creation of new party.

(a) Definition. — A political party within the meaning of the election laws of this State shall be either:

- (1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, at least ten percent (10%) of the entire vote cast in the State for Governor or for presidential electors; or
- (2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by 5,000 persons who, at the time they sign, are registered and qualified voters in this State, and which comply with the conditions prescribed in subsection (b) of this section. Also the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chairman of the proposed new political party.

(b) Petitions for New Political Party. — Petitions for the creation of a new political party shall contain on the heading of each page of the petition in bold print or all in capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN COUNTY HEREBY PETITION FOR THE FORMATION OF A NEW POLITICAL PARTY AND DO HEREBY REQUEST AND DIRECT THE COUNTY BOARD OF ELECTIONS TO CHANGE OUR POLITICAL PARTY AFFILIATION TO THE PARTY IMMEDIATELY FOLLOWING CERTIFICATION OF THE NEW PARTY BY THE STATE BOARD OF ELECTIONS. THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE STATE CHAIRMAN OF THE PROPOSED PARTY IS:, THE SIGNERS OF THIS PETITION INTEND TO ORGANIZE A NEW POLITICAL PARTY TO PARTICIPATE IN THE NEXT SUCCEEDING GENERAL ELECTION." All printing required to appear on the heading of the petition shall be in type no smaller than 10 point. In addition to the form of the petition, the organizers and petition circulators shall inform the signers of the petition that they shall have their current affiliation changed by signing the petition, provided the new party is certified.

The petitions must specify the name selected for the proposed political party. The State Board of Elections shall reject petitions for the formation of a new party if the name chosen contains any word that appears in the name of any existing political party recognized in this State or if, in the Board's opinion, the name is so similar to that of an existing political party recognized in this State as to confuse or mislead the voters at an election.

The petitions must state the name and address of the State chairman of the proposed new political party.

The validity of the signatures on the petitions shall be proved in accordance with one of the following alternative procedures:

- (1) The signers may acknowledge their signatures before an officer authorized to take acknowledgments, after which that officer shall certify the validity of the signatures by appropriate notation attached to the petition, or
- (2) A person in whose presence a petition was signed may go before an officer authorized to take acknowledgments and, after being sworn, testify to the genuineness of the signatures on the petition, after which the officer before whom he has testified shall certify his testimony by appropriate notation attached to the petition.

Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained, and it shall be the chairman's duty:

- (1) To examine the signatures on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county.
- (2) To attach to the petition his signed certificate
 - a. Stating that the signatures on the petition have been checked against the registration records and
 - b. Indicating the number found qualified and registered to vote in his county.
- (3) To return each petition, together with the certificate required by the preceding subdivision, to the person who presented it to him for checking.

The group of petitioners shall submit the petitions to the chairman of the county board of elections in the county in which the signatures were obtained no later than 5:00 P.M. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections as provided in subsection (a)(2) of this section. Provided the petitions are timely submitted, the chairman of the county board of elections shall require a fee of five cents (5¢) for each signature appearing and shall proceed to examine and verify the signatures under the provisions of this subsection. Verification shall be completed within two weeks from the date such petitions are presented and the required fee received.

(c) Duties of County and State Boards of Elections. — Upon receiving a petition for verification under subsection (b), the county board of elections shall make and keep a copy of the names of registered voters of that county whose names appear on the petition. If the State Board of Elections determines under subsection (a) that the petitions are sufficient it shall notify the county boards of elections, which shall change those voters' party affiliation or unaffiliated status to affiliation with the new political party and thereafter promptly notify all such voters by mail that their political party affiliation has been changed in accordance with their direction by signing the petition. The State Board of Elections shall prescribe the form of the petition and promulgate rules to implement this subsection. (1901, c. 89, s. 85; Rev., s. 4292; 1915, c. 101, s. 31; 1917, c. 218; C.S., ss. 5913, 6052; 1933, c. 165, ss. 1, 17; 1949, c. 671, ss. 1, 2; 1967, c. 775, s. 1; 1975, c. 179; 1979, c. 411, s. 3; 1981, c. 219, ss. 1-3.)

Cross References. — As to changing recorded party affiliation, see § 163-74.

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, substituted "5,000" for "10,000" in the first sentence of subdivision (a)(2), added the second sentence in

subdivision (a)(2), rewrote the first paragraph of subsection (b), and added subsection (c).

Legal Periodicals. — For review and comment on former § 163-1, relating to the formation of new political parties, see 11 N.C.L. Rev. 226. For note on definition of political

parties, see 11 N.C.L. Rev. 148 et seq. As to the 1949 amendment, which rewrote former § 163-1, see 27 N.C.L. Rev. 455.

CASE NOTES

Discrimination Against Independent Candidates Unconstitutional. — North Carolina grossly discriminated against those who chose to pursue their candidacies as independents rather than by forming a new political party in requiring a group of voters seeking a place on the ballot as a new party to submit petitions signed by only 10,000 voters, less than one sixteenth the number required of an independent candidate, and furthermore, in requiring a candidate desiring to run in the North Carolina Presidential Preference Primary to submit only 10,000 signatures; since the State asserted no compelling interest for such disparate treatment, that portion of § 163-122 which required an independent candidate for president to file written petitions signed by qualified voters equal in number to 10 percent of those who voted for Governor in the last gubernatorial election was an unconstitutional infringement upon the rights of such candidate and his supporters to associate for the advancement of political beliefs, to cast their votes effectively, and to enjoy equal protection under law. *Greaves v. State Bd. of Elections*, 508 F. Supp. 78 (E.D.N.C. 1980), decided prior to 1981 amendment to § 163-122.

The primary laws have no application to new political parties created by petition. *States' Rights Democratic Party v. State Bd. of Elections*, 229 N.C. 179, 49 S.E.2d 379 (1948).

This section and §§ 163-98, 163-122 and 163-151(2) are not available to candidate denied access to primary election ballot under § 163-107. *Brown v. North Carolina State Bd. of Elections*, 394 F. Supp. 359 (W.D.N.C. 1975).

Any qualified voter has the legal right to sign a petition for the creation of a new political party, irrespective of whether such voter has participated in the primary election of an existing political party during the year in which the petition is signed, and regulations of the State Board of Elections are invalid if they undertake to establish and enforce the rule that a qualified voter is ineligible to join in a petition for the creation of a new political party during a year in which he has voted in the primary election of an existing political party. *States' Rights Democratic Party v. State Bd. of Elections*, 229 N.C. 179, 49 S.E.2d 379 (1948).

Duty of State Board of Elections. — Upon the filing of a petition for the creation of a new political party, it is the duty of the State Board of Elections, in the first instance, to determine whether the petition is in accordance with the statutory requirements. *States' Rights Democratic Party v. State Bd. of Elections*, 229 N.C. 179, 49 S.E.2d 379 (1948).

Notice and Hearing Required before Rejection of Petition. — Manifestly the statutes creating the State Board of Elections and defining its duties contemplate that the Board shall give petitioners for the creation of a new political party notice and an opportunity to be heard in support of their petition before rejecting it or adjudging it insufficient. Indeed, notice and hearing in such case are necessary to meet the constitutional requirement of due process of law. *States' Rights Democratic Party v. State Bd. of Elections*, 229 N.C. 179, 49 S.E.2d 379 (1948).

§ 163-97. Termination of status as political party.

When any political party fails to poll for its candidate for governor, or for presidential electors, at least ten percent (10%) of the entire vote cast in the State for governor or for presidential electors at a general election, it shall cease to be a political party within the meaning of the primary and general election laws and all other provisions of this Chapter. (1901, c. 89, s. 85; Rev., s. 4292; C.S., s. 5913; 1933, c. 165, s. 1; 1949, c. 671, s. 1; 1967, c. 775, s. 1.)

§ 163-97.1. Voters affiliated with expired political party.

The State Board of Elections shall be authorized to promulgate appropriate procedures to order the county boards of elections to change the registration affiliation of all voters who are recorded on the voter registration books as being affiliated with a political party which has lost its legal status as provided in G.S. 163-97. The State Board of Elections shall not implement the authority contained in this section earlier than 90 days following the certification of the

election in which the political party failed to continue its legal status as provided in G.S. 163-97. All voters affiliated with such expired political party shall be changed to "unaffiliated" designation by the State Board's order and all such registrants shall be entitled to declare a political party affiliation as provided in G.S. 163-74(b). (1975, c. 789; 1977, c. 408, s. 1.)

§ 163-98. General election participation by new political party.

In the first general election following the date on which a new political party qualifies under the provisions of G.S. 163-96, it shall be entitled to have the names of its candidates for State, congressional, and national offices printed on the official ballots, but it shall not be entitled to have the names of candidates for other offices printed on State, district, or county ballots at that election.

For the first general election following the date on which it qualifies under G.S. 163-96, a new political party shall select its candidates by party convention. Following adjournment of the nominating convention, but not later than the first day of July prior to the general election, the president of the convention shall certify to the State Board of Elections the names of persons chosen in the convention as the new party's candidates for State, congressional, and national offices in the ensuing general election. The State Board of Elections shall print names thus certified on the appropriate ballots as the nominees of the new party. (1901, c. 89, s. 85; Rev., s. 4292; C.S., s. 5913; 1933, c. 165, s. 1; 1949, c. 671, s. 1; 1967, c. 775, s. 1; 1979, c. 411, s. 4.)

CASE NOTES

This section and §§ 163-96, 163-122 and 163-151(2) are not available to candidate denied access to primary election ballot under § 163-107. *Brown v. North Carolina*

State Bd. of Elections, 394 F. Supp. 359 (W.D.N.C. 1975).

Cited in *Greaves v. State Bd. of Elections*, 508 F. Supp. 78 (E.D.N.C. 1980).

§ 163-99. Use of schools and other public buildings for political meetings.

The governing authority having control over schools or other public buildings which have facilities for group meetings, or where polling places are located, is hereby authorized and directed to permit the use of such buildings without charge, except custodial and utility fees, by political parties, as defined in G.S. 163-96, for the express purpose of biennial precinct meetings and county and district conventions. Provided, that the use of such buildings by political parties shall not be permitted at times when school is in session or which would interfere with normal school activities or functions normally carried on in such buildings, and such use shall be subject to reasonable rules and regulations of the school boards and other governing authorities. (1975, c. 465.)

§§ 163-100 to 163-103: Reserved for future codification purposes.

SUBCHAPTER V. NOMINATION OF CANDIDATES.

ARTICLE 10.

*Primary Elections.***§ 163-104. Primaries governed by general election laws; authority of State Board of Elections to modify time schedule.**

Unless otherwise provided in this Chapter, primary elections shall be conducted as far as practicable in accordance with the general election laws of this State. All provisions of this Chapter and of other laws governing elections, not inconsistent with this Article and other provisions of law dealing specifically with primaries, shall apply as fully to primary elections and to the acts and things done thereunder as to general elections. Nevertheless, for purposes of primary elections the State Board of Elections may, by general rule, modify the general election law time schedule with regard to ascertaining, declaring, and reporting results.

All acts made criminal if committed in connection with a general election shall likewise be criminal, with the same punishment, when committed in a primary election held under the provisions of this Chapter. (1915, c. 101, s. 3; 1917, c. 218; C.S., s. 6020; 1967, c. 775, s. 1.)

Local Modification to Former §§ 163-117 to 163-147. — Session Laws 1945, c. 894, repealed former Article 19, relating to primaries, insofar as its provisions apply to the nomination of Democratic candidates for the General Assembly and county offices in Mitchell County. Session Laws 1945, c. 894, was repealed by Session Laws 1979, c. 210, which provides that this Article is applicable in Mitchell County.

Session Laws 1957, c. 826, as amended by Session Laws 1959, c. 621, s. 2, provided that the former Article should not apply to nominations of Democratic candidates for county offices and members of the House of Representatives in Cherokee County, but such candidates should be nominated by convention of the Democratic Party.

Session Laws 1961, c. 484, provided that the former Article should not apply to nominations

of Republican candidates for county offices and members of the General Assembly in Cherokee County, but such candidates should be nominated by conventions of the Republican Party.

Session Laws 1953, c. 1069, as amended by Session Laws 1959, c. 238, made the former Article applicable to Watauga County. Session Laws 1955, c. 439, to the extent provided, made the former Article applicable to Yancey County. Session Laws 1955, c. 442, made the former Article applicable to the Counties of Avery, Madison, Mitchell and Yancey for the purpose of nominating Democratic candidates for the State Senate.

Editor's Note. — For special provisions for 1982 primary elections, see Session Laws 1982, 2nd Ex. Sess., c. 3, ss. 1 through 19, as amended by Session Laws 1981 (Reg. Sess., 1982), c. 1265, s. 1.

CASE NOTES

As to constitutionality of former article, see *McLean v. Durham County Bd. of Elections*, 222 N.C. 6, 21 S.E.2d 842 (1942).

For construction of former article, see *Phillips v. Slaughter*, 209 N.C. 543, 183 S.E. 897 (1936); *McLean v. Durham County Bd. of Elections*, 222 N.C. 6, 21 S.E.2d 842 (1942).

The manifest purposes of the primary system set up by our laws is to secure to the members of an existing political party freedom of choice of candidates, and to confine the right

of qualified electors to vote in party primaries to the primary of the existing political party of which they are members at the time of the holding of such primary. *States' Rights Democratic Party v. State Bd. of Elections*, 229 N.C. 179, 49 S.E.2d 379 (1948).

Primary and Regular Elections Distinguished. — There is a well-defined distinction between a primary election and a regular election. A primary election is a means provided by law whereby members of a political party select

by ballot candidates or nominees for office, whereas a regular election is a means whereby officers are elected and public offices are filled according to established rules of law. In short, a primary election is merely a mode of choosing candidates of political parties, whereas a regular election is the final choice of the entire elec-

torate. *Rider v. Lenoir County*, 236 N.C. 620, 73 S.E.2d 913 (1952); *Ponder v. Joslin*, 262 N.C. 496, 138 S.E.2d 143 (1964).

The primary laws have no application to new political parties created by petition. *States' Rights Democratic Party v. State Bd. of Elections*, 229 N.C. 179, 49 S.E.2d 379 (1948).

§ 163-105. Payment of expense of conducting primary elections.

The expense of printing and distributing the poll and registration books, blanks, and ballots for those offices required by G.S. 163-108(b) to be furnished by the State, and the per diem and expenses of the State Board of Elections while engaged in the discharge of primary election duties imposed by law upon that Board, shall be paid by the State.

The expenses of printing and distributing the ballots for those offices required by G.S. 163-108(c) to be furnished by counties, and the per diem (or salary) and expenses of the county board of elections and the registrars and judges of election, while engaged in the discharge of primary election duties imposed by law upon them, shall be paid by the counties. (1915, c. 101, s. 7; 1917, c. 218; C.S., s. 6026; 1927, c. 260, s. 21; 1933, c. 165, s. 14; 1967, c. 775, s. 1.)

§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal.

(a) Notice and Pledge. — No one shall be voted for in a primary election unless he shall have filed a notice of candidacy with the appropriate board of elections, State or county, as required by this section. To this end every candidate for selection as the nominee of a political party shall file with and place in the possession of the board of elections specified in subsection (c) of this section, a notice and pledge in the following form:

"Date

I hereby file notice as a candidate for nomination as in the party primary election to be held on 19..... I affiliate with the party, (and I certify that I am now registered on the registration records of the precinct in which I reside as an affiliate of the party.)

I pledge that if I am defeated in the primary, I will not run for any office as a write-in candidate in the next general election.

Signed
Name of candidate

Witness:

.....
.....

(Title of witness)"

Each candidate shall sign his notice of candidacy in the presence of the chairman or secretary of the board of elections, State or county, with which he files. In the alternative, a candidate may have his signature on the notice of candidacy acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail his notice of candidacy to the appropriate board of elections.

In signing his notice of candidacy the candidate shall use only his legal name and, in his discretion, any nickname by which he is commonly known.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

Prior to the date on which candidates may commence filing, the State Board of Elections shall print and furnish, at State expense, to each county board of elections a sufficient number of the notice of candidacy forms prescribed by this subsection for use by candidates required to file with county boards of elections.

(b) Eligibility to File. — No person shall be permitted to file as a candidate in a primary if, at the time he offers to file notice of candidacy, he is registered on the appropriate registration book or record as an affiliate of a political party other than that in whose primary he is attempting to file. No person who has changed his political party affiliation or who has changed from unaffiliated status to party affiliation as permitted in G.S. 163-74(b), shall be permitted to file as a candidate in the primary of the party to which he changed unless he has been affiliated with the political party in which he seeks to be a candidate for at least three months prior to the filing date for the office for which he desires to file his notice of candidacy.

A person registered as "unaffiliated" shall be ineligible to file as a candidate in a party primary election.

(c) Time for Filing Notice of Candidacy. — Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

Governor

Lieutenant Governor

All State executive officers

Justices of the Supreme Court, Judges of the Court of Appeals

Judges of the superior courts

Judges of the district courts

United States Senators

Members of the House of Representatives of the United States

District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

State Senators

Members of the State House of Representatives

All county offices.

(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. — In any primary in which there are two or more vacancies for Chief Justice and associate justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals, or two vacancies for United States Senator from North Carolina, or two or more vacancies for the office of superior court judge or two or more vacancies for the office of district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection.

A person seeking party nomination for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which he seeks nomination.

(e) **Withdrawal of Notice of Candidacy.** — Any person who has filed notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (c) of this section.

(f) Candidates required to file their notice of candidacy with the State Board of Elections under subsection (c) of this section shall file along with their notice a certificate signed by the chairman of the board of elections or the supervisor of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, stating the party with which the person is affiliated, and that the person has not changed his affiliation from another party or from unaffiliated within three months prior to the filing deadline under subsection (c) of this section. In issuing such certificate, the chairman or supervisor shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(g) When any candidate files a notice of candidacy with a county board of elections under subsection (c) of this section or under G.S. 163-291(2), the chairman or supervisor of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who is not eligible under subsection (c) of this section. The Board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the sheriff. (1915, c. 101, ss. 6, 15; 1917, c. 218; C.S., ss. 6022, 6035; 1921, c. 217; 1923, c. 111, s. 13; C.S., s. 6055(a); 1927, c. 260, s. 19; 1929, c. 26, s. 1; 1933, c. 165, s. 12; 1937, c. 364; 1947, c. 505, s. 7; 1949, c. 672, s. 4; c. 932; 1951, c. 1009, s. 3; 1955, c. 755; c. 871, s. 1; 1959, c. 1203, s. 4; 1965, c. 262; 1967, c. 775, s. 1; c. 1063, s. 2; 1969, c. 44, s. 83; c. 1190, s. 56; 1971, cc. 189, 675, 798; 1973, c. 47, s. 2; c. 793, s. 36; c. 862; 1975, c. 844, s. 2; 1977, c. 265, ss. 4, 5; c. 408, s. 2; c. 661, ss. 2, 3; 1979, c. 24; c. 411, s. 5; 1981, c. 32, ss. 1, 2.)

Editor's Note. — For special provisions for 1982 primary elections, see Session Laws 1982, 2nd Ex. Sess., c. 3, ss. 1 through 19, as amended by Session Laws 1981 (Reg. Sess., 1982), c. 1265, s. 1.

Effect of Amendments. — The 1981 amendment added subsections (f) and (g).

Legal Periodicals. — For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

CASE NOTES

As to unconstitutionality of selectively adopted and applied numbered seat law of former § 163-117, which in conjunction with this section made a candidate for the House or Senate decide whom he was going to run against by creating separate offices out of seats in a multi-member district and making votes effective only for the seat for which he filed, see *Dunston v. Scott*, 336 F. Supp. 206 (E.D.N.C. 1972).

Where there are two vacancies for the office of Associate Justice of the Supreme

Court to be filled at the general election, a notice of candidacy for the nomination of a party which does not specify to which of the vacancies the candidate is asking the nomination is fatally defective. *Ingle v. State Bd. of Elections*, 226 N.C. 454, 38 S.E.2d 566 (1946).

Obligation Imposed upon Candidate by Former Law. — Former § 163-119 attempted to place upon a candidate seeking nomination to public office in the primary election of an existing political party an obligation to adhere to such existing political party for at least a

limited time in the future. *States' Rights Democratic Party v. State Bd. of Elections*, 229 N.C. 179, 49 S.E.2d 379 (1948).

Action against County Board Improper. — Action challenging refusal to place candidate on primary election ballot, brought against a county board of elections and its individual members, would be dismissed on the ground

that they were not proper parties to such action, because the State statute requires that candidates for Congress file with the State Board of Elections, and the county board has no authority to accept or reject such applications. *Brown v. North Carolina State Bd. of Elections*, 394 F. Supp. 359 (W.D.N.C. 1975).

§ 163-107. Filing fees required of candidates in primary; refunds.

(a) Fee Schedule. — At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All Justices, Judges, and Solicitors of the General Court of Justice	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars (\$10.00)
Members of county board of education, if compensated entirely by fees	Five dollars (\$5.00)
Sheriff, if compensated entirely by fees	Forty dollars (\$40.00), plus one percent (1%) of the income of the office above four thousand dollars (\$4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars (\$40.00), plus one percent (1%) of the income of the office above four thousand dollars (\$4,000)
Register of deeds, if compensated entirely by fees	Forty dollars (\$40.00), plus one percent (1%) of the income of the office above four thousand dollars (\$4,000)
Any other county office, if compensated entirely by fees	Twenty dollars (\$20.00), plus one percent (1%) of the income of the office above two thousand dollars (\$2,000)

Office Sought	Amount of Filing Fee
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)

(b) Refund of Fees. — If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section, withdraws his notice of candidacy within the period prescribed in G.S. 163-106(e), he shall be entitled to have the fee he paid refunded. If the fee was paid to the State Board of Elections, the chairman of that Board shall certify to the Auditor that the refund should be made, and the Auditor shall give his warrant upon the Treasurer of the State who shall make the refund payment. If the fee was paid to a county board of elections, the chairman of the Board shall certify to the county accountant that the refund should be made, and the county accountant shall make the refund in accordance with the provisions of the County Fiscal Control Act.

If any person files a notice of candidacy and pays a filing fee to a board of elections other than that with which he is required to file under the provisions of G.S. 163-106(e), he shall be entitled to have the fee refunded in the manner prescribed in this subsection if he requests the refund before the date on which the right to file for that office expires under the provisions of G.S. 163-106(e). (1915, c. 101, s. 4; 1917, c. 218; 1919, cc. 50, 139; C.S., ss. 6023, 6024; 1927, c. 260, s. 20; 1933, c. 165, s. 12; 1939, c. 264, s. 2; 1959, c. 1203, s. 5; 1967, c. 775, s. 1; 1969, c. 44, s. 84; 1973, c. 793, s. 37; 1977, c. 265, s. 6.)

Local Modification to Former § 163-120. — Mecklenburg: 1937, c. 382; Sampson: 1941, c. 111.

Cross References. — For section providing for filing of a petition in lieu of payment of filing fee, see § 163-107.1.

Legal Periodicals. — For comment on the deductibility of campaign expenses, see 43 N.C.L. Rev. 1004 (1965).

CASE NOTES

Constitutionality. — Since there were no alternative means of access to the primary ballot in North Carolina, this section was held constitutionally invalid. *Brown v. North Carolina State Bd. of Elections*, 394 F. Supp. 359 (W.D.N.C. 1975), decided under this chapter as it stood before the enactment of § 163-107.1.

By requiring candidates to shoulder the costs of conducting primary elections through filing fees and by providing no reasonable alternative means of access to the ballot, the State erected a system that utilized the criterion of ability to pay as a condition to being on the ballot, thus excluding some candidates otherwise qualified and denying an undetermined number of voters the opportunity to vote for candidates of their choice. *Brown v. North Carolina State Bd. of Elections*, 394 F. Supp. 359 (W.D.N.C. 1975), decided under this Chapter as it stood before the enactment of § 163-107.1.

In the absence of reasonable alternative means of ballot access, a state may not, consistent with constitutional standards, require from an indigent candidate filing fees he cannot pay. *Brown v. North Carolina State Bd. of Elections*, 394 F. Supp. 359 (W.D.N.C. 1975), decided under this Chapter as it stood before the enactment of § 163-107.1.

Sections 163-96, 163-98, 163-122 and 163-151(2) are not available to candidate denied access to primary election ballot under this section. *Brown v. North Carolina State Bd. of Elections*, 394 F. Supp. 359 (W.D.N.C. 1975).

Filing Fee Is Not a Tax. — The filing fee is in no sense a tax within the meaning of N.C. Const., Art. II, § 23, or a local law as condemned by N.C. Const., Art. II, § 24. *McLean v. Durham County Bd. of Elections*, 222 N.C. 6, 21 S.E.2d 842 (1942).

§ 163-107.1. Petition in lieu of payment of filing fee.

(a) Any qualified voter who seeks nomination in the party primary of the political party with which he affiliates may, in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office with the appropriate board of elections, State, county or municipal.

(b) If the candidate is seeking the office of United States Senator, Governor, Lieutenant Governor, any State executive officer, Justice of the Supreme Court or Judge of the Court of Appeals, the petition must be signed by 10,000 registered voters who are members of the political party in whose primary the candidate desires to run. The petition must be filed with the State Board of Elections not later than 12:00 noon on Monday preceding the filing deadline before the primary in which he seeks to run. The names on the petition shall be verified by the board of elections of the county where the signer is registered, and the petition must be presented to the county board of elections at least 15 days before the petition is due to be filed with the State Board of Elections. When a proper petition has been filed, the candidate's name shall be printed on the primary ballot.

(c) County, Municipal and District Primaries. — If the candidate is seeking one of the offices set forth in G.S. 163-106(c) but which is not listed in subsection (b) of this section, or a municipal or any other office requiring a partisan primary which is not set forth in G.S. 163-106(c) or (d), he shall file a written petition with the appropriate board of elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for, who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 200 registered voters regardless of said voter's political party affiliation, whichever requirement is greater. The board of elections shall verify the names on the petition, and if the petition is found to be sufficient, the candidate's name shall be printed on the appropriate primary ballot. Petitions for candidates for member of the U.S. House of Representatives, District Attorney, judge of the District Court and judge of the Superior Court, or members of the State House of Representatives from multi-county districts or members of the State Senate from multi-county districts must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections, and such petition must be filed with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms.

(d) Nonpartisan Primaries and Elections. — Any qualified voter who seeks to be a candidate in any nonpartisan primary or election may, in lieu of payment of the filing fee required, file a written petition signed by ten percent (10%) of the registered voters in the election area in which the office will be voted for with the appropriate board of elections. Any qualified voter may sign the petition. The petition shall state the candidate's name, address and the office which he is seeking. The petition must be filed with the appropriate board of elections no later than 60 days prior to the filing deadline for the primary or election, and if found to be sufficient, the candidate's name shall be printed on the ballot. (1975, c. 853; 1977, c. 386.)

§ 163-108. Certification of notices of candidacy.

(a) Within three days after the time for filing notices of candidacy with the State Board of Elections under the provisions of G.S. 163-106(c) has expired, the chairman or secretary of that Board shall certify to the Secretary of State the name, address, and party affiliation of each person who has filed with the State Board of Elections, indicating in each instance the office sought.

(b) No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-106(c) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the following offices who have filed the required notice and pledge and paid the required filing fee to the State Board of Elections, so that their names may be printed on the official county ballots: Superior court judge, district court judge, and solicitor.

(c) In representative districts composed of more than one county and in multi-county senatorial districts the chairman or secretary of the county board of elections in each county shall, within three days after the time for filing notices of candidacy under the provisions of G.S. 163-106(c) has expired, certify to the State Board of Elections (i) the names of all candidates who have filed notice of candidacy in his county for member of the State Senate, or, if such is the fact, that no candidates have filed in his county for that office, and (ii) the names of all candidates who have filed notice of candidacy in his county for the office of member of the State House of Representatives or, if such is the fact, that no candidates have filed in his county for that office. The chairman of the county board of elections shall forward a copy of this report to the chairman of the board of elections of each of the other counties in the representative or senatorial district. Within 10 days after the time for filing notices of candidacy for those offices has expired the chairman or secretary of the State Board of Elections shall certify to the chairman of the county board of elections in each county of each multi-county representative or senatorial district the names of all candidates for the House of Representatives and Senate which must be printed on the county ballots.

(d) Within two days after he receives each of the letters of certification from the chairman of the State Board of Elections required by subsections (b) and (c) of this section, each county elections board chairman shall acknowledge receipt by letter addressed to the chairman of the State Board of Elections. (1915, c. 101, s. 8; 1917, c. 218; C.S., s. 6028; 1927, c. 260, s. 22; 1966, Ex. Sess., c. 5, s. 8; 1967, c. 775, s. 1; 1973, c. 793, s. 38; 1979, c. 797, s. 5.)

CASE NOTES

Cited in *Holshouser v. Scott*, 335 F. Supp. 928 (M.D.N.C. 1971), *aff'd*, 409 U.S. 807, 93 S. Ct. 43, 34 L. Ed. 2d 68 (1972).

§ 163-108.1. Nomination of members of House of Representatives.

Chapter 826, Session Laws of 1957; Chapter 484, Session Laws of 1961; Chapter 621, Session Laws of 1959; Chapter 894, Session Laws of 1945; Chapter 442, Session Laws of 1955; Chapter 103, Public-Local Laws of 1941; Chapter 439, Session Laws of 1955; Chapter 238, Session Laws of 1959; and all other special and local acts providing for the nomination of candidates for the State

House of Representatives by convention in any county, are modified and amended as follows: In the several representative districts of the State containing two or more counties, each political party shall nominate candidates for membership in the State House of Representatives according to the provisions of the statewide primary law, Article 19 [Article 10], Chapter 163 of the General Statutes of North Carolina, or by district convention of the party when so provided by law. In a county assigned to a multi-county representative district, no political party shall nominate candidates for the State House of Representatives by party convention for the single county. (1966, Ex. Sess., c. 5, s. 16.)

Editor's Note. — The statewide primary law, referred to in this section, is now found in Article 10 of this Chapter.

§ 163-109. Primary ballots; printing and distribution.

(a) General. — In primary elections there shall be as many kinds of official State, district, and county ballots as there are legally recognized political parties, members of which have filed notice of their candidacy for nomination. The ballots for each political party shall be printed to conform to the requirements of G.S. 163-140(c) and to show the party's name, the name of each party member who has filed notice of candidacy, and the office for which each aspirant is a candidate.

Only those who have filed the required notice of candidacy and pledge with the proper board of elections, and who have paid the required filing fee, shall have their names printed on the official ballots of the political party with which affiliated.

(b) Ballots to Be Furnished by State Board of Elections. — It shall be the duty of the State Board of Elections to print official ballots for each political party having candidates for the following offices to be voted for in the primary:

United States Senator,

Member of the House of Representatives of the United States Congress,
Governor, and

All other State offices, except superior court judge, district court judge, and district attorney.

In its discretion, the State Board of Elections may print separate primary ballots for each of these offices, or it may combine some or all of them on a single ballot.

At least 60 days before the date of the primary, the State Board of Elections shall deliver a sufficient number of these ballots to each county board of elections. The chairman of the county board of elections shall furnish the chairman of the State Board of Elections with a written receipt for the ballots delivered to him within two days after their receipt.

(c) Ballots to Be Furnished by County Board of Elections. — It shall be the duty of the county board of elections to print official ballots for each political party having candidates for the following offices to be voted for in the primary:

Superior court judge,

District court judge,

District attorney,

State Senator,

Member of the House of Representatives of the General Assembly, and

All county offices.

In printing primary ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

In its discretion, the county board of elections may print separate primary ballots for the district and county offices listed in this subsection, or it may combine some or all of them on a single ballot. In a primary election, if there shall be 10 or more candidates for nomination to any one office, the county board of elections in its discretion may prepare a separate ballot for said office.

Three days before the primary election, the chairman of the county board of elections shall distribute official State, district, and county ballots to the registrar of each precinct in his county, and the registrar shall give him a receipt for the ballots received. On the day of the primary it shall be the registrar's duty to have all the ballots delivered to him available for use at the precinct voting place.

(d) Repealed by Session Laws 1977, c. 265, s. 8. (1915, c. 101, ss. 8, 17; 1917, c. 218; C.S., ss. 6028, 6037; 1927, c. 260, s. 22; 1933, c. 165, s. 16; 1966, Ex. Sess., c. 5, ss. 8, 10; 1967, c. 775, s. 1; c. 1063, s. 3; 1973, c. 793, ss. 39-41; 1977, c. 265, ss. 7, 8; 1979, c. 411, s. 6.)

Editor's Note. — For special provisions for 1982 primary elections, see Session Laws 1982, 2nd Ex. Sess., c. 3, ss. 1 through 19, as amended

by Session Laws 1981 (Reg. Sess., 1982), c. 1265, s. 1.

CASE NOTES

Procedure for Election of Superior Court Judges Upheld. — A superior court judge is a hybrid official with both local and statewide functions and authority, and there is a reasonable basis for election procedure requiring him to be nominated in the primary election and elected in the general election by statewide vote, which serves and achieves a legitimate state purpose and is not arbitrary and capricious. *Holshouser v. Scott*, 335 F. Supp. 928 (M.D.N.C. 1971), *aff'd*, 409 U.S. 807, 93 S. Ct. 43, 34 L. Ed. 2d 68 (1972).

Requiring regular superior court judges to be nominated in the primary election by districts and elected in the general election by statewide vote does not deny equal protection of the laws. *Holshouser v. Scott*, 335 F. Supp. 928 (M.D.N.C.

1971), *aff'd*, 409 U.S. 807, 93 S. Ct. 43, 34 L. Ed. 2d 68 (1972).

The one man, one vote rule does not apply to the State judiciary, and therefore a mere showing of a disparity among the voters or in the population figures of the district would not be sufficient to strike down the election procedure for superior court judges. A showing of an arbitrary and capricious or invidious action or distinction between citizens and voters would be required. *Holshouser v. Scott*, 335 F. Supp. 928 (M.D.N.C. 1971), *aff'd*, 409 U.S. 807, 93 S. Ct. 43, 34 L. Ed. 2d 68 (1972).

It is the duty of the county board of elections to keep official ballots in its possession until delivery to the local officials. *State v. Abernethy*, 220 N.C. 226, 17 S.E.2d 25 (1941).

§ 163-110. Candidates declared nominees without primary.

If a nominee for a single office is to be selected and only one candidate of a political party files for that office, or if nominees for two or more offices (constituting a group) are to be selected, and only the number of candidates equal to the number of the positions to be filled file for a political party for said offices, then the appropriate board of elections shall, upon the expiration of the filing period for said office, declare such persons as the nominees or nominee of that party, and the names shall not be printed on the primary ballot, but shall be printed on the general election ballot as candidate for that political party for that office. For the following offices, this declaration shall be made by the county board of elections with which the aspirant filed notice of candidacy: All county offices, State Senators in single-county senatorial districts, and members of the State House of Representatives in single-county representative districts. For all other offices, this declaration shall be made by the State Board of Elections. (1915, c. 101, ss. 13, 19; 1917, c. 218; C.S., ss. 6033,

6039; 1966, Ex. Sess., c. 5, ss. 9, 11; 1967, c. 775, s. 1; 1973, c. 793, s. 42; 1975, c. 19, s. 68; 1981, c. 220, ss. 1, 2.)

Effect of Amendments. — The 1981 amendment rewrote the first sentence of the section and deleted the former last sentence of the sec-

tion, which was similar to the first sentence as rewritten.

§ 163-111. Determination of primary results; second primaries.

(a) **Nomination Determined by Majority; Definition of Majority.** — Except as otherwise provided in this section, nominations in primary elections shall be determined by a majority of the votes cast. A majority within the meaning of this section shall be determined as follows:

- (1) If a nominee for a single office is to be selected, and there is more than one person seeking nomination, the majority shall be ascertained by dividing the total vote cast for all aspirants by two. Any excess of the sum so ascertained shall be a majority, and the aspirant who obtains a majority shall be declared the nominee.
- (2) If nominees for two or more offices (constituting a group) are to be selected, and there are more persons seeking nomination than there are offices, the majority shall be ascertained by dividing the total vote cast for all aspirants by the number of positions to be filled, and by dividing the result by two. Any excess of the sum so ascertained shall be a majority, and the aspirants who obtain a majority shall be declared the nominees. If more candidates obtain a majority than there are positions to be filled, those having the highest vote (equal to the number of positions to be filled) shall be declared the nominees.

(b) **Right to Demand Second Primary.** — If an insufficient number of aspirants receive a majority of the votes cast for a given office or group of offices in a primary, a second primary, subject to the conditions specified in this section, shall be held:

- (1) If a nominee for a single office is to be selected and no aspirant receives a majority of the votes cast, the aspirant receiving the highest number of votes shall be declared nominated by the appropriate board of elections unless the aspirant receiving the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary only the two aspirants who received the highest and next highest number of votes shall be voted for.
- (2) If nominees for two or more offices (constituting a group) are to be selected and aspirants for some or all of the positions within the group do not receive a majority of the votes, those candidates equal in number to the positions remaining to be filled and having the highest number of votes shall be declared the nominees unless some one or all of the aspirants equal in number to the positions remaining to be filled and having the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary to select nominees for the positions in the group remaining to be filled, the names of all those candidates receiving the highest number of votes and all those receiving the second highest number of votes and demanding a second primary shall be printed on the ballot.

(c) **Procedure for Requesting Second Primary.** —

- (1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below,

and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Secretary-Director of the State Board of Elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Secretary-Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,
 Lieutenant Governor,
 All State executive officers,
 Justices, Judges, or District Attorneys of the General Court of Justice,
 United States Senators,
 Members of the United States House of Representatives,
 State Senators in multi-county senatorial districts, and
 Members of the State House of Representatives in multi-county representative districts.

- (2) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below and desiring to do so, shall file a request for a second primary in writing or by telegram with the chairman or supervisor of the county board of elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the county board of elections:

State Senators in single-county senatorial districts,
 Members of the State House of Representatives in single-county representative districts, and
 All county officers.

- (3) Immediately upon receipt of a request for a second primary the appropriate board of elections, State or county, shall notify all candidates entitled to participate in the second primary, by telephone followed by written notice, that a second primary has been requested and of the date of the second primary.
- (d) Tie Votes; How Determined. —

- (1) In the event of a tie for the highest number of votes in a first primary between two candidates for party nomination for a single county, or single-county legislative district office, the board of elections of the county in which the two candidates were voted for shall conduct a recount and declare the results. If the recount shows a tie vote, a second primary shall be held on the date prescribed in subsection (e) of this section between the two candidates having an equal vote, unless one of the aspirants, within three days after the result of the recount has been officially declared, files a written notice of withdrawal with the board of elections with which he filed notice of candidacy. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.

- (2) In the event of a tie for the highest number of votes in a first primary between two candidates for a State office, for United States Senator, or for any district office (including State Senator in a multi-county senatorial district and member of the State House of Representatives in a multi-county representative district), no recount shall be held solely by reason of the tie, but the two candidates having an equal vote shall be entered in a second primary to be held on the date prescribed in subsection (e) of this section, unless one of the two candidates files a written notice of withdrawal with the State Board of Elections within three days after the result of the first primary has been officially declared and published. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.
- (3) In the event one candidate receives the highest number of votes cast in a first primary, but short of a majority, and two or more of the other candidates receive the second highest number of votes cast in an equal number, the proper board of elections shall declare the candidate having the highest vote to be the party nominee, unless all but one of the tied candidates give written notice of withdrawal to the proper board of elections within three days after the result of the first primary has been officially declared. If all but one of the tied candidates withdraw within the prescribed three-day period, and the remaining candidate demands a second primary in accordance with the provisions of subsection (c) of this section, a second primary shall be held between the candidate who received the highest vote and the remaining candidate who received the second highest vote.

(e) **Date of Second Primary; Procedures.** — If a second primary is required under the provisions of this section, the appropriate board of elections, State or county, shall order that it be held four weeks after the first primary.

There shall be no registration of voters between the dates of the first and second primaries. Persons whose qualifications to register and vote mature after the day of the first primary and before the day of the second primary may register on the day of the second primary and, when thus registered, shall be entitled to vote in the second primary. The second primary is a continuation of the first primary and any voter who files a proper and timely affidavit of transfer of precinct, under the provisions of G.S. 163-72(c), before the first primary may vote in the second primary without having to refile the affidavit of transfer if he is otherwise qualified to vote in the second primary. Subject to this provision for registration, the second primary shall be held under the laws, rules, and regulations provided for the first primary.

(f) **No Third Primary Permitted.** — In no case shall there be a third primary. The candidates receiving the highest number of votes in the second primary shall be nominated. If in a second primary there is a tie for the highest number of votes between two candidates, the proper party executive committee shall select the party nominee for the office in accordance with the provisions of G.S. 163-114. (1915, c. 101, s. 24; 1917, c. 179, s. 2; c. 218; C.S., s. 6045; 1927, c. 260, s. 23; 1931, c. 254, s. 17; 1959, c. 1055; 1961, c. 383; 1966, Ex. Sess., c. 5, s. 13; 1967, c. 775, s. 1; 1969, c. 44, s. 85; 1973, c. 47, s. 2; c. 793, ss. 43, 44; 1975, c. 844, s. 3; 1977, c. 265, s. 9; 1981, c. 645, ss. 1, 2.)

Editor's Note. — Subsection (c) of § 163-72, referred to in subsection (e) of this section, was repealed by Session Laws 1979, c. 135, s. 1.

Effect of Amendments. — The 1981 amend-

ment, in subdivision (c)(1), substituted "A candidate who is apparently" for "An aspirant" at the beginning of the subdivision, inserted "according to the unofficial results" in the first

sentence, substituted "no later than" for "by" near the middle of the first sentence, and substituted the language beginning "seventh day" and ending "following the notification" for "second day after the result of the first primary has been officially declared" at the end of the introductory paragraph. In subdivision (c)(2), the amendment substituted "A candidate who is apparently" for "An aspirant" at the beginning of the subdivision, inserted "according to the unofficial results" near the beginning

of subdivision (c)(2), deleted "written" preceding "request for a," inserted "in writing or by telegram" and "Chairman or Supervisor of the county," substituted "no later than" for "in the county in which he filed notice of candidacy by," and substituted the language beginning "seventh day" and ending "Board of Elections" for "fifth day after the result of the first primary has been officially declared" at the end of the first paragraph. The amendment also added subdivision (c)(3).

CASE NOTES

Effect of Failure to Make Timely Request for Second Primary. — Under § 24 of the State Primary Law, c. 101, Laws of 1915, providing, among other things, that the successful candidate for certain offices should receive a majority of the votes cast, when construed in connection with the proviso of the same section that the one receiving the next highest vote, under a majority, should file a request in writing with the appropriate board of elections for a second primary, entitled the one receiving the highest number of votes to be the candidate of the party to the office, upon the failure of the one receiving the next highest vote to comply with the provision within the time stated. *Johnston v. Board of Elections*, 172 N.C. 162, 90 S.E. 143 (1916).

Enforcement of Board's Duty by Mandamus. — Where a candidate for membership in the General Assembly who received the next highest vote in a legalized primary, but less than a majority of the votes cast, failed to give written notice to the board of elections for a second primary within the time prescribed, and after duly declaring the result of the election the board ordered the second primary, the board's ministerial duty of recognizing the one

receiving the highest vote as the candidate and putting his name on the ticket as such would be enforced by mandamus. *Johnston v. Board of Elections*, 172 N.C. 162, 90 S.E. 143 (1916).

Showing Required of Plaintiff Seeking Mandamus. — The plaintiff in proceedings for mandamus to compel county board of elections to declare him the successful candidate of his party in a primary election or to declare that he was entitled to a second primary involving himself and another candidate for the same office must show the denial of a present, clear legal right by the failure of such board to have done so. *Umstead v. Board of Elections*, 192 N.C. 139, 134 S.E. 409 (1926).

In order for a candidate for the party nomination for the legislature to obtain a writ of mandamus against the county board of elections to compel the ordering of a second primary, he must show that his opponents, who received the larger number of votes did not receive a majority of the votes cast for said nomination, and he must have timely filed with the county board of elections a written request that the second primary be called by it. *Umstead v. Board of Elections*, 192 N.C. 139, 134 S.E. 409 (1926).

§ 163-112. Death of candidate before primary; vacancy in single office.

(a) **Death of One of Two Candidates within 30 Days after the Filing Period Closes.** — If at the time the filing period closes, only two persons have filed notice of candidacy for nomination by a political party to a single office, and one of the candidates dies within 30 days after the filing period closes, then the proper board of elections shall, upon notice of the death, reopen the filing period for that party contest, for an additional three days. Should no candidate file during the three days, the board of elections shall certify the remaining candidate as the nominee of his party as provided in G.S. 163-110.

(b) **Death of One of More Than Two Candidates within 30 Days after the Filing Period Closes.** — If at the close of the filing period more than two candidates have filed for a single office, and within 30 days after the filing period closes the board of elections receives notice of a candidate's death, the board shall immediately open the filing period for that party contest, for three

additional days in order for candidates to file for that office. The name of the deceased candidate shall not be printed on the ballot.

In the event a candidate's death occurs more than 30 days after the closing of the original filing period, the names of the remaining candidates shall be printed on the ballot. If the ballots have been printed at the time death occurs, the ballots shall not be reprinted and any votes cast for a deceased candidate shall not be counted or considered for any purpose. In the event the death of a candidate or candidates leaves only one candidate, then such candidate shall be certified as the party's nominee for that office.

(c) Vacancy in Group Offices within 30 Days after the Filing Period Closes. — If at the time the filing period closes more persons have filed notice of candidacy for nomination by a political party to an office constituting a group than there are positions to be filled, and a candidate or candidates dies within 30 days after the filing period closes, and there remains only the number of candidates equal to or fewer than the number of positions to be filled, the appropriate board of elections shall reopen the filing period for that party contest, for three days for that office. Should no persons file during the three-day period, then those candidates already filed shall be certified as the party nominees for that office.

(d) Vacancy in Group Offices More Than 30 Days after the Filing Period Closes. — In the event a candidate or candidates death occurs more than 30 days after the original filing period closes for an office constituting a group, then regardless of the number of candidates filed for nomination, the board of elections shall be governed as follows:

- (1) If the ballots have not been printed at the time the board of elections receives notice of the death, the deceased candidate's name shall not be printed on the ballot.
- (2) If the ballots have been printed at the time the board of elections receives notice of the death, the ballots shall not be reprinted but votes cast for the deceased candidate shall not be counted for any purpose.
- (3) In the event the death of a candidate or candidates results in the number of candidates being equal to or less than the number of positions to be filled for that office, then the remaining candidates shall be certified as the party nominees for that office and no primary shall be held for that office.
- (4) If death, resignation or disqualification of candidates results in the number of candidates being less than the number of positions to be filled for that office, then the appropriate party executive committee shall, in accordance with G.S. 163-114, make nominations of persons equal to the number of positions to be filled and no primary shall be held and those names shall be printed on the general election ballot. (1959, c. 1054; 1967, c. 775, s. 1; 1981, c. 434.)

Editor's Note. — For special provisions for 1982 primary elections, see Session Laws 1982, 2nd Ex. Sess., c. 3, ss. 1 through 19, as amended by Session Laws 1981 (Reg. Sess., 1982), c. 1265, s. 1.

Effect of Amendments. — The 1981 amendment rewrote this section.

§ 163-113. Nominee's right to withdraw as candidate.

A person who has been declared the nominee of a political party for a specified office under the provisions of G.S. 163-175, G.S. 163-192, or G.S. 163-110, shall not be permitted to resign as a candidate unless, at least 30 days before the general election, he submits to the board of elections which certified his nomination a written request that he be permitted to withdraw. (1929, c. 164, s. 8; 1967, c. 775, s. 1.)

§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position
Any elective State office
United States Senator

Vacancy is to be filled by appointment of State executive committee of political party in which vacancy occurs

A district office, including:
Member of the United States House of Representatives
Judge of superior court
Judge of district court
Solicitor
State Senator in a multi-county senatorial district
Member of State House of Representatives in a multi-county representative district

Appropriate district executive committee of political party in which vacancy occurs

State Senator in a single-county senatorial district
Member of State House of Representatives in a single-county representative district
Any elective county office

County executive committee of political party in which vacancy occurs, but if the vacancy arises from a cause other than death, the vacancy shall not be filled unless the board of elections in the county in which the vacancy occurs issues an order to that effect, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote.

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, charged with the duty of printing the ballots on which the name is to appear. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S. 163-139 shall apply.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote. (1929, c. 164, s. 19; 1967, c. 775, s. 1; 1973, c. 793, s. 45; 1981 (Reg. Sess., 1982), c. 1265, ss. 4, 5.)

Editor's Note. — For special provisions for 1982 primary elections, see Session Laws 1982, 2nd Ex. Sess., c. 3, ss. 1 through 19, as amended by Session Laws 1981 (Reg. Sess., 1982), c. 1265, s. 1.

Effect of Amendments. — The 1981 (Reg.

Sess., 1982) amendment added the proviso following "order to that effect" in the last paragraph in the second column of "instructions." The amendment also added the last two paragraphs of the section.

§ 163-115. Special provisions for obtaining nominations when vacancies occur in certain offices.

If a vacancy occurs in the office of the clerk of superior court, otherwise than by expiration of the term, or if the people fail to elect, the vacancy shall be filled as provided in Sec. 9(3) of Article IV of the North Carolina Constitution. If the vacancy occurs after the time for filing notice of candidacy in the primary has expired in a year when a regular election is not being held to elect a clerk of superior court by expiration of term, then the county executive committee of each political party shall nominate a candidate whose name shall appear on the general election ballot. The candidate elected in the general election shall serve the unexpired portion of the term of the person causing the vacancy.

In the event a special election is called to fill a vacancy in the State's delegation in the United States House of Representatives, the provisions of G.S. 163-13 shall apply.

If a vacancy occurs in an elective State or district office (other than member of the United States House of Representatives) during the period opening 10 days before the filing period for the office ends and closing 30 days before the ensuing general election, a nomination shall be made by the proper executive committee of each political party as provided in G.S. 163-114, and the names of the nominees shall be printed on the general election ballots, unless the ballots have already been printed when the nominations are made, in which case the provisions of G.S. 163-139 shall apply. (1915, c. 101, s. 33; 1917, c. 179, s. 3; c. 218; C.S., s. 6053; 1923, c. 111, s. 16; 1955, c. 574; 1957, c. 1242; 1966, Ex. Sess., c. 5, s. 14; 1967, c. 775, s. 1; 1973, c. 793, s. 46.)

§§ 163-116 to 163-118: Repealed by Session Laws 1973, c. 793, ss. 47-49.

§§ 163-119 to 163-121: Reserved for future codification purposes.

ARTICLE 11.

Nomination by Petition.

§ 163-122. Unaffiliated candidates nominated by petition.

(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate.
— Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

- (1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of registered voters in the State as reflected by the most recent statistical report issued by the State Board of Elections. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are presented and a fee of five cents (5¢) for each name appearing on the petition has been received.
- (2) If the office is a district office comprised of two or more counties, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to five percent (5%) of the total number of registered voters in the district as reflected by the latest statistical report issued by the State Board of Elections. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and the procedure for certification shall be the same as specified in (1) above.
- (3) If the office is a county office or a single county legislative district, file written petitions with the chairman or supervisor of the county board of elections supporting his candidacy for a specified county office. These petitions must be filed with the county board of elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the county equal in number to ten percent (10%) of the total number of registered voters in the county as reflected by the most recent statistical report issued

by the State Board of Elections. Each petition shall be presented to the chairman or supervisor of the county board of elections. The chairman shall examine, or cause to be examined, the names on the petition and the procedure for certification shall be the same as specified in (1) above.

- (4) If the office is a partisan municipal office, file written petitions with the chairman or supervisor of the county board of elections in the county wherein the municipality is located supporting his candidacy for a specified municipal office. These petitions must be filed with the county board of elections on or before the time and date specified in G.S. 163-296 and must be signed by the number of qualified voters specified in G.S. 163-296. The procedure for certification shall be the same as specified in (1) above.

Upon compliance with the provisions of (1), (2), (3), or (4) of this subsection, the board of elections with which the petitions and affidavit have been timely filed shall cause the unaffiliated candidate's name to be printed on the general election ballots in accordance with G.S. 163-14C [G.S. 163-140].

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to have his name placed on the general election ballot as an unaffiliated candidate for the same office in that year.

(b) Form of Petition. — Petitions requesting an unaffiliated candidate to be placed on the general election ballot shall contain on the heading of each page of the petition in bold print or in all capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN COUNTY HEREBY PETITION ON BEHALF OF AS AN UNAFFILIATED CANDIDATE IN THE NEXT GENERAL ELECTION. THE UNDERSIGNED HEREBY PETITION THAT SUBJECT CANDIDATE BE PLACED ON THE APPROPRIATE BALLOT UPON COMPLIANCE WITH THE PROVISIONS CONTAINED IN G.S. 163-122." (1929, c. 164, s. 6; 1931, c. 223; 1935, c. 236; 1967, c. 775, s. 1; 1973, c. 793, s. 50; 1977, c. 408, s. 3; 1979, c. 23, ss. 1, 3; c. 534, s. 2; 1981, c. 637.)

Editor's Note. — The reference to § 163-14C at the end of the next-to-last paragraph of subsection (a) of this section, as rewritten by Session Laws 1981, c. 637, is an error. The correct

reference, § 163-140, has been inserted in brackets.

Effect of Amendments. — The 1981 amendment rewrote this section.

CASE NOTES

Ten Percent Requirement for Independent Candidates Held Unconstitutional. — North Carolina grossly discriminated against those who chose to pursue their candidacies as independents rather than by forming a new political party in requiring a group of voters seeking a place on the ballot as a new party to submit petitions signed by only 10,000 voters, less than one sixteenth the number required of an independent candidate, and furthermore, in requiring a candidate desiring to run in the North Carolina Presidential Preference Primary to submit only 10,000 signatures; since the State asserted no compelling interest for such disparate treatment, that portion of subsection (1) of this section which required an independent candidate for president to file written petitions signed by qualified voters

equal in number to 10 percent of those who voted for Governor in the last gubernatorial election was an unconstitutional infringement upon the rights of such candidate and his supporters to associate for the advancement of political beliefs, to cast their votes effectively, and to enjoy equal protection under law. *Greaves v. State Bd. of Elections*, 508 F. Supp. 78 (E.D.N.C. 1980), decided prior to 1981 amendment.

Filing Deadline Held Unconstitutional. — The former filing deadline contained in this section, requiring an independent candidate's petition to be submitted by the last Friday in April before the general election, did not serve a compelling state interest and was an unconstitutional restriction on the rights of independent candidates and their supporters to associate for the advancement of political

beliefs, to cast their votes effectively, and to enjoy equal protection under law, since such deadline did not protect the integrity of the ballot and resulted in disparate treatment of independent and party candidates. *Greaves v. State Bd. of Elections*, 508 F. Supp. 78 (E.D.N.C. 1980), decided prior to 1981 amendment.

Because this section totally prohibits the "sore loser" from running as an independent, former early filing deadline for independent candidates (the last Friday in April before the general election) could not be said to be "necessary" to the accomplishment of the same goal. *Greaves v. State Bd. of Elections*, 508 F. Supp. 78 (E.D.N.C. 1980), decided prior to 1981 amendment.

An independent candidate for President had standing to challenge the filing deadline established by this section, where he chose to submit his petition in timely fashion and face rejection for failure to gather required number of signatures, because it curtailed his ability to collect the number of signatures required to place his name on the ballot. *Greaves v. State Bd. of Elections*, 508 F. Supp. 78 (E.D.N.C. 1980), decided prior to 1981 amendment.

This section and §§ 163-96, 163-98 and 163-151(2) are not available to candidate denied access to primary election ballot under § 163-107. *Brown v. North Carolina State Bd. of Elections*, 394 F. Supp. 359 (W.D.N.C. 1975).

§§ 163-123 to 163-127: Reserved for future codification purposes.

SUBCHAPTER VI. CONDUCT OF PRIMARIES AND ELECTIONS.

ARTICLE 12.

Precincts and Voting Places.

§ 163-128. Election precincts and voting places established or altered.

(a) Each county shall be divided into a convenient number of precincts for the purpose of voting, and there shall be at least one precinct encompassed within the territory of each township; provided, however, that upon a resolution adopted by the county board of elections and approved by the Secretary-Director of the State Board of Elections voters from a given precinct within a township may be temporarily transferred, for the purpose of voting, to a precinct in an adjacent township. Any such transfers shall be for the period of time equal only to the term of office of the county board of elections making such transfer. When such a resolution has been adopted by the county board of elections to assign voters from more than one township to the same precinct, then the county board of elections shall maintain separate registration and voting records, consistent with the procedure prescribed by the State Board of Elections, so as to properly identify the township in which such voters reside. There shall be at least one voting place in each precinct.

The county board of elections shall have power from time to time, by resolution, to establish, alter, discontinue, or create such new election precincts or voting places as it may deem expedient. Upon adoption of a resolution establishing, altering, discontinuing, or creating a precinct or voting place, the board shall give 20 days' notice thereof prior to the date on which the registration books or records next close pursuant to G.S. 163-67. Notice shall be given by advertisement in a newspaper having general circulation in the county, by posting a copy of the resolution at the courthouse door, and by mailing a copy of the resolution to the chairman of every political party in the county.

(b) Each county board of elections shall prepare a map of the county on which the precinct boundaries are drawn or described, shall revise the map

when boundaries are changed, and shall keep a copy of the current map on file and posted for public inspection at the office of the Board of Elections, and shall file a copy with the State Board of Elections. (Rev., s. 4313; 1913, c. 53; C.S., s. 5934; 1921, c. 180; 1933, c. 165, s. 3; 1967, c. 775, s. 1; 1969, c. 570; 1973, c. 793, ss. 51-53; 1975, c. 798, s. 2; 1979, c. 785; 1981, c. 515, s. 1.)

Local Modification. — Catawba: 1981, c. 850; Cleveland: 1981, c. 411; Hertford: 1981, c. 204; Mecklenburg: 1981, c. 433; Stanly: 1981, c. 433; city of Rocky Mount: 1969, c. 1051.

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, added "and shall file a copy with the State Board of Elections" at the end of subsection (b).

§ 163-129. Structure at voting place; marking off limits of voting place.

At the voting place in each precinct established under the provisions of G.S. 163-128, the county board of elections shall provide or procure by lease or otherwise a suitable structure or part of a structure in which registration and voting may be conducted. To this end, the county board of elections shall be entitled to demand and use any school or other State, county, or municipal building, or a part thereof, for the purpose of conducting registration and voting for any primary or election, and it may require that the requisitioned premises, or a part thereof, be vacated for these purposes.

The county board of elections shall inspect each precinct voting place to ascertain how it should be arranged for voting purposes, and shall direct the registrar and judges of any precinct to define the voting place by roping off the area or otherwise enclosing it or by marking its boundaries. The boundaries of the voting place shall at any point lie no more than 100 feet from each ballot box or voting machine. The space so roped off or enclosed or marked for the voting place may contain area both inside and outside the structure in which registration and voting are to take place. (1929, c. 164, s. 17; 1967, c. 775, s. 1; 1973, c. 793, s. 54.)

§§ 163-130 to 163-134: Reserved for future codification purposes.

ARTICLE 13.

General Instructions.

§ 163-135. Applicability of Article.

(a) In General. — The provisions of this Article shall apply to all elections in all counties, cities, towns, townships, and school districts in the State of North Carolina.

(b) Primary Elections. — The provisions of this Article shall apply to all primary elections held in this State, or in any county, as fully as it applies to general elections.

(c) Special Elections. — Every election held in pursuance of a writ from the Governor shall be conducted in accordance with the provisions of this Article, so far as the particular case can be governed by general rules.

(d) Referenda. — This Article shall apply to and control all elections for the issuance of bonds and to all other elections in which any constitutional amendment, question, or issue is submitted to a vote of the people.

(e) Municipal Primaries and Elections. — This Article shall apply to and control all elections held in and for cities, towns, incorporated villages and all special districts, whether conducted by the county board of elections or a duly

appointed municipal board of elections. (1901, c. 89, s. 75; Rev., s. 4341; C.S., s. 5975; 1929, c. 164, ss. 2, 4, 34, 42; 1967, c. 775, s. 1; 1975, c. 798, s. 1.)

Local Modification to Former § 163-148.

— Ashe: 1933, c. 557; 1935, c. 259; 1937, c. 170.

CASE NOTES

As to construction of former Article 10 in pari materia with primary election law, see 897 (1936); McLean v. Durham County Bd. of Elections, 222 N.C. 6, 21 S.E.2d 842 (1942).
Phillips v. Slaughter, 209 N.C. 543, 183 S.E.

§ 163-136. Preparation, distribution and financing of ballots.

(a) Ballots a Public Expense. — All ballots cast in the elections, primaries, and referenda listed below shall be printed and distributed at public expense:

- (1) General and special elections for national, State, district, county, and municipal offices in the counties, districts, cities, towns, and other political subdivisions of the State.
- (2) Primaries for nomination of candidates for the offices listed in the preceding subdivision.
- (3) Elections or referenda for the issuance of bonds.
- (4) Elections or referenda in which any constitutional amendment, question or issue is submitted to a vote of the people.

(b) Printing and Distribution. — The printing and distribution of ballots shall be arranged, handled, and paid for as follows:

- (1) For municipal elections, primaries, and referenda, by the municipal authorities conducting the election, primary, or referendum, at the expense of the municipality.
- (2) For county, single-county district, and legislative district elections, primaries, and referenda, by the responsible county board of elections, at the expense of the county.
- (3) For all elections, primaries, and referenda not specified in the two preceding subdivisions, by the State Board of Elections, at the expense of the State.

Provided, that the State Board of Elections, in its discretion, may direct some or all counties to print the ballots required by this subdivision under the supervision of the State Board of Elections. If the State Board of Elections prints and distributes the ballots required by this subdivision at the expense of the State, the State Board shall have the authority to negotiate for the ballots to be printed and distributed on a regional or centralized basis, and the State Board shall be exempt from securing competitive bids for printing and distribution of all ballots, abstracts and precinct return forms.

(c) Paper Ballots for General Elections and County Bond Elections Where Voting Machines Are Used. — In counties in which voting machines are used at some or all voting places, paper ballots shall be printed for purposes of absentee voting in statewide general elections and in county bond elections under the provisions of Articles 20 and 21.

(d) Each kind of official ballot as defined in G.S. 163-140 used in a primary election shall have a distinct and separate color, and each such ballot used in a general election shall have a distinct and separate color. In both a primary and general election, the color of each kind of official ballot as defined in G.S. 163-140 shall be determined by the board of elections responsible for printing

the ballots. (1929, c. 164, s. 3; 1963, c. 457, s. 9; 1967, c. 775, s. 1; c. 952, s. 2; 1973, c. 793, s. 55; c. 1135; 1975, c. 844, s. 4.)

§ 163-137. General, special and primary election ballots; names and questions to be printed thereon; distribution.

(a) The ballots printed for use in general and special elections under the provisions of this Article shall contain:

- (1) The names of all candidates who have been put in nomination in accordance with the provisions of this Chapter by any political party recognized in this State.
- (2) The names of all persons who have qualified as unaffiliated candidates under the provisions of G.S. 163-122.
- (3) All questions, issues, and propositions to be voted on by the people.

(b) The ballots prepared for use in general and special elections under the provisions of this Article by the State Board of Elections shall be printed and delivered to the county boards of elections at least 60 days prior to the date of any election in which absentee voting is permitted and at least 60 days prior to the date of any election in which absentee voting is not permitted.

(c) In a primary election the names of all candidates of the same political party for the same office shall be printed on the ballot either vertically or horizontally, and in no event shall both arrangements of names be used concurrently for candidates on the same ballot for the same office. (1929, c. 164, s. 5; 1945, c. 972; 1957, c. 1264; 1963, c. 934; 1967, c. 775, s. 1; 1973, c. 536, s. 3; 1975, c. 149, s. 1; c. 844, s. 5; 1977, c. 408, s. 4; 1979, c. 797, s. 6.)

Cross References. — As to the use of paper ballots where voting machines are used, see § 163-162.

CASE NOTES

The right of a candidate to have his name printed on the official ballot is dependent upon his becoming a nominee in the required manner. *McLean v. Durham County Bd. of*

Elections, 222 N.C. 6, 21 S.E.2d 842 (1942).

Cited in *Greaves v. State Bd. of Elections*, 508 F. Supp. 78 (E.D.N.C. 1980).

§ 163-138. Instructions for printing names on primary and election ballots.

In preparing primary, general, and special election ballots, the legal name of a candidate (together with his nickname in the situation outlined below) shall be printed precisely as it appears on the notice of candidacy form filed in accordance with G.S. 163-106 or in petition forms filed in accordance with G.S. 163-122. If the candidate has inserted a nickname on the notice of candidacy or in the petition, it shall be printed on the ballot immediately before the candidate's surname and shall be enclosed by parenthesis. No title, appendage, or appellation indicating rank, status, or position, shall be printed before or following or as a nickname or in connection with the name of any candidate on any ballot. Nevertheless, a candidate who is a married woman may use the prefix "Mrs." and a candidate who is a single woman may use the prefix "Miss" before her name if she so elects. (1929, c. 164, s. 5; 1945, c. 972; 1957, c. 1264; 1963, c. 934; 1967, c. 775, s. 1.)

§ 163-139. Reprinting ballots when substitute candidate is named.

(a) Before General or Special Election. — After the official ballots for a general or special election have been printed by the proper elections board, the death, resignation, or disqualification of a candidate whose name appears on the official ballots shall not require that the ballots be reprinted, although the responsible board of elections may have the ballots reprinted if it desires to do so.

If a candidate dies, resigns, or otherwise becomes disqualified after his name has been printed on an official general or special election ballot, and if a nomination has been made to fill the vacancy as authorized by G.S. 163-114, the name of the substituted nominee shall not appear on the official ballots unless the responsible board of elections decides that it is feasible and advisable to reprint the ballots to show the name of the substituted nominee. If the ballots are not reprinted, a vote cast for the candidate whose name is printed on the ballot shall be counted as a vote for the substituted candidate whose name has been certified to the appropriate board of elections under the provisions of G.S. 163-114.

(b) Before Primary Election. — The provisions of G.S. 163-112 shall apply in the event a candidate for party nomination dies before the primary. (1929, c. 164, s. 7; 1931, c. 254, s. 1; 1947, c. 505, s. 8; 1967, c. 775, s. 1.)

§ 163-140. Kinds of ballots; what they shall contain; arrangement.

(a) Kinds of General Election Ballots; Right to Combine. — For purposes of general elections, there shall be seven kinds of official ballots entitled:

- (1) Ballot for presidential electors
- (2) Ballot for United States Senator
- (3) Ballot for member of the United States House of Representatives
- (4) State ballot
- (5) County ballot
- (6) Repealed by Session Laws 1973, c. 793, s. 56.
- (7) Ballot for constitutional amendments and other propositions submitted to the people.

Use of official ballots shall be limited to the purposes indicated by their titles. The printing on all ballots shall be plain and legible but, unless large type is specified by this section, type larger than 10-point shall not be used in printing ballots. All general election ballots shall be prepared in such a way as to leave sufficient blank space beneath each name printed thereon in which a voter may conveniently write the name of any person for whom he may desire to vote.

Unless prohibited by this section, the board of elections, State or county, charged by law with printing ballots may, in its discretion, combine any two or more official ballots. Whenever two or more ballots are combined, the voting instructions for the State ballot set out in subsection (b)(4) of this section shall be used.

(b) General Election Ballots. —

- (1) Ballot for Presidential Electors: On the ballot for presidential electors there shall be printed, under the titles of the offices, the names of the candidates for President and Vice-President of the United States nominated by each political party qualified under the provisions of G.S. 163-96. A separate column shall be assigned to each political party with candidates on the ballot, and the party columns shall be separated by distinct black lines. At the head of each column the party name shall be printed in large type and below it a circle, one-half inch

in diameter, and below the circle the names of the party's candidates for President and Vice-President in that order. On the face of the ballot, above the party column division, the following instructions shall be printed in heavy black type:

- "a. To vote this ballot, make a cross (X) mark in the circle below the name of the political party for whose candidates you wish to vote.
- b. A vote for the names of a political party's candidates for President and Vice-President is a vote for the electors of that party, the names of whom are on file with the Secretary of State.
- c. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the Chairman of the State Board of Elections.

The official ballot for presidential electors shall not be combined with any other official ballots.

- (2) Ballot for United States Senator: Beneath the title and general instructions set out in this subsection, the ballot for United States Senator shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having a candidate for the office and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for unaffiliated candidates shall be printed in large type the words "Unaffiliated Candidates." The name of each political party's candidate for United States Senator shall be printed in the appropriate party column, and the names of unaffiliated candidates for the office shall be printed in the column headed "Unaffiliated Candidates." At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line. On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy black type:

"a. Vote for only one candidate.

- b. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the Chairman of the State Board of Elections.

When the ballot for United States Senator is combined with a ballot for another office, below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: "For a straight ticket, mark within this circle." The following instructions, in lieu of those specified in the preceding paragraph, shall be printed in heavy black type on the face of the combined ballot to the top above the party and unaffiliated column division:

- "a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.
 - b. To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.
 - c. If you tear or deface or wrongly mark this ballot, return it and get another."
- (3) Ballot for Member of the United States House of Representatives: Beneath the title and general instructions set out in this subsection, the congressional district ballot for member of the United States House of Representatives shall be divided into parallel columns sepa-

rated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having a candidate for the office and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for unaffiliated candidates shall be printed in large type the words "Unaffiliated Candidates." The name of each political party's candidate for member of the United States House of Representatives from the congressional district shall be printed in the appropriate party column, and the names of unaffiliated candidates for the office shall be printed in the column headed "Unaffiliated Candidates." At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line. On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy black type:

- "a. Vote for only one candidate.
- b. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the Chairman of the State Board of Elections.

When the ballot for member of the United States House of Representatives is combined with a ballot for another office, below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: "For a straight ticket, mark within this circle." The following instructions, in lieu of those specified in the preceding paragraph, shall be printed in heavy black type on the face of the combined ballot at the top above the party and unaffiliated column division:

- "a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.
 - b. To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.
 - c. If you tear or deface or wrongly mark this ballot, return it and get another."
- (4) State Ballot: Beneath the title and general instructions set out in this subsection, the ballot for State officers (including judges of the superior court) shall be divided into parallel columns separated by distinct black lines. The State Board of Elections shall assign a separate column to each political party having candidates for State offices and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type, and at the head of the column for unaffiliated candidates shall be printed in large type the words "Unaffiliated Candidates." Below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: "For a straight ticket, mark within this circle." With distinct black lines, the State Board of Elections shall divide the columns into horizontal sections and, in the customary order of office, assign a separate section to each office or group of offices to be filled. On a single line at the top of each section shall be printed a direction as to the number of candidates for whom a vote may be cast. If candidates are to be chosen for different terms to the same office, the term in each instance shall be printed as part of the title of the office.

The name or names of each political party's candidate or candidates for each office listed on the ballot shall be printed in the appropriate

office section of the proper party column, and the names of unaffiliated candidates shall be printed in the appropriate office section of the column headed "Unaffiliated Candidates." At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line.

On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy black type:

- "a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.
- b. To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.
- c. If you should insert a cross (X) mark in one of the party circles at the top of the ballot and also mark in the voting square opposite the name of any candidate of any party, your ballot will be counted as a straight ticket vote for all of the candidates of the party whose circle you marked.
- d. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the Chairman of the State Board of Elections.

- (5) County Ballot: Beneath the title and general instructions set out in this subsection, the ballot for county officers (including solicitor for the solicitorial district in which the county is situated, district judge for the district court district in which the county is situated, and members of the General Assembly in the senatorial and representative districts in which the county is situated) shall be divided into parallel columns separated by distinct black lines. The county board of elections shall assign a separate column to each political party having candidates for the offices on the ballot and one to unaffiliated candidates, if any. At the head of each party column the party's name shall be printed in large type and at the head of the column for unaffiliated candidates shall be printed in large type the words "Unaffiliated Candidates." Below the party name in each column shall be printed a circle, one-half inch in diameter, around which shall be plainly printed the following instruction: "For a straight ticket, mark within this circle." With distinct black lines, the county board of elections shall divide the columns into horizontal sections and, in the customary order of office, assign a separate section to each office or group of offices to be filled. On a single line at the top of each section shall be printed the title of the office, and directly below the title shall be printed a direction as to the number of candidates for whom a vote may be cast. If candidates are to be chosen for different terms to the same office, the term in each instance shall be printed as part of the title of the office.

The name or names of each political party's candidate or candidates for each office listed on the ballot shall be printed in the appropriate office section of the proper party column, and the names of unaffiliated candidates shall be printed in the appropriate office section of the column headed "Unaffiliated Candidates." At the left of each name shall be printed a voting square, and in each column all voting squares shall be arranged in a perpendicular line.

On the face of the ballot, above the party and unaffiliated column division, the following instructions shall be printed in heavy black type:

- "a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party for whose candidates you wish to vote.
- b. To vote for candidates of more than one party (a split ticket), do not mark in any party circle, but make a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.
- c. If you should insert a cross (X) mark in one of the party circles at the top of the ballot and also mark in the voting square opposite the name of any candidate of any party, your ballot will be counted as a straight ticket vote for all of the candidates of the party whose circle you marked.
- d. If you tear or deface or wrongly mark this ballot, return it and get another."

On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the county board of elections.

(6) Repealed by Session Laws 1973, c. 793, s. 56.

(7) Ballot for Constitutional Amendments and Other Propositions Submitted to the People: The form of ballot used in submitting a constitutional amendment or other proposition or issue to the voters of the entire State shall be prepared by the State Board of Elections and approved by the Attorney General. The form of ballot used in submitting propositions and issues to the voters of a single county or subdivision shall be prepared by the county board of elections. In a referendum the issue presented to the voters with respect to each constitutional amendment, question, or proposition, shall be printed in the form laid down by the General Assembly or other body submitting it. If more than one amendment, question, or proposition is submitted on a single ballot, each shall be printed in a separate section, and the sections shall be numbered consecutively. On the face of the ballot, above the issue or issues being submitted, shall be printed instructions for marking the voter's choice, in addition to the following instruction: "If you tear or deface or wrongly mark this ballot, return it and get another." On the bottom of the ballot shall be printed an identified facsimile of the signature of the chairman of the responsible board of elections, State or county.

(c) Primary Election Ballots. —

- (1) Kinds of Primary Ballots; Right to Combine: For the purposes of primary elections, there shall be five kinds of official ballots, entitled:
 - a. Primary ballot for United States Senator
 - b. Primary ballot for member of the United States House of Representatives
 - c. State primary ballot
 - d. County primary ballot
 - e. Repealed by Session Laws 1973, c. 793, s. 56, effective July 1, 1973.
 Use of official primary ballots shall be limited to the purposes indicated by their titles. The printing on all primary ballots shall be plain and legible but, unless large type is specified by this Chapter, type larger than 10-point shall not be used in printing primary ballots.

Primary ballots shall be prepared in accordance with the provisions of G.S. 163-109 and the provisions of this section as modified by the provisions of this subsection.

- (2) Separate Ballots for Each Political Party: For each political party conducting a primary election separate ballots shall be printed, and the paper used for each party's ballots shall be different in color from that used for the ballots of other parties. Primary ballots shall not provide for voting a straight-party ticket, but a voting square shall be printed to the left of the name of each candidate appearing on the ballot.

(3) **Rotation of Positions on Ballots Among Candidates:** The board of elections, State or county, responsible for printing and distributing primary election ballots shall have them printed so that the names of opposing candidates for any office shall, as far as practicable, occupy alternate positions upon the ballot, to the end that the name of each candidate shall occupy with reference to the name of every other candidate for the same office, first position, second position, and every other position, if any, upon an equal number of ballots; and the ballots shall be distributed among the precinct voting places impartially and without discrimination.

(4) **Facsimile Signatures:** On the bottom of each primary ballot shall be printed an identified facsimile of the signature of the chairman of the board of elections, State or county, responsible for its preparation.

(d) **Municipal Primary and Election Ballots.** — In all municipal elections there shall be an official ballot on which shall be printed the names of all candidates for offices in the municipality. The municipal ballot shall conform as nearly as possible to the provisions of subsections (a) through (c) of this section, but on the bottom of the municipal ballot shall be printed an identified facsimile of the signature of the chairman of the county or municipal board of elections, as appropriate.

(e) Repealed by Session Laws 1977, c. 265, s. 10. (1929, c. 164, s. 9; 1931, c. 254, ss. 2-10; 1933, c. 165, ss. 20, 21; 1939, c. 116, s. 1; 1947, c. 505, s. 9; 1949, c. 672, s. 2; 1955, c. 812, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 56, 57; 1977, c. 265, s. 10; c. 408, s. 5.)

CASE NOTES

The one man, one vote rule does not apply to the State judiciary, and therefore a mere showing of a disparity among the voters or in the population figures of the district would not be sufficient to strike down the election procedure for superior court judges. A showing of an arbitrary and capricious or invidious action or distinction between citizens and voters would be required. *Holshouser v. Scott*, 335 F. Supp. 928 (M.D.N.C. 1971), *aff'd*, 409 U.S. 807, 93 S. Ct. 43, 34 L. Ed. 2d 68 (1972).

Procedure for Election of Superior Court Judges Upheld. — A superior court judge is a hybrid official with both local and statewide functions and authority, and there is a reasonable basis for election procedure requiring him to be nominated in the primary election and elected in the general election by statewide

vote, which serves and achieves a legitimate state purpose and is not arbitrary and capricious. *Holshouser v. Scott*, 335 F. Supp. 928 (M.D.N.C. 1971), *aff'd*, 409 U.S. 807, 93 S. Ct. 43, 34 L. Ed. 2d 68 (1972).

Requiring regular superior court judges to be nominated in the primary election by districts and elected in the general election by statewide vote does not deny equal protection of the laws. *Holshouser v. Scott*, 335 F. Supp. 928 (M.D.N.C. 1971), *aff'd*, 409 U.S. 807, 93 S. Ct. 43, 34 L. Ed. 2d 68 (1972).

Violation of the "sufficient ballot space" portion of this section would not vitiate an election unless the violation altered the outcome of the election. *In re Cleveland County Comm'rs*, 56 N.C. App. 187, 287 S.E.2d 451 (1982).

§ 163-140.1. Political party alignment on ballots.

All ballots printed for use in general elections in the State, district, county or any other political subdivision, shall be aligned with the number of political party columns required pursuant to instructions contained in G.S. 163-140(b) and the columns shall be assigned in strict alphabetical order, beginning with the left column, to the political parties entitled to ballot position provided such political parties reflect at least five percent (5%) of the total statewide voter registration, according to the latest statistical report published by the State Board of Elections. Political parties having less than five percent (5%) of the total statewide voter registration, but otherwise eligible for ballot position

shall be assigned column alignment to the right of all other qualified political parties. The State Board of Elections shall be responsible for implementing the procedures required by this section and shall issue instructions to those counties using voting machines so as to accomplish the effect of this section whether such counties utilize voting machines that list party columns in a horizontal or vertical alignment. Every county board of elections shall follow the column alignment prescribed by the State Board of Elections. (1975, c. 809.)

§ 163-141. Sample ballots.

Sample ballots of each kind to be voted in each primary and election shall be printed by the board of elections responsible for printing the official ballots. Sample ballots shall be printed on paper of a color different from that used for the official ballots, and each sample ballot shall have the words "Sample Ballot" printed conspicuously on its face. Sample ballots shall be used for instructional purposes and shall not be used as official ballots.

The State Board of Elections shall distribute the sample ballots for which it is responsible to the county boards of elections at the time it distributes the official ballots; and the county board of elections, at the time it is required to distribute official ballots, shall furnish each precinct registrar with an adequate supply of the sample ballots prepared by the State Board of Elections as well as of those the county board is required to prepare. (1929, c. 164, s. 13; 1931, c. 254, s. 12; 1967, c. 775, s. 1.)

§ 163-142. Number of ballots to be furnished each voting place; packaging; date of delivery; receipt for ballots; accounting for ballots.

The county board of elections shall furnish each precinct voting place with each kind of ballot to be voted in the primary or election in a number equal to one hundred five percent (105%) of the number of persons registered to vote in the primary or election in the precinct.

Each kind of ballot shall be wrapped in a separate package or packages for each precinct voting place. The number of ballots to be placed in each package shall be determined by the chairman of the county board of elections, and the outside of each package shall be marked or stamped to show the kind of ballot and the number contained.

Three days before the primary or election, the county board of elections shall deliver to such precinct registrar the required number of ballots of each kind to be voted in his precinct, and the registrar shall immediately give a receipt for the ballots delivered to him in accordance with the information marked or stamped on the ballot packages.

Within three days after the primary or election, the registrar shall deliver to the county board of elections all ballots spoiled in his precinct. At the same time he shall also deliver to the county board of elections all unused ballots from his precinct. Thereupon, the county board of elections shall make a check to ascertain whether the total of spoiled ballots and unused ballots, when added to the number of ballots cast in the precinct, equal the number of ballots furnished to and receipted for by the registrar prior to the primary or election.

The provisions of this section shall not apply to voting places at which voting machines are used. (1929, c. 164, ss. 10, 11, 14, 25; 1933, c. 165, s. 22; 1951, c. 849, ss. 1, 2; 1967, c. 775, s. 1.)

§ 163-143. Ballot boxes to be furnished each voting place; date of delivery; receipt for boxes.

The county board of elections shall furnish each precinct voting place with a ballot box for each kind of ballot to be voted in the primary or election, together with one additional box in which spoiled ballots are to be deposited. Each box shall be plainly marked to indicate the ballots to be deposited therein, and the extra box to be delivered to each precinct shall be marked "For Spoiled Ballots."

Each ballot box shall be designed so that it may be locked and sealed and shall be constructed with an opening in the top large enough to allow a single ballot to be easily passed through, but no larger. At the time ballot boxes are delivered to the precinct, the chairman of the county board of elections shall furnish each registrar with a lock and proper seals for each box to be used in his precinct, with instructions as to how each box is to be securely locked and sealed in compliance with G.S. 163-171.

Three days before the primary or election, the county board of elections shall deliver to each precinct registrar the number of ballot boxes required for his precinct, and the registrar shall immediately give a receipt for them.

The provisions of this section shall not apply to voting places at which voting machines are used. (1929, c. 164, ss. 12, 14; 1931, c. 254, s. 11; 1967, c. 775, s. 1.)

§ 163-144. Lost, destroyed, damaged, and stolen ballots; replacement; report.

Should official ballots furnished to any precinct in accordance with the provisions of this chapter be lost, destroyed, damaged, or stolen, the county board of elections, upon ascertaining that a shortage of ballots exists in the precinct, shall furnish the needed replacement ballots.

Within three days after the primary or election, the registrar of the precinct in which the loss occurred shall make a written report, under oath, to the county board of elections describing in detail the circumstances of the loss, destruction, damage, or theft of the ballots. (1929, c. 164, s. 15; 1967, c. 775, s. 1.)

§ 163-145. Voting booths; description; provision.

The county board of elections shall furnish each voting place with at least one voting booth for each 100 persons qualified to vote in the precinct. Each voting booth shall be at least three feet square and six feet high; it shall have three sides and a door or curtain in front. The bottom of the door or curtain shall hang two feet above the floor. Each voting booth shall be equipped with a table or shelf on which voters may conveniently mark their ballots.

The provisions of this section shall not apply to voting places at which voting machines are used. (1929, c. 164, s. 17; 1967, c. 775, s. 1.)

§ 163-146. Voting enclosure at voting place; furnishings; arrangement.

At each precinct voting place as described in G.S. 163-129, there shall be a room or area set apart as the voting enclosure. The limits of the voting enclosure shall be defined by walls, guardrails, or other boundary markers which at no point stand nearer than 10 feet nor farther than 20 feet from each ballot box or voting machine. This enclosure shall be arranged so that a single door or opening (not more than three feet wide) can be used as the entrance for persons seeking to vote.

Within the voting enclosure and in plain view of the qualified voters present at the voting place shall be placed:

- (1) A table or desk on which the registrar shall place and use the precinct registration books and records.
- (2) A table or desk on which the responsible judge shall place and superintend the ballots for distribution and the box for spoiled ballots.
- (3) A table or desk on which the responsible judge shall place and maintain the pollbook.
- (4) The ballot boxes.
- (5) The voting booths.

All voting booths and ballot boxes shall be placed in plain view of the registrar and judges as well as of the qualified voters present at the voting place.

The registrar's table shall be placed near the entrance to the voting enclosure.

Each voting booth shall be located and arranged so that it is impossible for a voter in one booth to see a voter in another booth in the act of marking his ballots. Each voting booth shall be kept properly lighted and provided with pencils or pens for marking ballots.

In precincts in which voting machines are used, ballot boxes and voting booths shall not be used. Within the voting enclosure at the voting place in such a precinct, each machine shall be placed so that the exterior from all its sides is visible and so that whenever it is not in use by a voter the ballot labels on its face may be plainly seen by the precinct officials and assistants, and by observers appointed under the provisions of G.S. 163-45. Precinct election officials and assistants shall not place themselves, nor shall they permit any other person to place himself, in any position that will permit one to see or ascertain how a voter votes on a voting machine except when the voter obtains assistance as provided in this Chapter.

No political banner, poster, or placard shall be allowed in or upon the voting place during the day of a primary or election. (1929, c. 164, s. 19; 1967, c. 775, s. 1; 1973, c. 793, ss. 58, 94.)

§ 163-147. No loitering or electioneering at voting place.

No person or group of persons shall, while the polls are open at the voting place on the day of the primary or election, loiter about, congregate, distribute campaign material, or do any electioneering within the voting place, or within 50 feet in any direction of the entrance or entrances to the building in which the voting place is located. Notwithstanding the above provision, if the voting place is located in a large building, the registrar and judges of the precinct may designate the entrance to the voting place within said building and none of the above activity shall be permitted within 50 feet of said entrance or entrances of said voting place. This section shall not, however, prohibit any candidate for nomination or election from visiting such voting place in person, provided he does not enter the voting enclosure except to cast his vote as a registered voter in said precinct. The county boards of elections and precinct registrars shall have full authority to enforce the provisions of this section. (1929, c. 164, s. 19; 1967, c. 775, s. 1; 1971, c. 537.)

CASE NOTES

Local Modification Held Invalid under Voting Rights Act. — Session Laws 1969, c. 1039, is inoperable in Cumberland, Franklin, Guilford and Vance Counties. *Clayton v. North*

Carolina State Bd. of Elections, 317 F. Supp. 915 (E.D.N.C. 1970).

Session Laws 1969, c. 1039, changed electioneering practices in the four counties

covered by the Voting Rights Act in 1969 from what they had been on November 1, 1964. This change was a change in "standard, practice, or procedure with respect to voting" within the meaning of § 5 of the Voting Rights Act. *Clayton v. North Carolina State Bd. of Elections*, 317 F. Supp. 915 (E.D.N.C. 1970).

There is no possible basis to explain, or any state of facts to justify, the difference in treatment between the counties to which Session Laws 1969, c. 1039, is applicable and the 94 counties which are governed by prior law. Therefore, Session Laws 1969, c. 1039, denies equal protection of the laws. *Clayton v. North Carolina State Bd. of Elections*, 317 F. Supp. 915 (E.D.N.C. 1970).

The right to vote includes the right to be educated on the candidates and propositions for which a vote is to be cast. To increase the closest distribution points to the circumference of a circle having a 500 foot radius rather than the circumference of a circle having a 50 foot radius would result in a greatly increased burden on political parties and render more difficult the distribution of campaign literature to persons converging on the polling place. More importantly, distributions to far fewer voters would be accomplished under Session Laws 1969, c. 1039, than previously. *Clayton v. North Carolina State Bd. of Elections*, 317 F. Supp. 915 (E.D.N.C. 1970).

§ 163-148. Procedures at voting place before polls are opened.

At least one-half hour before the time set for opening the polls for each primary and election, the judges of elections and assistants, shall meet the registrar at the precinct voting place, at which time the registrar shall administer to them the appropriate oaths set out in G.S. 163-41(a) and G.S. 163-42.

The registrar and judges shall arrange the voting enclosure according to the requirements of G.S. 163-146 and the instructions of the county board of elections. They shall then unlock the official ballot boxes, see that they are empty, allow authorized observers and other voters present to examine the boxes, and then they shall relock them while still empty. They shall open the sealed packages of ballots, and one of the judges, at the registrar's request, shall announce that the polls are open and state the hour at which they will be closed.

If voting machines are used in the precinct, immediately before the polls are opened the registrar and judges shall open each voting machine, examine the ballot labels, and check the counters to see that they are set to indicate that no votes have been cast or recorded; at the same time, the precinct officials shall allow authorized observers and other voters present to examine the machines. If found to be in order and the ballot labels in proper form, the precinct officials shall lock and seal each machine, and it shall remain locked until after the polls are closed. (1929, c. 164, s. 18; 1967, c. 775, s. 1; 1973, c. 793, ss. 59, 94.)

§ 163-149. Protection of ballots, ballot boxes, pollbook, and registration records on day of primary or election.

When the empty official ballot boxes have been relocked after the inspection required by G.S. 163-148 before the polls are opened on the day of each primary and election, they shall not be unlocked or opened until the polls are closed.

Only official ballots shall be allowed to be deposited in the ballot boxes, and no other articles or matter shall be placed in them.

No person shall purposely deface or tear an official ballot in any manner, and no person shall purposely erase any name or mark written on a ballot by a voter.

From the time the polls are opened until the precinct count has been completed, the returns signed, and the results declared, no person shall take or remove from the voting enclosure the official ballot boxes, the box for spoiled

ballots, the pollbook, the registration book or records, or any official ballots. (1929, c. 164, ss. 18, 22, 23, 25; 1931, c. 254, s. 14; 1939, c. 263, s. 3½; 1953, c. 1040; 1967, c. 775, s. 1.)

§ 163-150. Voting procedures.

(a) Checking Registration. — A person seeking to vote shall enter the voting enclosure at the voting place through the appropriate entrance and shall at once state his name and place of residence to one of the judges of election. In a primary election, the voter shall also state the political party with which he affiliates and in whose primary he desires to vote. The judge to whom the voter gives this information shall announce the name and residence of the voter in a distinct tone of voice. After examining the precinct registration records, the registrar shall state whether the person seeking to vote is duly registered.

(b) Distribution of Ballots; Information. — If the voter is found to be registered and is not challenged, or, if challenged and the challenge is overruled as provided in G.S. 163-88, the responsible judge of election shall hand him an official ballot of each kind he is entitled to vote. In a primary election the voter shall be furnished ballots of the political party with which he affiliates and no others. It shall be the duty of the registrar and judges holding the primary or election to give any voter any information he desires in regard to the kinds of ballots he is entitled to vote and the names of the candidates on the ballots. In response to questions asked by the voter, the registrar and judges shall communicate to him any information necessary to enable him to mark his ballot as he desires.

(c) Act of Voting. — When a person is given official ballots by the judge, he shall be deemed to have begun the act of voting, and he shall not leave the voting enclosure until he has deposited his ballots in the ballot boxes or returned them to the precinct officials. When he leaves the voting enclosure, whether or not he has deposited his ballots in the ballot boxes, he shall not be entitled to enter the voting enclosure again for the purpose of voting. On receiving his ballots, the voter shall immediately retire alone to one of the voting booths unless he is entitled to assistance under the provisions of G.S. 163-152, and without undue delay he shall mark his ballots in accordance with the provisions of G.S. 163-151.

(d) Spoiled and Damaged Ballots. — If a voter spoils or damages a ballot, he may obtain another upon returning the spoiled or damaged ballot to the registrar. A voter shall not be given a replacement ballot until he has returned the spoiled or damaged ballot, and he shall not be given more than three replacement ballots in all. The registrar shall deposit each spoiled or damaged ballot in the box provided for that purpose.

(e) Depositing Ballots and Leaving Enclosure. — When the voter has marked his ballots he shall leave the voting booth and deposit them in the appropriate boxes or hand them to the registrar or a judge who shall deposit them for him. If he does not mark a ballot he shall return it to one of the precinct officials before leaving the voting enclosure. If the voter has been challenged and the challenge has been overruled, before depositing his ballots in the boxes he shall write his name on each of his ballots so they may be identified in the event his right to vote is again questioned. After depositing his ballots in the ballot boxes, the voter shall immediately leave the voting enclosure unless he is one of the persons authorized by law to remain within the enclosure for purposes other than voting.

(f) Maintenance of Pollbook or Other Record of Voting. — At each primary, general or special election, the precinct registrar shall appoint two precinct assistants (one from each political party as recommended by the county chairman thereof), one to be assigned to keep the pollbook or other voting record used in the county as approved by the State Board of Elections, and the

other to keep the registration books under the supervision of the precinct officials. The names of all persons voting shall be checked on the registration records and entered on the pollbook or other voting record. In an election where observers may be appointed under G.S. 163-45 each voter's party affiliation shall be entered in the proper column of the book or other approved record opposite his name. The precinct assistant shall make each entry at the time the ballots are handed to the voter. As soon as the polls are closed, the registrar and judges of election shall sign the pollbook or other approved record immediately beneath the last voter's name entered therein. The registrar or the judge appointed to attend the county canvass shall deliver the pollbook or other approved record to the chairman of the county board of elections at the time of the county canvass, and the chairman shall remain responsible for its safekeeping.

(g) **Occupation of Voting Booth.** — Subject to the provisions of G.S. 163-152 and G.S. 163-152.1, no voter shall be allowed to occupy a voting booth or voting machine already occupied by another voter, provided, however, husbands and wives may occupy the same voting booth if both wish to do so. No voter shall be allowed to occupy a voting booth or voting machine more than five minutes if all the booths or machines are in use and other voters are waiting to obtain booths or machines. (1915, c. 101, s. 11; 1917, c. 218; C. S., s. 6031; 1921, c. 181, s. 6; 1923, c. 111, s. 14; 1929, c. 164, ss. 20, 22, 23, 25; 1931, c. 254, ss. 13, 14; 1939, c. 263, s. 312; 1953, c. 1040; 1955, c. 767; 1959, c. 1203, s. 7; 1967, c. 775, s. 1; 1973, c. 793, ss. 60, 61; c. 1223, s. 7; c. 1344, ss. 2, 3; 1979, c. 60, s. 1.)

CASE NOTES

Right of Voter to make Ballot Public. — The provision of the State Constitution providing that elections by the people shall be by ballot (see N.C. Const., Art. VI, § 5) means that the elector has the right to put his ballot in the box and to refuse to disclose for whom he voted, but this privilege of voting a secret ballot is entirely a personal one. Hence, the voter has the right at the time of voting to voluntarily make his ballot public. *Jenkins v. State Bd. of Elections*, 180 N.C. 169, 104 S.E. 346 (1920).

Election Held Not Vitiating by Short Absence of Officer in Charge. — Fact that one of the officers appointed to conduct an election was absent a short time from the polls, during which time no vote was cast and the

ballot boxes were not tampered with, nor was any opportunity afforded for tampering with them, did not vitiate election. *State ex rel. DeBerry v. Nicholson*, 102 N.C. 465, 9 S.E. 545 (1889).

Inquiry as to Voter's Qualifications Rests with Election Officials. — The law does not contemplate that a watcher or any other person, when he challenges a voter at the polls, may take charge and conduct a hearing with respect to the voter's right to vote. The inquiry with respect to the voter's qualifications to vote rests with the election officials. *Overton v. Mayor & City Comm'rs*, 253 N.C. 306, 116 S.E.2d 808 (1966).

§ 163-151. Marking ballots in primary and election.

The voter shall adhere to the following rules and those instructions printed on the ballot in marking his ballots:

- (1) **How Ballots to Be Marked.** — In both primaries and elections, a voter may designate his choice of candidates by making a cross mark (X), a check mark, or some other clear indicative mark in the appropriate voting square or circle.
- (2) **No More Names to Be Marked Than Positions to Be Filled.** — In both primaries and elections, a voter should not mark more names for any office than there are positions to be filled by election.
- (3) **Stickers, Rubber Stamps, etc., Prohibited.** — A voter should not affix a sticker to a ballot, mark a ballot with a rubber stamp, attach

- anything to a ballot, wrap or fold anything in a ballot or do anything to a ballot except to mark it properly with a pencil or pen.
- (4) **Straight Ticket.** — In an election, but not a primary, if the voter desires to vote for all candidates of one political party (a straight ticket), he shall either:
 - a. Mark the party circle printed above the party column; or
 - b. Mark in the voting square at the left of the name of every candidate printed on the ballot in the party column for whom he desires to vote; or
 - c. Mark the party circle and also mark some or all names printed in that party column.
 - (5) **Split Ticket.** — In an election but not in a primary, if the voter desires to vote for candidates of more than one political party (a split ticket), he shall:
 - a. Omit marking in the party circle of any party and mark in the voting square opposite the name of each candidate of any party printed on the ballot for whom the voter wishes to vote.
 - b. If the voter should mark the party circle of one party, and also mark the voting square opposite the name of candidates of any other party, the ballot shall be counted as a straight ticket for all candidates of the party whose circle was marked and the individually marked candidates of any other party shall not be counted.
 - (6) **Write-In Votes.** —
 - a. In an election but not in a primary, if a voter desires to vote for a person whose name is not printed on the ballot, he shall write in the name of the person in the space immediately beneath the name of a candidate, if any, printed on the ballot for that particular office. The voter shall write the name himself unless he is entitled to assistance under G.S. 163-152, in which case the person giving assistance may write in the name at the request of the voter.
 - b. The voter should not write in a name of a person whose name appears as a candidate of a political party. If the voter writes in the name of a candidate printed on the ballot of any party, the write-in shall not be counted.
 - c. If the voter has marked the party circle of one political party, he may also write in the name of a person for whom he wishes to vote beneath the name of a candidate printed in the same column whose party circle he has marked.
 - d. If the voter has marked the party circle of one party, he should not write in the name of a person under the name of a candidate in any other party. In such case, the write-in shall not be counted, but the ballot shall be counted for all candidates of the party whose circle was marked.
 - e. No voter shall write the name of any person on a primary ballot. (1929, c. 164, ss. 21, 28; 1931, c. 254, s. 15; 1933, c. 165, s. 23; 1939, c. 116, s. 2; 1947, c. 505, s. 10; 1955, c. 812, s. 2; c. 1104, ss. 1-2½; 1957, cc. 344, 440, 589, 647, 737, 1383; 1959, cc. 105, 604, 610, 888; c. 1203, ss. 8, 9; 1961, c. 451; 1963, cc. 154, 167, 376, 389, 390, 567, 774; 1965, cc. 119, 154, 547, 727; c. 1117, s. 3; 1967, c. 775, s. 1; c. 1016; 1969, cc. 190, 917, 1253; 1971, c. 807; 1973, c. 793, s. 62; 1979, c. 802, s. 1.)

Local Modification to Former § 163-175.

— City of Washington: 1959, c. 847.

CASE NOTES

Constitutionality of Anti-Single Shot Law. — Selective and arbitrary application of the anti-single shot law formerly set forth in this section in some districts and not in others denied to the voters of North Carolina the equal protection of the laws and was unconstitutional, as the state showed no justification or even rationale for discriminating between voters of covered and exempted areas. Such an unexplained classification was inherently suspect and failed even the ordinary test of equal protection. *Dunston v. Scott*, 336 F. Supp. 206 (E.D.N.C. 1972).

The anti-single shot law formerly contained in this section denied to voters in North Carolina the equal protection of the laws, because it allowed voters to single shot vote in some areas of the state while prohibiting this manner of voting in others, and the state showed no justification for this discrimination.

Dunston v. Scott, 336 F. Supp. 206 (E.D.N.C. 1972).

Treatment of Amendments under Voting Rights Act. — Every amendment to the anti-single shot law formerly contained in this section, whether an addition or deletion, which affected any part of one or more of the 39 counties covered by the Voting Rights Act of 1965 should have been submitted to the Attorney General of the United States or been the subject of a declaratory judgment action as outlined by 42 U.S.C. § 1973c. *Dunston v. Scott*, 336 F. Supp. 206 (E.D.N.C. 1972).

Write-in provisions of this section are not available to candidate denied access to primary election ballot under § 163-107; nor are the provisions of §§ 163-96, 163-98 and 163-122. *Brown v. North Carolina State Bd. of Elections*, 394 F. Supp. 359 (W.D.N.C. 1975).

§ 163-152. Assistance to voters in primaries and general elections.

(a) In Primaries or General Election. —

(1) Who Is Entitled to Assistance: In a primary or general election, a registered voter qualified to vote in the primary or general election shall be entitled to assistance in getting to and from the voting booth and in preparing his ballots in accordance with the following rules:

- a. Any voter shall be entitled to assistance from a near relative of his choice.
- b. If no near relative of the voter's choice is present at the voting place, a voter in any of the following three categories shall be entitled to assistance from any voter of the precinct who has not given aid to another voter at the same primary or general election; or, if no such person be present at the voting place, from the registrar or one of the judges of election, or one of the assistants appointed pursuant to G.S. 163-42:
 1. One who, on account of physical disability, is unable to enter the voting booth without assistance;
 2. One who, on account of physical disability, is unable to mark his ballots without assistance;
 3. One who, on account of illiteracy, is unable to mark his ballots without assistance.

(2) Procedure for Obtaining Assistance: A person seeking assistance in a primary or general election shall, upon arriving at the voting place, first request the registrar to permit him to have assistance, stating his reasons. If the registrar determines that the voter is entitled to assistance, he shall ask the voter to point out and identify the near relative or other voter of the precinct he desires to help him and to whose assistance he is entitled under this section. The registrar shall thereupon direct the near relative or other voter indicated to render the requested aid. If no near relative or other voter of the voter's choice is present, the voter entitled to assistance may request and obtain aid from the registrar, one of the judges or one of the assistants appointed pursuant to G.S. 163-42, at the voter's choice. Under no circumstances

shall any precinct official be assigned to assist a voter who qualifies for assistance under this section, who was not specified by the voter.

(b) Repealed by Session Laws 1973, c. 793, s. 63.

(c) Conduct of Persons Rendering Assistance. — Anyone rendering assistance to a voter in a primary or general election or election under the provisions of this section shall be admitted to the voting booth with the person being assisted and shall be governed by the following rule:

- (1) He shall not in any manner seek to persuade or induce any voter to cast his vote in any particular way.
- (2) Except when going to or returning from a voting booth with a voter as authorized by this section, he shall remain within the voting place but shall not come within 10 feet of the voting enclosure.
- (3) Immediately after rendering assistance, he shall vacate the voting booth and withdraw to his place in the voting place outside the voting enclosure.
- (4) He shall not accompany the voter from the voting booth to the ballot box unless the voter requires and requests assistance on account of physical disability; if assistance is rendered in this way, he shall not converse with the voter prior to the time he deposits his ballots in the ballot boxes.
- (5) He shall not make or keep any memorandum of anything which occurs within the voting booth.
- (6) He shall not, directly or indirectly, reveal to any person how, in any particular, the assisted voter marked his ballots, unless he or they are called upon to testify in a judicial proceeding for a violation of the election laws.

(d) Meaning of "Near Relative". — As used in this section, the words "near relative" shall include the voter's husband, wife, brother, sister, parent, child, grandparent, and grandchild, but no other relative.

(e) Violation of Section. — It shall be unlawful for any person to give, receive, or permit assistance in the voting booth during any primary or general election or election to any voter otherwise than as is allowed by this section. (1929, c. 164, ss. 26, 27; 1933, c. 165, s. 24; 1939, c. 352, ss. 1, 2; 1953, c. 843; 1955, c. 800; 1957, c. 784, s. 6; 1959, c. 616, s. 1; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1973, c. 793, s. 63; 1977, c. 345, ss. 1, 2.)

Local Modification to Former §§ 163-172 and 163-173. — Brunswick: 1933, c. 164; 1935, c. 221; Cherokee: 1935, c. 461; 1937, c. 391; 1965, c. 737; 1967, c. 1000; Cumberland: 1937,

c. 426; Sampson: 1941, c. 166.

Local Modification to Former § 163-174. — Cumberland, Wilson: 1939, c. 402.

CASE NOTES

Violations. — It was a violation of former § 163-172 for a judge of elections to mark the ballots for voters without any request for assistance by the voters, or, in the event of a request for assistance, to fail to return the marked

ballot to the voter in order that the voter might see how it was marked before putting it in the ballot box. *Overton v. Mayor & City Comm'rs*, 253 N.C. 306, 116 S.E.2d 808 (1960).

§ 163-152.1. Assistance to blind voters in primaries and elections.

Any blind voter shall be permitted to select assistance of his own choosing in any primary or election without regard to residency within the voting precinct provided, such voter has recorded at the time of registration or prior to the date of the election, a certificate issued by the Department of Human

Resources, by an optometrist or by a physician, stating that the named individual should be entitled to assistance as a blind voter. Upon receipt of such certification the registrar or special registration commissioner shall enter on the voter's registration record the words "blind voter" so as to establish such fact and so as to entitle such voter to the same assistance in subsequent primaries and elections whether such voter resides in a county with full-time registration or regular registration. The certification presented to the precinct registrar or special registrar shall be forwarded to the chairman of the county board of elections to be filed as a permanent record with the voter's duplicate registration record as required by G.S. 163-65. (1969, c. 175; 1973, c. 476, s. 143.)

§ 163-153. Access to voting enclosure.

In all counties, only the following persons shall be allowed within the voting enclosure while the polls are open to voting:

- (1) Officers of election, that is, members of the State Board of Elections, members of the county board of elections, and the precinct registrar, precinct judges of election, and assistants appointed for the precinct under the provisions of G.S. 163-42.
- (2) Voters in the act of voting.
- (3) A near relative of a voter, but only while assisting the voter as authorized in G.S. 163-152.
- (4) Any voter of the precinct called upon to assist another voter, but only while assisting him as authorized in G.S. 163-152.
- (5) Municipal policemen assigned by the municipal authorities to keep the peace at a voting place located within the municipality, but only when requested to come within the voting enclosure by the registrar and judges for the purpose of preventing disorder; at the request of the registrar and judges, they shall withdraw from the voting enclosure and remain at least 10 feet from its entrance.
- (6) Any voter of the precinct while entering and explaining a challenge, and any voter of the county who has challenged a voter in that precinct if the challenge is heard at the polls under G.S. 163-87 and 163-88, while entering and explaining a challenge.
- (7) Observers appointed under the provisions of G.S. 163-45. (1929, c. 164, s. 24; 1955, c. 871, s. 7; 1967, c. 775, s. 1; 1969, c. 1280, s. 1; 1973, c. 793, ss. 64, 94; 1979, c. 357, s. 5.)

Local Modification to Former § 163-170.

— Cumberland: 1937, c. 426.

§ 163-154: Repealed by Session Laws 1981, c. 559.

§ 163-155. Aged and disabled persons allowed to vote outside voting enclosure.

In any primary or election any qualified voter who is able to travel to the voting place, but because of age, or physical disability and physical barriers encountered at the voting place is unable to enter the voting place or enclosure to vote in person without physical assistance, shall be allowed to vote between the hours of 7:00 A.M. and 6:00 P.M. only either in the vehicle conveying such person to the voting place or in the immediate proximity of the voting place under the following restrictions:

- (1) The county board of elections shall have printed and numbered a sufficient supply of affidavits to be distributed to each precinct registrar which shall be in the following form:

"Affidavit of person voting outside voting place or enclosure.
State of North Carolina
County of
I do solemnly swear (or affirm) that I am a registered voter in ...
..... precinct. That because
of age or physical disability I am unable to enter the voting place to
vote in person without physical assistance. That I desire to vote
outside the voting place and enclosure.
I understand that a false statement as to my condition will subject
me to a fine not to exceed five hundred dollars (\$500.00) or imprison-
ment not to exceed six months, or both.
.....
Date Signature of Voter
.....
Address
.....
Signature of assistant who
administered oath."

- (2) The registrar shall designate one of the assistants, appointed under G.S. 163-42 to attend the voter. Upon arrival outside the voting place, the voter shall execute the affidavit after being sworn by the assistant. The ballots shall then be delivered to the voter who shall mark the ballots and hand them to the assistant. The ballots shall then be delivered to one of the judges of elections who shall deposit the ballots in the proper boxes. The affidavit shall be delivered to the other judge of election.
- (3) The voter shall be entitled to the same assistance in marking the ballots as is authorized by G.S. 163-152.
- (4) The affidavit executed by the voter shall be retained by the county board of elections for a period of six months. In those precincts using voting machines, the county board of elections shall furnish paper ballots of each kind for use by persons authorized to vote outside the voting place by this section.
- (5) If there is no assistant appointed under G.S. 163-42 to perform the duties required by this section, the precinct registrar or one of the precinct judges, to be designated by the voter, if he chooses, or, if he does not, by the precinct registrar, shall perform those duties.

A violation of this section shall be a misdemeanor and upon conviction punished by a fine not to exceed five hundred dollars (\$500.00) or imprisonment not to exceed six months, or both, in the discretion of the court. (1971, c. 746, s. 1; 1973, c. 793, s. 65; 1979, c. 425, s. 1.)

§§ 163-156 to 163-159: Reserved for future codification purposes.

ARTICLE 14.

Voting Machines.

§ 163-160. Voting machines; approval; rules and regulations.

The State Board of Elections shall have authority to approve types and kinds of voting machines for use in primaries and elections held in this State. The use of voting machines which have been approved by the State Board of Elections in any primary or election held in any county or municipality shall be as valid as the use of paper ballots by the voters.

The State Board of Elections shall prescribe rules and regulations for the adoption, handling, operation, and honest use of voting machines, including, but not limited to, rules and regulations governing:

- (1) Types of voting machines approved for use in this State;
- (2) Form of ballot labels to be used on voting machines;
- (3) Operation of and manner of voting on voting machines;
- (4) Instruction of precinct election officials in the use of voting machines;
- (5) Instruction of voters in the use of voting machines;
- (6) Assistance to voters using voting machines;
- (7) Duties of custodians of voting machines;
- (8) Examination of voting machines before use in a primary election; and
- (9) Use of paper ballots where voting machines are used as set out in G.S. 163-162. (1949, c. 301; 1953, c. 1001; 1955, c. 1066, s. 1; 1967, c. 775, s. 1; 1975, c. 149, s. 3.)

Local Modification to Former
§ 163-187.4. — Forsyth: 1965, c. 732, s. 1.

§ 163-161. Adoption of voting machines by county or municipality.

(a) Discretionary Authority. — In whatever manner and upon whatever terms the board of county commissioners deems to be in the best interest of the county, it may adopt and purchase or lease voting machines of a type approved by the State Board of Elections for use in some or all voting places in the county at some or all primaries and elections. Specifically, the board may purchase voting machines upon an installment basis or otherwise, or it may lease voting machines with or without an option to purchase.

The governing body of any municipality shall have the same authority with respect to the acquisition and use of voting machines for municipal primaries and elections.

In addition, the governing body of any municipality and the board of commissioners of the county in which the municipality is situated shall have authority, jointly, upon such terms as they may agree to, to adopt and purchase or lease voting machines for use in some or all voting places of the county and municipality at some or all primaries and elections held in the two units of government.

Before adopting or acquiring voting machines under the authority of this subsection, the commissioners of the county, or the governing body of the municipality, or both jointly, may, at their discretion, submit to the voters of the county, or the municipality, or of both units, the question of whether voting machines should be adopted for use in primaries and elections in the unit or units. The question may be submitted at any general election or special election ordered to be held for some purpose other than the submission of this issue. The results of the referendum authorized under this subsection shall be advisory only and shall not bind the governing body submitting the question.

(b) Referendum Discretionary Upon Petition. — Upon receipt of a written petition signed by at least 500 registered voters of the county or municipality, the board of county commissioners or municipal governing body may submit to the voters of the county or municipality the question of adopting voting machines for use in all voting places of the county or municipality at all primaries and elections held in the unit. In such a case, each person signing the petition shall write the name or number of his precinct after his name.

The question may be submitted at any general election or special election ordered or held for some purpose other than the submission of this issue. If a majority of the voters casting ballots in the referendum approve the adoption

of voting machines, the board of county commissioners or the governing body of the municipality may adopt for use in primaries and elections in the unit voting machines of a type or kind approved by the State Board of Elections.

(c) Care and Custody of Voting Machines. — When the unit governing body has decided to adopt and purchase voting machines under the provisions of subsection (a) of this section, or when the adoption of voting machines has been approved in a referendum conducted under the provisions of subsection (b) of this section, the board of county commissioners or municipal governing body shall, as soon as practical, provide for each voting place in the unit one or more approved voting machines in complete working order. If it is impractical to furnish each voting place with voting machines, those obtained may be placed in voting places chosen, in the case of a county, by the county board of elections, and in the case of a municipality, by the governing body.

The county board of elections or the municipal governing body shall appoint as many voting machine custodians as may be necessary for the proper preparation of the machines for each primary and election and for their maintenance, storage, and care. (1949, c. 301; 1953, c. 1001; 1955, c. 1066, s. 1; 1967, c. 775, s. 1.)

§ 163-162. Use of paper ballots where voting machines used.

In counties in which voting machines are used in some or all precincts the county board of elections shall have authority to furnish paper ballots of each kind to precincts using voting machines for use by:

- (1) Persons required to sign their ballots under the provisions of G.S. 163-150(e) and 163-155, and
- (2) Persons who wish to write in names of candidates who are not on the ballot, if it is not practical to use voting machines to record write-in votes in particular precincts because of the horizontal or vertical printing limitations of G.S. 163-137, provided the county board of elections has been issued written approval from the State Board of Elections. (1967, c. 775, s. 1; 1973, c. 793, s. 66; 1975, c. 149, s. 2; 1981, c. 630.)

Effect of Amendments. — The 1981 amendment added the proviso at the end of subdivision (2).

§ 163-162.1: Expired.

Editor's Note. — This section, which was enacted by Session Laws 1979, 2nd Sess., c. 1325, expired by its own terms January 1, 1981.

§§ 163-163 to 163-167: Reserved for future codification purposes.

ARTICLE 15.

Counting Ballots, Canvassing Votes, and Certifying Results in Precinct and County.

§ 163-168. Proceedings when polls are closed.

At the time set by G.S. 163-2 for closing the polls on the day of a primary, general or special election, the precinct registrar shall announce that the polls are closed, but any qualified voters who are then in the process of voting or who are in line at the voting place waiting to vote, whether or not they are within the voting enclosure or voting place boundaries, shall be allowed to vote.

At closing time, the registrar, or a judge designated by the registrar, shall enter into the pollbook, on a separate page labeled "Persons Waiting to Vote at Closing Time in the Primary Election Held the Day of, 19.," the names of all persons then in line at the voting place waiting to vote, beginning with the person last in line and proceeding to the person first in line at closing time. No persons shall be allowed to vote after closing time unless their names are so listed. (1933, c. 165, s. 8; 1955, c. 891; 1961, c. 487; 1967, c. 775, s. 1; 1973, c. 793, s. 67.)

§ 163-169. Counting ballots at precincts; unofficial report of precinct vote to county board of elections.

(a) Instructions. — Before each primary and election, the chairman of the county board of elections shall furnish each registrar written instructions on how ballots shall be marked and counted. Before starting the counting of ballots in his precinct, the registrar shall instruct all of the judges, assistants, and ballot counters in how differently marked ballots shall be counted and tallied.

(b) General Rule. — Only official ballots shall be voted and counted. No official ballot shall be rejected because of technical errors in marking it, unless it is impossible to determine the voter's choice under the rules for counting ballots. Such determination shall be made by the county board of elections if the registrar and judges are unable to determine the voter's choice, or whether a particular ballot should be counted.

(c) Right to Witness Precinct Count. — The counting of the ballots in each box shall be made in the presence of the precinct election officials and witnesses and observers who are present and desire to observe the count. Observers shall not interfere with the orderly counting of the ballots.

(d) Counting to Be Continuous; Precinct Officials Not to Separate. — As soon as the polls are closed the registrar and judges shall, without adjournment or postponement, open the ballot boxes and count the ballots. The counting of ballots at the precinct shall be continuous until completed. More than one box may be counted at the same time by the precinct officials, assistants, and ballot counters, but the registrar and judges shall supervise the counting of all boxes and shall be responsible for them. From the time the first ballot box is opened and the count of votes begun until the votes are counted and the statement of returns made out, signed, certified as required by G.S. 163-173, and delivered to the registrar or judge chosen to deliver them to the county board of elections, the precinct registrar and judges shall not separate, nor shall any one of them leave the voting place except for unavoidable necessity.

(e) **Counting Primary Ballots.** — In a primary election only one ballot shall be removed from the ballot box at a time, and it shall be opened in full view of the precinct election officials and witnesses present. The name of each candidate voted for shall be read aloud distinctly, and the vote received by each candidate shall be tallied on the tally sheet. This procedure shall be followed for all ballot boxes being counted at the same time.

(f) **Counting General Election Ballots.** — In a general election the contents of a ballot box may be emptied upon a table and the ballots divided into two piles:

- (1) All those ballots marked in the circle of one political party to indicate a vote for all of the candidates of that party, that is, "straight tickets," which shall be so counted and tallied.
- (2) All those ballots marked for candidates of more than one political party, that is, "split tickets," which shall be called and tallied in the manner prescribed for counting primary ballots in subsection (e) of this section.

(g) **Questioned Ballots.** — All questions arising with respect to how a ballot shall be counted or tallied shall be referred to the registrar and judges of election for determination before the completion of the counting of the ballots in the box from which the questioned ballot was taken.

(h) **Unofficial Report of Precinct Returns.** — On the night of the primary or election, as soon as the votes have been counted and the precinct returns certified, the registrar, or one of the judges selected by the registrar, shall report the total precinct vote for each candidate, constitutional amendment, and proposition by telephone or otherwise to the county board of elections. This report shall be unofficial and shall have no binding effect upon the official county canvass to follow. As soon as the precinct reports are received, the chairman, secretary, or clerk to the county board of elections shall publish the reports to the press, radio, and television. The costs incurred in executing the provisions of this subsection shall be charged to the operating expense of the county board of elections.

(i) **Absentee Ballots.** — Absentee ballots shall be deposited and voted in accordance with the provisions of G.S. 163-234; they shall be counted and tabulated as provided in this section and G.S. 163-170.

(j) **Repealed by Session Laws 1977, c. 265, s. 12. (1933, c. 165, s. 8; 1953, c. 843; 1955, cc. 800, 891; 1961, c. 487; 1963, c. 303, s. 1; 1965, c. 871; 1967, c. 775, s. 1; 1973, c. 793, s. 94; 1977, c. 265, s. 12; 1979, c. 802, s. 2.)**

CASE NOTES

Counting by Persons Other than Officers of Election. — While it is irregular to permit persons other than the officers of election to count the ballots, yet, unless it appears affirmatively that the count was not correct, that fact

will not be allowed to vitiate the election, especially when the judges accepted and certified the result thus ascertained as true. *State v. Calvert*, 98 N.C. 580, 4 S.E. 127 (1887).

§ 163-170. Rules for counting ballots.

Only official ballots shall be voted and counted. No official ballot shall be rejected because of technical errors in marking it unless it is impossible to determine the voter's choice. In applying the general rule, all election officials shall be governed by the following rules:

- (1) **When Impossible to Determine Voter's Choice for Office.** — If for any reason it is impossible to determine a voter's choice for an office, the ballot shall not be counted for that office but shall be counted for all other offices.

- (2) When Ballot Marked for More Names Than There are Positions to Be Filled. — If a ballot is marked for more names than there are positions to be filled, it shall not be counted for that office but shall be counted for all other offices.
- (3) When Ballot Defaced or Torn. — If a ballot has been defaced or torn by a voter so that it is impossible to determine the voter's choice for one or more offices, it shall not be counted for such offices but shall be counted for all offices for which the voter's choice can be determined.
- (4) When Voter Has Affixed Sticker, etc., or Otherwise Improperly Treated Property Marked Ballot. — If a voter has properly marked the voting square with pen or pencil, and also has affixed a sticker to a ballot, or marked a ballot with a rubber stamp, attached anything to a ballot, wrapped or folded anything in a ballot, or done anything to a ballot other than mark it properly with pen or pencil, it shall be counted unless such action by the voter makes it impossible to determine the voter's choice.
- (5) Write-In Votes. — If a name has been written in on an official general election ballot as provided in G.S. 163-151, it shall be counted in accordance with the following rules:
 - a. The name written in shall not be counted unless written in by the voter or a person authorized to assist the voter pursuant to G.S. 163-152.
 - b. The name shall be written in immediately below the name of a candidate for a particular office, if any, and shall be counted as a vote for the person whose name has been written in for that office. If the voter has made a mark to the left of the name written in, or checked in the party circle or the square beside the name of a candidate below whose name the write-in appears, or if the voter strikes out, marks through or crosses out the name printed above the write-in, such action by the voter shall not serve to invalidate the ballot or the vote for the person whose name was written in for that particular office.
 - c. If the person whose name was written in appears as a candidate of a political party for any office, the write-in shall be ignored and the ballot shall be counted as though no write-in appeared for such office.
 - d. Marking Party Circle and Write-Ins. —
 1. If the voter marks the party circle above the column in which he has entered the write-in, his ballot shall be counted as a vote for the person whose name has been written in, and for all other candidates of the party in whose circle he has marked, except the candidate beneath whose printed name the write-in appears.
 2. If the voter has marked the party circle at the top of the column of a political party, and has made a write-in under the name of a candidate printed in a column of a different political party, the write-in shall not be counted, and the ballot shall be counted as a vote for all candidates of the party in whose circle he has marked.
- (6) Split Ticket. —
 - a. If the voter has marked the party circle of one party and also marked the voting square of individual candidates of another party, the ballot shall be counted as a straight ballot and counted as a vote for every candidate for the party whose circle has been marked.
 - b. If the voter votes a split ticket by omitting to mark the party circle and marks the voting square opposite the name of candidates for

whom he desires to vote in different party columns, the ballot shall be counted as a vote for each candidate marked in a different party column.

- (7) Voting a Straight Ticket. — If a voter desires to vote for all candidates of one political party, a straight ticket, he shall either:
- Mark the party circle printed at the top of the party column; or
 - Mark the voting squares at the left of the name of every candidate of the same party printed on the ballot; or
 - Mark the party circle and also mark some or all names printed in that party column.

In either case, the ballot shall be counted as a straight ticket and counted as a vote for every candidate whose name is printed in the party column. (1929, c. 164, s. 28; 1931, c. 254, s. 15; 1933, c. 165, ss. 8, 23; 1939, c. 116, s. 2; 1947, c. 505, s. 10; 1955, c. 812, s. 2; c. 891; c. 1104, ss. 1-2½; 1957, cc. 344, 440, 589, 647, 737, 1383; 1959, cc. 105, 604, 610, 888; c. 1203, s. 9; 1961, cc. 451, 487; 1963, cc. 154, 167, 376, 389, 390, 567, 774; 1965, cc. 119, 154, 547, 727; c. 1117, s. 3; 1967, c. 775, s. 1; 1973, c. 793, s. 68; 1979, c. 802, s. 3.)

CASE NOTES

Evidence as to Which of Two Candidates with Same Name Intended. — If there are two candidates for different offices who have the same name, and a ticket is found in the ballot box having that name and no other on it, it may be proved by extrinsic evidence for which of the candidates it was given. *Wilson v. Peterson*, 69 N.C. 113 (1873).

Ballots Held Improperly Rejected. — The statute does not contemplate throwing out the whole ballot for voting one ticket for too many candidates. Hence, a ballot for one claiming the office of register of deeds, which was thrown out because it contained two unmarked names,

instead of one, for the office of recorder of the county, was improperly rejected as a vote for register, since the elector's choice for such office was properly indicated. *Bray v. Baxter*, 171 N.C. 6, 86 S.E. 163 (1915).

A ballot the only defect of which was that it contained unmarked names of four persons for the office of county commissioner, while only three commissioners were to be elected, was improperly rejected. *Bray v. Baxter*, 171 N.C. 6, 86 S.E. 163 (1915).

Applied in *In re Cleveland County Comm'rs*, 56 N.C. App. 187, 287 S.E.2d 451 (1982).

§ 163-171. Preservation of ballots; locking and sealing ballot boxes; signing certificates.

When the precinct count is completed after a primary or election, all ballots shall be put back in the ballot boxes from which they were taken, and the registrar and judges shall promptly lock and place a seal around the top of each ballot box, so that no ballot may be taken from or put in it. The registrar and judges shall then sign the seal on each ballot box. In the alternative, the county board of elections may permit the precinct officials to put the counted ballots back in one ballot box or more to facilitate safekeeping provided the board prescribes an appropriate procedure to keep the different kinds of ballots separated in bundles or bags within the box.

Ballot boxes in which ballots have been placed and which have been locked and sealed as required by the preceding paragraph shall remain in the safe custody of the registrar, subject to the orders of the chairman of the county board of elections as to their disposition. No ballot box shall be opened except upon the written order of the county board of elections or upon a proper order of court.

Ballots cast in a primary or general election shall be preserved for at least two months after the primary or general election in which voted.

On each precinct return form there shall be printed a statement to be signed by the registrar and judges certifying that, after the precinct count was completed, each ballot box was properly locked, sealed, and the seals signed, as prescribed in this section, before the precinct officials left the voting place on the night of the primary or election.

Willful failure to securely lock, seal, and sign the seal on each ballot box on the night of any primary or election, and willful failure to sign the certificate on the duplicate return forms certifying that this was done, shall constitute a misdemeanor. (1915, c. 101, s. 21; 1917, c. 179, s. 1; c. 218; C. S., s. 6041; 1923, c. 111, s. 15; 1959, c. 1203, s. 2; 1967, c. 775, s. 1; 1981, c. 124.)

Effect of Amendments. — The 1981 amendment added the third sentence in the first paragraph.

§ 163-172. State Board of Elections to prepare and distribute abstract forms; printing by counties.

The State Board of Elections shall prepare and print appropriate abstract of returns forms and, at least 30 days before the time for holding any primary or election, send copies of them to the chairman of the county board of elections and clerk of superior court of each county. At the same time, the State Board of Elections shall furnish directions for completing, certifying, signing, and transmitting abstracts of returns to the State Board of Elections and Secretary of State as required by this Chapter after each primary and election.

Provided, that the State Board of Elections, in its discretion, may direct some or all counties to print the abstracts and precinct return forms as designed by the State Board and required for any primary or election. If the State Board prints and distributes the abstracts and precinct return forms required for any primary or election, at the expense of the State, the State Board shall have the authority to negotiate for the abstracts and precinct return forms to be printed and distributed on a regional or centralized basis, and the State Board shall be exempt from securing competitive bids for printing and distribution. (1967, c. 775, s. 1; 1975, c. 844, s. 6.)

§ 163-173. How precinct returns are to be made.

In each precinct, when the results of the counting of the ballots have been ascertained they shall be recorded in original and duplicate statements to be prepared, signed, and certified to by the registrar and judges on forms provided by the county board of elections.

One of the statements of the voting in the precincts shall be placed in a sealed envelope and delivered to the registrar or a judge selected by the precinct officials for the purpose of delivery to the county board of elections for review at its meeting on the second day after the primary or election. The other copy of the statement shall either be mailed immediately or delivered in person immediately, as directed by the county board of elections, by one of the other two precinct election officials, to the chairman of the county board of elections or the supervisor of elections if authorized by the chairman to receive the statement.

Any registrar or judge appointed to deliver the certified precinct returns who shall fail to deliver them to the county board of elections by 12:00 noon, on the day the board meets to canvass the returns shall be guilty of a misdemeanor, unless the failure resulted from illness or other good cause. (1933, c. 165, s. 8; 1967, c. 775, s. 1; 1981, c. 153.)

Effect of Amendments. — The 1981 amendment, inserted "for review" near the end of the first sentence of the second paragraph, inserted "either" near the beginning of the second sentence of the second paragraph, inserted "or delivered in person immediately, as directed by the county board of elections, by one of the other

two precinct election officials" in the second sentence of the second paragraph, and substituted "or the supervisor of elections if authorized by the chairman to receive the statement" for "by one of the other two precinct election officials" in that same sentence.

CASE NOTES

As to admissibility of returns as substantive evidence, see *State v. Ponder*, 234 N.C. 294, 67 S.E.2d 292 (1951).

§ 163-174. Registration and pollbooks to be returned to chairman of county board of elections.

On the day preceding the county canvass or on the day of the county canvass, following each primary and election, as may be directed by the chairman of the county board of elections, the registrar (or judge appointed to bring in the precinct returns) shall deliver the precinct registration book or records and the pollbook to the chairman of the county board of elections at the time directed by the chairman. (1933, c. 165, s. 8; 1967, c. 775, s. 1; 1981, c. 152.)

Effect of Amendments. — The 1981 amendment, added "On the day preceding the county canvass or" at the beginning of the section, inserted "as may be directed by the chairman of

the county board of elections," near the middle of the section, and added "at the time directed by the chairman" at the end of the section.

§ 163-175. County board of elections to canvass returns.

On the second day (Sunday excepted) next after every primary and election, the county board of elections shall meet at 11:00 A.M. at the county courthouse to canvass the votes cast in the county and prepare the county abstracts. If the returns from any precinct have not been received by the county board by 12:00 noon on that day, or if the returns of any precinct are incomplete or defective, the board shall have authority to dispatch a peace officer to the residences of the election officials of the delinquent precinct for the purpose of securing proper returns for that precinct.

In the presence of such persons as choose to attend, the members of the county board of elections shall open the precinct returns, canvass and judicially determine the results of the voting in the county, and prepare and sign duplicate abstracts showing:

- (1) In a primary, the total number of votes cast in each precinct and in the county for each candidate of each political party for each office.
- (2) In an election, the number of legal votes cast in [each] precinct for each candidate, the name of each person voted for, the political party with which he is affiliated, and the total number of votes cast in the county for each person for each different office.

In complying with the provisions of this section, the county board of elections shall have power and authority to pass judicially upon all facts relative to the primary or election, to make or order such recounts as it deems necessary, and to determine judicially the result of the primary or election. Provided, however, that where a petitioner has been denied a recount upon a verbal or written order of the State Board of Elections pursuant to regulations of the State Board, the county board of elections shall not make or order a further recount. The

board shall also have power to send for papers and persons and to examine them and to pass upon the legality of any disputed ballots transmitted to it by any precinct election official.

When, on account of errors in tabulating returns and filling out abstracts, the result of a primary or election in any one or more precincts cannot be accurately known, the county board of elections shall be allowed access to the ballot boxes in such precincts to make or order a recount and to declare the result. (1915, c. 101, s. 27; 1917, c. 218; C. S., s. 6048; 1933, c. 165, s. 8; 1957, c. 1263; 1966, Ex. Sess., c. 5, s. 4; 1967, c. 775, s. 1; 1977, c. 265, s. 13; 1981, c. 304.)

Local Modification to Former § 163-143. — Brunswick: 1951, c. 462; Halifax: 1951, c. 462.

Effect of Amendments. — The 1981 amendment, substituted "to canvass" for "for the purpose of canvassing" and "prepare" for "preparing" in the first sentence of the first paragraph, substituted "pass judicially" for "judicially pass" and "determine judicially" for "judicially determine" in the first sentence of

the third paragraph, and added the second sentence in the third paragraph. The amendment also, apparently through inadvertence, dropped the word "each" preceding "precinct" near the beginning of subdivision (2) of the second paragraph; the word has been inserted in brackets by the editor.

Legal Periodicals. — For comment on election contests in North Carolina, see 55 N.C.L. Rev. 1228 (1977).

CASE NOTES

Judicial Powers of County Board. — The county board of canvassers (now the county board of elections) is vested with statutory authority to pass judicially upon all facts relative to the election and to determine judicially and declare the results, and the courts will not interfere with the exercise of this discretion, except in an action to try title to the office by quo warranto. *Britt v. Board of Canvassers*, 172 N.C. 797, 90 S.E. 1005 (1916).

Canvass of Primary and Election Returns for County Offices by County Board. — A county board of elections is the proper agency to canvass the returns in a primary for the selection of party nominees for county offices, as well as in a general election to fill such offices. *Ponder v. Joslin*, 262 N.C. 496, 138 S.E.2d 143 (1964).

Authority to Conduct Recount in Primary Election. — Where a candidate in a primary election, prior to the time fixed for the county board of elections to canvass the returns, suggested errors in tabulating ballots in certain precincts because persons not legally qualified acted as counters and tabulators, but made no assertion that any person voted who was not entitled to vote or that any qualified elector was prevented from voting, and filed a written request for recount, the county board had the authority, in the exercise of its judgment and discretion in good faith, to order and conduct a recount of the ballots cast and to certify the candidate having the majority of the votes as ascertained by such recount as the nominee of the party, notwithstanding that the returns of the precinct officials were regular upon their

face. *Strickland v. Hill*, 253 N.C. 198, 116 S.E.2d 463 (1960).

Access to Ballot Boxes. — Former § 163-143, similar to the last paragraph of this section, applied only "when, on account of errors in tabulating returns or filling out blanks," the result of the election could not be accurately known, and conferred no authority on the courts to investigate and pass upon the methods or manner in which the primary might have been conducted. *Brown v. Costen*, 176 N.C. 63, 96 S.E. 659 (1918).

Returns made by the precinct officials constitute only a preliminary step in ascertaining the results of an election, and such returns must be canvassed and declared by the board of canvassers (now the board of elections) as an essential part of the election machinery. *State v. Proctor*, 221 N.C. 161, 19 S.E.2d 234 (1942).

Correction of Tabulations by Registrar and Judges of Election. — In a primary for county officers, the registrar and judges of election may correct their tabulation of the results to the county board of elections before the latter has judicially determined the results, as the duties of the latter board are continuous, and such powers are not functus officio until they have finally determined the results of the election. *Bell v. County Bd. of Elections*, 188 N.C. 311, 124 S.E. 311 (1924).

Supplementary Returns after Adjournments of Registrar and Judges. — Additional or supplemental returns made up by the county board of canvassers (now the county board of elections) after the registrar and poll

holders (now the registrar and judges) had fully performed their duties and adjourned, and without calling them together for reconsideration as a body, should not be given effect by the courts. *Britt v. Board of Canvassers*, 172 N.C. 797, 90 S.E. 1005 (1916).

Result as Declared by Board Prima Facie Correct. — In proceedings in the nature of a quo warranto to determine the respective rights of the parties contesting for an office, the result of the election, as declared by the county board of canvassers (now the county board of elections), must be taken as prima facie correct. *State ex rel. Robertson v. Jackson*, 183 N.C. 695, 110 S.E. 593 (1922).

The finding by the board of canvassers (now the county board of elections) as to the number of votes received by a contestant in an election is prima facie correct. *State ex rel. Jones v. Flynt*, 159 N.C. 87, 74 S.E. 817 (1912).

There is a final and conclusive presumption in favor of the correctness of the result of an election, as declared by the proper officials, until the issues raised by the pleadings have been tried and disposed of before the jury. *Wallace v. Salisbury*, 147 N.C. 58, 60 S.E. 713 (1908).

Decisions of Board Subject to Collateral Attack. — The decisions or judgments of the county board of canvassers (now the county board of elections) are not of such conclusiveness or finality as to exclude collateral attack, and the use of the word "judicially" in the statute does not affect the construction. *State ex rel. Barnett v. Midgett*, 151 N.C. 1, 65 S.E. 441 (1909).

Quo Warranto as Remedy to Determine Correctness of Election Result. — The

correctness of the result of the election of a clerk of the superior court, determined and declared by the county board of canvassers (now the county board of elections), can be investigated, passed upon and determined in a civil action in the nature of a quo warranto, and such is the proper remedy. *State ex rel. Barnett v. Midgett*, 151 N.C. 1, 65 S.E. 441 (1909).

Jurisdiction of Superior Court in Quo Warranto. — The act of the county canvassers (now the county board of elections) in declaring the result of an election to public office cannot have the effect of ousting the jurisdiction of the superior court in quo warranto or information in the nature thereof. *Harkrader v. Lawrence*, 190 N.C. 441, 130 S.E. 35 (1925).

As to use of mandamus to reconvene board to require board to complete its labors, see *Britt v. Board of Canvassers*, 172 N.C. 797, 90 S.E. 1005 (1916).

Mandamus by Candidate. — Where county board of elections has assumed to pass upon the qualifications of the electors voting in a primary for the selection of a party candidate for a county office, and in so doing has declared certain of the electors disqualified and has accordingly changed its returns and declared the one appearing to have received a smaller vote as the choice of the party as a candidate, an action will lie by the one appearing to have received the larger vote against the county board, to compel them, by mandamus, to tabulate the returns made by the registrars and judges of the precinct, and then to publish and declare the same as the result of the election. *Rowland v. Board of Elections*, 184 N.C. 78, 113 S.E. 629 (1922).

§ 163-176. Preparation of original abstracts; where filed.

When the county canvass has been completed, the county board of elections shall record the results determined in accordance with G.S. 163-175 on duplicate abstract forms furnished by the State Board of Elections.

Each abstract shall be prepared to show the total number of votes cast for each constitutional amendment and proposition and for each candidate of each political party for each office in each precinct and in the entire county.

When the original and two duplicate abstracts have been prepared, the members of the county board of elections shall sign an affidavit on each, stating that it is true and correct.

Each of the original abstracts, together with the original precinct returns, shall be filed by the county board of elections with the clerk of superior court to be recorded in the permanent file in his office. (1933, c. 165, s. 8; 1967, c. 775, s. 1; 1969, c. 971, s. 1.)

CASE NOTES

As to admissibility of abstract as substantive evidence, see *State v. Ponder*, 234 N.C. 294, 67 S.E.2d 292 (1951).

§ 163-177. Disposition of duplicate abstracts.

Within six hours after the returns of a primary or election have been canvassed and the results judicially determined, the chairman of the county board of elections shall mail, or otherwise deliver, to the State Board of Elections the duplicate-original abstracts prepared in accordance with G.S. 163-176 for all offices and referenda for which the State Board of Elections is required to canvass the votes and declare the results including:

President and Vice-President of the United States

Governor, Lieutenant Governor, and all other State executive officers

United States Senators

Members of the House of Representatives of the United States Congress

Justices, Judges, and District Attorneys of the General Court of Justice

State Senators in multi-county senatorial districts

Members of the State House of Representatives in multi-county representative districts

Constitutional amendments and propositions submitted to the voters of the State.

One duplicate abstract prepared in accordance with G.S. 163-176 for all offices and referenda for which the county board of elections is required to canvass the votes and declare the results (and which are listed below) shall be retained by the county board, which shall forthwith publish and declare the results; the second duplicate abstract shall be mailed to the chairman of the State Board of Elections, to the end that there be one set of all primary and election returns available at the seat of government.

All county offices

State Senators in single-county senatorial districts

Members of the State House of Representatives in single-county representative districts

Propositions submitted to the voters of one county.

If the chairman of the county board of elections fails or neglects to transmit duplicate abstracts to the chairman of the State Board of Elections within the time prescribed in this section, he shall be guilty of a misdemeanor and subject to a fine of one thousand dollars (\$1,000): Provided, that the penalty shall not apply if the chairman was prevented from performing the prescribed duty because of sickness or other unavoidable delay, but the burden of proof shall be on the chairman to show that his failure to perform was due to sickness or unavoidable delay. (1933, c. 165, s. 8; 1966, Ex. Sess., c. 5, s. 3; 1967, c. 775, s. 1; 1969, c. 44, s. 86; c. 971, s. 2; 1973, c. 47, s. 2; c. 793, s. 69; 1975, c. 844, s. 7; 1977, c. 265, s. 14.)

§ 163-177.1. Responsibility of chairman.

The chairman of the county board of elections shall be responsible for prompt delivery of the abstracts required in G.S. 163-177 to the State Board of Elections. If the chairman of the county board of elections is notified by the State Board, by telephone or otherwise, that the abstracts from his county have not been received and therefore the State canvass cannot proceed, then the chairman of the county board shall deliver immediately, or have delivered, the office copy of all abstracts due.

The North Carolina State Highway Patrol, in cooperation with the State Board of Elections and county boards of elections, may, upon request, be responsible for the delivery of the abstracts from each county to the office of the State Board of Elections. (1975, c. 844, s. 8.)

§ 163-178: Repealed by Session Laws 1981, c. 564, s. 1, effective July 1, 1981.

§ 163-179. Who declared elected by county board.

In a general election, the person having the greatest number of legal votes for a county office or for membership in one of the houses of the General Assembly in a representative or senatorial district composed of only one county shall be declared elected by the county board of elections. If two or more candidates for a county office, having the greatest number of votes, shall have an equal number, the county board of elections shall determine by lot which shall be elected. If two or more candidates for membership in one of the houses of the General Assembly in a representative or senatorial district composed of only one county, having the greatest number of votes, shall have an equal number, the determination of which of the candidates is elected shall be governed by the provisions of G.S. 163-191. (1933, c. 165, s. 8; 1957, c. 1263; 1966, Ex. Sess., c. 5, s. 4; 1967, c. 775, s. 1; 1973, c. 793, s. 70.)

§ 163-180. Chairman of county board of elections to furnish certificate of election.

Not earlier than five days nor later than 10 days after the results of an election have been officially determined and published in accordance with G.S. 163-175 and G.S. 163-179, the chairman of the county board of elections shall furnish to each of the following persons appropriate certificates of election under his hand and seal: County officers and persons elected to membership in the General Assembly in representative and senatorial districts composed of only one county. He shall also immediately notify all persons elected to county offices to meet at the courthouse on the first Monday in the ensuing December to be qualified.

In issuing certificates of election under this section, the chairman of the county board of elections shall be restricted by the provisions of G.S. 163-181. (1933, c. 165, s. 8; 1947, c. 505, s. 4; 1955, c. 871, s. 5; 1959, c. 1203, s. 3; 1966, Ex. Sess., c. 5, s. 5; 1967, c. 775, s. 1; 1977, c. 265, s. 15.)

CASE NOTES

Conclusiveness of Adjudication of Board and Certificate of Election. — The adjudication of the board and the resultant certificate of election constitute conclusive evidence of the

certificate holder's right to the office in every proceeding except a direct proceeding under § 1-514 et seq. to try the title to the office. *State v. Ponder*, 234 N.C. 294, 67 S.E.2d 292 (1951).

§ 163-181. When election contest stays certification of election.

If an election contest is properly pending before a county or city board of elections or before the State Board of Elections on appeal or otherwise, after a primary or election, the chairman of the county or city board of elections shall not issue a certification of election or certify a nominee for the office in

controversy until the contest has been finally decided by the appropriate board of elections or by the court in the event the decision of the State Board of Elections is on appeal. (1933, c. 165, s. 8; 1947, c. 505, s. 4; 1955, c. 871, s. 5; 1959, c. 1203, s. 3; 1966, Ex. Sess., c. 5, s. 5; 1967, c. 775, s. 1; 1975, c. 844, s. 9; 1977, c. 661, s. 4.)

Legal Periodicals. — For comment on election contests in North Carolina, see 55 N.C.L. Rev. 1228 (1977).

§§ 163-182 to 163-186: Reserved for future codification purposes.

ARTICLE 16.

Canvass of Returns for Higher Offices and Preparation of State Abstracts.

§ 163-187. State Board of Elections to canvass returns for higher offices.

In addition to the other powers and duties assigned it by this Chapter, the State Board of Elections shall constitute the State's legal canvassing board in both primaries and elections for all national, State, and district offices (including the offices of State Senator and member of the State House of Representatives in those senatorial and representative districts consisting of more than one county).

No member of the State Board of Elections shall take part in canvassing the votes for any office for which he himself is a candidate. (1933, c. 165, s. 9; 1966, Ex. Sess., c. 5, s. 6; 1967, c. 775, s. 1.)

CASE NOTES

State Board of Elections has general supervision over primaries and elections in the State, with authority to promulgate legally consistent rules and regulations for their conduct and to compel the observance of the election laws by county boards of election. *Burgin v. North Carolina State Bd. of Elections*, 214 N.C. 140, 198 S.E. 592 (1938).

Supervisory Power Not Affected by Canvassing Duties. — The duty of the State Board to canvass returns and declare the count does not affect its supervisory power, which performance must be exercised prior to the final acceptance of the returns made by the county boards. *Burgin v. North Carolina State Bd. of Elections*, 214 N.C. 140, 198 S.E. 592 (1938).

The fact that, after the returns are in, the State Board of Elections is to canvass the returns and determine who has been nominated or elected is not to be construed as a denial or negation of its supervisory powers, which performance are to be exercised prior to the final acceptance of the several returns. *Ponder v.*

Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

Canvass of Primary Returns in Multi-County Senatorial District. — The State Board of Elections is the appropriate agency to canvass and judicially declare the results of a primary for the nomination of a candidate in a senatorial district composed of more than one county. A county board of elections in a multiple county senatorial district has no such power. *Ponder v. Joslin*, 262 N.C. 496, 138 S.E.2d 143 (1964).

The courts will not undertake to control the State Board in exercising its duty of general supervision so long as such supervision conforms to the rudiments of fair play and the statutes on the subject. *Ponder v. Joslin*, 262 N.C. 496, 138 S.E.2d 143 (1964).

Review of State Board's Decision. — When the State Board of Elections obtained jurisdiction of an election protest upon an appeal from a single county in a multiple county senatorial district, or by the filing in apt time of a protest directly with the State Board

of Elections, its decision could only be reviewed in the manner prescribed by former § 143-306 et seq. (now repealed). *Ponder v. Joslin*, 262 N.C. 496, 138 S.E.2d 143 (1964).

For present provisions as to judicial review of decisions of administrative agencies, see § 150A-43 et seq.

§ 163-188. Meeting of State Board of Elections to canvass returns of primary and election.

Following each primary and election held in this State under the provisions of this Chapter, the State Board of Elections shall meet at its offices in the City of Raleigh to canvass the votes cast in all the counties of the State for all national, State, and district offices, to determine by the count who is nominated or elected to the respective offices, and to declare the results and prepare abstracts as required by G.S. 163-192. The time and date of the general election canvass shall be 11:00 A.M., on the Tuesday following the third Monday after the general election. The time and date of the primary canvass shall be fixed by the State Board of Elections.

At the meeting required by the preceding paragraph, if the abstracts of returns have not been received from all of the counties, the Board may adjourn for not more than 10 days for the purpose of securing the missing abstracts. In obtaining them, the Board is authorized to secure the originals or copies from the appropriate clerks of superior court or county boards of elections, at the expense of the counties. The State Board of Elections is authorized to enforce the penalties provided in G.S. 163-177 and 163-178 for failure of a county elections board chairman or clerk of superior court to comply with the provisions of this Chapter in making returns of a primary or election.

At the meeting required by the first paragraph of this section (or at any adjourned session thereof), the State Board of Elections shall examine the county abstracts when they have all been received and shall proceed with the canvass publicly. (1933, c. 165, s. 9; 1967, c. 775, s. 1; 1975, c. 844, s. 10; 1977, c. 661, s. 5; 1981, c. 35, s. 2.)

Editor's Note. — For special provisions for 1982 primary elections, see Session Laws 1982, 2nd Ex. Sess., c. 3, ss. 1 through 19, as amended by Session Laws 1981 (Reg. Sess., 1982), c. 1265, s. 1.

Section 163-178, referred to in this section,

was repealed by Session Laws 1981, c. 564, s. 1, effective July 1, 1981.

Effect of Amendments. — The 1981 amendment substituted "at its offices" for "in the Hall of the House of Representatives" in the first sentence of the first paragraph.

§ 163-189. Meeting of State Board of Elections to canvass returns of a special election for United States Senator or Representative.

If a special election is ordered by the Governor to fill a vacancy in the State's representation in the United States Senate or House of Representatives as provided for in G.S. 163-12 or G.S. 163-13, the State Board of Elections may meet for the purposes prescribed in G.S. 163-188 as soon as its chairman shall have received abstracts of returns from all of the counties entitled to vote in the special election. The chairman of the State Board shall fix the day of the meeting not later than 10 days after the special election, and county boards of elections shall transmit their abstracts of returns to the State Board in sufficient time to be available for the State canvass. (1933, c. 165, s. 9; 1967, c. 775, s. 1.)

§ 163-190. State Board of Elections may refer to ballot boxes to resolve doubts.

When, on account of errors in tabulating returns and filling out abstracts, the result of a primary or election in any precinct, county, district, or the State cannot be accurately known, the State Board of Elections shall be allowed access to the ballot boxes to make or order a recount and to declare the results. (1915, c. 101, s. 27; 1917, c. 218; C.S., s. 6048; 1967, c. 775, s. 1.)

§ 163-191. Contested primaries and elections; how tie broken.

In a primary for party nomination for one or more of the offices to be canvassed by the State Board of Elections under the provisions of G.S. 163-187, the results shall be determined in accordance with the provisions of G.S. 163-111.

In a general election for one or more of the offices to be canvassed by the State Board of Elections under the provisions of G.S. 163-187, the persons having the highest number of votes for each office, respectively, shall be declared duly elected to that office by the State Board of Elections. But if two or more be equal and highest in votes for the office, then the State Board of Elections shall order a new election for the purpose of breaking the tie vote. (1901, c. 89, s. 44; Rev., s. 4363; 1915, c. 121, s. 1; C.S., s. 5999; 1927, c. 260, s. 14; 1933, c. 165, s. 10; 1967, c. 775, s. 1; 1971, c. 219, ss. 1, 2.)

§ 163-192. State Board of Elections to prepare abstracts and declare results of primaries and elections.

(a) After Primary. — At the conclusion of its canvass of the primary election, the State Board of Elections shall prepare separate abstracts of the votes cast:

- (1) For Governor and all State officers, justices of the Supreme Court, judges of the Court of Appeals, judges of the superior court, and United States Senators.
- (2) For members of the United States House of Representatives for the several congressional districts in the State.
- (3) For district court judges for the several judicial districts in the State.
- (4) For solicitor in the several solicitorial districts in the State.
- (5) For State Senators in the several senatorial districts in the State composed of more than one county.
- (6) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.

Abstracts prepared by the State Board of Elections under this subsection shall state the total number of votes cast for each candidate of each political party for each of the various offices canvassed by the State Board of Elections. They shall also state the name or names of the person or persons whom the State Board of Elections shall ascertain and judicially determine by the count to be nominated for each office.

Abstracts prepared under this subsection shall be signed by the members of the State Board of Elections in their official capacity and shall have the great seal of the State affixed thereto.

(b) After General Election. — At the conclusion of its canvass of the general election, the State Board of Elections shall prepare abstracts of the votes cast:

- (1) For President and Vice-President of the United States, when an election is held for those offices.
- (2) For Governor and all State officers, justices of the Supreme Court, judges of the Court of Appeals, judges of the superior court, and United States Senators.

- (3) For members of the United States House of Representatives for the several congressional districts in the State.
- (4) For district court judges for the several judicial districts in the State.
- (5) For solicitor in the several solicitorial districts in the State.
- (6) For State Senators in the several senatorial districts in the State composed of more than one county.
- (7) For members of the State House of Representatives in the several representative districts in the State composed of more than one county.
- (8) For and against any constitutional amendments or propositions submitted to the people.

Abstracts prepared by the State Board of Elections under this subsection shall state the names of all persons voted for, the office for which each received votes, and the number of legal ballots cast for each candidate for each office canvassed by the State Board of Elections. They shall also state the name or names of the person or persons whom the State Board of Elections shall ascertain and judicially determine by the count to be elected to each office.

Abstracts prepared under this subsection shall be signed by the members of the State Board of Elections in their official capacity and shall have the great seal of the State affixed thereto.

(c) Disposition of Abstracts of Returns. — The State Board of Elections shall file with the Secretary of State the original abstracts of returns prepared by it under the provisions of subsections (a) and (b) of this section, and also the duplicate county abstracts transmitted to the State Board of Elections under the provisions of G.S. 163-177. (1933, c. 165, s. 9; 1966, Ex. Sess., c. 5, s. 7; 1967, c. 775, s. 1; 1969, c. 44, s. 87.)

§ 163-193. Results of election certified to Secretary of State; certificates of election.

After ascertaining and declaring the result of an election as provided in G.S. 163-192(b), the State Board of Elections shall certify the result to the Secretary of State. The Secretary of State shall then prepare and sign a certificate of election for each person elected and deliver it to him upon demand. (1933, c. 165, s. 9; 1967, c. 775, s. 1.)

§ 163-194. Governor to issue commissions to certain elected officials.

Every person duly elected to one of the offices listed below, upon obtaining a certificate of his election from the Secretary of State under the provisions of G.S. 163-193, shall procure from the Governor a commission attesting his election to the specified office, which the Governor shall issue upon production of the Secretary of State's certificate:

Members of the United States House of Representatives,

Justices, Judges, and Solicitors of the General Court of Justice. (1901, c. 89, ss. 61, 69; Rev., ss. 4370, 4377; C.S., ss. 6008, 6015; 1967, c. 775, s. 1; 1969, c. 44, s. 88.)

§ 163-195. Secretary of State to record abstracts.

The Secretary of State shall record the State, district, and county abstracts filed with him by the State Board of Elections in a book to be kept by him for that purpose. (1933, c. 165, s. 9; 1967, c. 775, s. 1.)

§§ 163-196 to 163-200: Reserved for future codification purposes.

ARTICLE 17.

Members of United States House of Representatives.

§ 163-201. Congressional districts specified.

(a) For the purpose of nominating and electing members of the House of Representatives of the Congress of the United States in 1982 and every two years thereafter, the State of North Carolina shall be divided into 11 districts as follows:

FIRST DISTRICT: Beaufort, Bertie, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Greene, Hertford, Hyde, Lenoir, Martin, Northhampton, Pamlico, Pasquotank, Perquimans, Pitt, Tyrrell, and Washington Counties.

SECOND DISTRICT: Caswell, Durham, Edgecombe, Granville, Halifax, Nash, Person, Vance, Warren, and Wilson Counties; and the O'Neals Township in Johnston County.

THIRD DISTRICT: Bladen, Duplin, Harnett, Jones, Lee, Onslow, Pender, Sampson, and Wayne Counties; the following townships of Johnston County: Banner, Bentonsville, Beulah, Boon Hill, Clayton, Cleveland, Elevation, Ingrams, Meadow, Micro, Pine Level, Pleasant Grove, Selma, Smithfield, Wilders, and Wilson Mills; and the following townships of Moore County: 1 (Carthage), 4 (Ritters), 5 (Deep River), 6 (Greenwood), and 10 (Little River).

FOURTH DISTRICT: Chatham, Franklin, Orange, Randolph, and Wake Counties.

FIFTH DISTRICT: Alexander, Alleghany, Ashe, Forsyth, Rockingham, Stokes, Surry, and Wilkes Counties.

SIXTH DISTRICT: Alamance, Davidson, and Guilford Counties.

SEVENTH DISTRICT: Brunswick, Columbus, Cumberland, New Hanover, and Robeson Counties.

EIGHTH DISTRICT: Anson, Cabarrus, Davie, Hoke, Montgomery, Richmond, Rowan, Scotland, Stanly, and Union Counties; and the following townships of Moore County: 2 (Bensalem), 3 (Sheffields), 7 (McNeills), 8 (Sand Hill), and 9 (Mineral Springs); and the following townships of Yadkin County: Boonville, East Bend, Fall Creek, Forbush, Knobs, and Liberty.

NINTH DISTRICT: Iredell, Lincoln, and Mecklenburg Counties; and the following townships of Yadkin County: Buck Shoal and Deep Creek.

TENTH DISTRICT: Burke, Caldwell, Catawba, Cleveland, Gaston, and Watauga Counties; and the following townships of Avery County: Banner Elk, Beech Mountain, Cranberry, Linville, and Wilsons Creek.

ELEVENTH DISTRICT: Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey Counties; and the following townships of Avery County: Altamont, Roaring Creek, and Toe River.

(b) The name and boundaries of townships specified in this section are as they were legally defined and in effect as of January 1, 1980, and recognized in the 1980 United States Census. (Rev., s. 4366; 1911, c. 97; C.S., s. 6004; 1931, c. 216; 1941, c. 3; 1961, c. 864; 1966, Ex. Sess., c. 7, s. 1; 1967, c. 775, s. 1; c. 1109; 1971, c. 257; 1981, c. 894; 1982, Ex. Sess., c. 7.)

Effect of Amendments. — The 1981 amendment rewrote this section by reorganizing the Congressional districts and adding subsection (b).

The 1982, Ex. Sess., amendment redefined the Second, Third, Fourth, Sixth, Eighth, Ninth, Tenth, and Eleventh Districts.

CASE NOTES

Constitutionality. —As the variance between the enacted legislative plan and a rejected alternative plan was insubstantial and de minimis, and the legislature made a good faith effort to equitably reapportion, this section was constitutional and not in violation of the equal protection clause of the Fourteenth Amendment. *Drum v. Scott*, 337 F. Supp. 588 (M.D.N.C. 1972).

The act of the 1967 session of the legislature reapportioning congressional districts met minimum federal constitutional standards. *Drum v. Seawell*, 271 F. Supp. 193 (M.D.N.C. 1967).

For case holding former apportionment unconstitutional, see *Drum v. Seawell*, 249 F. Supp. 877 (M.D.N.C. 1965), *aff'd*, 383 U.S. 831,

86 S. Ct. 1237, 16 L. Ed. 2d 298 (1966).

Practical and Rational Equality Required. — While rigid mathematical standards are not the sine qua non of constitutional validity, practical and rational equality is required. Such equality recognizes only minor deviations which may occur in the recognition of rational and legitimate factors, free from the taint of arbitrariness, irrationality and discrimination. *Drum v. Seawell*, 250 F. Supp. 922 (M.D.N.C. 1966).

Stricter adherence to equality of population between districts may more logically be required in congressional than in state legislative representation. *Drum v. Seawell*, 250 F. Supp. 922 (M.D.N.C. 1966).

§ 163-201.1. Severability of congressional apportionment acts.

If any provision of any act of the General Assembly that apportions congressional districts is held invalid by any court of competent jurisdiction, the invalidity shall not affect other provisions that can be given effect without the invalid provision; and to this end the provisions of any said act are severable. (1981, c. 771, s. 2.)

§ 163-202. Election after reapportionment of members of House of Representatives.

Whenever, by a new apportionment of members of the United States House of Representatives, the number of Representatives from North Carolina shall be changed, and neither the Congress nor the General Assembly shall provide for electing them, the following procedures shall apply:

- (1) If the number of Representatives is increased, the Representative from each of the existing congressional districts shall be elected by the qualified voters of his district, and the additional Representatives apportioned to North Carolina shall be elected on a single ballot by the qualified voters of the whole State.
- (2) If the number of Representatives is decreased, existing congressional district lines shall be ignored, and all Representatives apportioned to North Carolina shall be elected on a single ballot by the qualified voters of the whole State. (1901, c. 89, s. 58; Rev., s. 4368; C.S., s. 6006; 1967, c. 775, s. 1.)

§§ 163-203 to 163-207: Reserved for future codification purposes.

ARTICLE 18.

Presidential Electors.

§ 163-208. Conduct of presidential election.

Unless otherwise provided, the election of presidential electors shall be conducted and the returns made in the manner prescribed by this Chapter for the election of State officers. (1901, c. 89, s. 79; Rev., s. 4371; C.S., s. 6009; 1933, c. 165, s. 11; 1967, c. 775, s. 1.)

CASE NOTES

Cited in *Greaves v. State Bd. of Elections*,
508 F. Supp. 78 (E.D.N.C. 1980).

§ 163-209. Names of presidential electors not printed on ballots.

The names of candidates for electors of President and Vice-President nominated by any political party recognized in this State under G.S. 163-96 shall be filed with the Secretary of State but shall not be printed on the ballot. In place of their names, in accordance with the provisions of G.S. 163-140 there shall be printed on the ballot the names of the candidates for President and Vice-President of each political party recognized in this State. A vote for the candidates named on the ballot shall be a vote for the electors of the party by which those candidates were nominated and whose names have been filed with the Secretary of State. (1901, c. 89, s. 78; Rev., s. 4372; C.S., s. 6010; 1933, c. 165, s. 11; 1949, c. 672, s. 2; 1967, c. 775, s. 1.)

CASE NOTES

Cited in *Greaves v. State Bd. of Elections*,
508 F. Supp. 78 (E.D.N.C. 1980).

§ 163-210. Governor to proclaim results; casting State's vote for President and Vice-President.

Upon receipt of the abstracts prepared by the State Board of Elections and delivered to him in accordance with G.S. 163-192, the Secretary of State, under his hand and the seal of his office, shall certify to the Governor the names of the persons elected to the office of elector for President and Vice-President of the United States as stated in the abstracts of the State Board of Elections. Thereupon, the Governor shall immediately issue a proclamation setting forth the names of the electors and instructing them to be present in the old Hall of the House of Representatives in the State Capitol in the City of Raleigh at noon on the first Monday after the second Wednesday in December next after their election, at which time the electors shall meet and vote on behalf of the State for President and Vice-President of the United States. The Governor shall cause this proclamation to be published in the daily newspapers published in the City of Raleigh.

On or before the date fixed for the meeting of the electors, the Governor shall send by registered mail to the Administrator of General Services, a certificate under the great seal of the State setting forth the names of the persons chosen as presidential electors for this State and the number of votes cast for each. At the same time he shall deliver to the electors six duplicate originals of the same certificate, each bearing the great seal of the State. At any time prior to receipt of the certificate of the Governor or within 48 hours thereafter, any person elected to the office of elector may resign by submitting his resignation, written and duly verified, to the Governor. Failure to so resign shall signify consent to serve and to cast his vote for the candidate of the political party which nominated such elector.

In case of the absence, ineligibility or resignation of any elector chosen, or if the proper number of electors shall for any cause be deficient, those present at the required meeting shall forthwith elect from the citizens of the State a sufficient number of persons to fill the deficiency, and the persons chosen shall be deemed qualified electors to vote for President and Vice-President of the United States. (1901, c. 89, s. 81; Rev., s. 4374; 1917, c. 176, s. 2; C.S., ss. 5916, 6012; 1923, c. 111, s. 12; 1927, c. 260, s. 17; 1933, c. 165, s. 11; 1935, c. 143, s. 2; 1967, c. 775, s. 1; 1969, c. 949, ss. 1, 2; 1981, c. 35, s. 1.)

Effect of Amendments. — The 1981 amendment substituted "old Hall of the House of Representatives in the State Capitol" for "Hall of

the House of Representatives" in the second sentence of the first paragraph.

CASE NOTES

Cited in *Greaves v. State Bd. of Elections*, 508 F. Supp. 78 (E.D.N.C. 1980).

§ 163-211. Compensation of presidential electors.

Presidential electors shall be paid, for attending the meeting held in the City of Raleigh on the first Monday after the second Wednesday in December next after their election, the sum of forty-four dollars (\$44.00) per day and traveling expenses at the rate of seventeen cents (17¢) per mile in going to and returning home from the required meeting. (1901, c. 89, s. 84; Rev., s. 2761; C.S., s. 3878; 1933, c. 5; 1967, c. 775, s. 1; 1979, c. 1008.)

CASE NOTES

Cited in *Greaves v. State Bd. of Elections*, 508 F. Supp. 78 (E.D.N.C. 1980).

§ 163-212. Penalty for failure of presidential elector to attend and vote.

Any presidential elector having previously signified his consent to serve as such, who fails to attend and vote for the candidate of the political party which nominated such elector, for President and Vice-President of the United States at the time and place directed in G.S. 163-210 (except in case of sickness or other unavoidable accident) shall forfeit and pay to the State five hundred dollars (\$500.00), to be recovered by the Attorney General in the Superior Court of Wake County. In addition to such forfeiture, refusal or failure to vote for the candidates of the political party which nominated such elector shall

constitute a resignation from the office of elector, his vote shall not be recorded, and the remaining electors shall forthwith fill such vacancy as hereinbefore provided. (1901, c. 89, s. 83; Rev., s. 4375; C.S., s. 6013; 1933, c. 165, s. 11; 1967, c. 775, s. 1; 1969, c. 949, s. 3.)

CASE NOTES

Cited in *Greaves v. State Bd. of Elections*,
508 F. Supp. 78 (E.D.N.C. 1980).

§ 163-213: Reserved for future codification purposes.

ARTICLE 18A.

Presidential Preference Primary Act.

§ 163-213.1. Short title.

This Article may be cited as the "Presidential Preference Primary Act." (1971, c. 225; 1975, c. 744.)

§ 163-213.2. Primary to be held; date; qualifications and registration of voters.

Beginning with the Tuesday after the first Monday in May, 1980, and every four years thereafter, the voters of this State shall be given an opportunity to express their preference for the person to be the presidential candidate of their political party.

Any person otherwise qualified who will become qualified by age to vote in the general election held in the same year of the presidential preference primary shall be entitled to register and vote in the presidential preference primary. Such persons may register not earlier than 60 days nor later than 21 days prior to the said primary. (1971, c. 225; 1975, c. 744; c. 844, s. 18; 1977, c. 19; c. 661, s. 7.)

Legal Periodicals. — For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

§ 163-213.3. Conduct of election.

The presidential preference primary election shall be conducted and canvassed by the same authority and in the manner provided by law for the conduct and canvassing of the primary election for the office of Governor and all other offices enumerated in G.S. 163-187 and under the same provisions stipulated in G.S. 163-188. The State Board of Elections shall have authority to promulgate reasonable rules and regulations, not inconsistent with provisions contained herein, pursuant to the administration of this Article. (1971, c. 225; 1975, c. 744.)

OPINIONS OF ATTORNEY GENERAL

Seventeen-year-olds whose 18th birthdays will be reached prior to the presidential general election in November, 1976, may vote in the N.C. presidential preference

primary election. See opinion of Attorney General to The Honorable Patricia S. Hunt, Member, House of Representatives, N.C. General Assembly, 45 N.C.A.G. 205 (1976).

§ 163-213.4. Nomination by State Board of Elections.

The State Board of Elections shall convene in Raleigh on the Tuesday following the first Monday in February preceding the presidential preference primary election. At the meeting required by this section, the State Board of Elections shall nominate as presidential primary candidates all candidates affiliated with a political party, recognized pursuant to the provisions of Article 9 of Chapter 163 of the General Statutes, who have become eligible to receive payments from the Presidential Primary Matching Payment Account, as provided in section 9033 of the U.S. Internal Revenue Code of 1954, as amended. Immediately upon completion of these requirements, the Board shall release to the news media all such nominees selected. Provided, however, nothing shall prohibit the partial selection of nominees prior to the meeting required by this section, if all provisions herein have been complied with. (1971, c. 225; 1975, c. 744.)

§ 163-213.5. Nomination by petition.

Any person seeking the endorsement by the national political party for the office of President of the United States, or any group organized in this State on behalf of, and with the consent of, such person, may file with the State Board of Elections petitions signed by 10,000 persons who, at the time they signed are registered and qualified voters in this State and are affiliated, by such registration, with the same political party as the candidate for whom the petitions are filed. Such petitions shall be presented to the county board of elections 10 days before the filing deadline and shall be certified promptly by the chairman of the board of elections of the county in which the signatures were obtained and shall be filed by the petitioners with the State Board of Elections no later than 5:00 P.M. on the date the State Board of Elections is required to meet as directed by G.S. 163-213.4.

The petitions must state the name of the candidate for nomination, along with a letter of approval signed by such candidate. Said petitions must also state the name and address of the chairman of any such group organized to circulate petitions authorized under this section. The requirement for signers of such petitions shall be the same as now required under provisions of G.S. 163-96(b)(1) and (2). The requirement of the respective chairmen of county boards of elections shall be the same as now required under the provisions of G.S. 163-96(b)(1) and (2) as they relate to the chairman of the county board of elections.

The group of petitioners shall pay to the chairman of the county board of elections a fee of ten cents (10¢) for each signature he is required to examine under the provisions of this section.

The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the chairman of such group organized to circulate petitions. The form and style of petition shall be as prescribed by the State Board of Elections. (1971, c. 225; 1975, c. 744.)

CASE NOTES

Discrimination Against Independent Candidates Unconstitutional. — North Carolina grossly discriminated against those who chose to pursue their candidacies as independent rather than by forming a new political party in requiring a group of voters seeking a place on the ballot as a new party to submit petitions signed by only 10,000 voters, less than one sixteenth the number required of an independent candidate, and furthermore, in requiring a candidate desiring to run in the North Carolina Presidential Preference Primary to submit only 10,000 signatures; since the State asserted no compelling interest for such

disparate treatment, that portion of § 163-122 which required an independent candidate for president to file written petitions signed by qualified voters equal in number to 10 percent of those who voted for Governor in the last gubernatorial election was an unconstitutional infringement upon the rights of such candidate and his supporters to associate for the advancement of political beliefs, to cast their votes effectively, and to enjoy equal protection under law. *Greaves v. State Bd. of Elections*, 508 F. Supp. 78 (E.D.N.C. 1980), decided prior to 1981 amendment to § 163-122.

§ 163-213.6. Notification to candidates.

The State Board of Elections shall forthwith contact each person who has been nominated by the Board or by petition and notify him in writing that, upon his written request, to be filed with the Board within 15 days of the notice to him by the Board, his name will be printed as a candidate of a specified political party on the North Carolina presidential preference primary ballot. A candidate who participates in the North Carolina presidential preference primary of a particular party shall have his name placed on the general election ballot only as a nominee of that political party. The board shall send a copy of the "Presidential Preference Primary Act" to each candidate with the notice specified above. (1971, c. 225; 1975, c. 744.)

CASE NOTES

Phrase "participates in the North Carolina presidential preference primary" might reasonably be interpreted as meaning (1) notifying the board, as required by the statute, of one's desire to have one's name placed on the

primary ballot, (2) actively seeking election in the primary election itself, or (3) engaging in other activity falling somewhere between those two extremes. *Anderson v. Babb*, 632 F.2d 300 (4th Cir. 1980).

§ 163-213.7. Voting in presidential preference primary; ballots.

The names of all candidates in the presidential preference primary shall appear at an appropriate place on the ballot or voting machine. In addition the State Board of Elections shall provide a category on the ballot or voting machine allowing voters in each political party to vote an "uncommitted" or "no preference" status. The voter shall be able to cast his ballot for one of the presidential candidates of a political party or for an "uncommitted" or "no preference" status, but shall not be permitted to vote for candidates or "uncommitted" status of a political party different from his registration. Persons registered as "Independents" or "No Party" shall not participate in the presidential preference primary except upon changing such affiliation in accordance with law. (1971, c. 225; 1975, c. 744.)

§ 163-213.8. Political parties and delegates bound by results of primary on first ballot.

(a) Upon completion and certification of the primary results by the State Board of Elections, the Secretary of State shall certify the results to the State chairman of each political party.

Each political party and its delegates from North Carolina shall be bound on the first ballot at the national convention by the results of the primary. Each political party at the State level shall adopt rules for the allocation of delegate votes on the first ballot which reflect the actual division of votes in the results of the party primary as much as possible, consistent with the national party rules of that political party.

After the vote on the first ballot at a national convention, all responsibility imposed by this Article shall terminate and further balloting shall be consistent with the rules of the political party.

In the event of the death or the withdrawal of a candidate prior to the first ballot, any delegate votes which would otherwise be allocated to him, shall be considered uncommitted.

(b) In case of conflict between subsection (a) of this section and the national rules of a political party, the State executive committee of that party has the authority to resolve the conflict by adopting for that party the national rules, which shall then supercede any provision in subsection (a) of this section with which it conflicts, provided that the executive committee shall take only such action under this subsection necessary to resolve the conflict. (1971, c. 225; 1975, c. 744; 1979, c. 800.)

§ 163-213.9. National committee to be notified of provisions under this Article.

It shall be the responsibility of the State chairman of each political party, qualified under the laws of this State, to notify his party's national committee no later than January 30 of each year in which such presidential preference primary shall be conducted of the provisions contained under this Article. (1971, c. 225; 1975, c. 744.)

Editor's Note. — This section was formerly § 163-213.10. It was redesignated § 163-213.9 by Session Laws 1975, c. 744, which act repealed former § 163-213.9.

§ 163-213.10: Transferred to § 163-213.9 by Session Laws 1975, c. 744.

Editor's Note. — Session Laws 1975, c. 744, redesignated former § 163-213.10 as present § 163-213.9 and repealed former § 163-213.9.

§§ 163-214 to 163-217: Reserved for future codification purposes.

ARTICLE 19.

Petitions for Elections and Referenda.

§ 163-218. Registration of notice of circulation of petition.

From and after July 1, 1957, notice of circulation of a petition calling for any election or referendum shall be registered with the county board of elections with which the petition is to be filed, and the date of registration of the notice shall be the date of issuance and commencement of circulation of the petition. (1957, c. 1239, s. 1; 1967, c. 775, s. 1.)

§ 163-219. Petition void after one year from registration.

Petitions calling for elections and referenda shall be and become void and of no further effect one year after the date the notice of circulation is registered with the county board of elections with which it is required to be filed; and notwithstanding any public, special, local, or private act to the contrary, no election or referendum shall thereafter be called or held pursuant to or based upon any such void petition. (1957, c. 1239, s. 2; 1967, c. 775, s. 1.)

§ 163-220. Limitation on petitions circulated prior to July 1, 1957.

Petitions calling for elections or referenda which were circulated prior to July 1, 1957, shall be and become void and of no further force and effect one year after the date of issuance of such petitions for circulation; and notwithstanding any public, special, local, or private act to the contrary, no election or referendum shall be called or held pursuant to or based upon any such void petition from and after July 1, 1957. (1957, c. 1239, s. 3; 1967, c. 775, s. 1.)

§ 163-221. Persons may not sign name of another to petition.

- (a) No person may sign the name of another person to:
 - (1) Any petition calling for an election or referendum;
 - (2) Any petition under G.S. 163-96 for the formulation of a new political party;
 - (3) Any petition under G.S. 163-107.1 requesting a person to be a candidate;
 - (4) Any petition under G.S. 163-122 to have the name of an unaffiliated candidate placed on the general election ballot, or under G.S. 163-296 to have the name of an unaffiliated or nonpartisan candidate placed on the regular municipal election ballot; or
 - (5) Any petition under G.S. 163-213.5 to place a name on the ballot under the Presidential Preference Primary Act.
- (b) Any name signed on a petition, in violation of this section, shall be void.
- (c) Any person who willfully violates this section is guilty of a misdemeanor and, upon conviction, shall be imprisoned for not more than six months or fined in an amount not to exceed five hundred dollars (\$500.00), or both. (1977, c. 218, s. 1; 1979, c. 534, s. 1.)

§§ 163-222 to 163-225: Reserved for future codification purposes.

SUBCHAPTER VII. ABSENTEE VOTING.

ARTICLE 20.

Absentee Ballot.

§ 163-226. Who may vote an absentee ballot.

(a) Who May Vote Absentee Ballot; Generally. — Any qualified voter of the State may vote by absentee ballot in a statewide primary, general, or special election on constitutional amendments, referenda or bond proposals, and any qualified voter of a county is authorized to vote by absentee ballot in any primary or election conducted by the county board of elections, in the manner provided in this Article if:

- (1) He expects to be absent from the county in which he is registered during the entire period that the polls are open on the day of the specified election in which he desires to vote; or
- (2) He is unable to be present at the voting place to vote in person on the day of the specified election in which he desires to vote because of his sickness or other physical disability; or
- (3) He is incarcerated, whether in his county of residence or elsewhere, shall be entitled to vote by absentee ballot in the county of his residence in any election, specified herein, in which he otherwise would be entitled to vote. Absentee voting shall be in the same manner as provided in this Article. The chief custodian or superintendent of the institution or other place of confinement shall certify that the applicant is not a felon, and the certification shall be as prescribed by the State Board of Elections. The State Board of Elections is authorized to prescribe procedures to carry out the intent and purpose of this subsection;
- (4) He is an employee of the county board of elections and his assigned duties on the day of the election will cause him to be unable to be present at the voting place to vote in person and provided such employee has his application witnessed by the chairman of the county board of elections.

(b) Absentee Ballots; Exceptions. — Notwithstanding the authority contained in G.S. 163-226(a), absentee ballots shall not be permitted in fire district elections. (1939, c. 159, s. 1; 1963, c. 457, s. 1; 1967, c. 775, s. 1; c. 952, s. 1; 1973, c. 536, s. 1; c. 1018; 1977, c. 469, s. 1; 1979, c. 140, s. 1.)

Local Modification to Former § 163-54. — Jackson: 1939, c. 309.

Local Modification to Former §§ 163-54 to 163-69.1. — Graham: 1959, c. 780, s. 1; Sampson: 1941, c. 167; 1963, c. 882.

Cross References. — For present provisions covering the subject matter of former subsection (d) of this section as it existed prior to the 1977 amendment, see § 163-226.1.

Legal Periodicals. — As to abuses under prior law and respects in which this enactment seeks to remedy those evils, see 17 N.C.L. Rev. 355.

For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

CASE NOTES

Effect of Mistake or Misconduct of Election Officials. — Persons in all respects qualified to cast absentee ballots will not be disfranchised for the mistake or even willful misconduct of election officials in performing their duties, when the mistake or misconduct does not amount to coercion, fraud or imposition and it appears that the ballots expressed only the free choices of the electors themselves. *State ex rel. Owens v. Chaplin*, 228 N.C. 705, 47 S.E.2d 12, rehearing denied, 229 N.C. 797, 48 S.E.2d 37 (1948).

Provision of former law that election laws be construed in favor of right to vote did not apply when the elector desired to avail himself of a special privilege and did not, of his own volition, comply with the conditions precedent prescribed by the statute, which gave him the right to do so. *Davis v. County Bd. of Educ.*, 186 N.C. 227, 119 S.E. 372 (1923).

As to validity of former law, see *Jenkins v. State Bd. of Elections*, 180 N.C. 169, 104 S.E. 346 (1920).

As to applicability of former law to municipal elections, see *Phillips v. Slaughter*, 209 N.C. 543, 183 S.E. 897 (1936).

As to nonentitlement of persons within county to vote as absentees under former law, see *State ex rel. Robertson v. Jackson*, 183 N.C. 695, 110 S.E. 593 (1922).

As to mandatory nature of certificate or affidavit under former law, see *Davis v. County Bd. of Educ.*, 186 N.C. 227, 119 S.E. 372 (1923).

As to jurat being prima facie evidence that ballots had been sworn to, under former law, see *Bouldin v. Davis*, 200 N.C. 24, 156 S.E. 103 (1930).

Cited in *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 187 S.E.2d 52 (1972).

§ 163-226.1. Absentee voting in primary.

A qualified voter may vote by absentee ballot in a statewide or countywide primary provided he is affiliated, at the time he makes application for absentee ballots, with the political party in whose primary he wishes to vote. The official registration records of the county in which the voter is registered shall be proof of whether he is affiliated with a political party and of the party, if any, with which he is affiliated. (1977, c. 469, s. 1.)

§ 163-226.2. Absentee voting in municipal elections.

Absentee voting by qualified voters residing in a municipality shall be in accordance with the authorization specified in G.S. 163-302. (1977, c. 469, s. 1.)

§ 163-226.3. Certain acts declared felonies.

(a) Any person who shall, in connection with absentee voting in any primary, general, municipal or special election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a felony and upon conviction shall be imprisoned for not less than six months or fined not less than one thousand dollars (\$1,000), or both, in the discretion of the court. It shall be unlawful:

- (1) For any person except the voter's near relative as defined in G.S. 163-227(c)(4) or the voter's legal guardian to assist the voter to vote an absentee ballot when the voter is voting an absentee ballot other than under the procedure described in G.S. 163-227.2; provided that if there is not a near relative or legal guardian available to assist the voter, the voter may request some other person to give assistance;
- (2) For any person to assist a voter to vote an absentee ballot under the absentee voting procedure authorized by G.S. 163-227.2 except a member of the county board of elections, the supervisor of elections, an employee of the board authorized by the board, the voter's near relative as defined in G.S. 163-227(c)(4), or the voter's legal guardian;
- (3) For a voter who votes an absentee ballot under the procedures authorized by G.S. 163-227.2 to vote his absentee ballot outside of the voting

booth or private room provided to him for that purpose in the office of the county board of elections or to receive assistance in getting to and from the voting booth or private room and in preparing and marking his ballots from any person other than a member of the county board of elections, the supervisor of elections, an employee of the board of elections authorized by the board, a near relative of the voter as defined in G.S. 163-227(c)(4), or the voter's legal guardian;

- (4) For any owner, manager, director, employee, or other person, other than the voter's near relative as defined in G.S. 163-227(c)(4) or legal guardian, to make application on behalf of a registered voter who is a patient in any hospital, clinic, nursing home or rest home in this State or for any owner, manager, director, employee, or other person other than the voter's near relative or legal guardian to mark the voter's absentee ballot or assist such a voter in marking an absentee ballot;
- (5) For any officer with a seal to take the acknowledgement on the container-return envelope of any absentee voter in any primary or election in which the officer is a candidate for nomination or election;
- (6) For any person to take into his possession for delivery to a voter or for return to a county board of elections the absentee ballot of any voter, provided, however, that this prohibition shall not apply to a voter's near relative as defined in G.S. 163-227(c)(4) or the voter's legal guardian;
- (7) Except as provided in subsections (1), (2), (3), and (4) of this section and G.S. 163-227.2(e), for any voter to permit another person to assist him in marking his absentee ballot, to be in the voter's presence when a voter votes an absentee ballot, or to observe the voter mark his absentee ballot.

(b) The State Board of Elections or a county board of elections, upon receipt of a sworn affidavit from any qualified voter of the State or the county, as the case may be, attesting to first-person knowledge of any violation of subsection (a) of this section, shall transmit such affidavit to the appropriate district attorney, who shall investigate and prosecute any person violating subsection (a). (1979, c. 799, s. 4.)

§ 163-227. State Board to prescribe forms of applications for absentee ballots; county to secure.

(a) Applications for Absentee Ballots Generally. — A voter falling in any one of the categories defined in G.S. 163-226, 163-226.1 or 163-226.2 may apply for absentee ballots not earlier than 60 days prior to the statewide, county or municipal election in which he seeks to vote and not later than 5:00 P.M. on the Thursday before that election. Subject to all other provisions contained in this Article, a voter applying for an absentee ballot shall complete the appropriate application to be secured by the county board of elections, lettered A, V, C, or OS, as designed and prescribed by the State Board of Elections and specified below:

Application A shall be completed by a voter expecting to be absent from the county of his residence all day on the day of the specified election. (G.S. 163-226(1)(3)) [163-226(a)(1)].

Application B shall be completed by a voter who is unable to be present at the voting place to vote in person on the day of the specified election because of his sickness or other physical disability occurring before 5:00 P.M. on the Thursday prior to the date of the specified election. (G.S. 163-226(2)) [163-226(a)(2)]. Application B shall be printed on the reverse side of Application A.

Application C shall be completed by a voter who is unable to be present at the voting place to vote in person on the day of the specified election because of his sickness or other physical disability occurring since 5:00 P.M. on the Thursday prior to the date of the specified election. (G.S. 163-226(2)) [163-226(a)(2)].

Application OS shall be completed by a voter expecting to be absent from the county, or due to emergency disability will be unable to vote in person, or a person who qualifies under G.S. 163-226(a)(4), and who, in lieu of making application by mail, wishes to apply in person and receive a ballot which he may immediately vote in the office of the county board of elections.

(b) Forms of Applications; Instructions. —

- (1) Expected Absence from County on Election Day; Form A. — A voter expected to be absent from the county in which registered during the entire period that the polls will be open on primary or general election day, or a near relative, shall make written application for absentee ballots to the chairman of the board of elections of the county in which the voter is registered not earlier than 60 days nor later than 5:00 P.M. on the Wednesday before the election. The application shall be submitted in the form set out in this subdivision upon a copy which shall be furnished the voter or a near relative by the chairman of the county board of elections.

The applicant shall sign his application personally, or it shall be signed by a near relative. The application shall be signed in the presence of a witness, who shall sign his name in the place provided on the form. The application form when properly filled out shall be transmitted by mail or delivered in person by the applicant or a near relative to the chairman or the supervisor of elections of the county board of elections.

- (2) Absence for Sickness or Physical Disability Occurring before 5:00 P.M. on the Thursday prior to the Primary or General Election; Form B. — A voter expecting to be unable to go to the voting place to vote in person on primary or general election day because of his sickness or other physical disability, or his near relative, shall make written application for absentee ballots to the chairman of the board of elections of the county in which the voter is registered not earlier than 60 days nor later than 5:00 P.M. on the Thursday before the election. The application shall be submitted in the form set out in this subdivision upon a copy which shall be furnished the voter or a near relative by the chairman of the county board of elections.

The application shall be signed by the voter personally, or it shall be signed by a near relative. The application shall be signed in the presence of a witness, who shall sign his name in the place provided on the form.

The application form, when properly filled out, shall be transmitted by mail or delivered in person by the applicant or a near relative to the chairman or supervisor of elections of the county board of elections of the county in which the applicant is registered.

- (3) Absence for Sickness or Physical Disability Occurring after 5:00 P.M. on the Thursday prior to Primary or General Election; Form C. — A voter expecting to be unable to go to the voting place to vote in person on primary or general election day because of sickness or other disability occurring after 5:00 P.M. on the Thursday before the election, or a near relative, shall make written application for absentee ballots to the chairman of the board of elections of the county in which he is registered not later than 12:00 noon on the day preceding the election. The application shall be submitted in the form set out in this subdivision upon a copy which shall be furnished the voter or a near relative by the chairman of the county board of elections.

The chairman of the county board of elections shall not issue or accept an application under the provisions of this subdivision later than 12:00 noon on the day preceding the election in which the voter seeks to vote.

The application shall be signed by the voter personally, or it shall be signed by a near relative. The application shall be signed in the presence of a witness who shall sign his name in the place provided on the form.

The certificate printed on the application form below the signatures of the applicant and his subscribing witness shall be filled in and signed in the presence of a witness by a licensed physician who is attending the applicant. The witness to the physician's certificate shall sign his name in the place provided on the form.

The application form, when properly filled out, signed by or for the applicant in the presence of a subscribing witness as provided in this subdivision, and certified and signed by the attending physician in the presence of a subscribing witness, may be transmitted by mail to the chairman or supervisor of elections of the board of elections of the county in which the applicant is registered, or it may be delivered to the chairman or supervisor of elections in person by the applicant or by his near relative.

- (4) "One-Stop" Voting Procedure, in Office of the County Board of Elections; Form OS. — A voter falling in the category specified in G.S. 163-227.2 may execute Form OS and proceed to vote his absentee ballot in the office of the county board of elections only.

(c) Application Forms Issued by Chairman of County Board of Elections. — The chairman of the county board of elections shall be sole custodian of all absentee ballot application forms, but he, the secretary of the board and the supervisor of elections of the board, in accordance with one of the following two procedures, shall issue and deliver a single application form, upon request, to a person authorized to sign such an application under the provisions of this section:

- (1) The chairman, secretary or supervisor of elections may deliver the form to a voter personally or to his near relative at the office of the county board of elections for the voter's own use; or
- (2) The chairman, secretary or supervisor of elections may mail the form to a voter for his own use upon receipt of a written request from the voter or his near relative.

At the time he issues an application form, the chairman, secretary or supervisor of elections of the county board of elections shall number it and write the name of the voter in the space provided therefor at the top of the form. At the same time the chairman, secretary or supervisor of elections shall insert the name of the voter and the number assigned his application in the register of absentee ballot applications and ballots issued provided for in G.S. 163-228. If the application is requested by the voter's near relative, the chairman, secretary or supervisor of elections also shall insert that person's name in the register after the name of the voter.

The chairman, secretary or supervisor of elections shall issue only one application form to a voter or his near relative unless a form previously issued is returned to the chairman, secretary or supervisor of elections and marked "Void" by him. In such a situation, the chairman, secretary or supervisor of elections may issue another application form to the voter or a near relative, but he shall retain the voided application form in the board's records. If the application is requested by the voter's near relative, the chairman, secretary or supervisor of elections shall write the name of the near relative on the

index of near relatives, applying for applications for absentee ballots; the index shall be in such form as may be prescribed or approved by the State Board of Elections; a separate index shall be maintained for each primary, general or special election in which absentee voting is allowed.

- (3) Applications or Absentee Ballots Transmitted by Mail or in Person. — An application for absentee ballots shall be made and signed only by the voter desiring to use them or the voter's near relative or legal guardian and shall be valid only when transmitted to the chairman or supervisor of elections of the county board of elections by mail or delivered in person by the voter or his near relative or legal guardian.
- (4) Who Is Authorized to Request Applications for Absentee Ballots. — A voter may personally request an application for absentee ballots or may cause such request to be made through a near relative or legal guardian. For the purpose of this Article, "near relative or legal guardian" means spouse, brother, sister, parent, grandparent, child, or grandchild.
- (5) The form of application for persons applying to vote in a primary under the provisions of this section shall be as designed and prescribed by the State Board of Elections. No voter shall be furnished ballots for voting in a primary except the ballots for candidates for nomination in the primary of the political party with which he is affiliated at the time he makes application for absentee ballots. The official registration records of the county in which the voter is registered shall be proof of the party, if any, with which the voter is affiliated.
- (6) The county board of elections shall cause to be stamped or printed on the face of each application for absentee ballots the following legend, and the blank space in the legend to be completed:
 "This application is issued for absentee ballots to be voted in the _____ (primary or general or special election) to be held in _____ County on the _____ day of _____, 19____."
 The county board of elections shall not issue any absentee ballots on the basis of any application that does not bear the completed legend.
- (7) No applications shall be issued earlier than 60 days prior to the election in which the voter wishes to vote. Nothing herein shall prohibit the county board of elections from receiving written requests for applications earlier than 60 days prior to the election but such applications shall not be mailed or issued to the voter in person earlier than 60 days prior to the election.
- (8) Applications for absentee ballots shall be issued only by mail or in the office of the county board of elections to the voter or a near relative or legal guardian authorized to make application. No election official shall issue applications for absentee ballots except in compliance with the provisions stated herein. (1939, c. 159, s. 2; 1943, c. 751, s. 1; 1963, c. 457, s. 2; 1967, c. 775, s. 1; c. 952, s. 3; 1971, c. 947, ss. 1-5; 1973, c. 536, s. 1; c. 1075, ss. 1-3; 1975, c. 19, s. 69; c. 844, s. 11; 1977, c. 469, s. 1; c. 626, s. 1; c. 680; 1981, c. 155, s. 3; c. 305, s. 1.)

Editor's Note. — The reference to G.S. 163-226(1)(3) in the second paragraph of subsection (a) and the references to G.S. 163-226(2) in the third and fourth paragraphs should refer to G.S. 163-226(a)(1) and (a)(3) and to 163-226(a)(2), respectively.

For special provisions for 1982 primary elections, see Session Laws 1982, 2nd Ex. Sess., c. 3, ss. 1 through 19, as amended by Session laws

1981 (Reg. Sess., 1982), c. 1265, s. 1.

Effect of Amendments. — The first 1981 amendment added "or legal guardian" following "relative" in subdivisions (3), (4), and (8) of subsection (c).

The second 1981 amendment, effective with respect to all elections occurring on or after July 1, 1981, substituted "Thursday" for "Wednesday" throughout the section.

§ 163-227.1. Second primary; applications for absentee ballots for voting in second primary.

A voter applying for an absentee ballot for a primary election who will be absent from the county of his residence on the day of the primary and second primary shall be permitted by the county board of elections to indicate such fact on his application and such voter shall automatically be issued an absentee ballot for the second primary if one is called. The county board of elections shall consider such indication a separate application for the second primary and, at the proper time, shall enter such voter's name in the absentee register along with the listing of other applicants for absentee ballots for the second primary.

In addition, a voter entitled to absentee ballots under the provisions of this Article who did not make application for the primary or who failed to apply for a second primary ballot at the time of application for a first primary ballot may apply for absentee ballots for a second primary not earlier than the day a second primary is called and not later than 5:00 P.M. on the Thursday prior to the date on which the second primary is held.

All procedures with respect to absentee ballots in a second primary shall be the same as with respect to absentee ballots in a first primary except as otherwise provided by this section. (1973, c. 536, s. 1; 1977, c. 469, s. 1; 1981, c. 560, s. 1.)

Effect of Amendments. — The 1981 amendment, effective with respect to all elections held on and after Sept. 1, 1981, substituted

"Thursday" for "Wednesday" near the end of the second paragraph.

§ 163-227.2. Alternate procedures for requesting application for absentee ballot; "one-stop" voting procedure in board office.

(a) A person expecting to be absent from the county in which he is registered during the entire period that the polls are open on the day of an election in which absentee ballots are authorized or is eligible under G.S. 163-226(a)(2) or 163-226(a)(4) may request an application for absentee ballots, complete the application, receive the absentee ballots, vote and deliver them sealed in a container-return envelope to the county board of elections in the county in which he is registered under the provisions of this section.

(b) Not earlier than the day following the day on which the registration books close before an election, in which absentee ballots are authorized, in which he seeks to vote and not later than 5:00 P.M. on the Thursday prior to that election, the voter shall appear in person only at the office of the county board of elections and request that the chairman, a member, or the supervisor of elections of the board, or an employee of the board of elections, authorized by the board, furnish him with application Form OS as specified in G.S. 163-227. The voter shall complete the application in the presence of the chairman, member, supervisor of elections or authorized employee of the board, and shall deliver the application to that person.

(c) If the application is properly filled out, the chairman, member, supervisor of elections of the board, or employee of the board of elections, authorized by the board, shall enter the voter's name in the register of absentee ballot applications and ballots issued; shall furnish the voter with the instruction sheets called for by G.S. 163-229(c); shall furnish the voter with the ballots to which the application for absentee ballots applies; and shall furnish the voter with a container-return envelope. The voter thereupon shall comply with the provisions of G.S. 163-231(a) except that he shall deliver the container-return enve-

lope to the chairman, member, supervisor of elections of the board, or an employee of the board of elections, authorized by the board, immediately after making and subscribing the affidavit printed on the container-return envelope as provided in G.S. 163-229(b). All actions required by this subsection (c) shall be performed in the office of the board of elections. For the purposes of this section only, the chairman, member, supervisor of elections of the board, or full-time employee, authorized by the board, is authorized to administer the oath required for the affidavit on the container-return envelope, in such case, no seal shall be required, but the chairman, member, supervisor of elections of the board, or full-time employee, authorized by the board, shall sign and indicate the official title held by him or her, and shall charge no fee of any voter for taking the acknowledgment required under this section.

(d) Only the chairman, member or supervisor of elections of the board shall keep the voter's application for absentee ballots and the sealed container-return envelope in a safe place, separate and apart from other applications and container-return envelopes. At the first meeting of the board pursuant to G.S. 163-230(2) held after receipt of the application and envelope, the chairman shall comply with the requirements of G.S. 163-230(1) and 163-230(2) b. and c. If the voter's application for absentee ballots is approved by the board at that meeting, the application form and container-return envelope, with the ballots enclosed, shall be handled in the same manner and under the same provisions of law as applications and container-return envelopes received by the board under other provisions of this Article. If the voter's application for absentee ballots is disapproved by the board, the board shall so notify the voter stating the reason for disapproval by first-class mail addressed to the voter at his residence address or at the address shown in the application for absentee ballots; and the board chairman shall retain the container-return envelope in its unopened condition until the day of the primary or election to which it relates and on that day he shall destroy the container-return envelope and the ballots therein, without, however, revealing the manner in which the voter marked the ballots.

(e) The voter shall vote his absentee ballot in a voting booth and the county board of elections shall provide a voting booth for that purpose, provided however, that the county board of elections may in the alternative provide a private room for the voter adjacent to the office of the board, in which case the voter shall vote his absentee ballot in that room. The voting booth shall be in the office of the county board of elections. If the voter needs assistance in getting to and from the voting booth and in preparing and marking his ballots or if he is a blind voter, only a member of the county board of elections, the supervisor of elections, an employee of the board of elections authorized by the board, a near relative of the voter as defined in G.S. 163-227(c)(4), or the voter's legal guardian shall be entitled to assist the voter.

(f) Notwithstanding the exception specified in G.S. 163-67(b) counties which operate a modified full-time office shall remain open five days each week during regular business hours consistent with the daily hours presently observed by the county board of elections, commencing with the date prescribed in G.S. 163-227.2(b) and continuing until 5:00 P.M. on the Thursday prior to that election or primary. The boards of county commissioners shall provide necessary funds for the additional operation of the office during such time. (1973, c. 536, s. 1; 1975, c. 844, s. 12; 1977, c. 469, s. 1; c. 626, s. 1; 1979, c. 107, s. 14; c. 799, ss. 1-3; 1981, c. 305, s. 2.)

Editor's Note. — For special provisions for 1982 primary elections, see Session Laws 1982, 2nd Ex. Sess., c. 3, ss. 1 through 19, as amended by Session Laws 1981 (Reg. Sess., 1982), c. 1265, s. 1.

Effect of Amendments. — The 1981 amendment, effective with respect to all elections occurring on or after July 1, 1981, substituted "Not earlier than the day following the day on which the registration books close" for "Not ear-

lier than 30 days" at the beginning of subsection (b).

§ 163-227.3. Date by which absentee ballots must be available for voting.

(a) The State Board of Elections shall provide absentee ballots of the kinds to be furnished by the State Board, to the county boards of elections 60 days prior to the date on which the election shall be conducted unless there shall exist an appeal before the State Board or the courts not concluded, in which case the State Board shall provide the ballots as quickly as possible upon the conclusion of such an appeal. In every instance the State Board shall exert every effort to provide absentee ballots, of the kinds to be furnished by the State Board, to each county by the date on which absentee voting is authorized to commence.

(b) Second Primary. — The State Board of Elections shall provide absentee ballots, of the kinds to be furnished by the State Board, as quickly as possible after the ballot information has been determined. (1973, c. 1275; 1977, c. 469, s. 1.)

§ 163-228. Register of absentee ballot applications and ballots issued; a public record.

The State Board of Elections shall design an official register and provide a source of supply thereof from which the chairman of the county board of elections in each county of the State shall purchase a book to be called the register of absentee ballot applications and ballots issued in which shall be recorded whatever information and official action may be required by this Article.

The register of absentee ballot applications and ballots issued shall constitute a public record and shall be opened to the inspection of any registered voter of the county at any time within 60 days before and 30 days after an election in which absentee ballots were authorized, or at any other time when good and sufficient reason may be assigned for its inspection. (1939, c. 159, ss. 3, 9; 1945, c. 758, s. 8; 1953, c. 1114; 1963, c. 457, s. 3; 1965, c. 1208; 1967, c. 775, s. 1; c. 952, s. 4; 1973, c. 536, s. 1; 1977, c. 469, s. 1.)

§ 163-229. Absentee ballots, container-return envelopes, and instruction sheets.

(a) Absentee Ballot Form. — In accordance with the provisions of G.S. 163-230(3), persons entitled to vote by absentee ballot shall be furnished with regular official ballots. Separate or distinctly marked absentee ballots shall not be used.

(b) Container-Return Envelope. — In time for use not later than 60 days before a statewide primary, general election or county bond election, the county board of elections shall print a sufficient number of envelopes in which persons casting absentee ballots may transmit their marked ballots to the chairman of the county board of elections. Each container-return envelope shall be printed in accordance with the following instructions:

- (1) On one side shall be printed an identified space in which shall be inserted the application number of the voter and the following statement which shall be certified by one member of the county board of elections:

“Certification of Election Official

The undersigned election official does by his hand and seal certify that
..... is a registered and qualified voter of County, Precinct
..... and has made proper application to vote under the Absentee Ballot
Law of North Carolina.

..... (Seal)

Chairman-Member”

- (2) On the other side shall be printed the return address of the chairman
of the county board of elections and the following affidavit:

“Affidavit of Absentee or Sick Voter

State of

County of

I,, do solemnly swear that I am a resident and
registered voter in precinct, County, North
Carolina; that on the day of an election,, 19. ... (check
whichever of the following statements is correct.)

() I will be absent from the county in which I reside.

() Due to sickness or physical disability, or incarceration as a
misdemeanant, I will be unable to travel to the voting place in the
precinct in which I reside.

I further swear that I made application for absentee ballots, and
that I marked the ballots enclosed herein, or that they were marked
for me in my presence and according to my instructions.

.....
(Signature of voter)

Sworn to and subscribed before me this day of, 19. ...

.....
(Signature and seal of officer
administering oath)

My commission (if any) expires

.....
.....
(Title of officer)”

Note: The acknowledgment of a member of the armed forces of the
United States may be taken before any commissioned officer or
noncommissioned officer of the rank of sergeant in the army, petty
officer in the navy, or equivalent rank in other branches of the armed
forces.

(c) Instruction Sheets. — In time for use not later than 60 days before a
statewide primary, general or county bond election, the county board of elec-
tions shall prepare and print a sufficient number of sheets of instructions on
how voters are to prepare absentee ballots and return them to the chairman of
the county board of elections. (1929, c. 164, s. 39; 1939, c. 159, ss. 3, 4; 1943,
c. 751, s. 2; 1963, c. 457, ss. 3, 4; 1965, c. 1208; 1967, c. 775, s. 1; c. 851, s. 1;
c. 952, s. 5; 1973, c. 536, s. 1; 1975, c. 844, s. 13; 1977, c. 469, s. 1.)

**§ 163-230. Consideration and approval of applications and
issuance of absentee ballots.**

The procedure to be followed in receiving applications for absentee ballots,
passing upon their validity, and issuing absentee ballots shall be governed by
the provisions of this section.

- (1) Record of Applications Received and Ballots Issued. — Upon receipt of a voter's written application for absentee ballots, the chairman of the county board of elections shall promptly enter in the register of absentee ballot application and ballots issued so much of the following information as he has not already entered there under the provisions of G.S. 163-227(4) [163-227(b)(4)]:
 - a. Name of voter applying for absentee ballots, and, if applicable, the name and address of the voter's near relative who applied for the application for absentee ballots.
 - b. Number of assigned voter's application when issued.
 - c. Precinct in which applicant is registered.
 - d. Address to which ballots are to be mailed, or that the voter voted pursuant to G.S. 163-227.2.
 - e. Reason assigned for requesting absentee ballots.
 - f. Date application for ballots is received by chairman.
 - g. The voter's party affiliation.
- (2) Determination of Validity of Applications for Absentee Ballots. — The county board of elections shall constitute the proper official body to pass upon the validity of all applications for absentee ballots received in the county; this function shall not be performed by the chairman or any other member of the board individually.
 - a. Required Meeting of County Board of Elections. — During the period commencing 60 days before an election, and until 30 days before the election, in which absentee ballots are authorized, the county board of elections shall hold one or more public meetings each week on a day and at an hour to be determined by the board for the purpose of action on applications for absentee ballots. Each member of the board shall be notified in writing of the day and hour such meetings shall be conducted. During the period opening 30 days before an election in which absentee ballots are authorized and closing at 5:00 P.M. on the Thursday before the election, the county board of elections shall hold public meetings at 10:00 A.M. on Tuesday and Friday of each week, and it shall also hold public meetings at 10:00 A.M. on the eight, fifth, third and first days immediately preceding election day. These meetings shall be held at the county courthouse or at the elections board's office at the hour fixed by law. At these meetings the county board of elections shall pass upon applications for absentee ballots.

Upon a majority vote, the county board of elections may hold the required public meetings at an hour other than 10:00 A.M., and it may hold more than one session on each Tuesday and Friday it is required to meet and may set the hours of any additional sessions. If the board desires to exercise either or both of the options granted by the preceding sentence, it shall do so prior to the date on which it is required to hold its first public meeting under the provisions of this subdivision and in time to give the notice required by the fourth paragraph of this lettered portion of this subdivision; thereafter, no change shall be made in the hours fixed for the board's public meetings on absentee ballot applications.

It shall not be necessary for the chairman of the county board of elections to give notice to other board members of weekly meetings of the board which are fixed as to time and place by this section.

If the county board of elections changes the time of holding its Tuesday and Friday meetings or provides for additional meetings on Tuesdays and Fridays in accordance with the terms of this

subdivision, notice of the change in hour and notice of the schedule of additional meetings, if any, shall be published in a newspaper circulated in the county, and a notice thereof shall be posted at the courthouse door of the county, at least one week prior to the time fixed for holding the first meeting under this subdivision.

The county board of elections shall not be required to hold any of the meetings prescribed by this subdivision unless, since its last preceding meeting, it actually has received one or more applications for absentee ballots which it has not passed upon. When no meeting is to be held for this reason, the chairman shall notify each of the other members of the county board of elections that the scheduled public meeting will not be held and state the reasons for its cancellation.

- b. Procedure at Required Meeting; Making Determination. — At each public meeting of the county board of elections the chairman shall present for consideration, and the board shall pass upon, the validity of all applications for absentee ballots received since its last preceding public meeting held for that purpose. In connection with each application received by mail the chairman shall also present the container-return envelope in which the application was received. At each such meeting any registered voter of the county shall be heard and allowed to present evidence in opposition to, or in favor of, the issuance of absentee ballots to any voter making application for them.

The county board of elections may consider the registration records as evidence of the voter's signature, if available, and as any other evidence that may be necessary to pass upon such an application, including the party affiliation of a voter seeking to vote in a primary.

If the board finds that the applicant is a qualified voter of the county, that he is registered in the precinct stated in his application, that the assertions in his application are true, and that his application is in proper form, it shall approve his application for absentee ballots.

- c. Record of Board's Determination; Decision Final. — At the time the county board of elections makes its decision on an application for absentee ballots, the chairman shall enter in the appropriate column in the register of absentee ballot applications and ballots issued opposite the name of the applicant a notation of whether his application was "Approved" or "Disapproved".

The decision of the board on the validity of an application for absentee ballots shall be final subject only to such review as may be necessary in the event of an election contest.

- (3) Delivery of Absentee Ballots and Container-Return Envelope to Applicant. — When the county board of elections approves an application for absentee ballots, the chairman shall promptly issue and transmit them to the voter only, and not to his near relative, in accordance with the following instructions:

- a. On the top margin of each ballot the applicant is entitled to vote, the chairman shall write or type the words "Absentee Ballot No. . . ." and insert in the blank space the number assigned the applicant's application in the register of applications for absentee ballots and ballots issued. He shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter.

- b. The chairman shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope.

lope and write or type in the appropriate blanks thereon, in accordance with the terms of G.S. 163-229(b), the absentee voter's name, his application number and the designation of the precinct in which the voter is registered. The chairman shall leave the container-return envelope holding the ballots unsealed.

- c. The chairman shall then place the unsealed container-return envelope holding the ballots together with printed instructions for voting and returning the ballots, in an envelope addressed to the applicant at the post office address stated in his application, seal the envelope, and mail it at the expense of the county board of elections, or deliver it to the applicant in person: Provided, that in case of approval of an application received after 5:00 P.M. on the Thursday before the election under the provisions of G.S. 163-227(b)(3), in lieu of transmitting the ballots to the applicant in person or by mail, the chairman may deliver the sealed envelope containing the instruction sheet and the container-return envelope holding the ballots to a near relative of the voter. (1939, c. 159, s. 3; 1963, c. 457, s. 3; 1965, c. 1208; 1967, c. 775, s. 1; c. 952, s. 6; 1973, c. 536, s. 1; c. 1075, s. 4; 1975, c. 844, ss. 14, 19; 1977, c. 469, s. 1; 1981, c. 305, s. 3.)

Effect of Amendments. — The 1981 amendment, effective with respect to all elections occurring on or after July 1 1981, substituted

"Thursday" for "Wednesday" in the third sentence of the first paragraph of subdivision (2)a and near the middle of subdivision (3)c.

CASE NOTES

Election Held Not Vitiating by Irregular Delivery of Ballots. — The fact that the chairman of the county board of elections, in company with candidates in the election, personally delivered absentee ballots to absentee voters at their temporary residence in

another state or county was insufficient, of itself, to vitiate their votes, there being no evidence remotely suggesting coercion, fraud or imposition. *State ex rel. Owens v. Chaplin*, 228 N.C. 705, 47 S.E.2d 12, rehearing denied, 229 N.C. 797, 48 S.E.2d 37 (1948).

§ 163-231. Voting absentee ballots and transmitting them to chairman of the county board of elections.

(a) Procedure for Voting Absentee Ballots. — In the presence of an officer authorized to administer oaths, having an official seal, the voter shall:

- (1) Mark his ballots, or cause them to be marked by such officer in his presence according to his instruction;
- (2) Fold each ballot separately, or cause each of them to be folded in his presence;
- (3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in his presence;
- (4) Make and subscribe the affidavit printed on the container-return envelope according to the provisions of G.S. 163-229(b).

The officer administering the oath shall then complete the form on the container-return envelope and affix his seal, if any, in the place indicated. When thus executed, the sealed container-return envelope, with the ballots enclosed, shall be transmitted in accordance with the provisions of subsection (b) of this section to the chairman of the county board of elections who issued the ballots.

In the case of voters who are members of the armed forces of the United States, as defined in G.S. 163-245, the signature of any commissioned officer or noncommissioned officer of the rank of sergeant in the army, petty officer

in the navy, or equivalent rank in other branches of the armed forces, as a witness to the execution of any certificate required by this or any other section of this Article to be under oath shall have the force and effect of the jurat of an officer with a seal fully authorized to take and administer oaths in connection with absentee ballots.

(b) Transmitting Executed Absentee Ballots to Chairman of County Board of Elections. — The sealed container-return envelope in which executed absentee ballots have been placed shall be transmitted to the chairman of the county board of elections who issued them as follows: All ballots issued under the provisions of Articles 20 and 21 of this Chapter shall be transmitted by mail, at the voter's expense, or delivered in person, or by the voter's spouse, brother, sister, parent, grandparent, child or grandchild not later than 5:00 P.M. on the day before the statewide primary or general election or county bond election. If such ballots are received later than that hour, they shall not be accepted for voting. (1939, c. 159, ss. 2, 5; 1941, c. 248; 1943, c. 736; c. 751, s. 1; 1945, c. 758, s. 5; 1963, c. 457, ss. 2, 5; 1967, c. 775, s. 1; 1971, c. 1247, s. 3; 1973, c. 536, s. 1; 1977, c. 469, s. 1; 1979, c. 799, s. 5.)

CASE NOTES

Voters Must Be Sworn. — Where the evidence supports the findings that certain absentee voters were not sworn, the rejection of their ballots is proper. *State ex rel. Owens v. Chaplin*, 228 N.C. 705, 47 S.E.2d 12, rehearing denied, 229 N.C. 797, 48 S.E.2d 37 (1948).

Oaths Need Not Be Taken upon the Bible. — The fact that the oaths of absentee voters were not taken by them upon the Bible, but were taken with uplifted hands, does not invalidate their votes. *State ex rel. Owens v.*

Chaplin, 228 N.C. 705, 47 S.E.2d 12 (1948), rehearing denied, 229 N.C. 797, 48 S.E.2d 37 (1948).

Interest of superior court clerk in reelection, standing alone, does not disqualify him from administering oaths to absentee voters, administering the oaths being ministerial and not judicial. *State ex rel. Owens v. Chaplin*, 228 N.C. 705, 47 S.E.2d 12 (1948), rehearing denied, 229 N.C. 797, 48 S.E.2d 37 (1948).

§ 163-232. **Certified list of executed absentee ballots; distribution of list.**

The chairman of the county board of elections shall prepare, or cause to be prepared, a list in at least quadruplicate, of all absentee ballots returned to the county board of elections to be counted, which have been approved by the county board of elections. At the end of the list, the chairman shall execute the following certificate under oath:

"State of North Carolina

County of

I,, chairman of the County board of elections, do hereby certify that the foregoing is a list of all executed absentee ballots to be voted in the election to be conducted on the . . . day of . . . , 19. . . , which have been approved by the county board of elections. I further certify that I have issued ballots to no other persons than those listed herein, whose original applications or original applications made by near relatives are filed in the office of the county board of elections; and I further certify that I have not delivered ballots for absentee voting to any person other than the voter himself, by mail or in person, except as provided by law, in the case of approved applications received after 5:00 P.M. on the Thursday before the election.

This the day of, 19.

(Signature of chairman of
county board of elections)

Sworn to and subscribed before me this day of, 19. Witness
my hand and official seal.

(Signature of officer
administering oath)

(Title of officer)"

No earlier than 3:00 P.M. on the day before the election and no later than 10:00 A.M. on election day, the chairman shall cause one copy of the list of executed absentee ballots, which may be a continuing countywide list or a separate list for each precinct, to be immediately deposited as "first-class" mail to the State Board of Elections, Post Office Box 1166, Raleigh, N.C. 27602. He shall retain one copy in the board office for public inspection and he shall cause two copies of the appropriate precinct list to be delivered to the registrar of each precinct in the county. The chairman shall be authorized to call upon the sheriff of the county to distribute the list to the precincts. In addition the chairman shall, upon request, provide a copy of the complete list to the chairman of each political party, recognized under the provisions of G.S. 163-96, represented in the county.

The registrar shall post one copy of the list immediately in a conspicuous location in the voting place and retain one copy until all challenges of absentee ballots have been heard by the county board of elections. Challenges shall be made to absentee ballots as provided in G.S. 163-89.

After receipt of the list of absentee voters required by this section the registrar shall call the name of each person recorded on the list and enter an "A" in the appropriate voting square on the voter's permanent registration record. If such person is already recorded as having voted in that election, the registrar shall enter a challenge which shall be presented to the chairman of the county board of elections for resolution by the board of elections prior to certification of results by the board.

All lists required by this section shall be retained by the county board of elections for a period of four years after which they may then be destroyed. (1939, c. 159, s. 6; 1943, c. 751, s. 3; 1963, c. 457, s. 6; 1967, c. 775, s. 1; 1973, c. 536, s. 1; 1977, c. 469, s. 1; 1981, c. 155, s. 1; c. 305, s. 4.)

Effect of Amendments. — The first 1981 amendment, substituted "receipt of the list of absentee voters required by this section" for "the last person has voted" in the first sentence of the fourth paragraph, and added the language beginning "which shall be presented" at

the end of the second sentence of the fourth paragraph.

The second 1981 amendment, effective with respect to all elections occurring on or after July 1, 1981, substituted "Thursday" for "Wednesday" near the end of the oath.

§ 163-233. Applications for absentee ballots; how retained.

The chairman of the county board of elections shall retain, in a safe place, the original of all applications made for absentee ballots and shall make them available to inspection by the State Board of Elections or to any person upon the directive of the State Board of Elections.

All applications for absentee ballots shall be retained by the county board of elections for a period of one year after which they may be destroyed. (1939, c. 159, s. 7; 1943, c. 751, s. 4; 1963, c. 457, s. 7; 1967, c. 775, s. 1; 1973, c. 536, s. 1; c. 1075, s. 5; 1977, c. 469, s. 1.)

Cross References. — For present provisions covering the subject matter of this section as it existed prior to the 1977 amendment, see § 163-232.

§ 163-233.1. Withdrawal of absentee ballots not allowed.

No person shall be permitted to withdraw an absentee ballot after such ballot has been mailed to or returned to the county board of elections. (1973, c. 536, s. 1; 1977, c. 469, s. 1.)

§ 163-234. Counting absentee ballots by county board of elections.

All absentee ballots returned to the chairman or supervisor of elections of the county board of elections in the container-return envelopes shall be retained by the chairman to be counted by the county board of elections as herein provided.

- (1) Only those absentee ballots returned to the county board of elections no later than 5:00 P.M. on the day before election day in a properly executed container-return envelope shall be counted.
- (2) The county board of elections shall meet at 5:00 P.M. on election day in the board office or other public location in the county courthouse for the purpose of counting all absentee ballots except those which have been challenged before 5:00 P.M. on election day. Any elector of the county shall be permitted to attend the meeting and allowed to observe the counting process, provided he shall not in any manner interfere with the election officials in the discharge of their duties.

Provided, that the county board of elections is authorized to begin counting absentee ballots between the hours of 2:00 P.M. and 5:00 P.M. upon the adoption of a resolution at least two weeks prior to the election wherein the hour and place of counting absentee ballots shall be stated. A copy of the resolutions shall be published once a week for two weeks prior to the election, in a newspaper having general circulation in the county. The count shall be continuous until completed and the members shall not separate or leave the counting place except for unavoidable necessity. The board shall not announce the result of the count before 7:30 P.M.

- (3) The counting of absentee ballots shall not commence until a majority and at least one board member of each political party represented on the board is present and such fact is publicly declared and entered in the official minutes of the county board.
- (4) The county board of elections may employ such assistants as deemed necessary to count the absentee ballots, but each board member present shall be responsible for and observe and supervise the opening and tallying of the ballots.
- (5) As each ballot envelope is opened, the board shall cause to be entered into a pollbook designated "Pollbook of Absentee Voters" the name of the absentee voter. Preserving secrecy, the ballots shall be placed in the appropriate ballot boxes, at least one of which shall be provided for each type of ballot.

After all ballots have been placed in the boxes, the counting process shall begin.

If a challenge transmitted to the board on canvass day by a registrar is sustained, the ballots challenged and sustained shall be withdrawn from the appropriate boxes, as provided in G.S. 163-89(e).

As soon as the absentee ballots have been counted and the names of the absentee voters entered in the pollbook as required herein, the

board members and assistants employed to count the absentee ballots shall each sign the pollbook immediately beneath the last absentee voter's name entered therein. The chairman shall be responsible for the safekeeping of the pollbook of absentee voters.

- (6) Upon completion of the counting process the board members shall cause the results of the tally to be entered on the absentee abstract prescribed by the State Board of Elections. The abstract shall be signed by the members of the board in attendance and the original mailed immediately to the State Board of Elections, Raleigh, North Carolina 27602.
- (7) One copy of the absentee abstract shall be retained by the county board of elections and the totals appearing thereon shall be added to the final totals of all votes cast in the county for each office as determined on the official canvass.
- (8) In the event a political party does not have a member of the county board of elections present at the 5:00 P.M. meeting to count absentee ballots due to illness or other cause of the member, the counting shall not commence until the county party chairman of said absent member, or a member of the party's county executive committee, is in attendance. Such person shall act as an official witness to the counting and shall sign the absentee ballot abstract as an "observer."
- (9) The county board of elections shall retain all container-return envelopes and absentee ballots, in a safe place, for at least four months, and longer if any contest is pending concerning the validity of any ballot. (1939, c. 159, ss. 8, 9; 1945, c. 758, s. 8; 1953, c. 1114; 1963, c. 547, s. 8; 1967, c. 775, s. 1; c. 851, s. 2; 1973, c. 536, s. 1; 1975, c. 798, s. 3; 1977, c. 469, s. 1; c. 626, s. 1.)

§ 163-235: Repealed by Session Laws 1973, c. 536, s. 5.

§ 163-236. Violations by chairman of county board of elections.

The chairman of the county board of elections shall be sole custodian of blank applications for absentee ballots, official ballots, and container-return envelopes for absentee ballots. He shall issue and deliver blank applications for absentee ballots in strict accordance with the provisions of G.S. 163-277(4) [163-227(c)]. The issuance of ballots to persons whose applications for absentee ballots have been approved by the county board of elections under the provisions of G.S. 163-230(3) is the responsibility and duty of the chairman of the county board of elections.

It shall be the duty of the chairman of the county board of elections to keep current all records required of him by this Article and to make promptly all reports required of him by this Article.

The willful violation of the terms of this section shall constitute a misdemeanor, and upon conviction, the offender shall be fined not less than one hundred dollars (\$100.00), or imprisoned not less than 60 days, or both, in the discretion of the court. (1939, c. 159, s. 14; 1963, c. 457, s. 10; 1967, c. 775, s. 1; 1977, c. 469, s. 1.)

Editor's Note. — The reference to § 163-227 has been inserted in brackets in the second sentence to correct the erroneous reference to

§ 163-277, which appeared in the 1977 amendatory act.

§ 163-237. Certain violations of absentee ballot law made criminal offenses.

(a) False Statements under Oath Made Misdemeanor. — If any person shall willfully and falsely make any affidavit or statement, under oath, which affidavit or statement under oath, is required to be made by the provisions of this Article, he shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than one hundred dollars (\$100.00), or imprisoned for not less than 60 days, or both, in the discretion of the court.

(b) False Statements Not under Oath Made Misdemeanor. — If any person, for the purpose of obtaining or voting any official ballot under the provisions of this Article, shall willfully sign any printed or written false statement which does not purport to be under oath, or which, if it purports to be under oath, was not duly sworn to, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars (\$100.00), or imprisoned not less than 60 days, or both, in the discretion of the court.

(c) Fraud in Connection with Absentee Vote; Forgery. — Any person attempting to aid and abet fraud in connection with any absentee vote cast or to be cast, under the provisions of this Article, shall be guilty of a misdemeanor, and, upon conviction, be fined or imprisoned, in the discretion of the court. Any person attempting to vote by fraudulently signing the name of a regularly qualified voter shall be guilty of forgery, and be punished accordingly.

(d) Violations Not Otherwise Provided for Made Misdemeanors. — If any person shall willfully violate any of the provisions of this Article, or willfully fail to comply with any of the provisions thereof, for which no other punishment is herein provided, he shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than one hundred dollars (\$100.00), or imprisoned not less than six months, or both, in the discretion of the court. (1929, c. 164, s. 40; 1939, c. 159, ss. 12, 13, 15; 1967, c. 775, s. 1; 1977, c. 469, s. 1.)

§ 163-238. Reports of violations to district attorneys.

It shall be the duty of the State Board of Elections to report to the district attorney of the appropriate prosecutorial district, any violation of this Article, or the failure of any person charged with a duty under its provisions to comply with and perform that duty, and it shall be the duty of the district attorney to cause such a person to be prosecuted therefor. (1939, c. 159, s. 16; 1967, c. 775, s. 1; 1977, c. 469, s. 1.)

§ 163-239. Article 21 relating to absentee voting by servicemen and certain civilians not applicable.

Except as otherwise provided therein, Article 21 of this Chapter, relating to absentee registration and voting by servicemen and certain civilians, shall not apply to or modify the provisions of this Article. (1963, c. 457, s. 11; 1967, c. 775, s. 1; 1977, c. 469, s. 1.)

§§ 163-240 to 163-240.5: Expired July 1, 1972.

§§ 163-241 to 163-244: Reserved for future codification purposes.

ARTICLE 21.

*Military Absentee Registration and Voting in Primary and General Elections.***§ 163-245. Persons in armed forces, their spouses, certain veterans, civilians working with armed forces, and members of Peace Corps may register and vote by mail.**

(a) Any individual who is eligible to register and who is qualified to vote in any statewide primary or election held under the laws of this State, and who is absent from the county of his residence in any of the capacities specified in subsection (b) of this section, shall be entitled to register by mail and to vote by military absentee ballot in the manner provided in this Article.

(b) The provisions of this Article shall apply to the following persons:

- (1) Persons serving in the armed forces of the United States, including (but not limited to) the army, the navy, the air force, the marine corps, the coast guard, the Army Nurse Corps, the Navy Nurse Corps, the Women's Navy Reserve, the Marine Corps Women's Reserve, the Women's Army Corps, the Merchant Marine, and members of the national guard and military reserve who on the day of a primary or general election are absent on active duty.
- (2) Spouses of persons serving in the armed forces of the United States residing outside the counties of their spouses' voting residence.
- (3) Disabled war veterans in United States government hospitals.
- (4) Civilians attached to and serving outside the United States with the armed forces of the United States.
- (5) Members of the Peace Corps. (1941, c. 346, ss. 1, 1a; 1943, c. 503, s. 1; 1945, c. 758, s. 4; 1953, c. 908; 1963, c. 457, s. 16; 1967, c. 775, s. 1; 1973, c. 793, s. 71.)

Legal Periodicals. — For comment on absentee voting in primaries by voters in military former §§ 163-70 to 163-77, relating to military and naval service, see 19 N.C.L. Rev. 480.

§ 163-246. Provisions of Article 20 applicable except as otherwise provided; State Board of Elections to adopt regulations.

Except as otherwise provided in this Article, registration by mail and absentee voting by individuals to whom this Article is applicable shall be governed by the provisions of Article 20 of this Chapter. By way of illustration rather than limitation, the provisions of this paragraph shall apply to the form of absentee ballots, certificates and container-return envelopes; the manner of depositing and voting military absentee ballots; the counting and certifying of results; the hearing of challenges; and the preservation of container-return envelopes in which executed military absentee ballots are transmitted.

The State Board of Elections is authorized to adopt and promulgate whatever rules and regulations (not in conflict with other provisions of this Chapter) it may deem necessary to carry out the true intent and purpose of this Article. (1941, c. 346, ss. 7-10; 1943, c. 503, ss. 7, 8; 1963, c. 457, s. 15; 1967, c. 775, s. 1.)

§ 163-247. Methods of applying for absentee ballots.

An individual entitled to exercise the rights conferred by this Article and who is absent from the county of his residence may apply for absentee ballots in either of the ways provided in this section.

- (1) Federal Postcard Application Form. — At any time prior to the statewide primary or general election in which he seeks to vote, the applicant may make and sign a written application to the Secretary of State for absentee ballots on the postcard form prescribed in Public Law 712 of the Seventy-seventh Congress. Upon receiving such an application, the Secretary of State shall record the applicant's name and residence address on a record maintained for that purpose and immediately send the application to the chairman of the board of elections of the county in which the applicant has his residence, together with instructions for handling the application under the provisions of this Article.
- (2) Application to Chairman of County Board of Elections. — In lieu of applying on the federal post card as provided in the preceding subdivision, at any time prior to the statewide primary or general election in which he seeks to vote the applicant may make and sign a written application to the chairman of the board of elections of the county of his residence upon a form prepared and furnished him upon request by the county board of elections. This form shall require the applicant's signature and shall elicit from him:
 - a. A request for absentee ballots to be voted in a specified statewide primary or general election.
 - b. A statement of his political party affiliation if he seeks to vote by absentee ballot in a primary election.
 - c. A statement of his membership in the armed forces of the United States, or his membership in one of the other categories to which this Article is made applicable in G.S. 163-245.
 - d. A statement of the precinct in which he is registered to vote, or, if the applicant is not registered, a statement of his address before entering military or other qualifying service and the period of time he resided at that address.
 - e. A statement of the address to which the absentee ballots should be mailed.

In lieu of using a form prepared and furnished by the county board of elections, the voter may apply in an informal writing. If the written application is signed by the voter and if it contains all the information required by this subdivision, it shall be regarded as sufficient to permit the chairman of the county board of elections to act upon it. (1941, c. 346, ss. 2, 3; 1943, c. 503, s. 2; 1963, c. 457, s. 12; 1967, c. 775, s. 1; 1977, c. 265, s. 16.)

§ 163-248. Register, ballots, container-return envelopes, and instruction sheets.

(a) Register of Military Absentee Ballot Applications and Ballots Issued. — The State Board of Elections shall furnish the chairman of the board of elections in each county of the State with a book to be called the register of military absentee ballot applications and ballots issued in which shall be recorded whatever information and official action may be required by this Article. In lieu of furnishing this register, the State Board of Elections may provide for a separate military section in the register furnished under the provisions of G.S. 163-228 which shall be used for the same purpose.

The register of military absentee ballot applications and ballots issued, whether contained in a separate book or maintained as a separate part of the register furnished under the provisions of G.S. 163-228, shall constitute a public record and shall be opened to the inspection of any registered voter of the county at any time.

(b) Absentee Ballot Form. — Persons entitled to vote by absentee ballot under the terms of this Article shall be furnished with regular official ballots; separate or distinctly marked absentee ballots shall not be used. The State Board of Elections and the county boards of elections shall have all necessary absentee ballots printed and in the hands of the proper election officials not later than 60 days before the primary or election.

(c) Container-Return Envelope. — The county board of elections shall print a sufficient number of envelopes in which persons casting military absentee ballots may transmit their marked ballots to the chairman of the county board of elections. The container-return envelopes shall be printed and available for use not later than 60 days before the primary or election. Each container-return envelope shall be printed in accordance with the following instructions:

- (1) On one side shall be arranged identified spaces in which the chairman of the county board of elections may insert the name of the applicant, the number assigned his application, and the designation of the precinct in which his ballots are to be voted.
- (2) On the other side shall be printed the return address of the chairman of the county board of elections and the following certificate:

“Certificate of Absentee Voter

I,, do hereby certify that I am a resident and qualified voter in precinct, County, North Carolina, and that I am [check whichever of the following statements is correct]

- [] Serving in the armed forces of the United States
- [] The spouse of a member of the armed forces of the United States residing outside the county of my spouse’s residence
- [] A disabled war veteran in a United States government hospital
- [] A civilian attached to and serving outside the United States with the armed forces of the United States
- [] A member of the Peace Corps

I further certify that I am affiliated with the Party. [To be completed only if applicant seeks to vote in the primary of the political party to which he belongs.]

I further certify that the following is my official address:

-
[Unit (Co., Sq., Trp., Bn., etc.), Governmental Agency, or Office]
-
[Military Base, Station, Camp, Fort, Ship, Airfield, etc.]
-
[Street number, APO, or FPO number]
-
[City, postal zone, State, and zip code]

I further certify that I made application for absentee ballots and that I marked the ballots enclosed herein, or that they were marked for me in my presence and according to my instruction.

Witness my hand in the presence of [Insert name and rank of witnessing officer] this day of, 19....

.....
(Signature of voter)

Witness:

(Signature of witnessing officer)

Rank or title of witnessing officer:

Unit to which witnessing officer is assigned:

Note: This certificate may be witnessed by any commissioned officer or any noncommissioned officer of the rank of sergeant in the Army, petty officer in the Navy, or equivalent rank in other branches of the armed forces of the United States."

(d) Instruction Sheets. — The county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters covered by the provisions of this Article are to prepare absentee ballots and return them to the chairman of the county board of elections. The instruction sheets shall be printed and available for use not later than 60 days before the primary or election. (1929, c. 164, s. 39; 1941, c. 346, ss. 2, 3, 4, 5, 6; 1943, c. 503, s. 3; 1963, c. 457, ss. 12, 13, 14; 1967, c. 775, s. 1; 1973, c. 793, s. 72; 1975, c. 844, ss. 15-17; 1979, c. 411, s. 7.)

§ 163-249. Consideration and approval of applications and issuance of absentee ballots.

The procedure to be followed in receiving applications for absentee ballots under this Article, passing upon their validity, and issuing absentee ballots shall be governed by the provisions of this section.

- (1) Record of Applications Received and Ballots Issued. — Upon receipt of a voter's written application for absentee ballots in either of the forms permitted by G.S. 163-247, the chairman of the county board of elections shall promptly enter in the register of military absentee ballot applications and ballots issued:
 - a. Name of voter applying for absentee ballots.
 - b. Applicant's political party affiliation as stated in an application for ballots in a primary.
 - c. Number assigned voter's application. (Numbers assigned applications received under the provisions of this Article shall be chosen so as not to be identical with numbers assigned applications received under the provisions of Article 20.)
 - d. Precinct in which applicant is registered if he is already registered, or precinct in which applicant is registered by the chairman of the county board of elections under the provisions of subdivisions (2) and (3) of this section.
 - e. Address to which ballots are to be mailed.
 - f. Statement of basis on which applicant asserts his qualifications for obtaining absentee ballots under the provisions of this Article.
 - g. Date application for ballots is received by chairman.

- (2) Determination of Validity of Applications for Absentee Ballots; Handling Applications for Persons Not Registered. — The chairman of the county board of elections shall pass upon the validity of all applications for absentee ballots received under the provisions of this Article, and he shall not delegate this responsibility.

If the chairman finds that the applicant is a qualified voter of the county, that he is registered in the precinct stated in his application, that the assertions in his application are true, that they demonstrate that he is entitled to vote by absentee ballot under the terms of this Article, and that his application is in proper form, the chairman shall approve the application for absentee ballots.

If the chairman finds that the applicant is not registered to vote in the precinct in which he declares he is a resident, the chairman shall

make a reasonable investigation as to the applicant's residence. If the chairman determines that the applicant is a resident of the precinct asserted, that he is eligible to register and vote under the Constitution and statutes of this State, and that his application is otherwise in order, the chairman shall register him according to the procedure specified in subdivision (3) of this section and approve his application for absentee ballots.

- (3) Record of Chairman's Decisions; Registration by Chairman. — At the time the chairman of the county board of elections makes his decision on an application for absentee ballots, he shall enter in the appropriate column in the register of military absentee ballot applications and ballots issued opposite the name of the applicant a notation of whether his application was "Approved" or "Disapproved." In cases in which the chairman determines that an unregistered applicant is entitled to register, he shall also note in the appropriate column of the register the designation of the precinct in which the applicant is entitled to vote. This entry shall constitute registration and shall entitle an otherwise qualified applicant to receive absentee ballots.
- (4) Delivery of Absentee Ballots and Container-Return Envelope to Applicant. — When the chairman of the county board of elections approves an application for military absentee ballots he shall promptly issue and transmit them in accordance with the following instructions:
 - a. On the top margin of each ballot the applicant is entitled to vote, the chairman shall write or type the words "Absentee Ballot No." and insert in the blank space the number assigned the applicant's application in the register of military absentee ballot applications and ballots issued. He shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter.
 - b. The chairman shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, the absentee voter's name, his application number, and the designation of the precinct in which his ballots are to be voted. The chairman shall leave the container-return envelope holding the ballots unsealed.
 - c. The chairman shall then place the unsealed container-return envelope holding the ballots, together with printed instructions for voting and returning the ballots, in an envelope addressed to the applicant at the address stated in his application, seal the envelope, and mail it at the expense of the county board of elections. (1941, c. 346, ss. 2, 3, 4, 5; 1943, c. 503, s. 3; 1963, c. 457, ss. 12, 13; 1967, c. 775, s. 1.)

§ 163-250. Voting absentee ballots and transmitting them to chairman of county board of elections.

(a) Procedure for Voting Absentee Ballots. — In the presence of any commissioned officer or noncommissioned officer of the rank of sergeant in the army, petty officer in the navy, or equivalent rank in other branches of the armed forces of the United States, the voter shall:

- (1) Mark his ballots, or cause them to be marked in his presence according to his instructions.
- (2) Fold each ballot separately, or cause each of them to be folded in his presence.

- (3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in his presence.
- (4) Make and subscribe the certificate printed on the container-return envelope according to the provisions of G.S. 163-248(c).

The officer witnessing the voter's signature shall then complete the form on the container-return envelope by signing his name in the appropriate place and entering his rank or title and the designation of the unit to which he is assigned.

(b) Transmitting Executed Absentee Ballots to Chairman of County Board of Elections. — When executed and witnessed in accordance with the provisions of subsection (a) of this section, the sealed container-return envelope in which executed absentee ballots have been placed shall be mailed by the voter to the chairman of the county board of elections who issued them. (1941, c. 346, ss. 7-10; 1963, c. 457, s. 15; 1967, c. 775, s. 1.)

§ 163-251. Certified list of approved military absentee ballot applications; record of ballots received; disposition of list; list constitutes registration.

(a) Preparation of List. — Before noon on the day of a statewide primary or general election, the chairman of the county board of elections shall prepare for each precinct a list, in quadruplicate, of all applications for military absentee ballots which he has received, entered in the register of military absentee ballot applications and ballots issued, and approved. This list shall be entitled "List of Applicants for Military Absentee Ballots to Whom Ballots Have Been Issued." By the name of each applicant whose executed military absentee ballots have been returned to him the chairman shall enter the notation "Ballots Returned." At the end of the list the chairman shall execute the following certificate under oath:

"State of North Carolina
County of

I,, chairman of the county board of elections, do hereby certify that the foregoing is a list of all applications filed with me for absentee ballots under the provisions of the Military Absentee Ballot Law to be voted in the [insert either 'primary' or 'general,' whichever is appropriate] election on the day of, 19. I further certify:

1. That I have issued military absentee ballots to no other persons than those listed therein;

2. That I have not delivered military absentee ballots to any person other than the voter himself, by mail or in person;

3. That I have received executed ballots from those absentee voters whose names are marked on this list with the notation 'Ballots Returned,' whose unopened container-return envelopes have been delivered to the county board of elections;

4. That this list constitutes the only precinct registration of military absentee voters whose names have not heretofore been entered on the regular registration of the appropriate precinct.

This the day of, 19.

.
(Signature of chairman of county board of elections)

Sworn to and subscribed before me this day of, 19- . . .

Witness my hand and official seal.

(Signature of officer administering oath)

(Title of officer)"

(b) Distribution of List. — Before noon on the day of the primary or general election in which the military absentee ballots are to be cast, the chairman of the county board of elections shall send one copy of the list required by this section, by United States Mail to the chairman of the State Board of Elections at Raleigh, North Carolina. The chairman shall deliver two copies of the list to the appropriate precinct registrar and retain one copy for the county board. The registrar shall post one copy in the voting place and retain one copy until all challenges of absentee ballots have been heard by the county board of elections. Challenges shall be made as provided in G.S. 163-89.

After receipt of the list of absentee voters required by this section the registrar shall call the name of each person recorded on the list and enter an "A" in the appropriate voting square on the voter's permanent registration record, if any. If such person is already recorded as having voted in that election, the registrar shall enter a challenge which shall be presented to the chairman of the county board of elections for resolution by the board of elections prior to certification or results by the board.

(c) List Constitutes Registration. — The "List of Applicants for Military Absentee Ballots to Whom Ballots Have Been Issued" prescribed by this section, when delivered to the registrars of the various precincts, shall constitute the only precinct registration of the military absentee voters listed thereon whose names are not already entered in the registration records of the appropriate precinct. Registrars shall not add the names of persons listed on the military absentee list to the regular registration books of their precincts.

(d) Counting Ballots, Hearing Challenges. — The county board of elections shall count military ballots as provided for civilian absentee ballots in G.S. 163-234, and shall hear challenges as provided in G.S. 163-89. (1941, c. 346, ss. 7-10, 12, 13; 1943, c. 503, ss. 4, 5; 1963, c. 457, s. 15; 1967, c. 775, s. 1; 1973, c. 536, s. 2; 1977, c. 265, s. 17; 1979, c. 797, s. 3; 1981, c. 155, s. 2; c. 308, s. 3.)

Effect of Amendments. — The first 1981 amendment, substituted "receipt of the list of absentee voters required by this section" for "the last person has voted" and "voting square" for "place" in the first sentence of the second paragraph of subsection (b), substituted "having voted" for "voting" in the second sentence of the second paragraph of subsection (b),

and added the language beginning "which shall be presented" at the end of the second sentence of the second paragraph of subsection (b).

The second 1981 amendment deleted "whose original applications are herewith filed with the State Board of Elections" at the end of subdivision (a)1.

§ 163-252: Repealed by Session Laws 1973, c. 536, s. 5.

§ 163-253. Article inapplicable to persons after change of status; reregistration required.

Upon discharge from the armed forces of the United States or termination of any other status qualifying him to register and vote by absentee ballot under the provisions of this Article, the voter shall not be entitled to vote by military absentee ballot, and if he was registered under the provisions of this Article his registration shall become void and he shall be required to register under the provisions of Article 7 before being entitled to vote in any primary or election. (1943, c. 503, s. 12; 1967, c. 775, s. 1.)

§ 163-254. Registration and voting on primary or election day.

Notwithstanding any other provisions of Chapter 163 of the General Statutes, any person entitled to vote an absentee ballot pursuant to G.S. 163-245 shall be permitted to register in person at any time including the day of a primary or election. Should such person's eligibility to register or vote as provided in G.S. 163-245 terminate after the registration records have closed prior to a primary or election, such person, if he appears in person, shall be entitled to register if otherwise qualified during the time the records are closed, or on the primary or election day, and shall be permitted to vote if such person is otherwise qualified. (1977, c. 93.)

Legal Periodicals. — For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

§ 163-255. Absentee voting at office of board of elections.

Notwithstanding any other provisions of Chapter 163 of the General Statutes, any person eligible to vote an absentee ballot pursuant to G.S. 163-245 shall be permitted to vote an absentee ballot pursuant to G.S. 163-227.2 if the person has not already voted an absentee ballot which has been returned to the board of elections, and if he will not be in the county on the day of the primary or election.

In the event an absentee application or ballot has already been mailed to such person applying to vote pursuant to G.S. 163-227.2, the board of elections shall void the application and ballot unless the voted absentee ballot has been received by the board of elections. Such person shall be eligible to vote pursuant to G.S. 163-227.2 no later than 5:00 P.M. on the day next preceding the primary, second primary or election. (1977, c. 93; 1979, c. 797, s. 4.)

§ 163-256. Regulations of State Board of Elections.

The State Board of Elections shall adopt rules and regulations to carry out the intent and purpose of G.S. 163-254 and 163-255, and to ensure that a proper list of persons voting under said sections shall be maintained by the boards of elections, and to ensure proper registration records, and such rules and regulations shall not be subject to the provisions of G.S. 150A-9. (1977, c. 93.)

§§ 163-257, 163-258: Reserved for future codification purposes.

SUBCHAPTER VIII. REGULATION OF ELECTION CAMPAIGNS.

ARTICLE 22.

Corrupt Practices and Other Offenses against the Elective Franchise.

§§ 163-259 to 163-268: Repealed by Session Laws 1975, c. 565, s. 8.

§ 163-269. Violations by corporations.

It shall be unlawful for any corporation doing business in this State, either domestic or foreign charter, directly or indirectly to make any contribution or expenditure in aid or in behalf of any candidate or campaign committee in any primary or election held in this State, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used, or for any contribution or expenditure so made; or for any officer, director, stockholder, attorney or agent of any corporation to aid, abet, advise or consent to any such contribution or expenditure, or for any person to solicit or knowingly receive any such contribution or expenditure.

Any officer, director, stockholder, attorney or agent of any corporation aiding or abetting in any contribution or expenditure made in violation of this section shall, in addition to being guilty of a misdemeanor as hereinafter set out, be liable to such corporation for the amount of such contribution or expenditure, and the same may be recovered of him upon suit by any stockholder thereof. Any person violating this section shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. (1931, c. 348, s. 9; 1951, c. 983, s. 1; 1967, c. 775, s. 1.)

§ 163-270. Using funds of insurance companies for political purposes.

No insurance company or association, including fraternal beneficiary associations, doing business in this State shall, directly or indirectly, pay or use, or offer, consent or agree to pay or use, any money or property for or in aid of any political party, committee or organization, or for or in aid of any corporation, joint-stock company, or other association organized or maintained for political purposes, or for or in aid of any candidate for political office or for nomination for such office, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used. An officer, director, stockholder, attorney or agent for any corporation or association which violates any of the provisions of this section, who participates in, aids, abets, advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this section, shall be guilty of a misdemeanor, and shall be punished by imprisonment for not more than one year and a fine of not more than one thousand dollars (\$1,000).

Any officer aiding or abetting in any contribution made in violation of this section shall be liable to the company or association for the amount so contributed. The Commissioner of Insurance may revoke the license of any company violating this section. No person shall be excused from attending and

testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon criminal investigation or proceeding. (1907, c. 121; C.S., s. 4199; 1967, c. 775, s. 1.)

CASE NOTES

Insurance Company Contributions to Postelection Appreciation Breakfast for Commissioner of Insurance Permissible. — A summons drawn under this section and § 163-278.19 failed sufficiently to charge an offense within the ambit of these sections where insurance companies made contributions of

money for an appreciation breakfast for the Commissioner of Insurance after his reelection. *State v. Charlotte Liberty Mut. Ins. Co.*, 39 N.C. App. 557, 251 S.E.2d 867, aff'd, 298 N.C. 270, 258 S.E.2d 343 (1979).

Quoted in *State v. Charlotte Liberty Mut. Ins. Co.*, 298 N.C. 270, 258 S.E.2d 343 (1979).

§ 163-271. Intimidation of voters by officers made misdemeanor.

It shall be unlawful for any person holding any office, position, or employment in the State government, or under and with any department, institution, bureau, board, commission, or other State agency, or under and with any county, city, town, district, or other political subdivision, directly or indirectly, to discharge, threaten to discharge, or cause to be discharged, or otherwise intimidate or oppress any other person in such employment on account of any vote such voter or any member of his family may cast, or consider or intend to cast, or not to cast, or which he may have failed to cast, or to seek or undertake to control any vote which any subordinate of such person may cast, or consider or intend to cast, or not to cast, by threat, intimidation, or declaration that the position, salary, or any part of the salary of such subordinate depends in any manner whatsoever, directly or indirectly, upon the way in which subordinate or any member of his family casts, or considers or intends to cast, or not to cast his vote, at any primary or election. Any person violating this section shall be guilty of a misdemeanor and punished by fine or imprisonment, or both, in the discretion of the court. (1933, c. 165, s. 25; 1967, c. 775, s. 1.)

Legal Periodicals. — For comment on political patronage and the Fourth Circuit's test of

dischargeability, see 15 *Wake Forest L. Rev.* 655 (1979).

CASE NOTES

Cited in *McCollum v. Stahl*, 579 F.2d 869 (4th Cir. 1978).

§ 163-272: Repealed by Session Laws 1971, c. 872, s. 3.

§ 163-273. Offenses of voters; interference with voters; penalty.

(a) Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this section to be unlawful, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. It shall be unlawful:

- (1) For a voter, except as otherwise provided in this Chapter, to allow his ballot to be seen by any person.
- (2) For a voter to take or remove, or attempt to take or remove, any ballot from the voting enclosure.
- (3) For any person to interfere with, or attempt to interfere with, any voter when inside the voting enclosure.
- (4) For any person to interfere with, or attempt to interfere with, any voter when marking his ballots.
- (5) For any voter to remain longer than the specified time allowed by this Chapter in a voting booth, after being notified that his time has expired.
- (6) For any person to endeavor to induce any voter, while within the voting enclosure, before depositing his ballots, to show how he marks or has marked his ballots.
- (7) For any person to aid, or attempt to aid, any voter by means of any mechanical device, or any other means whatever, while within the voting enclosure, in marking his ballots.

(b) Election officers shall cause any person committing any of the offenses set forth in subsection (a) of this section to be arrested and shall cause charges to be preferred against the person so offending in a court of competent jurisdiction. (1929, c. 164, s. 29; 1967, c. 775, s. 1.)

§ 163-274. Certain acts declared misdemeanors.

Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this section to be unlawful, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. It shall be unlawful:

- (1) For any person to fail, as an officer or as a judge or registrar of a primary or election, or as a member of any board of elections, to prepare the books, ballots, and return blanks which it is his duty under the law to prepare, or to distribute the same as required by law, or to perform any other duty imposed upon him within the time and in the manner required by law;
- (2) For any person to continue or attempt to act as a judge or registrar of a primary or election, or as a member of any board of elections, after having been legally removed from such position and after having been given notice of such removal;
- (3) For any person to break up or by force or violence to stay or interfere with the holding of any primary or election, to interfere with the possession of any ballot box, election book, ballot, or return sheet by those entitled to possession of the same under the law, or to interfere in any manner with the performance of any duty imposed by law upon any election officer or member of any board of elections;
- (4) For any person to be guilty of any boisterous conduct so as to disturb any member of any election board or any registrar or judge of election in the performance of his duties as imposed by law;

- (5) For any person to bet or wager any money or other thing of value on any election;
- (6) For any person, directly or indirectly, to discharge or threaten to discharge from employment, or otherwise intimidate or oppose any legally qualified voter on account of any vote such voter may cast or consider or intend to cast, or not to cast, or which he may have failed to cast;
- (7) For any person to publish in a newspaper or pamphlet or otherwise, any charge derogatory to any candidate or calculated to affect the candidate's chances of nomination or election, unless such publication be signed by the party giving publicity to and being responsible for such charge;
- (8) For any person to publish or cause to be circulated derogatory reports with reference to any candidate in any primary or election, knowing such report to be false or in reckless disregard of its truth or falsity, when such report is calculated or intended to affect the chances of such candidate for nomination or election;
- (9) For any person to give or promise, in return for political support or influence, any political appointment or support for political office;
- (10) For any chairman of a county board of elections or other returning officer to fail or neglect, willfully or of malice, to perform any duty, act, matter or thing required or directed in the time, manner and form in which said duty, matter or thing is required to be performed in relation to any primary, general or special election and the returns thereof;
- (11) For any clerk of the superior court to refuse to make and give to any person applying in writing for the same a duly certified copy of the returns of any primary or election or of a tabulated statement to a primary or election, the returns of which are by law deposited in his office, upon the tender of the fees therefor;
- (12) For any person willfully and knowingly to impose upon any blind or illiterate voter a ballot in any primary or election contrary to the wish or desire of such voter, by falsely representing to such voter that the ballot proposed to him is such as he desires.
- (13) Except as authorized by G.S. 163-72.2(b), for any person to provide false information, or sign the name of any other person, to a written report under G.S. 163-72.2. (1931, c. 348, s. 9; 1951, c. 983, s. 1; 1967, c. 775, s. 1; 1979, c. 135, s. 3.)

CASE NOTES

Indictment Held Insufficient. — An indictment charging that defendant unlawfully and willfully, by his own boisterous and violent conduct, disturbed a named registrar while in the performance of her duties in examining a named applicant for registration was insufficient, although charging the offense in the

words of the statute, since such words did not in themselves inform the accused of the specific offense of which he was accused, so as to enable him to prepare his defense or plead his conviction or acquittal as a bar to further prosecution for the same offense. *State v. Walker*, 249 N.C. 35, 105 S.E.2d 101 (1958).

§ 163-275. Certain acts declared felonies.

Any person who shall, in connection with any primary, general or special election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a Class H felony. It shall be unlawful:

- (1) For any person fraudulently to cause his name to be placed upon the registration books of more than one election precinct or fraudulently

to cause or procure his name or that of any other person to be placed upon the registration books in any precinct when such registration in that precinct does not qualify such person to vote legally therein, or to impersonate falsely another registered voter for the purpose of voting in the stead of such other voter;

- (2) For any person to give or promise or request or accept at any time, before or after any such primary or election, any money, property or other thing of value whatsoever in return for the vote of any elector;
- (3) For any person who is an election officer, a member of an election board or other officer charged with any duty with respect to any primary or election, knowingly to make any false or fraudulent entry on any election book or any false or fraudulent returns, or knowingly to make or cause to be made any false statement on any ballot, or to do any fraudulent act or knowingly and fraudulently omit to do any act or make any report legally required of such person;
- (4) For any person knowingly to swear falsely with respect to any matter pertaining to any primary or election;
- (5) For any person convicted of a crime which excludes him from the right of suffrage, to vote at any primary or election without having been restored to the right of citizenship in due course and by the method provided by law;
- (6) For any person to take corruptly the oath prescribed for voters, and the person so offending shall be guilty of perjury;
- (7) For any person with intent to commit a fraud to register or vote at more than one precinct or more than one time, or to induce another to do so, in the same primary or election, or to vote illegally at any primary or election;
- (8) For any registrar or any clerk or copyist to make any entry or copy with intent to commit a fraud;
- (9) For any election official or other officer or person to make, certify, deliver or transmit any false returns of any primary or election, or to make any erasure, alteration, or conceal or destroy any election ballot, book, record, return or process with intent to commit a fraud;
- (10) For any person to assault any registrar, judge of election or other election officer while in the discharge of his duty in the registration of voters or in conducting any primary or election;
- (11) For any person, by threats, menaces or in any other manner, to intimidate or attempt to intimidate any registrar, judge of election or other election officer in the discharge of his duties in the registration of voters or in conducting any primary or election;
- (12) For any registrar, judge of election, member of a board of elections, assistant, marker, or other election official, directly or indirectly, to seek, receive or accept money or the promise of money, the promise of office, or other reward or compensation from a candidate in any primary or election or from any source other than such compensation as may be provided by law for his services;
- (13) For any person falsely to make or present any certificate or other paper to qualify any person fraudulently as a voter, or to attempt thereby to secure to any person the privilege of voting.
- (14) Any officer authorized by G.S. 163-80 to register voters and any other individual who knowingly and willfully receives, completes, or signs an application to register from any voter contrary to the provisions of G.S. 163-72 shall be guilty of a Class H felony. (1901, c. 89, s. 13; Rev., s. 3401; 1913, c. 164, s. 2; C.S., s. 4186; 1931, c. 348, s. 10; 1943, c. 543; 1965, c. 899; 1967, c. 775, s. 1; 1979, c. 539, s. 4; 1979, 2nd Sess., c. 1316, ss. 27, 28.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1981, and applicable to offenses committed on or after that date, substituted "Class H felony" in the first sentence of the introductory paragraph and in subdivision (14) for provisions for punishment by imprisonment for not less than four

months or a fine of not less than \$1000, or both. The 1979, 2nd Sess., amendatory act was originally made effective March 1, 1981. It was postponed to April 15, 1981, by Session Laws 1981, c. 63; and to July 1, 1981, by Session Laws 1981, c. 179.

§ 163-276. Convicted officials; removal from office.

Any public official who shall be convicted of violating any provision of Article 13 or 22 of this Chapter, in addition to the punishment provided by law, shall be removed from office by the judge presiding, and, if the conviction is for a felony, shall be disqualified from voting until his citizenship is restored as provided by law, and if the conviction is for a misdemeanor, he shall be disqualified from voting for a period of two years. (1949, c. 504; 1967, c. 775, s. 1.)

§ 163-277. Compelling self-incriminating testimony; person so testifying excused from prosecution.

No person shall be excused from attending or testifying or producing any books, papers or other documents before any court or magistrate upon any investigation, proceeding or trial for the violation of any of the provisions of this Article, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him, but such person may be subpoenaed and required to testify by and for the State relative to any offense arising under the provisions of this Article; but such person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon any criminal investigation or proceeding, but such person so compelled to testify with respect to any acts of his own shall be immune from prosecution on account thereof, and shall be pardoned for any violation of law about which such person shall be so required to testify. (1931, c. 348, s. 11; 1967, c. 775, s. 1.)

Legal Periodicals. — For a general discussion of the limits to self-incrimination, see 15 N.C.L. Rev. 229.

§ 163-278. Duty of investigating and prosecuting violations of this Article.

It shall be the duty of the State Board of Elections and the district attorneys to investigate any violations of this Article, and the Board and district attorneys are authorized and empowered to subpoena and compel the attendance of any person before them for the purpose of making such investigation. The State Board of Elections and the district attorneys are authorized to call upon the Attorney General to furnish assistance by the State Bureau of Investigation in making the investigations of such violations. The State Board of Elections shall furnish the district attorney a copy of its investigation. The district attorney shall initiate prosecution and prosecute any violations of this Article. The provisions of G.S. 163-278.28 shall be applicable to violations of this Article. (1931, c. 348, s. 12; 1967, c. 775, s. 1; 1975, c. 565, s. 7.)

Legal Periodicals. — For survey of 1978 constitutional law, see 57 N.C.L. Rev. 958 (1979).

§§ 163-278.1 to 163-278.5: Reserved for future codification purposes.

ARTICLE 22A.

Regulating Contributions and Expenditures in Political Campaigns.

Part 1. In General.

§ 163-278.6. Definitions.

When used in this Article:

- (1) The term "board" means the State Board of Elections with respect to all candidates for State and multi-county district offices and the county board of elections with respect to all candidates for single-county district, county and municipal offices. The term means the State Board of Elections with respect to all statewide referenda.
- (2) The term "broadcasting station" means any commercial radio or television station or community antenna radio or television station.
- (3) The term "business entity" means any partnership, joint venture, joint-stock company, company, firm, or any commercial or industrial establishment or enterprise.
- (4) The term "candidate" means any individual who has filed a notice of candidacy for public office listed in G.S. 163-278.6(18) with the proper board of elections.
- (5) The term "communications media" or "media" means broadcasting stations, carrier current stations, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, newspaper inserts, and any person or individual whose business is polling public opinion, analyzing or predicting voter behavior or voter preferences.
- (6) The terms "contribute" or "contribution" mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, from any person or individual, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution, in support of or in opposition to any candidate, political committee, referendum committee, or political party. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods notwithstanding the foregoing meanings of "contribution," the work shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee.

- (7) The term "corporation" means any corporation doing business in this State under either domestic or foreign charter, and includes a corporate subsidiary and any business entity in which a corporation participates or is a stockholder, a partner or a joint venturer.
- (8) The term "election" means any general or special election, a first or second primary, a run-off election, or an election to fill a vacancy. The term "election" shall not include any local or statewide referendum.
- (9) The terms "expend" or "expenditure" mean any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, from any person or individual, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make an expenditure, in support of or in opposition to any candidate, political committee, referendum committee, or political party.
- (10) The term "individual" means a single individual or more than one individual.
- (11) The term "insurance company" means any person whose business is making or underwriting contracts of insurance, and includes mutual insurance companies, stock insurance companies, and fraternal beneficiary associations.
- (12) The term "labor union" means any union, organization, combination or association of employees or workmen formed for the purposes of securing by united action favorable wages, improved labor conditions, better hours of labor or work-related benefits, or for handling, processing or righting grievances by employees against their employers, or for representing employees collectively or individually in dealings with their employers. The term includes any unions to which Article 10, Chapter 95 applies.
- (13) The term "person" means any business entity, corporation, insurance company, labor union, or professional association.
- (14) The term "political committee" means a combination of two or more individuals, or any person, committee, association, or organization, the primary or incidental purpose of which is to support or oppose any candidate or political party or to influence or attempt to influence the result of an election or which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the nomination or election of any candidate at any election. The term includes, without limitation, any political party's State, county or district executive committee.
- (15) The term "political party" means any political party organized or operating in this State, whether or not that party is recognized under the provisions of G.S. 163-96.
- (16) The term "political purpose" means any purpose in aid of seeking to influence an election or a political party or candidate.
- (17) The term "professional association" means any trade association, group, organization, association, or collection of persons or individuals formed for the purposes of advancing, representing, improving, furthering or preserving the interests of persons or individuals having a common vocation, profession, calling, occupation, employment, or training.
- (18) The term "public office" means any office filled by election by the people on a statewide, county, municipal or district basis, and this Article shall be applicable to such elective offices whether the election therefor is partisan or nonpartisan, provided candidates for municipal and county offices in those municipalities and counties having less than 50,000 population, according to the most recent decennial census

figures, shall not be required to file reports required by this Article, but this Article shall otherwise be applicable to such candidates for municipal and county offices.

- (18a) The term "referendum" means any question, issue, or act referred to a vote of the people of the entire State by the General Assembly and includes constitutional amendments and State bond issues. The term "referendum" does not include any type of municipal, county, or special district referendum.
- (18b) The term "referendum committee" means a combination of two or more individuals or any business entity, corporation, insurance company, labor union, professional association, committee, association, or organization, the primary or incidental purpose of which is to support or oppose the passage of any referendum on the ballot, or to influence or attempt to influence the result of a referendum, or which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the outcome of any referendum.
- (19) The term "treasurer" means an individual appointed by a candidate, political committee, or referendum committee as provided in G.S. 163-278.7 or G.S. 163-278.40A. (1973, c. 1272, s. 1; 1975, c. 798, ss. 5, 6; 1979, c. 500, s. 1; c. 1073, ss. 1-3, 19, 20; 1981, c. 837, s. 1.)

Editor's Note. — Session Laws 1981, c. 837, s. 3, which added Part 2 of Article 22A, effective with respect to primaries and elections held on or after Sept. 1, 1981, redesignated §§ 163-278.6 through 163-278.38 as Part 1 of this Article.

Effect of Amendments. — The 1981 amendment, effective with respect to primaries and

elections held on or after Sept. 1, 1981, added "or G.S. 163-278.40A" at the end of subdivision (19).

Legal Periodicals. — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Quoted in *State v. Charlotte Liberty Mut. Ins. Co.*, 39 N.C. App. 557, 251 S.E.2d 867 (1979).

§ 163-278.7. Appointment of political treasurers.

(a) Each candidate, political committee, and referendum committee shall appoint a treasurer and, under verification, report the name and address of the treasurer to the Board. A candidate may appoint himself or any other individual, including any relative except his spouse, as his treasurer, and, upon failure to file report designating a treasurer, the candidate shall be concluded to have appointed himself as treasurer and shall be required to personally fulfill the duties and responsibilities imposed upon the appointed treasurer and subject to the penalties and sanctions hereinafter provided.

(b) Each appointed treasurer shall file with the Board at the time required by G.S. 163-278.9(a)(1) a statement of organization that includes:

- (1) The name, address and purpose of the candidate, political committee, or referendum committee, and when the political committee is created pursuant to G.S. 163-278.19(b), the purpose of the political committee shall include the name of the corporation, insurance company, business entity, labor union or professional association whose officials, employees, or members established the political committee;
- (2) The names, addresses, and relationships of affiliated or connected candidates, political committees, referendum committees, political parties, or similar organizations;

- (3) The territorial area, scope, or jurisdiction of the candidate, political committee, or referendum committee;
- (4) The name, address, and position with the candidate or political committee of the custodian of books and accounts;
- (5) The name and party affiliation of the candidate(s) whom the committee is supporting or opposing, and the office(s) involved;
- (5a) The name of the referendum(s) which the referendum committee is supporting or opposing, and whether the committee is supporting or opposing the referendum;
- (6) The name of the political committee or political party being supported or opposed if the committee is supporting the ticket of a particular political or political party;
- (7) A listing of all banks, safety deposit boxes, or other depositories used, including the names and numbers of all accounts maintained and the numbers of all such safety deposit boxes used;
- (8) The name or names and address or addresses of any assistant treasurers appointed by the treasurer. Such assistant treasurers shall be authorized to act in the name of the treasurer, who shall be fully responsible for any act or acts committed by an assistant treasurer, and the treasurer shall be fully liable for any violation of this Article committed by any assistant treasurer; and
- (9) Any other information which might be requested by the Board that deals with the campaign organization of the candidate or referendum committee.

(c) Any change in information previously submitted in a statement of organization shall be reported to the Board within a 10-day period following the change.

(d) A candidate, political committee or referendum committee may remove his or its treasurer. In case of the death, resignation or removal of his or its treasurer before compliance with all obligations of a treasurer under this Article, such candidate, political committee or referendum committee shall appoint a successor within 10 days of the vacancy of such office, and certify the name and address of the successor in the manner provided in the case of an original appointment. (1973, c. 1272, s. 1; 1979, c. 500, s. 2; c. 1073, ss. 4, 5, 16, 18, 20.)

§ 163-278.8. Detailed accounts to be kept by political treasurers.

(a) The treasurer of each candidate, political committee, and referendum committee shall keep detailed accounts, current within not more than seven days after the date of receiving a contribution or making an expenditure, of all contributions received and all expenditures made by or on behalf of the candidate, political committee, or referendum committee.

(b) Accounts kept by the treasurer of a candidate, political committee, or referendum committee or the accounts of a treasurer or political committee at any bank or other depository listed under G.S. 163-278.7(b)(7), may be inspected, before or after the election to which the accounts refer, by a member, designee, agent, attorney or employee of the Board who is making an investigation pursuant to G.S. 163-278.22.

(c) A treasurer may not accept a contribution of more than one hundred dollars (\$100.00) from a nonresident of this State unless the contribution is accompanied by a written statement setting forth the name and address of each contributor.

(d) A treasurer shall not be required to report the name of any resident of this State who makes a total contribution of one hundred dollars (\$100.00) or

less but he shall instead report the fact that he has received a total contribution of one hundred dollars (\$100.00) or less, the amount of the contribution, and the date of receipt. If a treasurer receives contributions of one hundred dollars (\$100.00) or less, each at a single event, he may account for and report the total amount received at that event, the date and place of the event, the nature of the event, and the approximate number of people at the event. With respect to the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods, if the price or value received for any single service or goods exceeds one hundred dollars (\$100.00), the treasurer shall account for and report the name of the individual paying for such services or goods, the amount received, and the date of receipt, but if the price or value received for any single service or item of goods does not exceed one hundred dollars (\$100.00), the treasurer may report only those services or goods rendered or sold at a value that does not exceed one hundred dollars (\$100.00), the nature of the services or goods, the amount received in the aggregate for the services or goods, and the date of the receipt.

(e) All expenditures for media expenses shall be made by check only. All media expenditures in any amount shall be accounted for and reported individually and separately.

(f) All expenditures for nonmedia expenses (except postage) of more than twenty-five dollars (\$25.00) shall be made by check only. All expenditures for nonmedia expenses of twenty-five dollars (\$25.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than twenty-five dollars (\$25.00) shall be accounted for and reported individually and separately, but expenditures of less than twenty-five dollars (\$25.00) may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that he made expenditures of less than twenty-five dollars (\$25.00) each, the amounts, dates, and the purposes for which made.

(g) All proceeds from loans shall be recorded separately with a detailed analysis reflecting the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers. (1973, c. 1272, s. 1; 1977, c. 635, s. 1; 1979, c. 1073, ss. 16, 20; 1981, c. 814, s. 1.)

Effect of Amendments. — The 1981 amendment, effective with respect to contributions made or proceeds received on or after July 1, 1981, substituted "one hundred dollars (\$100.00)" for "fifty dollars (\$50.00)" throughout subsection (d).

Legal Periodicals. — For survey of 1979 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 163-278.9. Statements filed with Board.

(a) The treasurer of each candidate and of each political committee shall file under verification with the Board the following reports:

- (1) **Organizational Report.** — The appointment of the treasurer as required by G.S. 163-278.7(a), the statement of organization required by G.S. 163-278.7(b), and a report of all contributions and expenditures not previously reported shall be filed with the Board no later than the tenth day following the day the candidate files his notice of candidacy or the tenth day following the organization of the political committee, whichever occurs first. Any candidate whose campaign is being conducted by a political committee which is handling all contributions and expenditures for his campaign shall file a statement with the Board stating such fact at the time required herein for the organizational report. Thereafter, the candidate's political committee shall be responsible for filing all reports required by law.

- (2) Preprimary Report. — The treasurer shall file a report with the Board no later than the tenth day preceding the primary election.
- (3) Postprimary Report(s). — The treasurer shall file a report with the Board no later than the tenth day after the primary election. If there is a second primary or runoff election, a report shall be filed no later than the tenth day after the second primary or runoff election by candidates or committees involved therein.
- (4) Preelection Report. — The treasurer shall file a report with the Board not later than the tenth day preceding the general election.
- (5) Final Report. — The treasurer shall file a final report no later than the tenth day after the general election. If the final report fails to disclose a final accounting of all contributions and expenditures, a supplemental final report shall be filed no later than January 7, after the general election, and shall be current through December 31 after the general election.
- (6) Annual Reports. — If contributions are received or expenditures made during a calendar year for which no reports are otherwise required by this Article, any and all such contributions and expenditures shall be reported by January 7 of the following year.

(b) Except as otherwise provided in this Article, each report shall be current within seven days prior to the date the report is due and shall list all contributions received and expenditures made which have not been previously reported.

(c) In addition to the primary reports required above, a final report shall be filed by the treasurer of each candidate and the treasurer of each committee supporting only candidates eliminated in primary elections. Such report of contributions and expenditures shall be filed with the Board no later than 45 days after the primary election in which the candidate or candidates are eliminated.

(d) Candidates and committees for municipal offices in a city with a population of 50,000 or greater, which are required to submit reports by G.S. 163-278.6(18) are not subject to subsections (a), (b) and (c) of this section. Reports for those candidates and committees are covered by Part 2 of this Article.

(e) Notwithstanding subsections (a) through (c) of this section, any political party (including a State, district, county, or precinct committee thereof) which is required to file reports under those subsections and under the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 434), shall instead of filing the reports required by those subsections, file with the State Board of Elections:

(1) The organizational report required by subsection (a)(1) of this section, and

(2) A copy of each report required to be filed under 2 U.S.C. 434, such copy to be filed on the same day as the federal report is required to be filed.

(f) Any report filed under subsection (e) of this section may include matter required by the federal law but not required by this Article.

(g) Any report filed under subsection (e) of this section must contain all the information required by G.S. 163-278.8 or G.S. 163-278.11, notwithstanding that the federal law may set a higher reporting threshold.

(h) Any report filed under subsection (e) of this section may reflect the cumulative totals required by G.S. 163-278.11 in an attachment, if the federal law does not permit such information in the body of the report.

(i) Any report or attachment filed under subsection (e) of this section must be made under oath. (1973, c. 1272, s. 1; 1975, c. 565, s. 1; 1979, c. 500, ss. 3, 16; c. 730; 1981, c. 837, s. 2.)

Effect of Amendments. — The 1981 amendment, effective with respect to primaries and elections held on or after Sept. 1, 1981, rewrote subsection (d).

§ 163-278.9A. Statements filed by referendum committees.

(a) The treasurer of each referendum committee shall file under verification with the Board the following reports:

- (1) **Organizational Report.** — The appointment of the treasurer as required by G.S. 163-278.7(a), the statement of organization required by G.S. 163-278.7(b), and a report of all contributions and expenditures shall be filed with the Board no later than the tenth day following the organization of the referendum committee.
- (2) **Pre-Referendum Report.** — The treasurer shall file a report with the Board no later than the tenth day preceding the referendum.
- (3) **Final Report.** — The treasurer shall file a final report no later than the tenth day after the referendum. If the final report fails to disclose a final accounting of all contributions and expenditures, a supplemental final report shall be filed no later than January 7, after the referendum, and shall be current through December 31 after the referendum.
- (4) **Annual Reports.** — If contributions are received or expenditures made during a calendar year for which no reports are otherwise required by this Article, any and all such contributions and expenditures shall be reported by January 7 of the following year.

(b) Except as otherwise provided in this Article, each report shall be current within seven days prior to the date the report is due and shall list all contributions received and expenditures made which have not been previously reported. (1979, c. 1073, s. 6.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 163-278.10. Procedure for inactive candidate or committee.

If no contribution is received or expenditure made by or on behalf of a candidate, political committee, or referendum committee during a period described in G.S. 163-278.9, the treasurer shall file with the Board, at the time required by G.S. 163-278.9, a statement to that effect and it shall not be required that any inactive candidate or committee so filing a report of inactivity file any additional reports required by G.S. 163-278.9 so long as the candidate or committee remains inactive. (1973, c. 1272, s. 1; 1979, c. 1073, s. 20.)

§ 163-278.11. Contents of treasurer's statement of receipts and expenditures.

(a) Statements filed pursuant to provisions of this Article shall set forth the following:

- (1) **Contributions.** — A list of all contributions required to be listed under G.S. 163-278.8 received by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each contributor, the amount contributed, and the date such contribution was received. The total sum of all contributions to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board.

- (2) Expenditures. — A list of all expenditures required under G.S. 163-278.8 made by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board.
- (3) Loans. — Every candidate and treasurer shall attach to the campaign transmittal submitted with each report an addendum listing all proceeds derived from loans for funds used or to be used in this campaign. The addendum shall be in the form as prescribed by the State Board of Elections and shall list the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers.
- (b) Statements shall reflect anything of value paid for or contributed by any person or individual, both as a contribution and expenditure. (1973, c. 1272, s. 1; 1977, c. 635, s. 2; 1979, c. 1073, s. 20.)

Legal Periodicals. — For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978). For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 163-278.12. Contributions and expenditures by an individual other than a candidate.

Subject to G.S. 163-278.16(f) and 163-278.14, it shall be permissible for an individual other than a candidate to make contributions or expenditures in support of, or in opposition to, any candidate, political committee, or referendum committee other than by contribution to a candidate, political committee, or referendum committee. In the event an individual makes contributions or expenditures, other than by contribution to a candidate, political committee, or referendum committee, in excess of one hundred dollars (\$100.00), then, within 10 days after making such a contribution or expenditure, he shall file a statement of such contribution or expenditure with the Board in accordance with the terms and conditions of G.S. 163-278.11. (1973, c. 1272, s. 1; 1979, c. 107, s. 15; c. 1073, s. 20.)

§ 163-278.13. Limitation on contributions.

(a) No individual or political committee shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of four thousand dollars (\$4,000) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any individual or other political committee of any money or any other contribution in any election in excess of four thousand dollars (\$4,000) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's spouse, parents, brothers and sisters to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of four thousand dollars (\$4,000) for that election.

(d) For the purposes of this section, the term "an election" means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the election.

(e) This section shall not apply to any State, district or county executive committee of any political party. For the purposes of this section only, the term "political party" means only those political parties officially recognized under G.S. 163-96.

(e1) No referendum committee which received any contribution from a corporation, labor union, insurance company, business entity, or professional association may make any contribution to another referendum committee, to a candidate or to a political committee.

(f) Any individual, candidate, political committee, or referendum committee who violates the provisions of this section is guilty of a misdemeanor and shall be fined not more than one thousand dollars (\$1,000), or imprisoned for not more than one year, or be both fined and imprisoned. (1973, c. 1272, s. 1; 1979, c. 1073, ss. 8, 20; 1981, c. 225.)

Effect of Amendments. — The 1981 amendment substituted "four thousand dollars" for "three thousand dollars (\$3,000)" in subsections (a), (b) and (c).

§ 163-278.14. No contributions in names of others; no anonymous contributions; contributions in excess of one hundred dollars.

(a) No candidate, political committee, referendum committee, political party, or treasurer shall knowingly accept any contribution made by any individual or person in the name of another individual or person or made anonymously except as provided in G.S. 163-278.8(d). If a candidate, political committee, referendum committee, political party, or treasurer receives any such contributions, he shall pay the money over to the Board, by check, and all such moneys received by the Board shall be deposited in the general fund of the State of North Carolina.

(b) No individual or person shall give, and no candidate, committee or treasurer shall accept, any monetary contribution in excess of one hundred dollars (\$100.00) unless such contribution be in the form of a check, draft, or money order. (1973, c. 1272, s. 1; 1979, c. 1073, s. 19.)

§ 163-278.15. No acceptance of contributions made by corporations, foreign and domestic.

No candidate, political committee, political party, or treasurer shall accept any contribution made by any corporation, foreign or domestic, regardless of whether such corporation does business in the State of North Carolina. (1973, c. 1272, s. 1.)

§ 163-278.16. Regulations regarding contributions, expenditures and media advertising.

(a) Except as provided in G.S. 163-278.12, no contribution may be received or expenditure made by or on behalf of a candidate, political committee, or referendum committee:

- (1) Until the candidate, political committee, or referendum committee appoints a treasurer and certifies the name and address of the treasurer to the Board; and
- (2) Unless the contribution is received or the expenditure made by or through the treasurer of the candidate, political committee, or referendum committee.

(b) to (e) Repealed by Session Laws 1975, c. 565, s. 2.

(f) No advertisement of any kind may be made by a treasurer, candidate, political committee, referendum committee or individual in the case of the media unless it bears the legend or includes the statement (Paid for or sponsored) by (Name of candidate, political committee, individual). The media shall not publish or broadcast any political advertisement unless it bears the legend or includes the statement required herein. (1973, c. 1272, s. 1; 1975, c. 565, s. 2; 1979, c. 500, s. 4; c. 1073, ss. 19, 20.)

§ 163-278.17. Statements of media receiving campaign expenditures.

(a) Each media shall file a report with the Board, no later than the tenth day after the first primary, and within 10 days after a second primary. Each media shall file a report with the Board no later than the tenth day after the general election, and, additionally, shall file a supplemental report no later than January 7 after the general election which shall be current as of December 31 after the general election. Each report shall show all expenditures not shown on any prior report required to be filed by the media under this Article, and each report shall include the following information:

- (1) The name and address of each candidate, treasurer or individual making or authorizing an expenditure for media purposes;
- (2) The candidate, political committee or political party on whose behalf the expenditure was made or authorized and the political office(s) with respect to which the candidate, treasurer or individual made the expenditure;
- (3) With respect to each candidate, treasurer or individual making or authorizing an expenditure, the amount and date of each expenditure and the total amount of all expenditures from each candidate, treasurer or individual; and
- (4) The name and address of any public relations firm or agency which makes direct payment to the media on behalf of any candidate, treasurer, political committee, political party or individual.

Except as otherwise provided, the media reports shall be current within seven days of the date the report is due. No report shall be necessary if no expenditures have been made in the period for which the report is due.

The reports required by this subsection shall be only for the offices of Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance. The written authorization for each expenditure and the legend for each advertisement shall be required as to all candidates and political committees covered by this Article.

(b) Each media shall require written authority for each expenditure from each candidate, treasurer or individual making or authorizing an expenditure.

A candidate may authorize advertisement paid for by a treasurer appointed by the candidate. All authorizations of expenditures signed by a candidate, treasurer or individual shall be deemed public records and copies of said authorizations shall be available for inspection during normal business hours at the office(s) of the media making the publication or broadcast nearest to the place(s) of publication or broadcast.

(c) No media reports are required in a referendum. (1973, c. 1272, s. 1; 1975, c. 565, s. 3; 1979, c. 500, ss. 5, 6; c. 1073, s. 9.)

§ 163-278.18. Normal commercial charges for political advertising.

(a) No media and no supplier of materials or services shall charge or require a candidate, treasurer, political party, or individual to pay a charge for advertising, materials, space, or services purchased for or in support of or in opposition to any candidate, political committee, or political party that is higher than the normal charge it requires other customers to pay for comparable advertising, materials, space, or services purchased for other purposes.

(b) A newspaper, magazine, or other advertising medium shall not charge any candidate, treasurer, political committee, political party, or individual for any advertising for or in support of or in opposition to any candidate, political committee or political party at a rate higher than the comparable rate charged to other persons for advertising of comparable frequency and volume; and every candidate, treasurer, political party or individual, with respect to political advertising, shall be entitled to the same discounts afforded by the advertising medium to other advertisers under comparable conditions and circumstances. (1973, c. 1272, s. 1; 1977, c. 856.)

§ 163-278.19. Violations by corporations, business entities, labor unions, professional associations and insurance companies.

(a) Except as provided in G.S. 163-278.19(b), it shall be unlawful for any corporation, business entity, labor union, professional association or insurance company directly or indirectly:

- (1) To make any contribution or expenditure (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) in aid or in behalf of or in opposition to any candidate or political committee in any election or for any political purpose whatsoever;
- (2) To pay or use or offer, consent or agree to pay or use any of its money or property for or in aid of or in opposition to any candidate or political committee or for or in aid of any person, organization or association organized or maintained for political purposes, or for or in aid of or in opposition to any candidate or political committee or for any political purpose whatsoever; and

(3) To reimburse or indemnify any person or individual for money or property so used or for any contribution or expenditure so made; and it shall be unlawful for any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company to aid, abet, advise or consent to any such contribution or expenditure, or for any person or individual to solicit or knowingly receive any such contribution or expenditure. Any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company aiding or abetting in any contribution or expenditure made in violation of this section shall be guilty of a misdemeanor as hereinafter set out, and shall in addition be liable to such corporation, business entity, labor union, professional association or insurance company for the amount of such contribution or expenditure, and the same may be recovered of him upon suit by any stockholder or member thereof.

(b) It shall, however, be lawful for any corporation, business entity, labor union, professional association or insurance company to communicate with its employees, stockholders or members and their families on any subject; to conduct nonpartisan registration and get-out-the-vote campaigns aimed at their employees, stockholders, or members and their families; or for officials and

employees of any corporation, insurance company or business entity or the officials and members of any labor union or professional association to establish, administer, contribute to, and to receive and solicit contributions to a separate segregated fund to be utilized for political purposes, except as provided in G.S. 163-278.20, and those individuals shall be deemed to become and be a political committee as that term is defined in G.S. 163-278.6(14); provided, however, that it shall be unlawful for any such fund to make a contribution or expenditure by utilizing contributions secured by physical force, job discrimination, financial reprisals or the threat of force, job discrimination or financial reprisals, or by dues, fees, or other moneys required as a condition of membership or employment or as a requirement with respect to any terms or conditions of employment, including, without limitation, hiring, firing, transferring, promoting, demoting, or granting seniority or employment-related benefits of any kind, or by moneys obtained in any commercial transaction whatsoever.

(c) A violation of this section shall be punishable by a fine of not less than one hundred dollars (\$100.00) nor more than five thousand dollars (\$5,000), or imprisonment of not more than one year, or by both fine and imprisonment. In addition, the acceptance of any contribution, expenditure, payment, reimbursement, indemnification, or anything of value under subsection (a) shall be unlawful and the defendant shall be subject to the same punishment as set forth in this subsection.

(d) Whenever a candidate or treasurer is an officer, director, stockholder, attorney, agent, or employee of any corporation, business entity, labor union, professional association or insurance company, and by virtue of his position therewith uses office space and communication facilities of the corporation, business entity, labor union, professional association or insurance company in the normal and usual scope of his employment, the fact that the candidate or treasurer receives telephone calls, mail, or visits in such office which relates to activities prohibited by this Article shall not be considered a violation under this section.

(e) Notwithstanding the prohibitions specified in this Article and Article 22 of this Chapter, a political committee organized under provisions of this Article shall be entitled to receive and the corporation, business entity, labor union, professional association, or insurance company designated on the committee's organizational report as the parent entity of the employees or members who organized the committee is authorized to give reasonable administrative support that shall include, but not be limited to, record keeping, computer services, billings, mailings to members of the committee, and such other support as is reasonably necessary for the administration of the committee.

The approximate cost of any record keeping, computer services, billings, mailings, office supplies, and office space provided on a continuing basis shall be submitted to the committee, in writing, and the committee shall include that cost on the annual report required by G.S. 163-278.9(a) (e) [163-278.9(a)(6)]. Also included in the report shall be the approximate allocable portion of the compensation of any officer or employee of the corporation, business entity, labor union, professional association, or insurance company who has devoted more than thirty-five percent (35%) of his time during normal business hours of the corporation, business entity, labor union, professional association, or insurance company during the period covered by the required report. The approximate cost submitted by the parent corporation, business entity, labor union, professional association, or insurance company shall be entered on the committee's annual report as the final entry on its list of "contributions" and a copy of the written approximate cost received by it shall be attached.

The administrative support given by a corporation, business entity, labor union, professional association, or insurance company shall be designated on

the books of the corporation, business entity, labor union, professional association, or insurance company as such and may not be treated by it as a business deduction for State income tax purposes. (1973, c. 1272, s. 1; 1975, c. 565, s. 6; 1979, c. 517, ss. 1, 2.)

Legal Periodicals. — For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

For survey of 1978 constitutional law, see 57 N.C.L. Rev. 958 (1979).

For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Constitutionality. — This section is constitutional on its face and as applied to construe plaintiff's payment of defendant's advertising expenses as advances prohibited by the section, since the prohibition thereof constitutes only a minimal intrusion on plaintiff's constitutional rights, and is clearly reasonable in light of the purposes to be accomplished by the section. *Louchheim, Eng & People, Inc. v. Carson*, 35 N.C. App. 299, 241 S.E.2d 401 (1978).

The purposes of this section are identical to those of its federal counterpart, namely, to protect the populace from undue influence by corporations and labor unions, and to ensure the responsiveness of elected officials to the public at large. *Louchheim, Eng & People, Inc. v. Carson*, 35 N.C. App. 299, 241 S.E.2d 401 (1978); *State v. Charlotte Liberty Mut. Ins. Co.*, 39 N.C. App. 557, 251 S.E.2d 867, aff'd, 298 N.C. 270, 258 S.E.2d 343 (1979).

The advance of money or anything of value to a political candidate by a corporation, labor union or business entity constitutes an illegal contribution or expenditure within the meaning of this section. *Louchheim, Eng & People, Inc. v. Carson*, 35 N.C. App. 299, 241 S.E.2d 401 (1978).

Contributions by Insurance Companies to Appreciation Breakfast for Newly Relected Insurance Commissioner Permissible. — Summons drawn under § 163-270 and this section failed sufficiently to charge of offense within the ambit of these sections where insurance companies made contributions of money for an appreciation breakfast for the Commissioner of Insurance after his reelection. *State v. Charlotte Liberty Mut. Ins. Co.*, 39 N.C. App. 557, 251 S.E.2d 867, aff'd, 298 N.C. 270, 258 S.E.2d 343 (1979).

Quoted in *State v. Charlotte Liberty Mut. Ins. Co.*, 298 N.C. 270, 258 S.E.2d 343 (1979).

§ 163-278.19A. Contributions allowed.

Notwithstanding any other provision of this Chapter, it is lawful for any person as defined in G.S. 163-278.6(13) to contribute to a referendum committee. (1979, c. 1073, s. 7.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 163-278.20. Disclosure before soliciting contributions.

(a) It shall be unlawful for one or more individuals acting in concert, or for any group, committee, club or organization, of any type or nature, of two or more individuals, to solicit, attempt to solicit, or receive contributions for the purpose of supporting a candidate, political committee, referendum committee, or political party without first clearly advising those solicited as follows:

- (1) The name of the candidate(s) for whom the contribution will be used;
or
- (2) The name of the political committee or party for which the funds will be used; or
- (3) That a decision will be reached later as to the candidate(s), political committee(s), or political party(ies) to be supported and that the

contributions solicited will be expended in a manner and for a purpose to be determined at a future date but no later than 20 days prior to the pending primary or general election; or

- (4) The name of the referendum committee for which the funds will be used.

(b) A violation of this section shall be punishable by a fine not less than one hundred dollars (\$100.00) nor more than five thousand dollars (\$5,000), or imprisonment of not more than one year, or by both fine and imprisonment. (1973, c. 1272, s. 1; 1979, s. 1073, ss. 10, 19.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 163-278.21. Promulgation of policy and administration through State Board of Elections.

The State Board of Elections shall have responsibility, adequate staff, equipment and facilities, for promulgating all necessary regulations, and for the administration of this Article. The State Board of Elections shall empower the Executive Secretary-Director with the responsibility for the administrative operations required to administer this Article and may delegate or assign to him such other duties from time to time by regulations or orders of the State Board of Elections. (1973, c. 1272, s. 1; 1975, c. 798, s. 7.)

§ 163-278.22. Duties of State Board.

It shall be the duty and power of the State Board:

- (1) To prescribe forms of statements and other information required to be filed by this Article, to furnish such forms to the county boards of elections and individuals, media or others required to file such statements and information, and to prepare, publish and distribute or cause to be distributed to all candidates at the time they file notices of candidacy a manual setting forth the provisions of this Article and a prescribed uniform system for accounts required to file statements by this Article;
- (2) To accept and file any information voluntarily supplied that exceeds the requirements of this Article;
- (3) To develop a filing, coding, and cross-indexing system consonant with the purposes of this Article;
- (4) To make statements and other information filed with it available to the public at a charge not to exceed actual cost of copying;
- (5) To preserve reports and statements filed under this Article. Such reports and statements, after a period of two years following the election year, may be transferred to the Department of Cultural Resources, Division of Archives and History, and shall be preserved for a period of 10 years.
- (6) To prepare and publish such reports as it may deem appropriate;
- (7) To make investigations to the extent the Board deems necessary with respect to statements filed under the provisions of this Article and with respect to alleged failures to file any statement required under the provisions of this Article, and, upon complaint under oath by any registered voter, with respect to alleged violations of any part of this Article; and
- (8) After investigation, to report apparent violations by candidates, political committees, referendum committees, individuals or persons to the proper district attorney as provided in G.S. 163-278.27.

- (9) To prescribe and furnish forms of statements and other material to the county boards of elections for distribution to candidates and committees required to be filed with the county boards.
- (10) To instruct the chairman and supervisors of elections of each county board as to their respective duties and responsibilities relative to the administration of this Article.
- (11) To require appropriate certification of delinquent or late filings from the county boards of elections and to execute the same responsibilities relative to such reports as provided in G.S. 163-278.27.
- (12) To assist county boards of elections in resolving questions arising from the administration of this Article.
- (13) To require county boards of elections to hold such hearings, make such investigations, and make reports to the State Board as the State Board deems necessary in the administration of this Article. (1973, c. 1272, s. 1; 1975, c. 798, s. 8; 1977, c. 626, s. 1; 1979, c. 500, ss. 9, 12, 13; c. 1073, s. 18.)

§ 163-278.23. Duties of Executive Secretary-Director of Board.

The Executive Secretary-Director of the Board shall inspect or cause to be inspected each statement filed with the Board under this Article within 30 days after the date it is filed. The Executive Secretary-Director shall advise, or cause to be advised, no more than 15 days and at least five days before each report is due, each candidate or treasurer whose organizational report has been filed, of the specific date each report is due. He shall immediately notify any individual, candidate, treasurer, political committee, referendum committee, or media required to file a statement under this Article if:

- (1) It appears that the individual, candidate, treasurer, political committee, referendum committee or media has failed to file a statement as required by law or that a statement filed does not conform to this Article; or
- (2) A written complaint is filed under oath with the Board by any registered voter of this State alleging that a statement filed with the Board does not conform to this Article or to the truth or that an individual, candidate, treasurer, political committee, referendum committee or media has failed to file a statement required by this Article.

The Executive Secretary-Director of the Board of Elections shall issue written rulings to candidates and may issue written rulings to the communications media, political committees, and referendum committees upon request, regarding filing procedures and compliance with this Article. Any such ruling so issued shall specifically refer to this paragraph. If the candidate, communications media, political committees, or referendum committees rely on and comply with the ruling of the Executive Secretary-Director of the Board of Elections, then prosecution on account of the procedure followed pursuant thereto and prosecution for failure to comply with the statute inconsistent with the written ruling of the Executive Secretary-Director of the Board of Elections issued to the candidate or committee involved shall be barred. Nothing in this paragraph shall be construed to prohibit or delay the regular and timely filing of reports. (1973, c. 1272, s. 1; 1975, c. 334; c. 565, s. 4; 1979, c. 500, s. 7; c. 1073, ss. 12, 13, 17.)

§ 163-278.24. Statements examined within four months.

Within four months after the date of each election or referendum, the Executive Secretary-Director shall examine or cause to be examined each statement filed with the Board under this Article, and, referring to the election or referendum, determine whether the statement conforms to law and to the truth. Such examination shall include a comparison of reports and statements submitted by a treasurer and those required from media pursuant to G.S. 163-278.17. (1973, c. 1272, s. 1; 1979, c. 500, s. 8; c. 1073, s. 14.)

§ 163-278.25. Issuance of declaration of nomination or certificate of election.

No declaration of nomination and no certificate of election shall be granted to any candidate until the candidate or his treasurer has filed the statements referring to the election he is required to file under this Article. Within 24 hours after reaching a decision that a declaration of nomination or certificate of election should not be granted, the Board shall give written notice of that decision, by telegraph or certified mail, to the candidate and the candidate's treasurer. Failure to grant certification shall not affect a successful candidate's title to an office to which he has been otherwise duly elected. (1973, c. 1272, s. 1.)

§ 163-278.26. Appeals from State Board of Elections; early docketing.

Any candidate for nomination or election who is denied a declaration of nomination or certificate of election, pursuant to G.S. 163-278.25, may, within five days after the action of the Board under that section, appeal to the Superior Court of Wake County for a final determination of any questions of law or fact which may be involved in the Board's action. The cause shall be entitled "In the Matter of the Candidacy of" It shall be placed on the civil docket of that court and shall have precedence over all other civil actions. In the event of an appeal, the chairman of the Board shall certify the record to the clerk of that court within five days after the appeal is noted.

The record on appeal shall consist of all reports filed by the candidate or his treasurer with the Board pursuant to this Article, and a memorandum of the Board setting forth with particularity the reasons for its action in denying the candidate a declaration of nomination or certificate of election. Written notice of the appeal shall be given to the Board by the candidate or his attorney, and may be effected by mail or personal delivery. On appeal, the cause shall be heard de novo. (1973, c. 1272, s. 1.)

Legal Periodicals. — For comment on election contests in North Carolina, see 55 N.C.L. Rev. 1228 (1977).

§ 163-278.27. Penalty for violations; duty to report and prosecute.

(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who violates the provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.14, 163-278.16, 163-278.17, 163-278.18, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is guilty of a misdemeanor and shall be fined not more than one thousand dollars (\$1,000) if an individual, and not more than

five thousand dollars (\$5,000) if a person other than an individual, or imprisoned for not more than one year, or be both fined and imprisoned.

(b) Whenever the Board has knowledge of or has reason to believe there has been a violation of any section of this Article, it shall report that fact, together with accompanying details, to the following prosecuting authorities:

- (1) In the case of a candidate for nomination or election to the State Senate or State House of Representatives: report to the district attorney of the prosecutorial district in which the candidate for nomination or election resides;
- (2) In the case of a candidate for nomination or election to the office of Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, State Superintendent of Public Instruction, State Attorney General, State Commissioner of Agriculture, State Commissioner of Labor, State Commissioner of Insurance, and all other State elective offices, Justice of the Supreme Court, Judge of the Court of Appeals, judge of a superior court, judge of a district court, and district attorney of the superior court: report to the district attorney of the prosecutorial district in which Wake County is located;
- (3) In the case of an individual other than a candidate, including, without limitation, violations by members of political committees, referendum committees or treasurers: report to the district attorney of the prosecutorial district in which the individual resides; and
- (4) In the case of a person or any group of individuals: report to the district attorney or district attorneys [of] the prosecutorial district or districts in which any of the officers, directors, agents, employees or members of the person or group reside.

(c) Upon receipt of such a report from the Board, the appropriate district attorney shall prosecute the individual or persons alleged to have violated a section or sections of this Article. (1973, c. 1272, s. 1; 1979, c. 500, s. 10; c. 1073, ss. 15, 19; 1981, c. 837, s. 4.)

Effect of Amendments. — The 1981 amendment, effective with respect to primaries and elections held on or after Sept. 1, 1981, deleted "or" preceding "163-278.18" near the middle of

subsection (a), and inserted "163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E" in subsection (a).

§ 163-278.28. Issuance of injunctions; special prosecutors named.

(a) The superior courts of this State shall have jurisdiction to issue injunctions or grant any other equitable relief appropriate to enforce the provisions of this Article upon application by any registered voter of the State.

(b) If the Board makes a report to a district attorney under G.S. 163-278.27 and no prosecution is initiated within 45 days after the report is made, any registered voter of the prosecutorial district to whose district attorney a report has been made, or any board of elections in that district, may, by verified affidavit, petition the superior court for that district for the appointment of a special prosecutor to prosecute the individuals or persons who have or who are believed to have violated any section of this Article. Upon receipt of a petition for the appointment of a special prosecutor, the superior court shall issue an order to show cause, directed at the individuals or persons alleged in the petition to be in violation of this Article, why a special prosecutor should not be appointed. If there is no answer to the order, the court shall appoint a special prosecutor. If there is an answer, the court shall hold a hearing on the order, at which both the petitioning and answering parties may be heard, to determine whether a prima facie case of a violation and failure to prosecute exists.

If there is such a prima facie case, the court shall so find and shall thereupon appoint a special prosecutor to prosecute the alleged violators. The special prosecutor shall take the oath required of assistant district attorneys by G.S. 7A-63, shall serve as an assistant district attorney pro tem of the appropriate district, and shall prosecute the alleged violators. (1973, c. 1272, s. 1; 1979, c. 500, s. 11.)

§ 163-278.29. Compelling self-incriminating testimony; individual so testifying excused from prosecution.

No individual shall be excused from attending or testifying or producing any books, papers, or other documents before any court upon any proceeding or trial of another for the violation of any of the provisions of this Article, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him, but such individual may be subpoenaed and required to testify by and for the State relative to any offense arising under the provisions of this Article; but such individual shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may be compelled to testify or produce evidence, documentary or otherwise, and no compelled testimony so given or produced shall be used against him upon any criminal proceeding, but such individual so compelled to testify with respect to any acts of his own shall be immune from prosecution on account thereof. (1973, c. 1272, s. 1.)

§ 163-278.30. Candidates for federal offices to file information reports.

Candidates for nomination in a party primary or for election in a general or special election to the offices of United States Senator, member of the United States House of Representatives, President or Vice-President of the United States shall file with the Board all reports they or political committee treasurers or other agents acting for them are required to file under the Federal Election Campaign Act of 1971, P.L. 92-225, as amended (T. 2, U.S.C. section 439). Those reports shall be filed with the Board at the times required by that act. The Board shall, with respect to those reports, have the following duties only:

- (1) To receive and maintain in an orderly manner all reports and statements required to be filed with it;
- (2) To preserve reports and statements filed under the Federal Election Campaign Act. Such reports and statements, after a period of two years following the election year, may be transferred to the Department of Cultural Resources, Division of Archives and History, and shall be preserved for a period of 10 years or for such period as may be required by federal law.
- (3) To make the reports and statements filed with it available for public inspection and copying during regular office hours, commencing as soon as practicable but not later than the end of the day during which they were received, and to permit copying of any such report or statement by hand or by duplicating machine, requested by any individual, at the expense of such individual; and
- (4) To compile and maintain a current list of all statements or parts of statements pertaining to each candidate. (1973, c. 1272, s. 1; 1979, c. 500, s. 14.)

§ 163-278.31. Limitation on media expenses in certain statewide races.

No political treasurers shall make or authorize any expenditure that will cause the total amount expended for media as defined in G.S. 163-278.6 to exceed ten cents (10¢) multiplied by the voting-age population of North Carolina, estimated for that election by the U.S. Department of Commerce and published in the Federal Register. For the purpose of this section the first primary, the second primary, and general election shall be deemed separate elections or election time segments whether or not the candidate has opposition in the respective elections. The amount expended for media for the purpose of this section shall include time and space costs and costs of production.

This section shall apply only to the following officers: Governor, Lieutenant Governor, and Council of State. Any political treasurer who violates this section shall be guilty of a misdemeanor and shall be fined not more than five thousand dollars (\$5,000) or imprisoned for not more than one year, or both. (1973, c. 1272, s. 1; 1975, c. 565, s. 9.)

§ 163-278.32. Statements under oath.

Any statement required to be filed under this Article shall be signed and certified as true and correct by the individual, media, candidate, treasurer or others required to file it, and shall be verified by the oath or affirmation of the individual, media, candidate, treasurer or others filing the statement, taken before any officer authorized to administer oaths; provided further that the candidate shall certify as true and correct to the best of his knowledge each report filed by a treasurer appointed by him or by his principal campaign committee. (1973, c. 1272, s. 1.)

§ 163-278.33. Applicability of Article 22.

Sections 163-271 through 163-278 shall be applicable to the offices covered by this Article and G.S. 163-269 through 163-278 shall be applicable to all elective offices not covered by this Article. (1973, c. 1272, s. 3; 1975, c. 50; c. 565, s. 10.)

Cross References. — As to offices covered by this Article, see § 163-278.6, subdivision (18).

§ 163-278.34. Filings; penalty for late filings.

(a) All reports, statements or other documents required by this Article to be filed with the Board shall be filed either by manual delivery to or by certified or registered mail addressed to the Board. Timely filing shall be complete if postmarked on the day the reports, statements or other documents are to be delivered to the Board. If a report, statement or other document is not filed within the time required by this Article, then the individual, person, media, candidate, political committee, referendum committee or treasurer responsible for filing shall pay to the State Board of Elections a late penalty of twenty dollars (\$20.00) per day for each day the filing is late not to exceed five days. The Board shall immediately notify, or cause to be notified, late filers, from which reports are apparently due, by registered or certified mail, return receipt requested, of the penalties under this section. If the penalty has not been paid to or the report has not been filed with the Board within five days after receipt of the notification, then the Board shall report the late filing or failure to file

to the appropriate district attorney who shall indict and prosecute the offender as required in G.S. 163-278.27. No criminal penalty shall be imposed if the penalty required by this section is paid and the delinquent report is filed within five days after notification by the Board.

(b) When a report, statement or other document, required by this Article is not apparently due (i.e., media, inactive candidate, individual, no organizational report filed, supplementary final report or annual report), the Board shall notify, as set forth above, the person or persons responsible for filing if information is presented indicating that the report, statement, or other document was in fact due. No criminal penalties shall be imposed if the late penalty is paid and the delinquent report is filed within five days after notification. (1973, c. 1272, s. 1; 1975, c. 565, s. 5; 1979, c. 1073, s. 19.)

§ 163-278.35. Preservation of records.

All reports, records and accounts required by this Article to be made, kept, filed, or maintained by any individual, media, candidate or treasurer shall be preserved and retained by the individual, media, candidate or treasurer for at least two years counting from the date of the election to which such reports, records and accounts refer. (1973, c. 1272, s. 1.)

§ 163-278.36. Elected officials to report funds.

All contributions to, and all expenditures from any "booster fund," "support fund," "unofficial office account" or any other similar source which are made to, in behalf of, or used in support of any person holding an elective office for any political purpose whatsoever during his term of office shall be deemed contributions and expenditures as defined in this Article and shall be reported as contributions and expenditures as required by this Article. The annual report shall show the balance of each separate fund or account maintained on behalf of the elected office holder. (1977, c. 615.)

Legal Periodicals. — For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

CASE NOTES

Quoted in State v. Charlotte Liberty Mut. Ins. Co., 39 N.C. App. 557, 251 S.E.2d 867 (1979).

§ 163-278.37. County boards of elections to preserve reports.

The county boards of elections shall preserve all reports and statements filed with them pursuant to this Article for such period of time as directed by the State Board of Elections. (1979, c. 500, s. 15.)

§ 163-278.38. Effect of failure to comply.

The failure to comply with the provisions of this Article shall not invalidate the results of any referendum. (1979, c. 1073, s. 11.)

§ 163-278.39: Reserved for future codification purposes.

Part 2. Municipal Campaign Reporting.

§ 163-278.40. Definitions.

When used in this Part, words and phrases have the same meaning as in G.S. 163-278.6, except that:

- (1) The term "board" means the county board of elections;
- (2) The term "city" means any incorporated city, town, or village with a population of 50,000 or over, according to the most recent decennial federal census. (1981, c. 837, s. 3.)

Editor's Note. — Session Laws 1981, c. 837, s. 5, makes this Part effective with respect to primaries and elections held on or after Sept. 1, 1981.

§ 163-278.40A. Organizational report.

(a) Each candidate and political committee in a city election shall appoint a treasurer and, under verification, report the name and address of the treasurer to the board. A candidate may appoint himself or any other individual, including any relative except his spouse, as his treasurer. If the candidate fails to designate a treasurer, the candidate shall be deemed to have appointed himself as treasurer. A candidate or political committee may remove his or its treasurer.

(b) The organizational report shall state the bank account and number of such campaign fund. Each report required by this Part shall reflect all contributions, expenditures and loans made in behalf of a candidate. The organizational report shall be filed with the county board of elections within 10 days after the candidate files a notice of candidacy with the county board of elections, or within 10 days following the organization of the political committee, whichever occurs first. (1981, c. 837, s. 3.)

Cross References. — For definitions of "treasurer," see § 163-278.6.

§ 163-278.40B. Campaign report; partisan election.

In any city election conducted on a partisan basis in accordance with G.S. 163-279(a)(2) and 163-291, the following reports shall be filed in addition to the organizational report:

- (1) **Pre-primary Report.** — The treasurer shall file a report with the board no later than the tenth day preceding each primary election.
- (2) **Pre-election Report.** — The treasurer shall file a report 10 days prior to the election, unless a second primary is held and the candidate appeared on the ballot in the second primary, in which case the report shall be filed 10 days before the second primary.
- (3) **Final Report.** — The treasurer shall file a final report 15 days after the election. A candidate eliminated in the first or second primary must file the final report no later than 15 days after that primary.
- (4) **Annual Report.** — If contributions are received or expenditures made during a calendar year, for which no reports are otherwise required by this section, any and all contributions and expenditures shall be reported by January 7 of the following year. (1981, c. 837, s. 3.)

§ 163-278.40C. Campaign report; nonpartisan election and runoff.

If any city election conducted under the nonpartisan election and runoff basis in accordance with G.S. 163-279(a)(4) and 163-293, the following reports shall be filed in addition to the organizational report:

- (1) Pre-election Report. — The treasurer shall file a report with the board no later than 10 days prior to the election.
- (2) Final Report. — The treasurer shall file a final report 15 days after the election, unless the candidate is in a runoff, in which case the report shall be filed 15 days after the runoff.
- (3) Annual Report. — If contributions are received or expenditures made during a calendar year, for which no reports are otherwise required by this section, any and all such contributions and expenditures shall be reported by January 7 of the following year. (1981, c. 837, s. 3.)

§ 163-278.40D. Campaign report; nonpartisan primary and elections.

In any city election conducted under the nonpartisan primary method in accordance with G.S. 163-279(a)(3) and 163-294, the following reports shall be filed in addition to the organizational report:

- (1) Pre-primary Report. — The treasurer shall file a report 10 days prior to the primary if the candidate is in a primary or 10 days prior to the election, if the candidate is not in a primary.
- (2) Final Report. — The treasurer shall file a final report 15 days after the election, unless the candidate was eliminated in a primary in which case the report shall be filed 15 days after the primary.
- (3) Annual Report. — If contributions are received or expenditures made during a calendar year, for which no reports are otherwise required by this section, any and all contributions and expenditures shall be reported by January 7 of the following year. (1981, c. 837, s. 3.)

§ 163-278.40E. Campaign report; nonpartisan plurality.

In any city election conducted under the nonpartisan plurality method under G.S. 163-279(a)(1) and 163-292, the following reports shall be filed in addition to the organizational report:

- (1) Pre-election Report. — The treasurer shall file a report 10 days prior to the election.
- (2) Final Report. — The candidate shall file a final report 15 days after the election.
- (3) Annual Report. — If contributions are received or expenditures made during a calendar year, for which no reports are otherwise required by this section, any and all such contributions and expenditures shall be reported by January 7 of the following year. (1981, c. 837, s. 3.)

§ 163-278.40F. Form of report.

Forms of reports under this Part shall be prescribed by the board. (1981, c. 837, s. 3.)

§ 163-278.40G. Content.

Except as otherwise provided in this Part, each report shall be current within seven days prior to the date the report is due and shall list all contributions received and expenditures made which have not been previously reported. (1981, c. 837, s. 3.)

§ 163-278.40H. Notice of reports due.

The supervisor of the board shall advise, or cause to be advised, no less than five days nor more than 15 days before each report is due each candidate or treasurer whose organizational report has been filed under G.S. 163-278.40A of the specific date each report is due. He shall immediately notify any individual, candidate, treasurer, or political committee, to file a statement under this Part if:

- (1) It appears that the individual, candidate, treasurer, or political committee has failed to file a statement as required by law or that a statement filed does not conform to this Part; or
- (2) A written complaint is filed under oath with the board by any registered voter of this State alleging that a statement filed with the board does not conform to this Part or to the truth or that an individual, candidate, treasurer, or political committee has failed to file a statement required by this Part. (1981, c. 837, s. 3.)

§ 163-278.40I. Part 1 to apply.

(a) Except as provided in this Part or in G.S. 163-278.9(d), the provisions of Part 1 shall apply to municipal elections covered by this Part.

(b) G.S. 163-278.7, 163-278.9(a), (b) and (c), 163-278.22(1) and (9), the first paragraph of 163-278.23, 163-278.24, 163-278.25, and 163-278.26 shall not apply to this Part. (1981, c. 837, s. 3.)

ARTICLE 22B.***Appropriations from the North Carolina
Election Campaign Fund.*****§ 163-278.41. Appropriations in general election years and other years.**

(a) Following the conclusion of the last primary or nominating convention held by a political party in a general election year in which a presidential election is held, the State chairman of that political party may apply to the State Treasurer for the disbursement of all funds deposited on behalf of such party in the North Carolina Election Campaign Fund. Upon receipt of such application, the State Treasurer shall forthwith, and every 30 days thereafter, pay over to said chairman all funds currently held by him on behalf of said chairman's political party, but provided that all such payments shall cease 30 days after the State Board of Elections has certified all of the results of the general election to the Secretary of State. Additionally and upon receipt of such application, the State Treasurer shall pay over to the said chairman all funds currently held by the State Treasurer in the "Presidential Election Year Candidates Fund" of that party, which funds shall be allocated and disbursed during the presidential election year among the candidates qualified therefor by the same procedure as the funds received from the North Carolina Campaign Election Fund are allocated among the candidates qualified therefor.

Any remaining funds of the political party in the hands of the State Treasurer shall thereafter be held by him until eligible for distribution pursuant to this section.

(b) Following the conclusion of the last primary or nominating convention held by a political party in a general election year in which there is not a presidential election, the State chairman of the political party may apply to the State Treasurer for the disbursement of all funds deposited on behalf of such party in the North Carolina Election Campaign Fund. Upon receipt of such application, the State Treasurer shall forthwith, and every 30 days thereafter, pay over to said chairman all funds currently held by him on behalf of said chairman's political party provided that all such payments to the said chairman shall cease 30 days after the State Board of Elections has certified all of the results of the general election to the Secretary of State. Any remaining funds of the political party in the hands of the State Treasurer shall thereafter be held by him until eligible for distribution pursuant to this section.

(c) In each year in which no general election is held, each State chairman of a political party on behalf of which funds have been deposited in the North Carolina Election Campaign Fund may, on or between August 1 and September 1 thereof, apply to the State Treasurer for payment of an amount not to exceed fifty percent (50%) of the then available funds credited to the account of his party. Upon receipt of such application, the State Treasurer shall pay over to said State chairman an amount not to exceed fifty percent (50%) of the then available funds credited to the account of his party. Additionally and upon receipt of such application, the State Treasurer shall place fifty percent (50%) of the said available funds in a separate interest bearing account to be known as the "Presidential Election Year Candidates Fund of the (name of the party) Party" to be disbursed in accord with the provisions of subsection (a) above. Any remaining funds of the political party in the hands of the State Treasurer shall thereafter be held by him until eligible for distribution pursuant to this section. Any interest earned on the funds deposited by the State Treasurer in such Presidential Election Year Campaign Fund shall be credited thereto. (1977, 2nd Sess., c. 1298, s. 2.)

Editor's Note. — The original Article 22B, comprising §§ 163-278.41 through 163-278.43 and covering the same subject matter as the present Article, was enacted by Session Laws 1975, c. 775, s. 2, effective for taxable years beginning on or after January 1, 1975, and expired by its own terms on December 31, 1977. See Session Laws 1975, c. 775, s. 3. The present

Article 22B, comprising §§ 163-278.41 through 163-278.45, was enacted by Session Laws 1977, 2nd Sess., c. 1298, s. 2, effective with respect to taxable years beginning on or after January 1, 1978. Session Laws 1981, c. 963, s. 1, amended Session Laws 1977, 2nd Sess., c. 1298, s. 3, so as to delete a provision that the 1977 act should expire on Dec. 31, 1981.

§ 163-278.42. Distribution of campaign funds; legitimate expenses permitted.

(a) In a general election year in which a presidential election is held, every State chairman of a political party shall disburse fifty percent (50%) of all funds received from the North Carolina Campaign Election Fund to that political party. The remaining fifty percent (50%) of such funds shall be allocated to individual candidates for Governor, Lieutenant Governor, United States Senator, United States House of Representatives, Council of State, North Carolina Supreme Court and North Carolina Court of Appeals who have opposition in the general election. In the event a candidate does not decline such funds as are allocated to him, the State Chairman shall forthwith disburse such funds to such candidate.

(b) In a general election year in which there is not a presidential election, every State chairman of a political party shall disburse fifty percent (50%) of all funds received from the North Carolina Campaign Election Fund to that political party. The remaining fifty percent (50%) of such funds shall be allocated to individual candidates for Governor, Lieutenant Governor, United States Senator, United States House of Representatives, Council of State, North Carolina Supreme Court and North Carolina Court of Appeals who have opposition in the general election. In the event a candidate does not decline such funds as are allocated to him, the State Chairman shall forthwith disburse such funds to such candidate.

(c) In each year in which no general election is held, every State chairman of a political party shall disburse all funds received from the North Carolina Campaign Election Fund to that political party.

(d) The allocation of all funds to be allocated and disbursed to the individual candidates who are qualified to receive such funds shall be made by a committee composed of the State chairman of the political party, the State Treasurer of the political party who shall serve as an ex officio member, and the members of that political party who occupy the following offices: Governor, Lieutenant Governor, United States Senate, United States House of Representatives, and Council of State, provided however, that in the event the incumbent is not the nominee of the party for that office in that particular general election then the nominee and not the incumbent, shall serve on this committee. The State chairman shall serve as chairman of this committee. The allocation of funds among the several eligible candidates shall be determined solely in the discretion of the committee and such shall be disbursed by the State chairman of that political party only to the treasurer of a candidate or political committee. In the event that any candidate declines in whole or in part any funds allocated to him or disbursed to him or fails to expend the same within 30 days following the general election, such funds shall revert to or be paid over to the political party of such candidate.

(e) Funds distributed from the North Carolina Campaign Election Fund or from the "Presidential Election Year Candidates Fund" of a political party shall only be expended for legitimate campaign expenses. By way of illustration but not by way of limitation, the following are examples of legitimate campaign expenses:

- (1) Radio, television, newspaper, and billboard advertising for and on behalf of a political party or candidate;
- (2) Leaflets, fliers, buttons, and stickers;
- (3) Campaign staff salaries, provided each staff member is listed by name and by the amount paid as salary and the amount paid as campaign expense reimbursement;
- (4) Travel expenses, lodging and food for candidate and staff;
- (5) Party headquarters operations related to upcoming general elections, including the purchase, maintenance and programming of computers to provide lists of voters, party workers, officers, committee members and participants in party functions, patterns of voting and other data for use in general election campaigns and party activities and functions prior thereto, the establishment and updating computer file systems of voter registration lists, State, district, county and precinct officers and committee member lists, party clubs or organization lists, the organizing of voter registration, fund raising and get-out-the-vote programs at the county level when conducted by State party personnel, and the preparation of reports required to be filed by State and federal laws and systems needed to prepare the same and keep records incident thereto.

(f) All moneys and funds previously designated by taxpayers being held by the North Carolina Secretary of Revenue and being held by the North Carolina

State Treasurer which moneys and funds have not been disbursed or delivered to a political party as of June 16, 1978, when disbursed shall be allocated by the State Chairman of the political party as follows: sixty-two and one-half percent (62½%) of such funds to the political party for legitimate general election campaign expenditures; thirty-seven and one-half percent (37½%) to the eligible candidates as determined by the committee established under this Article.

(g) It shall be unlawful for any person, candidate, political committee or political party to use either directly or indirectly any part of funds distributed from the North Carolina Campaign Election Fund or the Presidential Election Year Candidates Fund of any political party for the support or assistance either directly or indirectly of any candidate in a primary election, for support or assistance relating to the selection of a candidate at a political convention or by the executive committee of a party, for the payment or repayment of any debt or obligation of whatsoever kind or nature incurred by any person, candidate or political committee in a primary election, the selection of a candidate at a political convention or by the executive committee of a party, or for the support, promotion or opposition of a national, State or local referendum, bond election or constitutional amendment. (1977, 2nd Sess., c. 1298, s. 2.)

§ 163-278.43. Annual report to State Board of Elections; suspension of disbursements; willful violations a misdemeanor; audits; adoption of rules.

(a) The State chairman of each political party and the treasurer of each candidate or political committee receiving funds from the North Carolina Campaign Election Fund or the Presidential Election Year Candidates Fund or both shall maintain a full and complete record of their receipts and any and all subsequent expenditures and disbursements thereof, and such shall be substantiated by any records, receipts, and information that the Executive Director of the State Board of Elections shall require. Such record shall be centrally located and shall be readily available at reasonable hours for public inspection. Treasurers of political committees and candidates shall maintain all such funds received from the North Carolina Campaign Election Fund or a Presidential Election Year Candidates Fund or both in a separate account, and shall not allow the same to be commingled with the funds from any other source.

(b) By December 31 of each year, the State chairman of each political party receiving funds from the North Carolina Campaign Election Fund or a Presidential Election Year Candidates Fund and the treasurer of all other political committees or candidates receiving any such funds in the 12 preceding months shall file with the State Board of Elections an itemized statement reporting all receipts, expenditures and disbursements from the date of the last report and attached to such report shall be the verification of such chairman or treasurer that all such funds received were expended in accordance with the provisions of this Article. If the Executive Secretary of the State Board of Elections determines and finds as a fact that any such funds were not disbursed or expended in accordance with this Article, he shall order such political party, political committee or candidate to reimburse the amount improperly expended or disbursed to the General Fund of the State and such political party, political committee or candidate shall not receive further disbursements from the North Carolina Campaign Election Fund or a Presidential Election Year Candidates Fund until such reimbursement has been accomplished in full. A copy of any such order shall be forwarded to the State Treasurer, which shall constitute notice to him to suspend further disbursements from the campaign fund.

(c) On or before the 15th of January of each calendar year or as soon thereafter as practical the Legislative Services Commission shall appoint an independent auditor or auditors and such auditor or auditors shall immediately conduct an audit of the financial records of the receipts, expenditures and disbursements through each political party to the treasurer of each candidate or political committee receiving any of the above-mentioned funds during the previous calendar year; a copy of such audit shall be forwarded promptly to the Executive Secretary of the State Board of Elections and to the Legislative Services Commission; any discrepancies as shown by the audit shall be acted upon by the Executive Secretary of the State Board of Elections in the manner set forth in subsection (b) above.

(d) The cost of the audit of each political party, candidate, or political committee shall be paid from the funds held by the State Treasurer for disbursement to that party, candidate or committee. The Legislative Services Commission shall determine and notify the State Treasurer of a fixed fee or maximum fee to be allowed for each such audit, and the State Treasurer shall withhold from the funds to be disbursed to each party, candidate or committee a sum necessary to pay the cost of the audit of that party, candidate or committee. If the amount withheld exceeds the actual cost of the audit, the Treasurer shall, after paying the costs of the audit, remit the balance to the party, candidate or committee from which it was withheld. If the designated cost of an audit exceeds the funds held by the Treasurer for disbursement to the party, candidate or committee to be audited, the chairman of the party, or the treasurer of the candidate or committee may decline to accept the funds, in which event the funds shall be transferred to the General Fund of the State, and no audit shall be required of those funds under this section. The Legislative Services Commission shall adopt and promulgate rules to implement the provisions of subsections (c) and (d) of this section. The Legislative Services Commission shall ensure that the auditing procedures shall be uniform and standardized. (1977, 2nd Sess., c. 1298, s. 2; 1979, c. 926, s. 1.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 163-278.44. Crime; punishment.

Any individual person, candidate, political committee, or treasurer who willfully and intentionally violates any of the provisions of this Article, shall be guilty of a misdemeanor and shall be fined not more than one thousand dollars (\$1,000) if an individual, and not more than five thousand dollars (\$5,000) if a person other than an individual, or imprisoned for not more than one year, or be both fined and imprisoned. (1977, 2nd Sess., c. 1298, s. 2.)

§ 163-278.45. Definitions.

The terms "candidate," "expend," "individual," "person," "political committee," and "treasurer" as used in this Article shall be as defined in G.S. 163-278.6. (1977, 2nd Sess., c. 1298, s. 2.)

SUBCHAPTER IX. MUNICIPAL ELECTIONS.

ARTICLE 23.

*Municipal Election Procedure.***§ 163-279. Time of municipal primaries and elections.**

(a) Primaries and elections for offices filled by election of the people in cities, towns, incorporated villages, and special districts shall be held in 1973 and every two or four years thereafter as provided by municipal charter on the following days:

- (1) If the election is nonpartisan and decided by simple plurality, the election shall be held on Tuesday after the first Monday in November.
- (2) If the election is partisan, the election shall be held on Tuesday after the first Monday in November, the first primary shall be held on the sixth Tuesday before the election, and the second primary, if required, shall be held on the third Tuesday before the election.
- (3) If the election is nonpartisan and the nonpartisan primary method of election is used, the election shall be held on Tuesday after the first Monday in November and the nonpartisan primary shall be held on the fourth Tuesday before the election.
- (4) If the election is nonpartisan and the election and runoff election method of election is used, the election shall be held on the fourth Tuesday before the Tuesday after the first Monday in November, and the runoff election, if required, shall be held on Tuesday after the first Monday in November.

(b) Notwithstanding the provisions of subsection (a), the next regular municipal primary and election in Winston-Salem shall be held at the time of the primary and election for county officers in 1974, officers elected at that time shall serve terms of office expiring on the first Monday in December, 1977. Beginning in 1977, municipal primaries and elections in Winston-Salem shall be held at the time provided in this section.

(c) Officers of sanitary districts elected in 1970 shall hold office until the first Monday in December, 1973, notwithstanding G.S. 130-126. Beginning in 1973, sanitary district elections shall be held at the times provided in this section. (1971, c. 835, s. 1; 1973, c. 1115.)

Editor's Note. — Session Laws 1973, c. 470, s. 2, provides:

"Sec. 2. The provisions of this act shall not apply to the City of Winston-Salem."

CASE NOTES

Stated in *McDowell v. Edmisten*, 523 F. Supp. 416 (E.D.N.C. 1981).

§ 163-280. Municipal boards of elections.

(a) In each city that is authorized and elects to conduct its own elections in the manner provided by G.S. 163-285, there shall be a municipal board of elections consisting of three persons of good moral character who are registered voters of the city. Members of the municipal board of elections shall be appointed by the city council at its regularly scheduled meeting held next before July 1 in each year preceding each regular municipal primary or election, and their terms of office shall be for two years beginning July 1 and until their successors are appointed and qualify. In municipalities where there are

registered voters of more than one party, not more than two members of the municipal board of elections shall belong to the same political party, if the municipal officers are elected on a nonpartisan or partisan basis.

No person shall serve as a member of a municipal board of elections who holds any elective office, who is a candidate for any elective public office, who is a member of a county board of elections, or who is serving as campaign manager for any candidate in any election.

(b) On the Monday following the ninth Saturday before the regular municipal primary or election, the newly appointed members of the municipal board of elections shall meet at the city hall or some other place specified by the city council and shall take the following oath of office:

"I,, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain, and defend the Constitution of said State, not inconsistent with the Constitution of the United States; and that I will well and truly execute the duties of the office of member of the municipal board of elections to the best of my knowledge and ability, according to law. So help me, God."

After each member has taken the oath, the board shall organize by electing one of its members chairman and another member secretary of the board.

(c) On the Monday following the seventh Saturday before each regular municipal primary or election, the municipal board of elections shall meet and appoint precinct registrars and judges of elections. The municipal board of elections may then or at any time thereafter appoint a supervisor of elections, who shall have all of the powers and duties of a supervisor of elections to a county board of elections. The board may hold other meetings at such times and places as the chairman of the board, or any two members thereof, may direct, for the performance of duties prescribed by law. A majority of the members shall constitute a quorum for the transaction of business.

(d) The municipal board of elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the board office if there be one, otherwise, the minute book shall remain in the custody of the secretary of the board.

(e) The compensation of members of the municipal board of elections shall be fixed by the city council.

(f) Municipal boards of elections shall have, with respect to municipal elections, all of the powers conferred on county boards of elections by G.S. 163-33 and G.S. 163-34 with respect to national, State, district, and county elections.

(g) No municipal, county, State or national chairman of any political party shall have the right to recommend to the city council the names of any person for appointment to membership on a municipal board of elections.

(h) Whenever a vacancy occurs in the membership of any municipal board of elections for any cause, the appointing city council shall fill the vacancy within 30 days of when it occurs.

(i) The city council with power to appoint a member of a municipal board of elections or the State Board of Elections may remove a member of a municipal board of elections for incompetency, neglect or failure to perform duties, fraud, or any other satisfactory cause. Before exercising this removal power, the city council or the State Board of Elections shall notify the municipal board member affected and give him an opportunity to be heard. (1971, c. 835, s. 1; 1973, c. 793, ss. 75-79; c. 1223, s. 8; 1975, c. 19, s. 70; 1977, c. 626, s. 1.)

§ 163-281. Municipal precinct election officials.

(a) Registrars and Judges. — At the meeting required by G.S. 163-280(c), the municipal board of elections shall appoint one person to act as registrar and two other persons to act as judges of election for each precinct in the city. Not more than one judge in each precinct where there are registered voters of more than one political party shall belong to the same political party as the registrar, if the municipal elections are on a nonpartisan or partisan basis. If the city and county precincts are identical and the board so chooses, it may decline to exercise its power to appoint precinct registrars and judges, in which event the persons appointed by the county board of elections as precinct registrars and judges in each precinct within the city shall serve as such for municipal elections under authority and subject to the supervision and control of the municipal board of elections. Nothing herein shall prohibit a municipal board of elections from using the registrars and judges of election appointed by the county board of elections in those precincts which are not identical provided the county board of elections agrees, in writing, to such arrangement. Registrars and judges shall be appointed for terms of two years. Except as modified by this Article, municipal precinct registrars and judges shall meet all of the qualifications, perform all the duties, and have all of the powers imposed and conferred on county precinct registrars and judges by G.S. 163-41(a), G.S. 163-47, and G.S. 163-48. Municipal precinct registrars and judges shall not have the powers and duties with respect to registration of voters prescribed by G.S. 163-47(b). Immediately after appointing registrars and judges as herein provided, the municipal board of elections shall publish the names of the persons appointed in some newspaper having a general circulation in the city, or in lieu thereof, by posting at the city hall or some other prominent place within the city, and shall notify each person appointed of his appointment.

(b) Assistants at Polls. — Municipal boards of elections shall have the same authority to appoint assistants to aid the registrar and judges as is conferred on county boards of elections by G.S. 163-42.

(c) Ballot Counters. — Municipal boards of elections shall have the same authority to appoint ballot counters as is conferred on county boards of elections by G.S. 163-43.

(d) Markers. — Municipal boards of elections shall not appoint markers, and markers shall not be used in municipal elections.

(e) Observers. — In cities holding partisan municipal elections, the chairman of each political party in the county shall have the same authority to appoint observers for municipal elections as he has for county elections under G.S. 163-45.

(f) Compensation. — Precinct officials and assistants appointed under this section shall be paid such sums as the city council may fix. County precinct officials and assistants serving in municipal elections in default of appointment of precinct officials by the municipal board of elections shall be compensated by the city in the sums specified in G.S. 163-46.

(g) Party Chairman Not to Recommend Persons for Appointment. — No municipal, county, State or national chairman of any political party shall have the right to recommend to the municipal board of elections the name of any person for appointment as a precinct registrar, judge of elections, assistant or ballot counter.

(h) Designation of Precincts in Which Officials to Serve. — The municipal board of elections may designate the precinct in which each registrar, judge, assistant, ballot counter, or observer or other officers of elections shall serve; and, after notice and hearing, may remove any registrar, judge, assistant, ballot counter, observer, supervisor of elections or other officers of elections appointed by it for incompetency, failure to discharge the duties of office, failure to qualify within the time prescribed by law, fraud, or for any other satisfactory cause.

(i) Powers and Duties. — Except as otherwise provided in this Chapter, precinct assistants, ballot counters, observers, and supervisors of elections and other officers of elections appointed by the municipal board of elections shall have the same powers and duties with respect to municipal elections as precinct assistants, ballot counters, observers, and supervisors of elections and other officers of elections appointed by county boards of elections. (1971, c. 835, s. 1; 1973, c. 793, ss. 80-83, 94; c. 1223, s. 9; 1977, c. 626, s. 1.)

CASE NOTES

Registrars are not required to be freeholders. Town of Hendersonville v. Jordan, 150 N.C. 35, 63 S.E. 167 (1908), decided under former provisions.

§ 163-282. Residency defined for voting in municipal elections.

The rules for determining residency within a municipality shall be the same as prescribed in G.S. 163-57 for determining county residency. No person shall be entitled to reside in more than one city or town at the same time. (1971, c. 835, s. 1.)

§ 163-283. Right to participate or vote in party primary.

No person shall be entitled to vote or otherwise participate in the primary election of any political party unless he

- (1) Is a registered voter, and
- (2) Has declared and has had recorded on the registration book or record the fact that he affiliates with the political party in whose primary he proposes to vote or participate, and
- (3) Is in good faith a member of that party.

Any person who will become qualified by age or residence to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary election, shall be entitled to register while the registration books are open during the regular registration period prior to the primary and then to vote in the primary after being registered, provided however, under full-time and permanent registration, such an individual may register not earlier than 60 days nor later than 21 days prior to the primary. (1971, c. 835, s. 1.)

§ 163-284. Mandatory administration by county boards of elections.

(a) No later than 30 days after January 1, 1973, every municipality which conducts its elections on a partisan basis, and every special district shall deliver its registration books to the county board of elections which shall, forthwith, assume the responsibility for administration of the registration and election process in such municipalities and special districts. The county boards of elections shall have authority to compare the registration books of such municipalities and special districts with the county registration books. Any person found to be registered for municipal or special district elections but not registered on the county registration records shall be required to register with the county board of elections in order to maintain his municipal or special district registration. The county board of elections shall forthwith notify any such person by mail to the address appearing on the municipal or special district registration records that he must reregister. The county board of elec-

tions shall have authority to require maps or definitive outlines of the boundaries constituting such municipality or special district and shall be immediately advised of any change or relocation of such boundaries.

(b) The registration of voters and the conduct of all elections in municipalities and special districts covered under this section shall be under the authority of the county board of elections. Any contested election or allegations of irregularities shall be made to the county board of elections and appeals from such rulings may be made to the State Board of Elections under existing statutory provisions and rules or regulations adopted by the State Board of Elections.

Each municipality and special district shall reimburse the county board of elections for the actual cost involved in the administration required under (a) and (b) of this section. (1971, c. 835, s. 1; 1973, c. 793, s. 84.)

§ 163-284.1. Special district elections conducted by county.

All elections held in and for a sanitary district, fire district or other special district, including school administrative units, shall be conducted by the county board of elections notwithstanding the fact that the taxes of the special district may be levied by a city. (1971, c. 835, s. 1.)

§ 163-285. Administration by county board of elections; optional by municipality.

Any city, town or incorporated village which conducts its elections on a nonpartisan basis may conduct its own elections, or it may request the county board of elections of the county in which it is located to conduct its elections. A county board of elections shall conduct the elections of each city, town or incorporated village so requesting and the city, town or incorporated village shall pay the cost thereof according to a formula mutually agreed upon by the county board of elections and the city council. If a mutual agreement cannot be reached, then the State Board of Elections shall prescribe the agreement, to which both parties are bound, or, in its discretion, the State Board of Elections shall have authority to instruct the county board of elections to decline the administration of the elections for such city, town or incorporated village.

- (1) The elections of cities, towns or incorporated villages which lie in more than one county shall be conducted either (i) by the county in which the greater number of the city's citizens reside, according to the most recent federal census of population, or (ii) jointly by the boards of elections of each county in which such city, town or incorporated village is located, as may be mutually agreed upon by the county boards of elections so affected, or (iii) by a municipal board of elections appointed by the governing body of the municipality. The State Board of Elections shall have authority to promulgate regulations for more detailed administration and conduct of municipal elections by county or municipal boards of elections for cities situated in more than one county.
- (2) Any city, town or incorporated village electing to have its elections conducted by the county board of elections as provided by this section, shall do so no later than January 1, 1973 provided, however, the county board of elections shall be entitled to 90 days' notice prior to the effective date decided upon by the municipality. For efficient administration the State Board of Elections shall have the authority to delay the effective date of all such agreements under this section and shall set a date certain on which such agreements shall commence. The State Board of Elections shall also have the authority to

- permit any city, town or incorporated village to exercise the options under this Article subsequent to the deadline stated in this section.
- (3) If any city, town or incorporated village, operating under this section, shall decide that a full-time registration office is needed in such city, then it shall be the duty of the county board of elections to appoint such registration commissioner who shall be attendant to the duties of registration of voters or other such duties as might be assigned by the county board of elections. Such registration commissioner shall be titled "city registrar" and shall be provided office space and equipment by the city, town or incorporated village requesting such "city registrar." Persons appointed by the county board of elections to such positions shall be paid by the city, town or incorporated village at the rate of not less than twenty dollars (\$20.00) per day and such persons shall be appointed by the county board of elections to be in attendance at the prescribed duties not less than one nor more than five days each week. (1971, c. 835, s. 1; 1973, c. 171.)

§ 163-286. Conduct of municipal and special district elections; application of Chapter 163.

(a) To the extent that the laws, rules and procedures applicable to the conduct of primary, general and special elections by county boards of elections under Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19 and 22 of this Chapter are not inconsistent with provisions of this Article, those laws, rules and procedures shall apply to municipal and special district elections and their conduct by the board of elections conducting those elections. The State Board of Elections shall have the same authority over all such elections as it has over county and State elections under those Articles.

(b) Any city, town or incorporated village which elects to conduct its own elections, under the provisions of G.S. 163-285, shall comply with the requirements contained in G.S. 163-280 and G.S. 163-281. (1971, c. 835, s. 1; 1973, c. 793, s. 85.)

§ 163-287. Special elections; procedure for calling.

Any city, whether its elections are conducted by the county board of elections or the municipal board of elections, or any special district shall have authority to call special elections as permitted by law. Prior to calling a special election, the city council or the governing body of the special district shall adopt a resolution specifying the details of the election, and forthwith deliver the resolution to the appropriate board of elections. The resolution shall call on the board of elections to conduct the election described in the resolution and shall state the date on which the special election is to be conducted. The special election may be held at the same time as any other State, county or municipal primary, election or special election or referendum, but may not otherwise be held within the period of time beginning 30 days before and ending 30 days after the date of any other primary, election, special election or referendum held for that city or special district.

Legal notice of the special election shall be published no less than 20 days prior to the date on which the registration books or records close for the special election. The appropriate board of elections shall be responsible for publishing the legal notice. The notice shall state the date and time of the special election, the issue to be submitted to the voters, and the precincts in which the election will be held. This paragraph shall not apply to bond elections. (1971, c. 835, s. 1; 1973, c. 793, s. 86.)

Editor's Note. — As to publication of notice and closing of registration books for local elections held under G.S. 163-287 or G.S. 159-61 on

June 10, 1982, see Session Laws 1982, 2nd Ex. Sess., c. 3, s. 19.2.

§ 163-288. Registration for city elections; county and municipal boards of elections.

(a) Where the county board of elections conducts the municipal election, the registration record of the county board of elections shall be the official registration record for voters to vote in all elections, city, district, county, State or national.

(b) Where the municipal board of elections conducts the elections, each such municipality shall purchase only those loose-leaf binders for the registration records that have been approved by the State Board of Elections.

The loose-leaf registration forms shall be those approved by the State Board of Elections. When completed by each municipal registrant, the forms shall be the official registration record in each municipality and shall be kept in agreement with the county registration records for that registrant. They shall be prepared, completed, maintained and kept current pursuant to the same provisions of Article 7, Chapter 163, as apply to registration records of county boards of elections. They also shall be furnished by the State Board of Elections, through the respective county boards of elections, to the municipalities.

Every municipal board of elections conducting the elections in any city, town, or incorporated village shall secure and install those binders and loose-leaf forms required by this section no later than January 1, 1973, or no later than 90 days after any such municipality elects to conduct its own elections.

(c) Registration of voters and preparation of registration books for city elections in cities electing to conduct their own elections shall be conducted under one of the following alternative methods:

(1) **METHOD A.** — A permanent, full-time registration office shall be established in a convenient place within a city, and the municipal board of elections shall appoint a special registration commissioner to be in charge of the office, and the commissioner shall have full power and authority to register voters who reside within the city without regard to their precinct or county of residence. A municipal board of elections may appoint special registration commissioners notwithstanding the population limitation contained in G.S. 163-67(b).

(2) **METHOD B.** — The municipal board of elections may contract with the county board of elections to prepare two extra sets of registration forms for each person who registers with the county board of elections and who resides in the municipality which negotiates such agreement. Any such agreement shall be in writing and shall be on such terms as is agreeable to the majority of the county board of elections involved.

(3) **METHOD C.** — The county board of elections shall permit the municipal board of elections to copy county registration books from the precinct binder record or from the duplicate required to be maintained by said county board of elections. During the period beginning on the twenty-first day before each municipal election (excluding Saturdays and Sundays), the municipal board of elections shall compare the municipal registration books with the appropriate county books and shall add or delete registration certificates in order that the city and county records shall agree. The precincts established for municipal elections may differ from those established by the county board of elections.

- (4) **METHOD D.** — The county board of elections may, in its sole discretion, deliver to the municipal board of elections the county precinct registration books for each precinct wholly or partially located within the city, and these books shall be used in conducting the municipal elections.

(d) The State Board of Elections shall have authority to promulgate rules and regulations for the detailed administration of each alternative method of registration offered by this section.

(e) Each city, town or incorporated village electing to conduct its own elections shall select one of the registration methods offered by this section by joint agreement with the appropriate county boards of elections, subject to the approval of the State Board of Elections. The selection of method shall be evidenced by concurrent resolutions of the city council and each affected county board of elections, which shall be filed with the State Board of Elections, and which shall become effective upon the State Board's approval thereof. Provided, however, if **METHOD A** is selected, the municipal board of elections shall only be required to send a copy of the resolution to the State Board of Elections and the county board of elections. If the city and the county board of elections fail to agree then **METHOD C** shall be used. (1971, c. 835, s. 1; 1973, c. 793, s. 87; 1981, c. 33, s. 5.)

Effect of Amendments. — The 1981 amendment substituted "on the twenty-first day" for "21 days" in the second sentence of subdivision (c)(3).

§ 163-288.1. Activating voters for newly annexed or incorporated areas.

(a) Whenever any new city or special district is incorporated or whenever an existing city or district annexes any territory, the city or special district shall cause a map of the corporate or district limits to be prepared from the boundary descriptions in the act, charter or other document creating the city or district or authorizing or implementing the annexation. The map shall be delivered to the county or municipal board of elections conducting the elections for the city or special district. The board of elections shall then activate for city or district elections each voter eligible to vote in the city or district who is registered to vote in the county to the extent that residence addresses shown on the county registration certificates can be identified as within the limits of the city or special district. Each voter whose registration is thus activated for city or special district elections shall be so notified by mail. The cost of preparing the map of the newly incorporated city or special district or of the newly annexed area, and of activating voters eligible to vote therein, shall be paid by the city or special district. In lieu of the procedures set forth in this section, the county board of elections may use either of the methods of registration of voters set out in G.S. 163-288.2 when activating voters pursuant to the incorporation of a new city or election of city officials or both under authority of an act of the General Assembly or when activating voters after an annexation of new territory by a city or special district under Chapter 160A, Article 4A, or other general or local law.

(b) Each voter whose registration is changed by the county or municipal board of elections in any manner pursuant to any annexation or expunction under this subsection shall be so notified by mail.

(c) The State Board of Elections shall have authority to adopt regulations for the more detailed administration of this section. (1971, c. 835, s. 1; 1973, c. 793, s. 88; 1977, c. 752, s. 1.)

§ 163-288.2. Registration in area proposed for incorporation or annexed.

(a) Whenever the General Assembly incorporates a new city and provides in the act of incorporation for a referendum on the question of incorporation or for a special election for town officials or for both, or whenever an existing city or special district annexes new territory under the provisions of Chapter 160A, Article 4A, or other general or local law, the board of elections of the county in which the proposed city is located or in which the newly annexed territory is located shall determine those individuals eligible to vote in the referendum or special election or in the city or special district elections. In determining the eligible voters the board may, in its discretion, use either of the following methods:

METHOD A. — The board of elections shall prepare a list of those registered voters residing within the proposed city or newly annexed territory. The board shall make this list available for public inspection in its office for a two-week period ending on the twenty-first day (excluding Saturdays and Sundays) before the day of the referendum or special election, or the next scheduled city or special district election. During this period, any voter resident within the proposed city or newly annexed territory and not included on the list may cause his name to be added to the list. At least one week and no more than two weeks before the day the period of public inspection is to begin, the board shall cause notice of the list's availability to be posted in at least two prominent places within the proposed city or newly annexed territory and may cause the notice to be published in a newspaper of general circulation within the county. The notice shall state that the list has been prepared, that only those persons listed may vote in the referendum or special election, that the list will be available for public inspection in the board's office, that any qualified voter not included on the list may cause his name to be added to the list during the two-week period of public inspection, and that persons in newly annexed territory should present themselves so their registration records may be activated for voting in city or special district elections in the newly annexed territory.

METHOD B. — The board of elections shall conduct a special registration of eligible persons desiring to vote in the referendum or special election or in the newly annexed territory. The registration records shall be open for a two-week period (except Sundays) ending on the twenty-first day (excluding Saturdays and Sundays) before the day of the referendum or special election or the next scheduled city or special district election. On the two Saturdays during that two-week period, the records shall be located at the voting place for the referendum or special election or the next scheduled city or special district election; on the other days it may, in the discretion of the board, be kept at the voting place, at the office of the board, or at the place of business of a person designated by the board to conduct the special registration. At least one week and no more than two weeks before the day the period of special registration is to begin, the board shall cause notice of the registration to be posted in at least two prominent places within the proposed city or newly annexed territory and may cause the notice to be published in a newspaper of general circulation within the county. The notice shall state the purpose and times of the special registration, the location of the registration records, that only those persons registered in the special registration may vote in the referendum or special election, and that persons in newly annexed territory should present themselves so their registration records may be activated for voting in city or special district elections in the newly annexed territory.

(b) Only those persons registered pursuant to this section may vote in the referendum or special election, provided, however, that in cases where voters are activated under either Method A or B to vote in a city or special district that

annexes territory, the city or special district shall permit them to vote in the city or special district's election and shall, as well, permit other voters to vote in such elections who did not register under the provisions of this section if they are otherwise registered, qualified and eligible to vote in the same. (1973, c. 551; 1977, c. 752, s. 2; 1981, c. 33, s. 6.)

Effect of Amendments. — The 1981 amendment substituted "on the twenty-first day" for "21 days" in the second sentences of both Method A and Method B in subsection (a).

Legal Periodicals. — For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

§ 163-288.3. Payment of cost of elections on question of formation of a new municipality or special district.

Whenever a referendum or election is held on the question of incorporation of a new municipality or the formation of a special district, the cost of the election shall be paid by the new municipality or special district in the event the voters approve of incorporation or creation and the new municipality or special district is established. If the voters disapprove and the new municipality or special district is not established, the cost of the election shall be paid by the county. The cost of the election shall be advanced by the county, which shall be reimbursed within 18 months of the date of election, by the municipality or special district if it is established. (1981, c. 786, s. 1.)

§ 163-289. Right to challenge; challenge procedure.

(a) The rules governing challenges in municipal elections shall be the same as are now applicable to challenges made in a county election, provided however, any voter who challenges another voter's right to vote in any municipal or special district election must reside in such municipality or special district.

(b) Whenever a challenge is made pursuant to this section, the appropriate board of elections shall process such challenge in accordance with the provisions of Article 8 of Chapter 163 of the General Statutes as such Article is applicable.

(c) If a municipal board of elections sustains a challenge on the grounds that a voter registered to vote in the municipality is not a resident of the municipality, it shall forthwith certify its decision to the county board of elections of the county or counties in which the municipality lies, and the voter's registration for municipal elections shall be expunged from the county registration records. (1971, c. 835, s. 1; 1973, c. 793, s. 89.)

§ 163-290. Alternative methods of determining the results of municipal elections.

(a) Each city, town, village, and special district in this State shall operate under one of the following alternative methods of nominating candidates for and determining the results of its elections:

- (1) The partisan primary and election method set out in G.S. 163-291.
- (2) The nonpartisan primary and election method set out in G.S. 163-294.
- (3) The nonpartisan plurality method set out in G.S. 163-292.
- (4) The nonpartisan election and runoff election method set out in G.S. 163-293.

(b) Each city whose charter provides for partisan municipal elections as of January 1, 1972, shall operate under the partisan primary and election method until such time as its charter is amended to provide for nonpartisan elections.

Each city, town, village, and special district whose elections are by charter or general law nonpartisan may select the nonpartisan primary and election method, the nonpartisan plurality method, or the nonpartisan election and runoff election method by resolution of the municipal governing board adopted and filed with the State Board of Elections not later than 5:00 P.M. Monday, January 31, 1972, except that a city whose charter provides for a nonpartisan primary as of January 1, 1972, may not select the plurality method unless its charter is so amended. If the municipal governing board does not exercise its option to select another choice before that time, the municipality shall operate under the method specified in the following table:

Cities, towns and villages of less than 5,000	Plurality
Cities, towns and villages of 5,000 or more	Election and Runoff Election
Special districts	Plurality

After January 31, 1972, each city, town and village may change its method of election from one to another of the methods set out in subsection (a) by act of the General Assembly or in the manner provided by law for amendment of its charter. (1971, c. 835, s. 1.)

CASE NOTES

Stated in *McDowell v. Edmisten*, 523 F. Supp. 416 (E.D.N.C. 1981).

ARTICLE 24.

Conduct of Municipal Elections.

§ 163-291. Partisan primaries and elections.

The nomination of candidates for office in cities, towns, villages, and special districts whose elections are conducted on a partisan basis shall be governed by the provisions of this Chapter applicable to the nomination of county officers, and the terms "county board of elections," "chairman of the county board of elections," "county officers," and similar terms shall be construed with respect to municipal elections to mean the appropriate municipal officers and candidates, except that:

- (1) The dates of the primary and election shall be as provided in G.S. 163-279.
- (2) A candidate seeking party nomination for municipal or district office may file his notice of candidacy with the board of elections not later than 12:00 noon on the Friday preceding the fifth Saturday and not earlier than 12:00 noon on the Friday preceding the eighth Saturday before the primary election in which he seeks to run.
- (3) The filing fee for municipal and district primaries shall be fixed by the governing board not later than Friday before the eighth Saturday before the primary. There shall be a minimum filing fee of five dollars (\$5.00). The governing board shall have the authority to set the filing fee at not less than five dollars (\$5.00) nor more than one percent (1%) of the annual salary of the office sought unless one percent (1%) of the annual salary of the office sought is less than five dollars (\$5.00), in which case the minimum filing fee of five dollars (\$5.00) will be charged. The fee shall be paid to the board of elections at the time notice of candidacy is filed.

- (4) The municipal ballot may not be combined with any other ballot.
- (5) The canvass of the primary and second primary shall be held on the Thursday following the primary or second primary.
- (6) Candidates having the right to demand a second primary shall do so not later than 12:00 noon on the Monday following the canvass of the first primary. (1971, c. 835, s. 1; 1973, c. 870, s. 1; 1975, c. 370, s. 2.)

§ 163-292. Determination of election results in cities using the plurality method.

In conducting nonpartisan elections and using the plurality method, elections shall be determined in accordance with the following rules:

- (1) When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared elected.
- (2) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared elected.
- (3) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall determine the winner by lot. (1971, c. 835, s. 1.)

§ 163-293. Determination of election results in cities using the election and runoff election method.

(a) Except as otherwise provided in this section, nonpartisan municipal elections in cities using the election and runoff election method shall be determined by a majority of the votes cast. A majority within the meaning of this section shall be determined as follows:

- (1) When more than one person is seeking election to a single office, the majority shall be ascertained by dividing the total vote cast for all candidates by two. Any excess of the sum so ascertained shall be a majority, and the candidate who obtains a majority shall be declared elected.
- (2) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, the majority shall be ascertained by dividing the total vote cast for all candidates by the number of offices to be filled, and by dividing the result by two. Any excess of the sum so ascertained shall be a majority, and the candidates who obtain a majority shall be declared elected. If more candidates obtain a majority than there are offices to be filled, those having the highest vote (equal to the number of offices to be filled) shall be declared elected.

(b) If no candidate for a single office receives a majority of the votes cast, or if an insufficient number of candidates receives a majority of the votes cast for a group of offices, a runoff election shall be held as herein provided:

- (1) If no candidate for a single office receives a majority of the votes cast, the candidate receiving the highest number of votes shall be declared elected unless the candidate receiving the second highest number of votes requests a runoff election in accordance with subsection (c) of this section. In the runoff election only the names of the two candidates who received the highest and next highest number of votes shall be printed on the ballot.
- (2) If candidates for two or more offices (constituting a group) are to be selected and aspirants for some or all of the positions within the group

do not receive a majority of the votes, those candidates equal in number to the positions remaining to be filled and having the highest number of votes shall be declared elected unless some one or all of the candidates equal in number to the positions remaining to be filled and having the second highest number of votes shall request a runoff election in accordance with subsection (c) of this section. In the runoff election to elect candidates for the positions in the group remaining to be filled, the names of all those candidates receiving the highest number of votes and demanding a runoff election shall be printed on the ballot.

(c) The canvass of the first election shall be held on the Thursday after the election. A candidate entitled to a runoff election may do so by filing a written request for a runoff election with the board of elections no later than 12:00 noon on the Monday after the result of the first election has been officially declared.

(d) Tie votes; how determined:

- (1) If there is a tie for the highest number of votes in a first election, the board of elections shall conduct a recount and declare the results. If the recount shows a tie vote, a runoff election between the two shall be held unless one of the candidates, within three days after the result of the recount has been officially declared, files a written notice of withdrawal with the board of elections. Should that be done, the remaining candidate shall be declared elected.
- (2) If one candidate receives the highest number of votes cast in a first election, but short of a majority, and there is a tie between two or more of the other candidates receiving the second highest number of votes, the board of elections shall declare the candidate having the highest number of votes to be elected, unless all but one of the tied candidates give written notice of withdrawal to the board of elections within three days after the result of the first election has been officially declared. If all but one of the tied candidates withdraw within the prescribed three-day period, and the remaining candidate demands a runoff election in accordance with subsection (c) of this section, a runoff election shall be held between the candidate who received the highest vote and the remaining candidate who received the second highest vote.

(e) Runoff elections shall be held on the date fixed in G.S. 163-279(a)(4). Persons whose registrations become valid between the date of the first election and the runoff election shall be entitled to vote in the runoff election, but in all other respects the runoff election shall be held under the laws, rules, and regulations provided for the first election.

(f) A second runoff election shall not be held. The candidates receiving the highest number of votes in a runoff election shall be elected. If in a runoff election there is a tie for the highest number of votes between two candidates, the board of elections shall determine the winner by lot. (1971, c. 835, s. 1; 1973, c. 793, s. 90.)

§ 163-294. Determination of election results in cities using nonpartisan primaries.

(a) In cities whose elections are nonpartisan and who use the nonpartisan primary and election method, there shall be a primary to narrow the field of candidates to two candidates for each position to be filled if, when the filing period closes, there are more than two candidates for a single office or the number of candidates for a group of offices exceeds twice the number of positions to be filled. If only one or two candidates file for a single office, no primary shall be held for that office and the candidates shall be declared nominated. If the number of candidates for a group of offices does not exceed twice the

number of positions to be filled, no primary shall be held for those offices and the candidates shall be declared nominated.

(b) In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated. If two or more candidates receiving the highest number of votes each received the same number of votes, the board of elections shall determine their relative ranking by lot, and shall declare the nominees accordingly. The canvass of the primary shall be held on the Thursday following the primary.

(c) In the election, the names of those candidates declared nominated without a primary and those candidates nominated in the primary shall be placed on the ballot. The candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be elected. If two candidates receiving the highest number of votes each received the same number of votes, the board of elections shall determine the winner by lot. (1971, c. 835, s. 1.)

§ 163-294.1. Death of candidates or elected officers.

(a) This section shall apply only to municipal and special district elections.

(b) If a candidate for political party nomination for office dies, becomes disqualified, or withdraws before the primary but after the ballots have been printed, the provisions of G.S. 163-112 shall govern.

If a candidate for nomination in a nonpartisan municipal primary dies, becomes disqualified, or withdraws before the primary but after the ballots have been printed, the board of elections shall determine whether or not there is time to reprint the ballots. If the board determines that there is not enough time to reprint the ballots, the deceased or disqualified candidate's name shall remain on the ballots. If he receives enough votes for nomination, such votes shall be disregarded and the candidate receiving the next highest number of votes below the number necessary for nomination shall be declared nominated. If the death or disqualification of the candidate leaves only two candidates for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be declared nominees.

If a nominee for political party nomination dies, becomes disqualified, or withdraws after the primary and before election day, the provisions of G.S. 163-114 shall govern.

If a candidate in a nonpartisan election dies, becomes disqualified, or withdraws before election day and after the ballots have been printed, the board of elections shall determine whether there is enough time to reprint the ballots. If there is not enough time to reprint the ballots, and should the deceased or disqualified candidate receive enough votes to be elected, the board of elections shall declare the office vacant, and it shall be filled as provided by law.

(c) If a person elected to any city office dies, becomes disqualified, or resigns on or after election day and before he has qualified by taking the oath of office, the office shall be deemed vacant, and shall be filled as provided by law.

(d) If a person elected to any municipal or special district office for a term of more than two years dies, becomes disqualified, or resigns after taking the oath of office, the person appointed to fill the vacancy shall serve for the remainder of the unexpired term. (1971, c. 835, s. 1.)

§ 163-294.2. Notice of candidacy and filing fee in nonpartisan municipal elections.

(a) Each person offering himself as a candidate for election to any municipal office in municipalities whose elections are nonpartisan shall do so by filing a notice of candidacy with the board of elections in the following form, inserting the words in parentheses when appropriate:

I hereby file notice that I am a candidate for election to the office of
..... (at large) (for the Ward) in the regular municipal election to
be held in on
..... (municipality)
....., 19.....

Signed
(Name of Candidate)

Witness:

For the Board of Elections"

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the board of elections, or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the board of elections. The candidate shall sign the notice of candidacy with his legal name and, in his discretion, any nickname by which he is commonly known, in the form that he wishes it to appear upon the ballot but substantially as follows: "Richard D. (Dick) Roc."

(b) Only persons who are registered to vote in the municipality shall be permitted to file notice of candidacy for election to municipal office. The board of elections shall inspect the voter registration lists immediately upon receipt of the notice of candidacy and shall cancel the notice of candidacy of any candidate who is not eligible to vote in the election. The board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the county sheriff.

(c) Candidates may file their notices of candidacy with the board of elections at any time after 12:00 noon on the Friday preceding the eighth Saturday and before 12:00 noon on the Friday preceding the fifth Saturday before the municipal primary or election. Notices of candidacy which were mailed must be received by the board of elections before the filing deadline regardless of the time they were deposited in the mails.

(d) Any person may withdraw his notice of candidacy at any time prior to the filing deadline prescribed in subsection (c), and shall be entitled to a refund of his filing fee if he does so.

(e) The filing fee for the primary or election shall be fixed by the governing board not later than Friday before the eighth Saturday before the primary or election. There shall be a minimum filing fee of five dollars (\$5.00). The governing board shall have the authority to set the filing fee at not less than five dollars (\$5.00) nor more than one percent (1%) of the annual salary of the office sought unless one percent (1%) of the annual salary of the office sought is less than five dollars (\$5.00), in which case the minimum filing fee of five dollars (\$5.00) will be charged. The fee shall be paid to the board of elections at the time notice of candidacy is filed. (1971, c. 835, s. 1; 1973, c. 870, s. 2; 1975, c. 370, s. 2; 1977, c. 265, s. 18; 1981, c. 32, s. 3.)

Effect of Amendments. — The 1981 amendment substituted "upon receipt of the notice of candidacy" for "after the expiration of the registration period" in the second sentence of subsection (b).

§ 163-294.3. Sole candidates to be voted upon in nonpartisan municipal elections.

Each candidate for municipal office in nonpartisan municipal elections shall be voted upon, even though only one candidate has filed or has been nominated for a given office, in order that the voters may have the opportunity to cast write-in votes under the general election laws. (1971, c. 835, s. 1.)

§ 163-294.4. Failure of candidates to file; death of a candidate before election.

(a) If in a nonpartisan municipal election, when the filing period expires, candidates have not filed for all offices to be filled, the board of elections may extend the filing period for five days.

(b) If at the time the filing period closes only two persons have filed notice of candidacy for election to a single office or only as many persons have filed notices of candidacy for group offices as there are offices to be filled, and thereafter one of the candidates dies before the election and before the ballots are printed, the board of elections shall, upon notification of the death, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the board of elections receives notice of the candidate's death, the board shall determine whether there will be sufficient time to reprint them before the election if the filing period is reopened for three days. If the board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file for election.

(c) If the ballots have been printed at the time the board of elections receives notice of a candidate's death, and if the board determines that there is not enough time to reprint the ballots before the election if the filing period is reopened for three days, then, regardless of the number of candidates remaining for the office, the ballots shall not be reprinted and the name of the deceased candidate shall remain on the ballots. If a deceased candidate should poll the highest number of votes in the election, even though short of a majority the board of elections shall declare the office vacant and it shall be filled in the manner provided by law. If no candidate in an election receives a majority of the votes cast and the second highest vote is cast for a deceased candidate, no runoff election shall be held, but the board of elections shall declare the candidate receiving the highest vote to be elected. (1971, c. 835, s. 1.)

§ 163-295. Municipal and special district elections; application of Chapter 163.

To the extent that the laws, rules and procedures applicable to the conduct of primary, general or special elections by county boards of elections under Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19 and 22 of this Chapter are not inconsistent with the provisions of this Article, those laws, rules and procedures shall apply to municipal and special district elections and their conduct by the board of elections conducting those elections. The State Board of Elections shall have the same authority over all such elections as it has over county and State elections under those Articles. (1971, c. 835, s. 1; 1973, c. 793, s. 91.)

§ 163-296. Nomination by petition.

In cities conducting partisan elections, any qualified voter who seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate may do so in the manner provided in G.S. 163-122, except that the petitions and affidavits shall be filed not later than 12:00 noon on the Friday preceding the seventh Saturday before the election, and the petitions shall be signed by a number of qualified voters of the municipality equal to at least fifteen percent (15%) of the whole number of voters qualified to vote in the municipal election according to the most recent figures certified by the State Board of Elections. A person whose name appeared on the ballot in a primary election is not eligible to have his name placed on the regular municipal election ballot as an unaffiliated candidate for the same office in that year. The Board of Elections shall examine and verify the signatures on the petition, and shall certify only the names of signers who are found to be qualified registered voters in the municipality. (1971, c. 835, s. 1; 1979, c. 23, ss. 2, 4, 5; c. 534, ss. 3, 4.)

§ 163-297. Structure at voting place; marking off limits of voting place.

Precincts in which municipal primaries and elections are conducted shall conform, in all regards, to the requirements stipulated in G.S. 163-129 and all other provisions contained in Chapter 163 relating to county and State elections. (1971, c. 835, s. 1.)

§ 163-298. Municipal primaries and elections.

The phrases "county board of elections," and "chairman of the board of elections" as used in this Article, with respect to all municipal primaries and elections, shall mean the municipal board of elections and its chairman in those cities and towns which conduct their own elections, and the county board of elections and its chairman in those cities and towns whose elections are conducted by the county board of elections. The words "general election," as used in this Article, shall include regular municipal elections, runoff elections, and nonpartisan primaries, except where specific provision is made for municipal elections and nonpartisan primaries. (1971, c. 835, s. 1.)

§ 163-299. Ballots; municipal primaries and elections.

(a) The ballots printed for use in general and special elections under the provisions of this Article shall contain:

(1) The names of all candidates who have been put in nomination in accordance with the provisions of this Chapter by any political party recognized in this State, or, in nonpartisan municipal elections, the names of all candidates who have filed notices of candidacy or who have been nominated in a nonpartisan primary.

(2) The names of all persons who have qualified as unaffiliated candidates under the provisions of G.S. 163-296.

(3) All questions, issues and propositions to be voted on by the people.

(b) The form of municipal ballots to be used in partisan municipal elections shall be the same as the form prescribed in this Chapter for the county ballot. A nonpartisan municipal ballot shall be divided into sections according to the offices to be filled. Within each section the names of the candidates for that office shall be printed. At the left of each name shall be printed a voting square, and all voting squares on the ballot shall be arranged in a perpendicular line. On the face of the ballot, above the list of candidates and below the title of the

ballot shall be printed in heavy black type the following instructions: "If you tear or deface or wrongly mark this ballot, return it and get another."

(c) The names of candidates for nomination or election in municipal primaries or elections shall be placed on the ballot in strict alphabetical order, unless the municipal governing body has adopted a resolution no later than 60 days prior to a primary or election requesting that candidates' names be rotated on ballots. In the event such a resolution has been adopted, then the board of elections responsible for printing the ballots shall have them printed so that the name of each candidate shall, as far as practicable, occupy alternate positions on the ballot; to that end the name of each candidate shall occupy with reference to the name of every other candidate for the same office, first position, second position and every other position, if any, upon an equal number of ballots, and the ballots shall be distributed among the precinct voting places impartially and without discrimination.

(d) The provisions of G.S. 163-151(1), (2) and (3) shall apply to ballots used in municipal primaries and elections in the same manner as it is applied to county ballots provided, however, the exceptions contained in G.S. 163-151 shall be adhered to if applicable.

(e) The rules contained in G.S. 163-169 for counting primary ballots shall be followed in counting ballots in municipal primaries and nonpartisan primaries.

(f) The requirements contained in G.S. 163-171 shall apply to all municipal elections.

(g) The county or municipal board of elections shall, in addition to the requirements contained in G.S. 163-175 canvass the results in a nonpartisan municipal primary, election or runoff election, and in a special district election, the number of legal votes cast in each precinct for each candidate, the name of each person voted for, and the total number of votes cast in the municipality or special district for each person for each different office. (1971, c. 835, s. 1; 1979, c. 534, s. 4; c. 806.)

§ 163-300. Disposition of duplicate abstracts in municipal elections.

Within five days after a primary or election is held in any municipality, the chairman of the county or municipal board of elections shall mail to the chairman of the State Board of Elections, the duplicate abstract prepared in accordance with G.S. 163-176. One copy shall be retained by the county or municipal board of elections as a permanent record and one copy shall be filed with the city clerk. (1971, c. 835, s. 1.)

§ 163-301. Chairman of election board to furnish certificate of elections.

Not earlier than five days nor later than 10 days after the results of any municipal election have been officially determined and published in accordance with G.S. 163-175 and G.S. 163-179, the chairman of the county or municipal board of elections shall issue certificates of election, under his hand and seal, to all municipal and special district officers. In issuing such certificates of election the chairman shall be restricted by the provisions of G.S. 163-181. (1971, c. 835, s. 1.)

§ 163-302. Absentee voting.

(a) In any municipal election, including a primary or general election or referendum, conducted by the county board of elections, absentee voting may, upon resolution of the municipal governing body, be permitted. Such resolution must be adopted no later than 60 days prior to an election in order to be effective for that election. Any such resolution shall remain effective for all future elections unless repealed no later than 60 days before an election. A copy of all resolutions adopted under this section shall be filed with the State Board of Elections and the county board of elections conducting the election within 10 days of passage in order to be effective. Absentee voting shall not be permitted in any municipal election unless such election is conducted by the county board of elections.

(b) The provisions of Articles 20 and 21 of this Chapter shall apply to absentee voting in municipal elections, except the earliest date by which absentee ballots shall be required to be available for absentee voting in municipal elections shall be 30 days prior to the date of the municipal primary or election or as quickly following the filing deadline specified in G.S. 163-291(2) or G.S. 163-294.2(c) as the county board of elections is able to secure the official ballots. (1971, c. 835, s. 1; 1975, c. 370, s. 1; c. 836; 1977, c. 475, s. 1.)

§ 163-303: Repealed by Session Laws 1977, c. 265, s. 19.

§ 163-304. State Board of Elections to have jurisdiction over municipal elections and election officials, and to advise.

The State Board of Elections shall have the same authority over municipal elections and election officials as it has over county and State elections and election officials. The State Board of Elections shall advise and assist cities, towns, incorporated villages and special districts, municipal boards of elections, their members and legal officers on the conduct and administration of their elections and registration procedure.

The county and municipal boards of elections shall be governed by the same rules for settling controversies with respect to counting ballots or certification of the returns of the vote in any municipal or special district election as are in effect for settling such controversies in county and State elections. (1971, c. 835, s. 1; 1973, c. 793, s. 92.)

§ 163-305. Validation of elections.

All elections, and the results thereof, previously held in and for any municipality, special district, or school administrative unit pursuant to Subchapter IX, Chapter 163, are hereby validated. (1973, c. 492, s. 1.)

§ 163-306. Assumption of office by mayors and councilmen.

Newly elected mayors and councilmen (members of the governing body) shall take office as prescribed by G.S. 160A-68. (1973, c. 866.)

Chapter 164.

Concerning the General Statutes of North Carolina.

Article 1.

The General Statutes.

Sec.

- 164-1. Title of revision.
- 164-2. Effect as to repealing other statutes.
- 164-3. Repeal not to affect rights accrued or suits commenced.
- 164-4. Offenses, penalties and liabilities not affected.
- 164-5. Pending actions and proceedings not affected.
- 164-6. Effect of repeal on persons holding office.
- 164-7. Statutes not repealed.
- 164-8. General Statutes of North Carolina effective December 31, 1943.
- 164-9. Completion of General Statutes by Division of Legislative Drafting and Codification of Statutes.
- 164-10. Supplements to the General Statutes; rearrangement of laws, and correction of errors.
- 164-11. Supplements prima facie statement of laws; method of citation.
- 164-11.1. Cumulative Supplements prima facie evidence of laws.
- 164-11.2. Adoption of 1950 Volumes 2A, 2B and 2C of the General Statutes.
- 164-11.3. Adoption of 1952 Volumes 3A, 3B and 3C of the General Statutes.
- 164-11.4. Adoption of 1953 Volumes 1A, 1B and 1C of the General Statutes.
- 164-11.5. Adoption of 1958 Replacement Volumes 2C and 3B of the General Statutes.

Sec.

- 164-11.6. Adoption of 1960 Replacement Volumes 2B and 3A of the General Statutes.
- 164-11.7. Adoption of 1965 Replacement Volumes 2B, 2C and 2D and 1964 Replacement Volumes 3B, 3C and 3D of the General Statutes.
- 164-11.8. Adoption of 1965 Replacement Volumes 1C and 1D and 1966 Replacement Volumes 2A and 3A of the General Statutes.
- 164-11.9. Adoption of 1969 Replacement Volumes 1A and 1B of the General Statutes.

Article 2.

The General Statutes Commission.

- 164-12. Creation; name.
- 164-13. Duties; use of funds.
- 164-14. Membership; appointments; terms; vacancies.
- 164-15. Meetings; quorum.
- 164-16. Officers.
- 164-17. Committees; rules.
- 164-18. Reports.
- 164-19. Compensation.
- 164-20 to 164-24. [Reserved.]

Article 3.

Commission on Code Recodification.

- 164-25 to 164-34. [Repealed.]

ARTICLE 1.

The General Statutes.

§ 164-1. Title of revision.

This revision shall be known as the "General Statutes of North Carolina" and may be cited in either of the following ways: "General Statutes of North Carolina"; or "General Statutes"; or "G.S."

§ 164-2. Effect as to repealing other statutes.

All public and general statutes not contained in the General Statutes of North Carolina are hereby repealed with the exceptions and limitations hereafter mentioned in this Chapter. No statute or law which has been heretofore repealed shall be revived by the repeal contained in any of the sections of the General Statutes of North Carolina or by the omission of any repealing statute from the General Statutes. All public and general statutes enacted at the regular session of the General Assembly of 1943 shall be deemed

to repeal any conflicting provisions of the General Statutes of North Carolina.

CASE NOTES

Cited in *Baker v. Varser*, 240 N.C. 260, 82 S.E.2d 90 (1954).

§ 164-3. Repeal not to affect rights accrued or suits commenced.

The repeal of the statutes described in G.S. 164-2 shall not affect any act done, any right accruing, accrued or established, or any action or proceeding had or commenced in any case before the time when such repeal shall take effect, but the proceedings in any such case shall be conformed, when necessary, to the provisions of the General Statutes of North Carolina.

§ 164-4. Offenses, penalties and liabilities not affected.

No offense committed, no penalty or forfeiture incurred, no liability arising, and no remedy availed of, under any of the statutes hereby repealed, before the time when such repeal shall take effect shall be affected by the repeal.

§ 164-5. Pending actions and proceedings not affected.

No action or proceeding pending at the time of the repeal, for any offense committed, or for the recovery of any penalty or forfeiture incurred under any of the statutes hereby repealed shall be affected by such repeal, except that the proceedings in such action or proceeding shall be conformed, when necessary, to the provisions of the General Statutes of North Carolina.

§ 164-6. Effect of repeal on persons holding office.

All persons who at the time the General Statutes of North Carolina becomes effective shall hold any office under any of the statutes hereby repealed shall continue to hold the same according to the tenure thereof.

§ 164-7. Statutes not repealed.

The General Statutes of North Carolina shall not have the effect of repealing statutes or provisions of statutes which affect only a particular locality, public-local or private statutes, statutes exempting pending litigation from operation of statutes, statutes relating to the boundary of the State or of any county, acts ceding or relating to the ceding of lands of the State to the federal government, statutes relating to the Cherokee lands, statutes relating to the construction or interpretation of statutes, statutes by virtue of which bonds have been issued and are outstanding on the effective date of the General Statutes, validating acts or curative statutes, or acts granting pensions to named individuals if such statutes were in force on the effective date of the General Statutes.

CASE NOTES

Applied in *State v. Gales*, 240 N.C. 319, 82 S.E.2d 80 (1954).

§ 164-8. General Statutes of North Carolina effective December 31, 1943.

All provisions, chapters, subdivisions of chapters and sections contained in the General Statutes of North Carolina shall be in force from and after the thirty-first day of December 1943.

CASE NOTES

Quoted in *Kirby v. Stokes County Bd. of Educ.*, 230 N.C. 619, 55 S.E.2d 322 (1949).

§ 164-9. Completion of General Statutes by Division of Legislative Drafting and Codification of Statutes.

The Division of Legislative Drafting and Codification of Statutes of the State Department of Justice, under the direction and supervision of the Attorney General, shall complete and perfect the General Statutes, as enacted by the General Assembly of 1943, by changing all references therein to the "Code," "North Carolina Code," "Code of 1943" or "North Carolina Code of 1943" to read "General Statutes," and by causing to be inserted therein all such general public statutes as may be enacted at the 1943 Session of the General Assembly and all amendments, in their proper places in sections under the appropriate chapter and subdivisions of chapters, and by deleting all sections or portions of sections found to be expressly repealed, or found to be repealed by virtue of the repeal of any cognate sections or parts of sections of the Consolidated Statutes or session laws, and by deleting repealed provisions and substituting in lieu thereof all proper amendments of the General Statutes or of cognate sections of the Consolidated Statutes or session laws; and the Division is hereby authorized to change the number of sections and chapters, transfer sections, chapters and subdivisions of chapters and make such other corrections which do not change the law, as may be found by the Division necessary in making an accurate, clear, and orderly statement of said laws. After the completion of such codification of the general and public laws of 1943, such laws, as they appear in the printed volumes of the General Statutes, shall be deemed an accurate codification of the statutes of 1943 contained therein. (1943, c. 15, s. 3.)

§ 164-10. Supplements to the General Statutes; rearrangement of laws, and correction of errors.

The Division of Legislative Drafting and Codification of Statutes of the Department of Justice, under the direction and supervision of the Attorney General, shall have the following duties and powers with regard to the supplements to the General Statutes:

- (1) Within six months after the adjournment of each General Assembly, or as soon thereafter as possible, the Division shall cause to be

published under its supervision, cumulative pocket supplements to the General Statutes, and any replacement or recompiled volumes thereof, which shall contain an accurate transcription of all laws of a general and permanent nature enacted by the General Assembly, the material contained in the next preceding pocket and interim supplements, complete and accurate annotations to the statutes, appendix and other material accumulated since the publication of the next preceding pocket and interim supplements, and a cumulative index of said material.

- (2) Periodically, every six months after the publication and issuance of a cumulative pocket supplement following a session of the General Assembly, or as soon thereafter as possible, except when the publication of the cumulative pocket supplement makes it unnecessary, the Division shall cause to be published an interim supplement containing all pertinent annotations and other material found by the Division to be necessary and proper, accumulating since the publication of the said cumulative pocket supplement or the last interim supplement.
- (3) In the preparation of the general and permanent laws enacted by the General Assembly the Division is hereby authorized:
 - a. To rearrange the order of chapters, subchapters, articles, sections and other divisions or subdivisions;
 - b. To provide titles for any such divisions or subdivisions and section titles or catchlines when they are not provided by such laws;
 - c. To adopt a uniform system of lettering or numbering sections and the various subdivisions thereof and to reletter or renumber sections and section subdivisions in accordance with such uniform system;
 - d. To rearrange definitions in alphabetical order;
 - e. To rearrange lists of counties in alphabetical order; and
 - f. To make such other changes in arrangement and form that do not change the law as may be found by the Division necessary for an accurate, clear and orderly codification of such general and permanent laws. (1945, c. 863; 1947, c. 150; 1951, c. 1149, s. 1; 1957, c. 1013.)

§ 164-11. Supplements *prima facie* statement of laws; method of citation.

(a) The supplements to the General Statutes of North Carolina, or to any replacement or recompiled volumes of the General Statutes, when printed under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice, shall establish *prima facie* the general and permanent laws of North Carolina contained in said supplements.

(b) The cumulative pocket supplement may be cited as "G.S., Supp. 19. . ." and the interim supplement may be cited as "... G.S. In. Supp. 19," the blank in front of "G.S." to be filled in with the number of the interim supplement for that year. (1945, c. 863; 1951, c. 1149, s. 2.)

Cross References. — For subsequent law, see § 164-11.1.

§ 164-11.1. Cumulative Supplements prima facie evidence of laws.

The 1945, 1947, 1949, 1951, 1953, 1955, and 1957 Cumulative Supplements to the General Statutes of North Carolina, or to any replacement or recompiled volumes of the General Statutes as compiled and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina, are hereby constituted and declared to be prima facie evidence of the laws of North Carolina contained in said supplements. (1949, c. 45; 1951, c. 1149, s. 3; 1953, c. 140; 1955, c. 53; 1957, c. 371.)

Cross References. — See § 164-11.

Legal Periodicals. — For brief comment on this section, see 27 N.C.L. Rev. 478.

§ 164-11.2. Adoption of 1950 Volumes 2A, 2B and 2C of the General Statutes.

The chapters, subchapters, articles and sections, now comprising Volume 2 of the General Statutes of North Carolina and the Cumulative Supplements thereto, consisting of G.S. 26-1 through 105-462 now in force as amended, are hereby reenacted and designated Volumes 2A, 2B and 2C, respectively, of the General Statutes of North Carolina: Provided, that this enactment of Volumes 2A, 2B and 2C shall not include any appended annotations, editorial notes, comments, cross references, legislative or historical references, or other material collateral or supplemental to the said chapters, subchapters, articles and sections, but not contained in the body thereof. (1951, c. 900.)

§ 164-11.3. Adoption of 1952 Volumes 3A, 3B and 3C of the General Statutes.

The chapters, subchapters, articles and sections now comprising Volume 3 of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of G.S. 106-1 through 166-13, now in force, as amended, are hereby reenacted and designated Volumes 3A, 3B and 3C respectively of the General Statutes of North Carolina. This reenactment of Volumes 3A, 3B and 3C shall not be construed to invalidate or repeal any acts which have been passed during the 1953 Session of the General Assembly, prior to February 18, 1953, nor shall this reenactment include any appended annotations, editorial notes, comments and cross references, legislative or historical references, or other material connected or supplemental to the said chapters, subchapters, articles and sections, but not contained in the body hereof. (1955, c. 43.)

§ 164-11.4. Adoption of 1953 Volumes 1A, 1B and 1C of the General Statutes.

The chapters, subchapters, articles and sections now comprising Volume 1 of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of G.S. 1-1 through 27-59, now in force, as amended, are hereby reenacted and designated Volumes 1A, 1B and 1C respectively of the General Statutes of North Carolina. This enactment of Volumes 1A, 1B and 1C shall not be construed to invalidate or repeal any acts which have been passed during the 1955 Session of the General Assembly, prior to February 11, 1955, nor shall this enactment include any appended annotations, editorial notes, comments and cross references, legislative or historical references, or other

material connected or supplemental to the said chapters, subchapters, articles and sections, but not contained in the body hereof. (1955, c. 43.)

§ 164-11.5. Adoption of 1958 Replacement Volumes 2C and 3B of the General Statutes.

(a) The chapters, subchapters, articles and sections now comprising Volume 2C of the General Statutes of North Carolina, and Cumulative Supplement thereto, consisting of G.S. 83-1 through 105-462, now in force, as amended, are hereby reenacted and designated Replacement Volume 2C of the General Statutes of North Carolina.

(b) The chapters, subchapters, articles and sections now comprising Volume 3B of the General Statutes of North Carolina, and Cumulative Supplement thereto, consisting of G.S. 117-1 through 150-34, now in force, as amended, are hereby reenacted and designated Replacement Volume 3B of the General Statutes of North Carolina.

(c) This enactment of Replacement Volumes 2C and 3B shall not be construed to invalidate or repeal any acts which have been passed during the 1959 Session of the General Assembly, prior to February 24, 1959, nor shall this enactment include any appended annotations, editorial notes, comments and cross references, legislative or historical references, or other material connected or supplemental to the said chapters, subchapters, articles and sections, but not contained in the body hereof. (1959, c. 12.)

§ 164-11.6. Adoption of 1960 Replacement Volumes 2B and 3A of the General Statutes.

(a) The chapters, subchapters, articles and sections now comprising Volume 2B of the General Statutes of North Carolina, and Cumulative Supplement thereto, consisting of G.S. 53-1 through 82-18, now in force, as amended, are hereby reenacted and designated as Replacement Volume 2B of the General Statutes of North Carolina.

(b) The chapters, subchapters, articles and sections now comprising Volume 3A of the General Statutes of North Carolina, and Cumulative Supplement thereto, consisting of G.S. 106-1 through 116-185, now in force, as amended, are hereby reenacted and designated Replacement Volume 3A of the General Statutes of North Carolina.

(c) This enactment of Replacement Volumes 2B and 3A shall not be construed to invalidate or repeal any acts which have been passed during the 1961 Session of the General Assembly, prior to March 14, 1961, nor shall this enactment include any appended annotations, editorial notes, comments and cross references, legislative or historical references, or other material connected or supplemental to the said chapters, subchapters, articles and sections, but not contained in the body hereof. (1961, cc. 38, 185.)

§ 164-11.7. Adoption of 1965 Replacement Volumes 2B, 2C and 2D and 1964 Replacement Volumes 3B, 3C and 3D of the General Statutes.

(a) The chapters, subchapters, articles and sections now comprising Volumes 2B and 2C of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of G.S. 53-1 to 105-462, now in force, as amended, are hereby reenacted and designated as 1965 Replacement Volumes 2B, 2C and 2D of the General Statutes of North Carolina.

(b) The chapters, subchapters, articles and sections now comprising Volumes 3B and 3C of the General Statutes of North Carolina, and Cumulative

Supplements thereto, consisting of G.S. 117-1 to 167-3, now in force, as amended, are hereby reenacted and designated as 1964 Replacement Volumes 3B, 3C and 3D of the General Statutes of North Carolina.

(c) This enactment of 1965 Replacement Volumes 2B, 2C and 2D and 1964 Replacement Volumes 3B, 3C and 3D shall not be construed to invalidate or repeal any acts which have been passed during the 1965 Session of the General Assembly, prior to May 14, 1965, nor shall this enactment include any appended annotations, editorial notes, comments and cross references, legislative or historical references, or other material connected or supplemental to the said chapters, subchapters, articles and sections, but not contained in the body hereof. (1965, c. 544.)

§ 164-11.8. Adoption of 1965 Replacement Volumes 1C and 1D and 1966 Replacement Volumes 2A and 3A of the General Statutes.

(a) The chapters, subchapters, articles and sections now comprising Volume 1C of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of G.S. 15-1 to 27-59, now in force, as amended, are hereby reenacted and designated as 1965 Replacement Volumes 1C and 1D of the General Statutes of North Carolina.

(b) The chapters, subchapters, articles and sections now comprising 1950 Recompiled Volume 2A of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of G.S. 28-1 to 52A-20, now in force, as amended, is hereby reenacted and designated as 1966 Replacement Volume 2A of the General Statutes of North Carolina.

(c) The chapters, subchapters, articles and sections now comprising 1960 Replacement Volume 3A of the General Statutes of North Carolina, and Cumulative Supplements thereto, consisting of G.S. 106-1 to 116-211, now in force, as amended, is hereby reenacted and designated as 1966 Replacement Volume 3A of the General Statutes of North Carolina.

(d) This enactment of 1965 Replacement Volumes 1C and 1D and 1966 Replacement Volumes 2A and 3A shall not be construed to invalidate or repeal any acts which have been passed during the 1967 Session of the General Assembly, prior to the date of ratification, nor shall this enactment include any appended annotations, editorial notes, comments and cross references, legislative or historical references, or other material connected or supplemental to said chapters, subchapters, articles and sections, but not contained in the body hereof. (1967, c. 1266.)

§ 164-11.9. Adoption of 1969 Replacement Volumes 1A and 1B of the General Statutes.

(a) The chapters and sections thereof now comprising Volume 1A of the General Statutes of North Carolina, and Cumulative Supplement thereto, consisting of G.S. 1-1 through 1B-8 now in force, as amended, are hereby reenacted and designated as 1969 Replacement Volume 1A of the General Statutes of North Carolina.

(b) The chapters and sections thereof now comprising Volume 1B of the General Statutes of North Carolina and Cumulative Supplement thereto, consisting of G.S. 2-1 through 14-431, now in force, as amended, are hereby reenacted and designated as 1969 Replacement Volume 1B of the General Statutes of North Carolina.

This reenactment and designation shall not operate as ratification of the judgment of the editors in placing certain sections of this volume in the "1970 Interim Supplement" to Volume 1B. Such sections shall be treated in all

respects as if they appear within the bound replacement volume. (1971, c. 135.)

ARTICLE 2.

The General Statutes Commission.

§ 164-12. Creation; name.

There is hereby created and established a commission to be known as "The General Statutes Commission." (1945, c. 157.)

State Government Reorganization. — The General Statutes Commission was transferred to the Department of Justice by § 143A-53, enacted by Session Laws 1971, c. 864.

Legal Periodicals. — For article on the North Carolina General Statutes Commission, see 46 N.C.L. Rev. 469 (1968).

§ 164-13. Duties; use of funds.

(a) It shall be the duty of the Commission:

- (1) To advise and cooperate with the Division of Legislative Drafting and Codification of Statutes of the Department of Justice in the work of continuous statute research and correction for which the Division is made responsible by G.S. 114-9(3).
- (2) To advise and cooperate with the Division of Legislative Drafting and Codification of Statutes in the preparation and issuance by the Division of supplements to the General Statutes pursuant to G.S. 114-9(2).
- (3) To make a continuing study of all matters involved in the preparation and publication of modern codes of law.
- (4) To recommend to the General Assembly the enactment of such substantive changes in the law as the Commission may deem advisable.
- (5) To receive and consider proposed changes in the law recommended by the American Law Institute, by the National Conference of Commissioners on Uniform State Laws or by other learned bodies.

(b) Funds made available to the Commission by appropriation of the General Assembly, by allotment from the Contingency and Emergency Fund, or otherwise, may be used to employ the services of persons especially qualified to assist in the work of the Commission and for necessary clerical assistance. (1945, c. 157; 1951, c. 761; 1957, c. 1405; 1969, c. 541, s. 3; 1971, c. 1093, s. 7; 1981, c. 599, s. 20.)

Cross References. — As to subsequent statute relating to duties of Revisor of Statutes in regard to § 114-9, subdivision (3), see § 114-9.1.

Effect of Amendments. — The 1981 amend-

ment, effective Oct. 1, 1981, added subdivision (5) of subsection (a).

Session Laws 1981, c. 599, s. 21, provides that the act shall not affect pending litigation.

§ 164-14. Membership; appointments; terms; vacancies.

(a) The Commission shall consist of 12 members, who shall be appointed as follows:

- (1) One member, by the president of the North Carolina State Bar;
- (2) One member, by the General Statutes Commission;
- (3) One member, by the dean of the school of law of the University of North Carolina;

- (4) One member, by the dean of the school of law of Duke University;
- (5) One member, by the dean of the school of law of Wake Forest University;
- (6) One member, by the Speaker of the House of Representatives of each General Assembly from the membership of the House;
- (7) One member, by the president of the Senate of each General Assembly from the membership of the Senate;
- (8) Two members, by the Governor;
- (9) One member, by the dean of the school of law of North Carolina Central University;
- (10) One member by the president of the North Carolina Bar Association;
- (11) One member, by the dean of the school of law of Campbell College.

(b) Appointments of original members of the Commission made by the president of the North Carolina State Bar, the president of the North Carolina Bar Association, and the deans of the schools of law of Duke University, the University of North Carolina, and Wake Forest University shall be for one year. Appointments of original members of the Commission made by the Speaker of the House of Representatives, the President of the Senate, and the Governor shall be for two years.

(c) After the appointment of the original members of the Commission, appointments by the president of the North Carolina State Bar, the General Statutes Commission, and the deans of the schools of law of North Carolina Central University, Duke University, the University of North Carolina, and Wake Forest University shall be made in the even-numbered years, and appointments made by the Speaker of the House of Representatives, the president of the Senate, president of the North Carolina Bar Association, the dean of the School of Law of Campbell College and the Governor shall be made in the odd-numbered years. Such appointments shall be made for two-year terms beginning June first of the year when such appointments are to become effective and expiring May 31 two years thereafter. All such appointments shall be made not later than May 31 of the year when such appointments are to become effective.

(d) If any appointment provided for by this section is not made prior to June first of the year when it should become effective, a vacancy shall exist with respect thereto, and the vacancy shall then be filled by appointment by the Governor. If any member of the Commission dies or resigns during the term for which he was appointed, his successor for the unexpired term shall be appointed by the person who made the original appointment, as provided in G.S. 164-14, or by the successor of such person; and if such vacancy is not filled within 30 days after the vacancy occurs, it shall then be filled by appointment by the Governor. In any case where an appointment authorized to be made by G.S. 164-14(c) has not been made on or before July 31 of the year in which it was due to be made, a vacancy shall exist with respect to that appointment and the General Statutes Commission at its next meeting shall by majority vote fill the vacancy by appointment.

(e) All appointments shall be reported to the secretary of the Commission.

(f) Notwithstanding the expiration of the term of the appointment, the terms of members of the General Statutes Commission shall continue until the appointment of a successor has been made and reported to the secretary of the Commission. (1945, cc. 157, 635; 1947, c. 114, s. 3; 1967, cc. 17, 1230; 1969, c. 541, s. 4; 1971, c. 1, ss. 1, 2; c. 76; 1975, c. 394, ss. 1, 2; 1977, c. 709, ss. 1, 2.)

§ 164-15. Meetings; quorum.

The Commission shall hold not less than two regular meetings each year, of which one shall be held in June and one in November, at such times during those months as may be fixed therefor by the Commission itself. The Commission may hold such other regular meetings as it may provide for by its rules. Special meetings may be called by the chairman, or by any two members of the Commission, upon such notice and in such manner as may be fixed therefor by the rules of the Commission. The regular June and November meetings of the Commission shall be held in Raleigh, but the Commission may provide for the holding of other meetings from time to time at any other place or places in the State. The first meeting of the Commission shall be held in June 1945 upon the call of the Attorney General at such time and upon such notice as he may designate. A majority of the members of the Board shall constitute a quorum. (1945, c. 157.)

§ 164-16. Officers.

At its regular June meeting in the odd-numbered years the Commission shall elect a chairman and a vice-chairman for a term of two years and until their successors are elected and assume the duties of their positions. The Revisor of Statutes shall be ex officio secretary of the Commission. (1945, c. 157; 1947, c. 114, s. 2.)

§ 164-17. Committees; rules.

The Commission may elect, or may authorize its chairman to appoint, such committees of the Commission as it may deem proper. The Commission may adopt such rules not inconsistent with this Article as it may deem proper with respect to any and all matters relating to the discharge of its duties under this Article. (1945, c. 157.)

§ 164-18. Reports.

The Commission shall submit to each regular session of the General Assembly a report of its work during the preceding two years, together with such recommendations as it may deem proper. (1945, c. 157.)

§ 164-19. Compensation.

Members of the Commission shall be paid the amount of per diem provided by G.S. 138-5 for attendance upon meetings of the Commission, or upon attendance of meetings of committees of the Commission, together with such subsistence and travel allowance as may be provided by law. (1945, c. 157; 1969, c. 445, s. 3.)

§§ 164-20 to 164-24: Reserved for future codification purposes.

ARTICLE 3.***Commission on Code Recodification.***

§§ 164-25 to 164-34: Repealed by Session Laws 1981, c. 859, s. 13.10, effective July 1, 1981.

Chapter 165.

Veterans.

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ARTICLE 1.

*Department of Administration.***§ 165-1. North Carolina Veterans Commission renamed.**

The North Carolina Veterans Commission is hereby renamed the Department of Administration. The Department shall assume all duties, responsibilities and powers formerly exercised by the Veterans Commission, and shall further exercise those powers and duties prescribed in this Article and elsewhere in the General Statutes. (1967, c. 1060, s. 1; 1973, c. 620, s. 9; 1977, c. 70, s. 27.)

Cross References. — As to Department of Administration, see § 143-334 et seq. and § 143B-366 et seq.

Revision of Article. — Session Laws 1967, c. 1060, s. 1, rewrote the former Article, which also consisted of 11 sections and derived from

Session Laws 1945, c. 723, s. 1; c. 1087; 1949, c. 430, ss. 1, 2; c. 1292; 1951, c. 1048, ss. 1, 2; 1957, c. 541, s. 19. Where present sections are similar to prior provisions, the historical citations have been added thereto.

§ 165-2. References changed.

Wherever in the General Statutes the words "North Carolina Veterans Commission" appear, the same shall be stricken out and the words "North Carolina Department of Administration" inserted in lieu thereof. (1967, c. 1060, s. 1; 1977, c. 70, s. 27.)

§ 165-3. Definitions.

Wherever used in this Article, unless the context otherwise requires, the terms defined in this section shall have the following meaning:

- (1) "Commission" means the Veterans Affairs Commission.
- (2) "Department" means the North Carolina Department of Administration, an agency of the government of the State of North Carolina.
- (3) Repealed by Session Laws 1973, c. 620, s. 9.
- (4) "Veteran" means
 - a. For qualifying as a voting member of the State Board of Veterans Affairs and as the State Director of Veterans Affairs, a person who served honorably during a period of war as defined in Title 38, United States Code.
 - b. For entitlement to the services of the Department of Administration, any person who may be entitled to any benefits or rights under the laws of the United States by reason of service in the armed forces of the United States.
- (5) "Veterans' organization" means any organization of veterans which has been chartered by an act of the United States Congress and is legally constituted and operating in this State pursuant to said charter. (1945, c. 723, s. 1; 1949, c. 430, s. 1; 1967, c. 1060, s. 1; 1973, c. 620, s. 9; 1977, c. 70, s. 27.)

§ 165-4. Purpose.

The purpose of this Article is to provide assistance to veterans, their families and their dependents, in obtaining or maintaining privileges, rights and benefits to which they are entitled under federal, State or local laws. (1945, c. 723, s. 1; 1967, c. 1060, s. 1.)

§ 165-5: Repealed by Session Laws 1973, c. 620, s. 9.

§ 165-6. Powers and duties of the Department.

In furtherance of the stated purpose of this Article, the Department is hereby authorized and empowered to do the following:

- (1) To assist veterans, their families, and dependents in the presentation, processing, proof, and establishment of such claims, privileges, rights, and benefits as they may be entitled to under federal, State, or local laws, rules, and regulations.
- (2) To aid persons in active military service and their dependents with problems arising out of said service which come reasonably within the purview of the Department's program of assistance.
- (3) To collect data and information as to the facilities and services available to veterans, their families, and dependents and to cooperate with agencies furnishing information or services throughout the State in order to inform such agencies regarding the availability of (i) education, training and retraining facilities, (ii) health, medical, rehabilitation, and housing services and facilities, (iii) employment and reemployment services, (iv) provisions of federal, State, and local laws, rules, and regulations affording rights, privileges, and benefits to veterans, their families, and dependents, and in respect to such other matters of similar, related, or appropriate nature not herein set out.
- (4) To establish such field offices, facilities and services throughout the State as may be necessary to carry out the purposes of this Article.
- (5) To cooperate, as the Department deems appropriate, with governmental, private and civic agencies and instrumentalities in securing services or benefits for veterans, their families, dependents and beneficiaries.
- (6) To accept any property, funds, service, or facilities from any source, public or private, granted in aid or furtherance of the administration of the provisions of this Article.
- (7) To enter into any contract or agreement with any person, firm, or corporation, or governmental agency or instrumentality in furtherance of the purposes of this Article, and to make all rules and regulations necessary for the proper and effective administration of its duties.
- (8) It shall be the duty of the Department to train, supervise and assist the employees of any county, city or town who are engaged in veterans service. Authority is hereby granted the governing body of any county, city or town to appropriate such amounts as it may deem necessary to provide a veterans service program and the expenditure of such funds is hereby declared to be for a public purpose; such program shall be operated in affiliation with this Department and under its supervision as set forth above.
- (9) The Department may, in its discretion, contribute to each county an amount not to exceed one thousand dollars (\$1,000) on a matching basis for any fiscal year for the maintenance and operation of a county veterans service program. Participating counties shall furnish the Department such reports, accountings and other information at such times and in such form as the Department may require.
- (10) Repealed by Session Laws 1973, c. 620, s. 9. (1945, c. 723, s. 1; 1949, c. 1292; 1967, c. 1060, s. 1; 1973, c. 620, s. 9.)

Local Modification. — Yancey: 1959, c. 936.

§ 165-7: Repealed by Session Laws 1973, c. 620, s. 9.

§ 165-8. Quarters.

The Department of Administration shall provide, in the City of Raleigh, adequate quarters for the central office of the Department of Administration. The Department of Administration shall procure suitable space for its field offices and other activities pursuant to applicable provisions of law and in accordance with rules adopted by the Governor with the approval of the Council of State. (1945, c. 723, s. 1; 1967, c. 1060, s. 1; 1973, c. 620, s. 9; 1977, c. 70, s. 27.)

§ 165-9. Appropriations.

Appropriations for the Department shall be made from the general fund of the State, and the Governor, with the approval of the Council of State, is hereby authorized and empowered to allocate from time to time from the Contingency and Emergency Fund, such funds as may be necessary to carry out the intent and purposes of this Article. (1945, c. 723, s. 1; 1967, c. 1060, s. 1.)

§ 165-10. Transfer of veterans' activities.

The Governor may transfer to the Department such funds, facilities, properties and activities now being held or administered by the State for the benefit of veterans, their families and dependents, as he may deem proper; provided, that the provisions of this section shall not apply to the activities of the North Carolina Employment Security Commission in respect to veterans. (1945, c. 723, s. 1; 1967, c. 1060, s. 1.)

§ 165-11. Copies of records to be furnished to the Department of Administration.

(a) Whenever copies of any State and local public records are requested by a representative of the Department of Administration in assisting persons in obtaining any federal, State, local or privately provided benefits relating to veterans and their beneficiaries, the official charged with the custody of any such records shall without charge furnish said representative with the requested number of certified copies of such records; provided, that this section shall not apply to the disclosure of information in certain privileged and confidential records referred to elsewhere in the General Statutes of North Carolina, which information shall continue to be disclosed in the manner prescribed by the statute relating thereto.

(b) No official chargeable with the collection of any fee or charge under the laws of the State of North Carolina in connection with his official duties shall be held accountable on his official bond or otherwise for any fee or charge remitted pursuant to the provisions of this section. (1967, c. 1060, s. 1; 1973, c. 620, s. 9; 1977, c. 70, s. 27.)

§ 165-11.1. Confidentiality of Veterans Affairs records.

Notwithstanding any other provisions of Chapter 143B, no records of the Division of Veterans Affairs in the Department of Administration shall be disclosed or used for any purpose except for official purposes, and no records shall be disclosed, destroyed or used in any manner which is in violation of any existing federal law or regulation. Nothing in this Chapter shall convert

records which are the property of the federal government into State property. (1977, c. 70, s. 28.)

ARTICLE 2.

Minor Veterans.

§ 165-12. Short title.

This Article may be cited as "The Minor Veterans Enabling Act." (1945, c. 770.)

Legal Periodicals. — For discussion of this Article, see 23 N.C.L. Rev. 359.

CASE NOTES

Quoted in *Gastonia Personnel Corp. v. Rogers*, 276 N.C. 279, 172 S.E.2d 19 (1970).

§ 165-13. Definition.

As used in this Article, "veteran" means any person who may be entitled to any benefits or rights under the laws of the United States, by reason of service in the armed forces of the United States. (1945, c. 770; 1967, c. 1060, s. 2.)

§ 165-14. Application of Article.

This Article applies to every person, either male or female, 18 years of age or over, but under 21 years of age, who is, or who may become, entitled to any rights or benefits under the laws of the United States relating to veterans benefits. (1945, c. 770; 1967, c. 1060, s. 3.)

§ 165-15. Purpose of Article.

The purpose of this Article is to remove the disqualification of age which would otherwise prevent persons to whom this Article applies from taking advantage of any right or benefit to which they may be or may become entitled under the laws of the United States relating to veterans benefits, and to assure those dealing with such minor persons that the acts of such minors shall not be invalid or voidable by reason of the age of such minors, but shall in all respects be as fully binding as if said minors had attained their majority; and this Article shall be liberally construed to accomplish that purpose. (1945, c. 770; 1967, c. 1060, s. 4.)

§ 165-16. Rights conferred; limitation.

(a) Every person to whom this Article applies is hereby authorized and empowered, in his or her own name without order of court or the intervention of any guardian or trustee:

- (1) To purchase or lease any property, either real or personal, or both, which such person may deem it desirable to purchase or lease in order to avail himself or herself of any of the benefits of the laws of United States relating to veterans benefits, and take title to such property in his or her own name or in the name of himself or herself and spouse.

- (2) To execute any note or similar instrument for any part or all of the purchase price of any property purchased pursuant to subdivision (1) of this section and to secure the payment thereof by retained title contract, mortgage, deed of trust or other similar or appropriate instrument.
- (3) To execute any other contract or instrument which such person may deem necessary in order to enable such person to secure the benefits of the laws of the United States relating to veterans benefits.
- (4) To execute any contract or instrument which such person may deem necessary or proper in order to enable such person to make full use of any property purchased pursuant to the provisions of the laws of the United States relating to veterans benefits, including the right to dispose of such property; such contracts to include but not to be limited to the following:
 - a. With respect to a home: Contracts for insurance, repairs, and services such as gas, water, and lights, and contracts for furniture and other equipment.
 - b. With respect to a farm: Contracts such as are included in paragraph (a) of this subdivision (4) above, together with contracts for livestock, seeds, fertilizer and farm equipment and machinery, and contracts for farm labor and other farm services.
 - c. With respect to a business: Contracts such as are included in paragraph (a) of this subdivision (4), together with such other contracts as such person may deem necessary or proper for the maintenance and operation of such business.

(b) Every person to whom this Article applies may execute such contracts as are hereby authorized in his own name without any order from any court, and without the intervention of a guardian or trustee, and no note, mortgage, conveyance, deed of trust, contract, or other instrument, conveyance or action within the purview of this Article shall be invalid, voidable or defective by reason of the fact that the person executing or performing the same was at the time a minor.

(c) In respect to any action at law or special proceeding in relation to any transaction within the purview of this Article, every minor person to whom this Article applies shall appear and plead in his or her own name and right without the intervention of any guardian or trustee, and every such minor person shall be considered a legal party to any such action at law or special proceeding in all respects as if such person had attained the age of 21 years. No such minor shall hereafter interpose the defense of lack of legal capacity by reason of age in connection with any transaction within the purview of this Article, nor disavow any such transaction upon coming of age.

(d) All such authority and power as are conferred by this Article are subject to all applicable provisions of the laws of the United States relating to veterans benefits. (1945, c. 770; 1967, c. 1060, s. 5.)

ARTICLE 3.

Minor Spouses of Veterans.

§ 165-17. Definition.

As used in this Article, "veteran" means any person who may be entitled to any benefits or rights under the laws of the United States, by reason of service in the armed forces of the United States. (1945, c. 771; 1967, c. 1060, s. 6.)

§ 165-18. Rights conferred.

(a) Any person under the age of 18 years who is the husband or wife of a veteran, is hereby authorized and empowered in his or her own name, and without any order of court or the intervention of a guardian or trustee, to execute any and all contracts, conveyances, and instruments, to take title to property, to defend any action at law, and to do all other acts necessary to make fully available to such veteran, his or her family or dependents, all rights and benefits under the laws of the United States relating to veterans benefits, in as full and ample manner as if such minor husband or wife of such veteran had attained the age of 18 years.

(b) Any person under the age of 18 years, who is the husband or wife of a veteran, is hereby authorized and empowered in his or her own name, and without any order of court or the intervention of a guardian or trustee, to join in the execution of any contract, deed, conveyance or other instrument which may be deemed necessary to enable his or her veteran spouse to make full use of any property purchased pursuant to the provisions of the foregoing subsection, including the right to dispose of such property.

(c) With respect to any action at law or special proceeding in relation to any transaction within the purview of this Article, every minor person to whom this Article applies shall appear and plead in his or her own name and right without the intervention of any guardian or trustee; and every such minor person shall be considered a legal party to any such action at law or special proceeding in all respects as if such person had attained the age of 18 years. No such minor shall hereafter interpose the defense of lack of legal capacity by reason of age in connection with any transaction within the purview of this Article, nor disavow any such transaction upon coming of age. (1945, c. 771; 1947, c. 905, ss. 1, 2; 1967, c. 1060, s. 7; 1971, c. 1231, s. 1; 1973, c. 1446, s. 12.)

Legal Periodicals. — For article, "The Perspective of Fair Exchange," see 50 N.C.L. Contracts of Minors Viewed from the Rev. 517 (1972).

CASE NOTES

Authority to suspend accrued statutory rights may not be reasonably implied from the general terms of this section. *Harrill v. Teachers' & State Employees' Retirement Sys.*, 271 N.C. 357, 156 S.E.2d 702 (1967).

ARTICLE 4.

Scholarships for Children of War Veterans.

§ 165-19. Purpose.

In appreciation for the service and sacrifices of North Carolina's war veterans and as evidence of this State's concern for their children, there is hereby continued a revised program of scholarships for said children as set forth in this Article. (1967, c. 1060, s. 8.)

§ 165-20. Definitions.

As used in this Article the terms defined in this section shall have the following meaning:

- (1) "Active federal service" means full-time duty in the armed forces other than active duty for training; however, if disability or death occurs while on active duty for training (i) as a direct result of armed conflict

- or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war, such active duty for training shall be considered as active federal service.
- (2) "Armed forces" means the army, navy, marine corps, air force and coast guard, including their reserve components.
- (3) "Child" means a person who has completed high school or its equivalent prior to receipt of a scholarship as may be awarded under this Article and who further meets one of the following requirements:
- a. A person whose veteran parent was a legal resident of North Carolina at the time of said veteran's entrance into that period of service in the armed forces during which eligibility is established under G.S. 165-22.
 - b. A veteran's child who was born in North Carolina and has lived in North Carolina continuously since birth. Provided, that the requirement in the preceding sentence as to birth in North Carolina may be waived by the Department of Administration if it is shown to the satisfaction of the Department that the child's mother was a native-born resident of North Carolina and was such resident at the time of her marriage to the veteran and was outside the State temporarily at the time of the child's birth, following which the child was returned to North Carolina within a reasonable period of time where said child has since lived continuously.
 - c. A person meeting either of the requirements set forth in subdivision (3)a or b above, and who was legally adopted by the veteran prior to said person's reaching the age of six years.
- (4) "Period of war" and "wartime" shall mean any of the periods or circumstances as defined below:
- a. World War I, meaning (i) the period beginning on April 6, 1917 and ending on November 11, 1918, and (ii) in the case of a veteran who served with the United States armed forces in Russia, the period beginning on April 6, 1917 and ending on April 1, 1920.
 - b. World War II, meaning the period beginning on December 7, 1941 and ending on December 31, 1946.
 - c. Korean Conflict, meaning the period beginning on June 27, 1950 and ending on January 31, 1955.
 - d. Vietnam era, meaning the period beginning on August 5, 1964, and ending on such date as shall be prescribed by Presidential proclamation or concurrent resolution of the Congress.
 - e. Any period of service in the armed forces during which the veteran parent of an applicant for a scholarship under this Article suffered death or disability (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war.
- (5) "Private educational institution" means any junior college, senior college or university which is operated and governed by private interests not under the control of the federal, State or any local government, which is located within the State of North Carolina, which does not operate for profit, whose curriculum is primarily directed toward the awarding of associate, baccalaureate or graduate degrees, which agrees to the applicable administration and funding provisions of G.S. 165-22.1, of this Article, and which is otherwise approved by the State Board of Veterans Affairs.
- (6) "State educational institution" means any educational institution of higher learning which is owned and operated by the State of North Carolina, or any community college operated under the provisions of Chapter 115A and Article 3 of Chapter 116 of the General Statutes of

North Carolina, or the college program of the North Carolina School of the Arts, or any technical institute operated under the provisions of Chapter 115A of the General Statutes of North Carolina.

- (7) "Veteran" means a person who served as a member of the armed forces of the United States in active federal service during a period of war and who was separated from the armed forces under conditions other than dishonorable. A person who was separated from the armed forces under conditions other than dishonorable and whose death or disability was incurred (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war, shall also be deemed a "veteran" and such death or disability shall be considered wartime service-connected. (1967, c. 1060, s. 8; 1969, c. 720, s. 3; c. 741, ss. 1, 2; 1971, c. 339; 1973, c. 620, s. 9; c. 755; 1975, c. 160, s. 1; 1977, c. 70, s. 27.)

Editor's Note. — Chapter 115A, referred to by Session Laws 1979, c. 462. See now Chapter 115D.
in subdivision (6) of this section, was repealed

§ 165-21. Scholarship.

A scholarship granted pursuant to this Article shall consist of the following benefits in either a State or private educational institution:

- (1) With respect to State educational institutions, unless expressly limited elsewhere in this Article, a scholarship shall consist of:
 - a. Tuition,
 - b. A reasonable board allowance,
 - c. A reasonable room allowance,
 - d. Matriculation and other institutional fees required to be paid as a condition to remaining in said institution and pursuing the course of study selected, excluding charges or fees for books, supplies, tools and clothing.
- (2) With respect to private educational institutions, a scholarship shall consist of a monetary allowance as prescribed in G.S. 165-22.1(d).
- (3) Only one scholarship may be granted pursuant to this Article with respect to each child and it shall not extend for a longer period than four academic years, which years, however, need not be consecutive. (1967, c. 1060, s. 8; 1969, c. 741, s. 3; 1975, c. 137, s. 1.)

§ 165-22. Classes or categories of eligibility under which scholarships may be awarded.

A child, as defined in this Article, who falls within the provisions of any eligibility class described below shall, upon proper application be considered for a scholarship, subject to the provisions and limitations set forth for the class under which he is considered:

- (1) Class I-A: Under this class a scholarship shall be awarded to any child whose veteran parent
 - a. Was killed in action or died from wounds or other causes not due to his own wilful misconduct while a member of the armed forces during a period of war, or
 - b. Has died of service-connected injuries, wounds, illness or other causes incurred or aggravated during wartime service in the armed forces, as rated by the United States Veterans Administration.
- (2) Class I-B: Under this class a limited scholarship providing only those benefits set forth in G.S. 165-21(1)a and d and 165-21(2) of this Article,

shall be awarded to any child whose veteran parent, at the time the benefits pursuant to this Article are sought to be availed of, is or was at the time of his death receiving compensation for a wartime service-connected disability of one hundred percent (100%) as rated by the United States Veterans Administration. Provided, that if the veteran parent of a recipient under this class should die of his wartime service-connected condition before the recipient shall have utilized all of his scholarship eligibility time, then the North Carolina Department of Administration shall amend the recipient's award from Class I-B to Class I-A for the remainder of the recipient's eligibility time. The effective date of such an amended award shall be determined by the Department of Administration, but, in no event shall it predate the date of the veteran parent's death.

- (3) Class II: Under this class a scholarship may be awarded to not more than 100 children yearly, each of whose veteran parent, at the time the benefits pursuant to this Article are sought to be availed of,
 - a. Is or was at the time of his death receiving compensation for a wartime service-connected disability of thirty percent (30%) or more, but less than one hundred percent (100%), as rated by the United States Veterans Administration, or
 - b. Is or was at the time of his death receiving wartime compensation for a statutory award for arrested pulmonary tuberculosis, as rated by the United States Veterans Administration, or
 - c. Repealed by Session Laws 1975, c. 160, s. 2.
- (4) Class III: Under this class a scholarship may be awarded to not more than 100 children yearly, each of whose veteran parent, at the time the benefits pursuant to this Article are sought to be availed of, is or was at the time of his death drawing pension for permanent and total disability, nonservice-connected, as rated by the United States Veterans Administration.
- (5) Class IV: Under this class a scholarship as defined in G.S. 165-21 shall be awarded to any child whose parent, while serving honorably as a member of the armed forces of the United States in active federal service during a period of war, as defined in G.S. 165-20(4), was listed by the United States government as (i) missing in action, (ii) captured in line of duty by a hostile force, or (iii) forcibly detained or interned in line of duty by a foreign government or power. (1967, c. 1060, s. 8; 1973, cc. 197, 577; c. 620, s. 9; 1975, c. 160, s. 2; c. 167, s. 1; 1977, c. 70, s. 27.)

§ 165-22.1. Administration and funding.

(a) The administration of the scholarship program shall be vested in the Department of Administration, and the disbursing and accounting activities required shall be a responsibility of the Department of Administration. The Veterans Affairs Commission shall determine the eligibility of applicants, select the scholarship recipients, establish the effective date of scholarships, and may suspend or revoke scholarships if the said Veterans Affairs Commission finds that the recipient does not maintain an adequate academic status, or if the recipient engages in riots, unlawful demonstrations, the seizure of educational buildings, or otherwise engages in disorderly conduct, breaches of the peace or unlawful assemblies. The Department of Administration shall maintain the primary and necessary records, and the Veterans Affairs Commission shall promulgate such rules and regulations not inconsistent with the other provisions of this Article as it deems necessary for the orderly administration of the program. It may require of State or private educational institutions, as defined in this Article, such reports and other information as it may

need to carry out the provisions of this Article. The Department of Administration shall disburse scholarship payments for recipients certified eligible by the Department of Administration upon certification of enrollment by the enrolling institution.

(b) Funds for the support of this program shall be appropriated to the Department of Administration as a reserve for payment of the allocable costs for room, board, tuition, and other charges, and shall be placed in a separate budget code from which disbursements shall be made. In the event the said appropriation for any year is insufficient to pay the full amounts allocable under the provisions of this Article, such supplemental sums as may be necessary shall be allocated from the Contingency and Emergency Fund. The method of disbursing and accounting for funds allocated for payments under the provisions of this section shall be in accordance with those standards and procedures prescribed by the Director of the Budget, pursuant to the Executive Budget Act.

(c) Allowances for room and board in State educational institutions shall be at such rate as the Director of the Budget may determine to be reasonable.

(d) Scholarship recipients electing to attend a private educational institution shall be granted a monetary allowance for each term or other academic period attended under their respective scholarship awards. All recipients under Class I-B scholarship shall receive an allowance at one rate, irrespective of course or institution; all recipients under Classes I-A, II, III and IV shall receive a uniform allowance at a rate higher than for Class I-B, irrespective of course or institution. The amount of said allowances shall be determined by the Director of the Budget and made known prior to the beginning of each fall quarter or semester; provided that the Director of the Budget may change the allowances at intermediate periods when in his judgment such changes are necessary. Disbursements by the State shall be to the private institution concerned, for credit to the account of each recipient attending said institution. The manner of payment to any private institution shall be as prescribed by the Department of Administration. The participation by any private institution in the program shall be subject to the applicable provisions of this Article and to examination by State auditors of the accounts of scholarship recipients attending or having attended private institutions. The Veterans Affairs Commission may defer making an award or may suspend an award in any private institution which does not comply with the provisions of this Article relating to said institutions.

(e) Irrespective of other provisions of this Article, the Veterans Affairs Commission may prescribe special procedures for adjusting the accounts of scholarship recipients who for reasons of illness, physical inability to attend class or for other valid reason satisfactory to the Veterans Affairs Commission may withdraw from State or private educational institutions prior to the completion of the term, semester, quarter or other academic period being attended at the time of withdrawal. Such procedures may include, but shall not be limited to, paying the recipient the dollar value of his unused entitlements for the academic period being attended, with a corresponding deduction of this period from his remaining scholarship eligibility time. (1967, c. 1060, s. 8; 1969, c. 720, ss. 4, 5; c. 741, s. 4; 1971, c. 458; 1973, c. 620, s. 9; 1975, c. 19, s. 71; c. 160, s. 3; 1977, c. 70, s. 27.)

ARTICLE 5.

*Veterans' Recreation Authorities.***§ 165-23. Short title.**

This Article may be referred to as the "Veterans' Recreation Authorities Law." (1945, c. 460, s. 1.)

CASE NOTES

This Article is valid, as it is for a public purpose and in the public interest. *Brumley v. Baxter*, 225 N.C. 691, 36 S.E.2d 281, 162 A.L.R. 930 (1945).

Article Does Not Authorize City to Make Absolute Grant. — This Article, under which veterans' recreational center was created, did not authorize city to make an absolute grant of its property upon such terms that in the event

the grantee determined the public purpose had failed or the recreational facilities placed thereon for veterans were not being sufficiently used, the grantee could dispose of the property in its discretion and apply the proceeds to such charity as it might elect. *Brumley v. Baxter*, 225 N.C. 691, 36 S.E.2d 281, 162 A.L.R. 930 (1945).

§ 165-24. Finding and declaration of necessity.

It is hereby declared that conditions resulting from the concentration in various cities and towns of the State having a population of more than one hundred thousand inhabitants of persons serving in the armed forces in connection with the present war, or who after having served in the armed services during the present war, or previously have been honorably discharged, require the construction, maintenance and operation of adequate recreation facilities for the use of such persons; that it is in the public interest that adequate recreation facilities be provided in such concentrated centers; and the necessity, in the public interest, for the provisions hereinafter enacted is hereby declared as a matter of legislative determination. (1945, c. 460, s. 2.)

§ 165-25. Definitions.

The following terms, wherever used or referred to in this Article, shall have the following respective meanings, unless a different meaning clearly appears from the context:

- (1) "Authority" or "recreation authority" shall mean a public body and a body corporate and politic organized in accordance with the provisions of this Article for the purposes, with the powers and subject to the restrictions hereinafter set forth.
- (2) "City" shall mean the city or town having a population of more than one hundred thousand inhabitants (according to the last federal census) which is, or is about to be, included in the territorial boundaries of an authority when created hereunder.
- (3) "City clerk" and "mayor" shall mean the clerk and mayor, respectively, of the city or the officers thereof charged with the duties customarily imposed on the clerk and mayor, respectively.
- (4) "Commissioner" shall mean one of the members of an authority appointed in accordance with the provisions of this Article.
- (5) "Council" shall mean the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city.

- (6) "Federal government" shall include the United States of America, the Federal Emergency Administration of Public Works or any agency, instrumentality, corporate or otherwise, of the United States of America.
- (7) "Government" shall include the State and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of any of them.
- (8) "Real property" shall include lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.
- (9) "State" shall mean the State of North Carolina.
- (10) "Veteran" shall include every person who has enlisted or who has been inducted, warranted or commissioned, and who served honorably in active duty in the military or naval service of the United States at any time, and who is honorably separated or discharged from such service, or who, at the time of making use of the facilities, is still in active service, or has been retired, or who has been furloughed to a reserve. This definition shall be liberally construed, with a view completely to effectuate the purpose and intent of this Article.
- (11) "Veterans' recreation project" shall include all real and personal property, buildings and improvements, offices and facilities acquired or constructed, or to be acquired or constructed, pursuant to a single plan or undertaking to provide recreation facilities for veterans in concentrated centers of population. The term "veterans' recreation project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the construction, reconstruction, alteration and repair of the improvements, and all other work in connection therewith. (1945, c. 460, s. 3.)

§ 165-26. Creation of authority.

If the council of any city in the State having a population of more than one hundred thousand, according to the last federal census, shall, upon such investigation as it deems necessary, determine:

- (1) That there is a lack of adequate veterans' recreation facilities and accommodations from the operations of public or private enterprises in the city and surrounding area; and/or
- (2) That the public interest requires the construction, maintenance or operation of a veterans' recreation project for the veterans thereof, the council shall adopt a resolution so finding (which need not go into any detail other than the mere finding), and shall cause notice of such determination to be given to the mayor, who shall thereupon appoint, as hereinafter provided, five commissioners to act as an authority. Said Commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the Secretary of State an application signed by them, which shall set forth (without any detail other than the mere recital): (i) that the council has made the aforesaid determination after such investigation, and that the mayor has appointed them as commissioners; (ii) the name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the recreation authority to become a public body and a body corporate and politic under this Article; (iii) the term of office of each of the commissioners; (iv) the name which is proposed for the corporation; and (v) the location and the principal office of the proposed corporation. The application shall be subscribed and

sworn to by each of the said commissioners before an officer authorized by the laws of the State to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The Secretary of State shall examine the application, and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this State or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the Secretary of State shall make and issue to the said commissioners a certificate of incorporation pursuant to this Article, under the seal of the State, and shall record the same with the application.

The boundaries of such authority shall include said city and the area within 10 miles from the territorial boundaries of said city, but in no event shall it include the whole or a part of any other city nor any area included within the boundaries of another authority. In case an area lies within 10 miles of the boundaries of more than one city, such area shall be deemed to be within the boundaries of the authority embracing such area which was first established, all priorities to be determined on the basis of the time of the issuance of the aforesaid certificates by the Secretary of State. After the creation of an authority, the subsequent existence within its territorial boundaries of more than one city shall in no way affect the territorial boundaries of such authority.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this Article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof. (1945, c. 460, s. 4.)

§ 165-27. Appointment, qualifications and tenure of commissioners.

An authority shall consist of five commissioners appointed by the mayor, and he shall designate the first chairman.

Of the commissioners who are first appointed, two shall serve for a term of one year, two for a term of three years, and one for a term of five years, and thereafter, the terms of office for all commissioners shall be five years. A commissioner shall hold office until his successor has been appointed and qualified. Vacancies shall be filled for the unexpired term. Vacancies occurring by expiration of office or otherwise shall be filled in the following manner: The mayor and the remaining commissioners shall have a joint session and shall unanimously select the person to fill the vacancy; but if they are unable to do so, then such fact shall be certified to the resident judge of the superior court of the County in which the authority is located, and he shall fill the vacancy. The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services, but he shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall

select from among its members a vice-chairman, and it may employ a secretary, technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. An authority may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. (1945, c. 460, s. 5.)

Local Modification. — City of Charlotte:
1961, c. 303.

§ 165-28. Duty of the authority and commissioners of the authority.

The authority and its commissioners shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this Article and the laws of the State and in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed.

The commissioners may, in the exercise of their discretion, limit the use of recreational centers under their control in whole or in part to veterans of one sex. They shall have the authority to make rules and regulations regarding the use of the recreational centers and other matters and things coming within their jurisdiction.

They shall have the authority to appoint one or more advisory committees consisting of representatives of various veterans' organizations and others and may delegate to such committee or committees authority to execute the policies and programs of activity adopted by the commissioners. (1945, c. 460, s. 6; 1965, c. 367.)

§ 165-29. Interested commissioners or employees.

No commissioner or employee of any authority shall acquire any interest, direct or indirect, in any veterans' recreation project or in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any such project. If any commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any veterans' recreation project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure so to disclose such interest shall constitute misconduct in office. (1945, c. 460, s. 7.)

§ 165-30. Removal of commissioners.

The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner shall have been given a copy of the charges against him (which may be made by the mayor) at least 10 days prior to the hearing thereon and had an opportunity to be heard in person or by counsel.

If, after due and diligent search, a commissioner to whom charges are required to be delivered hereunder cannot be found within the county where the authority is located, such charges shall be deemed served upon such commissioner if mailed to him at his last known address as same appears upon the records of the authority.

In the event of the removal of any commissioner, the mayor shall file in the office of the city clerk a record of the proceedings, together with the charges made against the commissioner removed, and the findings thereon. (1945, c. 460, s. 8.)

§ 165-31. Powers of authority.

An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Article, including the following powers in addition to others herein granted:

To sue and be sued in any court; to make, use and alter a common seal; to purchase, acquire by devise or bequest, hold and convey real and personal property; to elect and appoint, in such manner as it determines to be proper, all necessary officers and agents, fix their compensation and define their duties and obligations; to make bylaws and regulations consistent with the laws of the State, for its own government and for the due and orderly conduct of its affairs and management of its property; without limiting the generality of the foregoing, to do any and everything that may be useful and necessary in order to provide recreation for veterans. (1945, c. 460, s. 9.)

§ 165-32. Zoning and building laws.

All recreation projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the recreation project is situated. (1945, c. 460, s. 10.)

§ 165-33. Tax exemptions.

The authority shall be exempt from the payment of any taxes or fees to the State or any subdivisions thereof, or to any officer or employee of the State or any subdivision thereof. The property of an authority shall be exempt from all local, municipal and county taxes, and for the purpose of such tax exemption, it is hereby declared as a matter of legislative determination that an authority is and shall be deemed to be a municipal corporation. (1945, c. 460, s. 11.)

§ 165-34. Reports.

The authority shall, at least once a year, file with the mayor of the city an audit report by a certified public accountant of its activities for the preceding year, and shall make any recommendations with reference to any additional legislation or other action that may be necessary in order to carry out the purposes of this Article. (1945, c. 460, s. 12.)

§ 165-35. Exemption from Local Government and County Fiscal Control Acts.

The authority shall be exempt from the operation and provisions of Chapter 60 of the Public Laws of North Carolina of 1931, known as the "Local Government Act," and the amendments thereto, and from Chapter 146 of the Public Laws of North Carolina of 1927, known as the "County Fiscal Control Act" and the amendments thereto. (1945, c. 460, s. 13.)

§ 165-36. Conveyance, lease or transfer of property by a city or county to an authority.

Any city or county, in order to provide for the construction, reconstruction, improvement, repair or management of any veterans' recreation project, or in order to accomplish any of the purposes of this Article, may, with or without consideration or for a nominal consideration, lease, sell, convey or otherwise transfer to an authority within the territorial boundaries of which such city or county it is wholly or partly located, any real, personal or mixed property, and in connection with any such transaction, the authority involved may accept such lease, transfer, assignment and conveyance, and bind itself to the performance and observation of any agreements and conditions attached thereto. Any city or county may purchase real property and convey or cause same to be conveyed to an authority. (1945, c. 460, s. 14.)

Local Modification. — Mecklenburg and city of Charlotte: 1965, c. 715, s. 1.

§ 165-37. Contracts, etc., with federal government.

In addition to the powers conferred upon the authority by other provisions of this Article, the authority is empowered to borrow money and/or accept grants from the federal government for or in aid of the construction of any veterans' recreation project which such authority is authorized by this Article to undertake, to take over any land acquired by the federal government for the construction of such a project, to take over, lease or manage any recreation project constructed or owned by the federal government, and to these ends, to enter into such contracts, mortgages, trust indentures, leases and other agreements which the federal government shall have the right to require. It is the purpose and intent of this Article to authorize every authority to do any and all things necessary to secure the financial aid and the cooperation of the federal government in the construction, maintenance and operation of any veterans' recreation project which the authority is empowered by this Article to undertake. (1945, c. 460, s. 15.)

§ 165-38. Article controlling.

Insofar as the provisions of this Article are inconsistent with the provisions of any other law, the provisions of this Article shall be controlling: Provided, that nothing in this Article shall prevent any city or municipality from establishing, equipping and operating a veterans' recreation project, or extending recreation facilities under the provisions of its charter or any general law other than this Article. (1945, c. 460, s. 17.)

ARTICLE 6.

Powers of Attorney.

§ 165-39. Validity of acts of agent performed after death of principal.

No agency created by a power of attorney in writing given by a principal who is at the time of execution, or who, after executing such power of attorney, becomes, either (i) a member of the armed forces of the United States, or (ii) a person serving as a merchant seaman outside the limits of the United States,

included within the 48 states and the District of Columbia; or (iii) a person outside said limits by permission, assignment or direction of any department or official of the United States government, in connection with any activity pertaining to or connected with the prosecution of any war in which the United States is then engaged, shall be revoked or terminated by the death of the principal, as to the agent or other person who, without actual knowledge or actual notice of the death of the principal, shall have acted or shall act, in good faith, under or in reliance upon such power of attorney or agency, and any action so taken, unless otherwise invalid or unenforceable, shall be binding on the heirs, devisees, legatees, or personal representatives of the principal. (1945, c. 980, s. 1.)

§ 165-40. Affidavit of agent as to possessing no knowledge of death of principal.

An affidavit, executed by the attorney in fact or agent, setting forth that he has not or had not, at the time of doing any act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death or otherwise, or notice of any facts indicating the same, shall, in the absence of fraud, be conclusive proof of the nonrevocation or nontermination of the power at such time. If the exercise of the power requires execution and delivery of any instrument which is recordable under the laws of this State, such affidavit (when authenticated for record in the manner prescribed by law) shall likewise be recordable. (1945, c. 980, s. 2.)

§ 165-41. Report of "missing" not to constitute revocation.

No report or listing, either official or otherwise, of "missing" or "missing in action," as such words are used in military parlance, shall constitute or be interpreted as constituting actual knowledge or actual notice of the death of such principal or notice of any facts indicating the same, or shall operate to revoke the agency. (1945, c. 980, s. 3.)

§ 165-42. Article not to affect provisions for revocation.

This Article shall not be construed so as to alter or affect any provisions for revocation or termination contained in such power of attorney. (1945, c. 980, s. 4.)

ARTICLE 7.

Miscellaneous Provisions.

§ 165-43. Protecting status of State employees in armed forces, etc.

Any employee of the State of North Carolina, who has been granted a leave of absence for service in either (i) the armed forces of the United States; or (ii) the merchant marine of the United States; or (iii) outside the continental United States with the Red Cross, shall, upon return to State employment, if reemployed in the same position and if within the time limits set forth in the leave of absence, receive an annual salary of at least (i) the annual salary the employee was receiving at the time such leave was granted; plus (ii) an amount obtained by multiplying the step increment applicable to the employee's classi-

fication as provided in the classification and salary plan for State employees by the number of years of such service, counting a fraction of a year as a year; provided that no such employee shall receive a salary in excess of the top of the salary range applicable to the classification to which such employee is assigned upon return. (1945, c. 220.)

Cross References. — As to federal records and reports that person dead, missing, captured, etc., see §§ 8-37.1 through 8-37.3. As to conservators of estates of persons reported missing, captured or interned, see §§ 28A-2 through 28A-8. As to guardians of children of servicemen, see § 33-67. As to Veterans' Guardianship Act, see Chapter 34. As to instruments proved or acknowledged before officers of certain ranks, see §§ 47-2, 47-2.1. As to registration of official discharges from military and naval forces, see §§ 47-109 to 47-114. As to exemption of veterans from peddlers' license tax, see § 105-53. As to exemption of veterans'

organizations from tax on billiard and pool tables, see § 105-64. As to exemption of veterans' pensions from taxation, see § 105-249.3. As to exemption of property of veterans' organizations from taxation, see § 105-278.7. As to pensions for Confederate veterans, widows and servants, see § 112-15 et seq. As to salary increments for experience to teachers, etc., serving in armed forces, see § 115C-302. As to furnishing statistical records to veterans' organizations, see § 130-67. As to absentee voting by members of armed forces, see Chapter 163, Article 21.

§ 165-44. Korean and Vietnam veterans; benefits and privileges.

(a) All benefits and privileges now granted by the laws of this State to veterans of World War I and World War II and their dependents and next of kin are hereby extended and granted to veterans of the Korean Conflict and their dependents and next of kin.

For the purposes of this section, the term "veterans of the Korean Conflict" means those persons serving in the armed forces of the United States during the period beginning on June 27, 1950, and ending on January 31, 1955.

(b) All benefits and privileges now granted by the laws of this State to veterans of World War I, World War II, the Korean Conflict, and their dependents and next of kin are hereby extended and granted to veterans of the Vietnam era and their dependents and next of kin.

For purposes of this section, the term "veterans of the Vietnam era" means those persons serving in the armed forces of the United States during the period beginning August 5, 1964, and ending on such date as shall be prescribed by Presidential proclamation or concurrent resolution of the Congress. (1953, c. 215; 1969, c. 720, ss. 1, 2.)

Chapter 166.

Civil Preparedness Agencies.

§§ 166-1 to 166-3: Repealed by Session Laws 1977, c. 848, s. 1.

Cross References. — For present provisions as to civil preparedness, see Chapter 166A. As to transfer of the State Civil Preparedness

Agency to the Department of Crime Control and Public Safety, see § 143B-475.

§ 166-4: Repealed by Session Laws 1975, c. 734, s. 8.

Cross References. — For present provisions as to civil preparedness, see Chapter 166A. As to transfer of the State Civil Preparedness

Agency to the Department of Crime Control and Public Safety, see § 143B-475.

§§ 166-5 to 166-12: Repealed by Session Laws 1977, c. 848, s. 1.

Cross References. — For present provisions as to civil preparedness, see Chapter 166A. As to transfer of the State Civil Preparedness

Agency to the Department of Crime Control and Public Safety, see § 143B-475.

§ 166-13: Repealed by Session Laws 1955, c. 79.

Cross References. — For present provisions as to civil preparedness, see Chapter 166A. As to transfer of the State Civil Preparedness

Agency to the Department of Crime Control and Public Safety, see § 143B-475.

Chapter 166A.

North Carolina Emergency Management Act.

Sec.	Sec.
166A-1. Short title.	166A-10. Establishment of mutual aid agreements.
166A-2. Purposes.	166A-11. Compensation.
166A-3. Limitations.	166A-12. Nondiscrimination in emergency management.
166A-4. Definitions.	166A-13. Emergency management personnel.
166A-5. State emergency management.	166A-14. Immunity and exemption.
166A-6. State of disaster.	166A-15. No private liability.
166A-6.1. Emergency planning; charge.	166A-16. Severability.
166A-7. County and municipal emergency management.	
166A-8. Local emergency authorizations.	
166A-9. Accept services, gifts, grants and loans.	

§ 166A-1. Short title.

This Chapter may be cited as "North Carolina Emergency Management Act of 1977." (1977, c. 848, s. 2; 1979, 2nd Sess., c. 1310, s. 2.)

Editor's Note. — This Chapter is Chapter 166, as rewritten by Session Laws 1977, c. 848, and recodified. Where appropriate, the historical citations to the sections in the former Chapter have been added to corresponding sections in the Chapter as rewritten and recodified.

§ 166A-2. Purposes.

The purposes of this Chapter are to set forth the authority and responsibility of the Governor, State agencies, and local governments in prevention of, preparation for, response to and recovery from natural or man-made disasters or hostile military or paramilitary action and to:

- (1) Reduce vulnerability of people and property of this State to damage, injury, and loss of life and property;
- (2) Prepare for prompt and efficient rescue, care and treatment of threatened or affected persons;
- (3) Provide for the rapid and orderly rehabilitation of persons and restoration of property; and
- (4) Provide for cooperation and coordination of activities relating to emergency and disaster mitigation, preparedness, response and recovery among agencies and officials of this State and with similar agencies and officials of other states, with local and federal governments, with interstate organizations and with other private and quasi-official organizations. (1959, c. 337, s. 1; 1975, c. 734, s. 1; 1977, c. 848, s. 2.)

§ 166A-3. Limitations.

Nothing in this Chapter shall be construed to:

- (1) Interfere with dissemination of news or comment on public affairs; but any communications facility or organization, including but not limited to radio and television stations, wire services, and newspapers, may be requested to transmit or print public service messages furnishing information or instructions in connection with an emergency, disaster or war; or
- (2) Limit, modify or abridge the authority of the Governor to proclaim martial law or exercise any other powers vested in him under the

Constitution, statutes, or common law of this State independent of, or in conjunction with, any provisions of this Chapter. (1975, c. 734, s. 2; 1977, c. 848, s. 2.)

§ 166A-4. Definitions.

The following words and phrases as used in this Chapter shall have the following meanings:

- (1) "Emergency Management." — Those measures taken by the populace and governments at federal, State, and local levels to minimize the adverse effect of any type disaster, which include the never-ending preparedness cycle of prevention, mitigation, warning, movement, shelter, emergency assistance and recovery.
- (2) "Emergency Management Agency." — A State or local governmental agency charged with coordination of all emergency management activities for its jurisdiction.
- (3) "Disaster." — An occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military or paramilitary cause.
- (4) "Political Subdivision." — Counties and incorporated cities, towns and villages. (1951, c. 1016, s. 2; 1953, c. 1099, s. 1; 1955, c. 387, s. 1; 1975, c. 734, ss. 4-6, 14; 1977, c. 848, s. 2; 1979, 2nd Sess., c. 1310, s. 2.)

OPINIONS OF ATTORNEY GENERAL

Regional Council Is Not Within Definition of Political Subdivision. — See opinion of Attorney General to Mr. David L. Britt,

Department of Military and Veterans Affairs, 43 N.C.A.G. 187 (1973), opinion rendered under former § 166-2.

§ 166A-5. State emergency management.

The State emergency management program includes all aspects of preparations for, response to and recovery from war or peacetime disasters.

- (1) Governor. — The Governor shall have general direction and control of the State emergency management program and shall be responsible for carrying out the provisions of this Chapter.
 - a. The Governor is authorized and empowered:
 1. To make, amend or rescind the necessary orders, rules and regulations within the limits of the authority conferred upon him herein, with due consideration of the policies of the federal government.
 2. To delegate any authority vested in him under this Chapter and to provide for the subdelegation of any such authority.
 3. To cooperate and coordinate with the President and the heads of the departments and agencies of the federal government, and with other appropriate federal officers and agencies, and with the officers and agencies of other states and local units of government in matters pertaining to the emergency management of the State and nation.
 4. To enter into agreements with the American National Red Cross, Salvation Army, Mennonite Disaster Service and other disaster relief organizations.
 5. To make, amend, or rescind mutual aid agreements in accordance with G.S. 166A-10.

6. To utilize the services, equipment, supplies and facilities of existing departments, offices and agencies of the State and of the political subdivisions thereof. The officers and personnel of all such departments, offices and agencies are required to cooperate with and extend such services and facilities to the Governor upon request. This authority shall extend to a state of disaster, imminent threat of disaster or emergency management planning and training purposes.
7. To agree, when required to obtain federal assistance in debris removal, that the State will indemnify the federal government against any claim arising from the removal.
8. To sell, lend, lease, give, transfer or deliver materials or perform services for disaster purposes on such terms and conditions as may be prescribed by any existing law, and to account to the State Treasurer for any funds received for such property.
- b. In the threat of or event of a disaster, or when requested by the governing body of any political subdivision in the State, the Governor may assume operational control over all or any part of the emergency management functions within this State.
- (2) Secretary of Crime Control and Public Safety. — The Secretary of Crime Control and Public Safety shall be responsible to the Governor for State emergency management activities and shall have:
 - a. The power, as delegated by the Governor, to activate the State and local plans applicable to the areas in question and he shall be empowered to authorize and direct the deployment and use of any personnel and forces to which the plan or plans apply, and the use or distribution of any supplies, equipment, materials and facilities available pursuant to this Chapter or any other provision of law.
 - b. Additional authority, duties, and responsibilities as may be prescribed by the Governor, and he may subdelegate his authority to the appropriate member of his department.
- (3) Functions of State Emergency Management. — The functions of the State emergency management program include:
 - a. Coordination of the activities of all agencies for emergency management within the State, including planning, organizing, staffing, equipping, training, testing, and the activation of emergency management programs.
 - b. Preparation and maintenance of State plans for man-made or natural disasters. The State plans or any parts thereof may be incorporated into department regulations and into executive orders of the Governor.
 - c. Promulgation of standards and requirements for local plans and programs, determination of eligibility for State financial assistance provided for in G.S. 166A-7 and provision of technical assistance to local governments.
 - d. Development and presentation of training programs and public information programs to insure the furnishing of adequately trained personnel and an informed public in time of need.
 - e. Making of such studies and surveys of the resources in this State as may be necessary to ascertain the capabilities of the State for emergency management, maintaining data on these resources, and planning for the most efficient use thereof.
 - f. Coordination of the use of any private facilities, services, and property.

- g. Preparation for issuance by the Governor of executive orders, proclamations, and regulations as necessary or appropriate; and
- h. Cooperation and maintenance of liaison with the other states, federal government and any public or private agency or entity in achieving any purpose of this Chapter and in implementing programs for emergency, disaster or war prevention, preparation, response, and recovery.
- i. Making recommendations, as appropriate, for zoning, building and other land-use controls, and safety measures for securing mobile homes or other nonpermanent or semipermanent works designed to protect against or mitigate the effects of a disaster.
- j. Coordination of the use of existing means of communications and supplementing communications resources and integrating them into a comprehensive State or State-federal telecommunications or other communications system or network. (1951, c. 1016, ss. 3, 9; 1953, c. 1099, s. 3; 1955, c. 387, ss. 2, 3, 5; 1957, c. 950, s. 5; 1975, c. 734, ss. 9, 10, 14, 16; 1977, c. 848, s. 2; 1979, 2nd Sess., c. 1310, s. 2.)

§ 166A-6. State of disaster.

(a) The existence of a state of disaster may be proclaimed by the Governor, or by a resolution of the General Assembly if either of these finds that a disaster threatens or exists. Any state of disaster shall terminate by a proclamation of the Governor or resolution of the General Assembly. A proclamation or resolution declaring or terminating a state of disaster shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant upon the disaster prevent or impede, promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State and the clerks of superior court in the area to which it applies.

(b) In addition to any other powers conferred upon the Governor by law, during the state of disaster, he shall have the following:

- (1) To utilize all available State resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating emergency services;
- (2) To take such action and give such directions to State and local law-enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Chapter and with the orders, rules and regulations made pursuant thereto;
- (3) To take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety;
- (4) Subject to the provisions of the State Constitution to relieve any public official having administrative responsibilities under this Chapter of such responsibilities for willful failure to obey an order, rule or regulation adopted pursuant to this Chapter.

(c) In addition, during a state of disaster, with the concurrence of the Council of State, the Governor has the following powers:

- (1) To direct and compel the evacuation of all or part of the population from any stricken or threatened area within the State, to prescribe routes, modes of transportation, and destinations in connection with evacuation; and to control ingress and egress of a disaster area, the movement of persons within the area, and the occupancy of premises therein;

- (2) To establish a system of economic controls over all resources, materials and services to include food, clothing, shelter, fuel, rents and wages, including the administration and enforcement of any rationing, price freezing or similar federal order or regulation;
- (3) To regulate and control the flow of vehicular and pedestrian traffic, the congregation of persons in public places or buildings, lights and noises of all kinds and the maintenance, extension and operation of public utility and transportation services and facilities;
- (4) To waive a provision of any regulation or ordinance of a State agency or a local governmental unit which restricts the immediate relief of human suffering;
- (5) To use contingency and emergency funds as necessary and appropriate to provide relief and assistance from the effects of a disaster, and to reallocate such other funds as may reasonably be available within the appropriations of the various departments when the severity and magnitude of such disaster so requires and the contingency and emergency funds are insufficient or inappropriate;
- (6) To perform and exercise such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population;
- (7) To appoint or remove an executive head of any State agency or institution the executive head of which is regularly selected by a State board or commission.
 - a. Such an acting executive head will serve during:
 1. The physical or mental incapacity of the regular office holder, as determined by the Governor after such inquiry as the Governor deems appropriate;
 2. The continued absence of the regular holder of the office; or
 3. A vacancy in the office pending selection of a new executive head.
 - b. An acting executive head of a State agency or institution appointed in accordance with this subdivision may perform any act and exercise any power which a regularly selected holder of such office could lawfully perform and exercise.
 - c. All powers granted to an acting executive head of a State agency or institution under this section shall expire immediately:
 1. Upon the termination of the incapacity as determined by the Governor of the officer in whose stead he acts;
 2. Upon the return of the officer in whose stead he acts; or
 3. Upon the selection and qualification of a person to serve for the unexpired term, or the selection of an acting executive head of the agency or institution by the board or commission authorized to make such selection, and his qualification.
- (8) To procure, by purchase, condemnation, seizure or by other means to construct, lease, transport, store, maintain, renovate or distribute materials and facilities for emergency management without regard to the limitation of any existing law. (1951, c. 1016, s. 4; 1955, c. 387, s. 4; 1959, c. 284, s. 2; c. 337, s. 4; 1975, c. 734, ss. 11, 14; 1977, c. 848, s. 2; 1979, 2nd Sess., c. 1310, s. 2.)

§ 166A-6.1. Emergency planning; charge.

(a) Every person, firm, corporation or municipality who is licensed to construct or who is operating a fixed nuclear facility for the production of electricity shall pay to the State of North Carolina for use of the Department of Crime Control and Public Safety an annual fee of at least thirty thousand dollars (\$30,000) for each fixed nuclear facility located within this State. This fee is to

be used to assist in or partially defray such costs of planning and implementing emergency response activities as are required of the State by the Federal Emergency Management Agency for the operation of nuclear facilities. Said fee is to be paid no later than July 1 of each year. This minimum fee may be increased from time to time as the costs of such planning and implementation increase. Such increases shall be by agreement between the State and the licensees or operators of the fixed nuclear facilities.

(b) Licensees or operators of fixed nuclear facilities are required to pay a fee of thirty thousand dollars (\$30,000) for the first year on or before November 1, 1981 and for succeeding years on or before July 1 of each year. (1981, c. 1128, ss. 1, 2.)

§ 166A-7. County and municipal emergency management.

(a) The governing body of each county is responsible for emergency management, as defined in G.S. 166A-4, within the geographical limits of such county. All emergency management efforts within the county will be coordinated by the county, including activities of the municipalities within the county.

- (1) The governing body of each county is hereby authorized to establish and maintain an emergency management agency for the purposes contained in G.S. 166A-2.
- (2) The governing body of each county which establishes an emergency management agency pursuant to this authorization will appoint a coordinator who will have a direct responsibility for the organization, administration and operation of the county program and will be subject to the direction and guidance of such governing body.
- (3) In the event any county fails to establish an emergency management agency, and the Governor, in his discretion, determines that a need exists for such an emergency management agency, then the Governor is hereby empowered to establish an emergency management agency within said county.

(b) All incorporated municipalities are authorized to establish and maintain emergency management agencies subject to coordination by the county. Joint agencies composed of a county and one or more municipalities within its borders may be formed.

(c) Each county and incorporated municipality in this State is authorized to make appropriations for the purposes of this Chapter and to fund them by levy of property taxes pursuant to G.S. 153A-149 and 160A-209 and by the allocation of other revenues, whose use is not otherwise restricted by law.

(d) In carrying out the provisions of this Chapter each political subdivision is authorized:

- (1) To appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for emergency management purposes and to provide for the health and safety of persons and property, including emergency assistance, consistent with this Chapter;
- (2) To direct and coordinate the development of emergency management plans and programs in accordance with the policies and standards set by the State;
- (3) To assign and make available all available resources for emergency management purposes for service within or outside of the physical limits of the subdivision; and
- (4) To delegate powers in a local state of emergency under G.S. 166A-8 to an appropriate official.

(e) Each county which establishes an emergency management agency pursuant to State standards and which meets requirements for local plans and programs may be eligible to receive State financial assistance. Such financial

assistance for the maintenance and operation of a county emergency management program will not exceed one thousand dollars (\$1,000) for any fiscal year and is subject to an appropriation being made for this purpose. Eligibility of each county will be determined annually by the State. (1951, c. 1016, s. 6; 1953, c. 1099, s. 4; 1957, c. 950, s. 2; 1959, c. 337, s. 5; 1973, c. 620, s. 9; 1975, c. 734, ss. 12, 14, 16; 1977, c. 848, s. 2; 1979, 2nd Sess., c. 1310, s. 2.)

§ 166A-8. Local emergency authorizations.

Procedures governing the declaration of a local state of emergency:

- (1) A local state of emergency may be declared for any disaster, as defined in G.S. 166A-4 under the provisions of Article 36A of G.S. Chapter 14.
- (2) Such a declaration shall activate the local ordinances authorized in G.S. 14-288.12 through 14-288.14 and any and all applicable local plans, mutual assistance compacts and agreements and shall also authorize the furnishing of assistance thereunder.
- (3) The timing, publication, amendment and rescission of local "state of emergency" declarations shall be in accordance with the local ordinance. (1951, c. 1016, s. 6; 1953, c. 1099, s. 4; 1957, c. 950, s. 2; 1959, c. 337, s. 5; 1973, c. 620, s. 9; 1975, c. 734, ss. 12, 14, 16; 1977, c. 848, s. 2.)

§ 166A-9. Accept services, gifts, grants and loans.

Whenever the federal government or any agency or officer thereof or of any person, firm or corporation shall offer to the State, or through the State to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant or loan, for the purposes of emergency management, the State acting through the Governor, or such political subdivision, acting with the consent of the Governor and through its governing body, may accept such offer. Upon such acceptance the Governor of the State or governing body of such political subdivision may authorize any officer of the State or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials or funds on behalf of the State or of such political subdivision, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer. (1951, c. 1016, s. 8; 1973, c. 803, s. 45; 1975, c. 19, s. 72; c. 734, ss. 13, 14; 1977, c. 848, s. 2; 1979, 2nd Sess., c. 1310, s. 2.)

§ 166A-10. Establishment of mutual aid agreements.

(a) The Governor may establish mutual aid agreements with other states and with the federal government provided that any special agreements so negotiated are within the Governor's authority.

(b) The chief executive of each political subdivision, with the concurrence of the subdivision's governing body, may develop mutual aid agreements for reciprocal emergency management aid and assistance. Such agreements shall be consistent with the State emergency management program and plans.

(c) The chief executive officer of each political subdivision, with the concurrence of the governing body and subject to the approval of the Governor, may enter into mutual aid agreements with local chief executive officers in other states for reciprocal emergency management aid and assistance.

(d) Mutual aid agreements may include but are not limited to the furnishing or exchange of such supplies, equipment, facilities, personnel and services as may be needed; the reimbursement of costs and expenses for equipment, supplies, personnel and similar items; and on such terms and conditions as deemed necessary. (1951, c. 1016, s. 7; 1975, c. 734, ss. 14, 16; 1977, c. 848, s. 2; 1979, 2nd Sess., c. 1310, s. 2.)

§ 166A-11. Compensation.

(a) Compensation for services or for the taking or use of property shall be only to the extent that legal obligations of individual citizens are exceeded in a particular case and then only to the extent that the claimant has not been deemed to have volunteered his services or property without compensation.

(b) Compensation for property shall be only if the property was commandeered, seized, taken, condemned, or otherwise used in coping with a disaster and this action was ordered by the Governor. The State shall make compensation for the property so seized, taken or condemned on the following basis:

- (1) In case property is taken for temporary use, the Governor, within 30 days of the taking, shall fix the amount of compensation to be paid for such damage or failure to return. Whenever the Governor shall deem it advisable for the State to take title to property taken under this section, he shall forthwith cause the owner of such property to be notified thereof in writing by registered mail, postage prepaid, or by the best means available, and forthwith cause to be filed a copy of said notice with the Secretary of State.
- (2) If the person entitled to receive the amounts so determined by the Governor as just compensation is unwilling to accept the same as full and complete compensation for such property or the use thereof, he shall be paid seventy-five per centum (75%) of such amount and shall be entitled to recover from the State of North Carolina in an action brought in the superior court in the county of residence of claimant, or in Wake County, in the same manner as other condemnation claims are brought, within three years after the date of the Governor's award. (1977, c. 848, s. 2.)

§ 166A-12. Nondiscrimination in emergency management.

State and local governmental bodies and other organizations and personnel who carry out emergency management functions under the provisions of this Chapter are required to do so in an equitable and impartial manner. Such State and local governmental bodies, organizations and personnel shall not discriminate on the grounds of race, color, religion, nationality, sex, age or economic status in the distribution of supplies, the processing of applications and other relief and assistance activities. (1975, c. 734, s. 3; 1977, c. 848, s. 2; 1979, 2nd Sess., c. 1310, s. 2.)

§ 166A-13. Emergency management personnel.

(a) No person shall be employed or associated in any capacity in any emergency management agency established under this Chapter if that person:

- (1) Advocates or has advocated a change by force or violence in the constitutional form of the Government of the United States or in this State;
- (2) Advocates or has advocated the overthrow of any government in the United States by force or violence;
- (3) Has been convicted of any subversive act against the United States;
- (4) Is under indictment or information charging any subversive act against the United States; or
- (5) Has ever been a member of the Communist Party.

Each person who is appointed to serve in any emergency management agency shall, before entering upon his duties, take a written oath before a person authorized to administer oaths in this State, which oath shall be substantially as follows:

"I,, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of North Carolina, against all enemies, foreign and domestic; and that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter. And I do further swear (or affirm) that I do not advocate, nor am I, nor have I ever knowingly been, a member of any political party or organization that advocates the overthrow of the Government of the United States or of this State by force or violence; and that during such time as I am a member of the State Emergency Management Agency I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States or of this State by force or violence, so help me God."

(b) No position created by or pursuant to this Chapter shall be deemed an office within the meaning of Article 6, Section 9 of the Constitution of North Carolina. (1951, c. 1016, s. 10; 1975, c. 734, ss. 14, 16; 1977, c. 848, s. 2; 1979, 2nd Sess., c. 1310, s. 2.)

§ 166A-14. Immunity and exemption.

(a) All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence or bad faith, any emergency management worker complying with or reasonably attempting to comply with this Chapter or any order, rule or regulation promulgated pursuant to the provisions of this Chapter or pursuant to any ordinance relating to any emergency management measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity.

(b) The rights of any person to receive benefits to which he would otherwise be entitled under this Chapter or under the Workers' Compensation Law or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress shall not be affected by performance of emergency management functions.

(c) Any requirement for a license to practice any professional, mechanical or other skill shall not apply to any authorized emergency management worker who shall, in the course of performing his duties as such, practice such professional, mechanical or other skill during a state of disaster.

(d) As used in this section, the term "emergency management worker" shall include any full or part-time paid, volunteer or auxiliary employee of this State or other states, territories, possessions or the District of Columbia, of the federal government or any neighboring country or of any political subdivision thereof or of any agency or organization performing emergency management services at any place in this State, subject to the order or control of or pursuant to a request of the State government or any political subdivision thereof.

(e) Any emergency management worker, as defined in this section, performing emergency management services at any place in this State pursuant to agreements, compacts or arrangements for mutual aid and assistance to which the State or a political subdivision thereof is a party, shall possess the same powers, duties, immunities and privileges he would ordinarily possess if performing his duties in the State, or political subdivision thereof in which normally employed or rendering services. (1957, c. 950, s. 4; 1975, c. 734, s. 14; 1977, c. 848, s. 2; 1979, c. 714, s. 2; 1979, 2nd Sess., c. 1310, s. 2.)

§ 166A-15. No private liability.

Any person, firm or corporation owning or controlling real or personal property who, voluntarily or involuntarily, knowingly or unknowingly, with or without compensation, grants a license or privilege or otherwise permits or allows the designation or use of the whole or any part or parts of such real or personal property for the purpose of sheltering, protecting, safeguarding or aiding in any way persons shall, together with his successors in interest, if any, not be civilly liable for the death of or injury to any person or the loss of or damage to the property of any persons where such death, injury, loss or damage resulted from, through or because of the use of the said real or personal property for any of the above purposes. (1957, c. 950, s. 3; 1977, c. 848, s. 2.)

§ 166A-16. Severability.

If any provision of this Chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable. (1977, c. 848, s. 2.)

Chapter 167.

State Civil Air Patrol.

§ 167-1: Repealed by Session Laws 1973, c. 620, s. 9.

§ 167-2: Repealed by Session Laws 1979, c. 516, s. 6.

Cross References. — As to transfer of the State Civil Air Patrol to the Department of Crime Control and Public Safety, see § 143B-475. As to the State Civil Air Patrol generally, see §§ 143B-490 through 143B-492.

§ 167-3: Repealed by Session Laws 1973, c. 620, s. 9.

Chapter 168. Handicapped Persons.

Article 1.

Rights.

Sec.

- 168-1. Purpose and definition.
- 168-2. Right of access to and use of public places.
- 168-3. Right to use of public conveyances, accommodations, etc.
- 168-4. May be accompanied by guide dog.
- 168-4.1. May be accompanied by hearing-ear dog.
- 168-5. Traffic and other rights of persons using certain canes.
- 168-6. Right to employment.
- 168-7. Guide dogs.
- 168-7.1. Hearing-ear dogs.
- 168-8. Right to habilitation and rehabilitation services.
- 168-9. Right to housing.

Sec.

- 168-10. Eliminate discrimination in treatment of handicapped and disabled.
- 168-11 to 168-13. [Reserved.]

Article 2.

Vocational Rehabilitation.

- 168-14. Vocational rehabilitation services for deaf persons.
- 168-15 to 168-19. [Reserved.]

Article 3.

Family Care Homes.

- 168-20. Public policy.
- 168-21. Definitions.
- 168-22. Zoning; family care home.
- 168-23. Certain private agreements void.

ARTICLE 1.

Rights.

§ 168-1. Purpose and definition.

The State shall encourage and enable handicapped persons to participate fully in the social and economic life of the State and to engage in remunerative employment. The definition of "handicapped persons" shall include those individuals with physical, mental and visual disabilities. For the purposes of this Article the definition of "visually handicapped" in G.S. 111-11 shall apply. (1973, c. 493, s. 1.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For comment on exclusionary zoning of community facilities, see 12 N.C. Cent. L.J. 167 (1980).

For note on employment discrimination against the handicapped, see 16 Wake Forest L. Rev. 836 (1980).

CASE NOTES

Legislative Intent. — The legislature intended to grant broad protection of basic rights to all persons with any type of disability, and additionally sought to grant particular protection to an especially disabled group, the "visually handicapped," by three sections dealing with that group, as defined in § 111-11: §§ 168-4, 168-5 and 168-7. *Burgess v. Joseph Schlitz Brewing Co.*, 39 N.C. App. 481, 250 S.E.2d 687, rev'd on other grounds, 298 N.C. 520, 259 S.E.2d 248 (1979).

Liberal Construction. — This chapter is remedial statute, and should be construed

broadly rather than narrowly to achieve its purposes. *Burgess v. Joseph Schlitz Brewing Co.*, 298 N.C. 520, 259 S.E.2d 248 (1979).

Application of Term "Visually Handicapped". — The restrictive definition of "visually handicapped" in § 111-11 should not be applied in a manner which limits the meaning of "visual disability" in this section. The narrowly defined term "visually handicapped," which refers only to persons who are blind or functionally blind, is used solely in connection with those sections of the statute dealing exclusively with problems unique to

the type of handicap identified by that term, i.e., §§ 168-4, 168-5 and 168-7. On the other hand, those sections of the statute which address problems common to all handicapped citizens, i.e., §§ 168-2, 168-3, 168-6, 168-8, 168-9, and 168-10, utilize the broadly defined term "handicapped person," which encompasses all persons "with physical, mental and visual disabilities." Thus, when the statute is read contextually, it is clear that the General Assembly did not intend the narrow definition of "visually handicapped" in § 111-11 to control the meaning of the term "visual disabilities" in this section; rather, the General Assembly intended that the definition in § 111-11 would apply only when the specific term "visually handicapped" was used. *Burgess v. Joseph Schlitz Brewing Co.*, 298 N.C. 520, 259 S.E.2d 248 (1979).

The term "visual disability," as used in this section includes as its most serious gradation the "visually handicapped" as defined in

§ 111-11, but also includes person with visual impairments less serious than those encompassed by the term "visually handicapped." *Burgess v. Joseph Schlitz Brewing Co.*, 39 N.C. App. 481, 250 S.E.2d 687, rev'd on other grounds, 298 N.C. 520, 259 S.E.2d 248 (1979).

Person who has eye disease but whose vision is functioning normally with glasses is not visually disabled within the meaning of this section, and thus is not a "handicapped person" who is granted a right of employment by § 168-6. *Burgess v. Joseph Schlitz Brewing Co.*, 298 N.C. 520, 259 S.E.2d 248 (1979).

People Irritated by Tobacco Smoke. — It is manifestly clear that the legislature did not intend to include within the meaning of "handicapped persons" those people with "any pulmonary problem," however minor, nor all people who are harmed or irritated by tobacco smoke. *GASP v. Mecklenburg County*, 42 N.C. App. 225, 256 S.E.2d 477 (1979).

OPINIONS OF ATTORNEY GENERAL

Criminal and Civil Enforcement of Chapter. — This Chapter can be criminally enforced even though no criminal penalty is prescribed, and can be civilly enforced even though no

specific civil remedy is prescribed. See opinion of Attorney General to Honorable James B. Hunt, 45 N.C.A.G. 131 (1975).

§ 168-2. Right of access to and use of public places.

Handicapped persons have the same right as the ablebodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and all other buildings and facilities, both publicly and privately owned, which serve the public. (1973, c. 493, s. 1.)

CASE NOTES

Application of Term "Visually Handicapped". — The restrictive definition of "visually handicapped" in § 111-11 should not be applied in a manner which limits the meaning of "visual disability" in § 168-1. The narrowly defined term "visually handicapped," which refers only to persons who are blind or functionally blind, is used solely in connection with those sections of the statute dealing exclusively with problems unique to the type of handicap identified by that term, i.e., §§ 168-4, 168-5 and 168-7. On the other hand, those sections of the statute which address problems common to all handicapped citizens, i.e.,

§§ 168-3, 168-6, 168-8, 168-9, 168-10, and this section, utilize the broadly defined term "handicapped person," which encompasses all persons "with physical, mental and visual disabilities." Thus, when the statute is read contextually, it is clear that the General Assembly did not intend the narrow definition of "visually handicapped" in § 111-11 to control the meaning of the term "visual disabilities" in § 168-1; rather, the General Assembly intended that the definition in § 111-11 would apply only when the specific term "visually handicapped" was used. *Burgess v. Joseph Schlitz Brewing Co.*, 298 N.C. 520, 259 S.E.2d 248 (1979).

§ 168-3. Right to use of public conveyances, accommodations, etc.

The handicapped and physically disabled are entitled to accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation; hotels, lodging places, places of public accommodation, amusement or resort to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons. (1973, c. 493, s. 1.)

CASE NOTES

Application of Term "Visually Handicapped". — The restrictive definition of "visually handicapped" in § 111-11 should not be applied in a manner which limits the meaning of "visual disability" in § 168-1. The narrowly defined term "visually handicapped," which refers only to persons who are blind or functionally blind, is used solely in connection with those sections of the statute dealing exclusively with problems unique to the type of handicap identified by that term, i.e., §§ 168-4, 168-5 and 168-7. On the other hand, those sections of the statute which address problems common to all handicapped citizens, i.e.,

§§ 168-2, 168-6, 168-8, 168-9, 168-10, and this section, utilize the broadly defined term "handicapped person," which encompasses all persons "with physical, mental and visual disabilities." Thus, when the statute is read contextually, it is clear that the General Assembly did not intend the narrow definition of "visually handicapped" in § 111-11 to control the meaning of the term "visual disabilities" in § 168-1; rather, the General Assembly intended that the definition in § 111-11 would apply only when the specific term "visually handicapped" was used. *Burgess v. Joseph Schlitz Brewing Co.*, 298 N.C. 520, 259 S.E.2d 248 (1979).

§ 168-4. May be accompanied by guide dog.

Every visually handicapped person shall have the right to be accompanied by a guide dog, especially trained for the purpose, in any of the places listed in G.S. 168-3 provided that he shall be liable for any damage done to the premises or facilities by such dog. (1973, c. 493, s. 1.)

Legal Periodicals. — For note on employment discrimination against the handicapped, see 16 Wake Forest L. Rev. 836 (1980).

CASE NOTES

Legislative Intent. — The legislature intended to grant broad protection of basic rights to all persons with any type of disability, and additionally sought to grant particular protection to an especially disabled group, the "visually handicapped," by three sections dealing with that group, as defined in § 111-11: this section and §§ 168-5 and 168-7. *Burgess v. Joseph Schlitz Brewing Co.*, 39 N.C. App. 481, 250 S.E.2d 687, rev'd on other grounds, 298 N.C. 520, 259 S.E.2d 248 (1979).

Application of Term "Visually Handicapped". — The restrictive definition of "visually handicapped" in § 111-11 should not be applied in a manner which limits the meaning of "visual disability" in § 168-1. The

narrowly defined term "visually handicapped," which refers only to persons who are blind or functionally blind, is used solely in connection with those sections of the statute dealing exclusively with problems unique to the type of handicap identified by that term, i.e., §§ 168-5, 168-7, and this section. On the other hand, those sections of the statute which address problems common to all handicapped citizens, i.e., §§ 168-2, 168-3, 168-6, 168-8, 168-9, and 168-10, utilize the broadly defined term "handicapped person," which encompasses all persons "with physical, mental and visual disabilities." Thus, when the statute is read contextually, it is clear that the General Assembly did not intend the narrow definition of "visually handi-

capped" in § 111-11 to control the meaning of the term "visual disabilities" in § 168-1; rather, the General Assembly intended that the definition in § 111-11 would apply only when

the specific term "visually handicapped" was used. *Burgess v. Joseph Schlitz Brewing Co.*, 298 N.C. 520, 259 S.E.2d 248 (1979).

§ 168-4.1. May be accompanied by hearing-ear dog.

Every hearing impaired person as defined in G.S. 8B-1(2) has the right to be accompanied by a hearing-ear dog, especially trained for the purpose and designated as such by the North Carolina Council for the Hearing Impaired, in any of the places listed in G.S. 168-3. Any hearing impaired person using a hearing-ear dog in any of these places is liable for any damage the dog does to the premises or facilities. The hearing impaired person qualifies for this right upon the showing of a card issued by the North Carolina Council for the Hearing Impaired designating the holder as the user of a trained hearing-ear dog. (1981, (Reg. Sess., 1982), c. 1177, s. 3.)

§ 168-5. Traffic and other rights of persons using certain canes.

The driver of a vehicle approaching a visually handicapped pedestrian who is carrying a cane predominantly white or silver in color (with or without a red tip) or using a guide dog shall take all necessary precautions to avoid injury to such pedestrian. (1973, c. 493, s. 1.)

Legal Periodicals. — For note on employment discrimination against the handicapped, see 16 Wake Forest L. Rev. 836 (1980).

CASE NOTES

Legislative Intent. — The legislature intended to grant broad protection of basic rights to all persons with any type of disability, and additionally sought to grant particular protection to an especially disabled group, the "visually handicapped," by three sections dealing with that group, as defined in § 111-11: §§ 168-4, 168-7 and this section. *Burgess v. Joseph Schlitz Brewing Co.*, 39 N.C. App. 481, 250 S.E.2d 687, rev'd on other grounds, 298 N.C. 520, 259 S.E.2d 248 (1979).

Application of Term "Visually Handicapped". — The restrictive definition of "visually handicapped" in § 111-11 should not be applied in a manner which limits the meaning of "visual disability" in § 168-1. The narrowly defined term "visually handicapped," which refers only to persons who are blind or functionally blind, is used solely in connection with those sections of the statute dealing exclu-

sively with problems unique to the type of handicap identified by that term, i.e., §§ 168-4, 168-7, and this section. On the other hand, those sections of the statute which address problems common to all handicapped citizens, i.e., §§ 168-2, 168-3, 168-6, 168-8, 168-9, and 168-10, utilize the broadly defined term "handicapped person," which encompasses all persons "with physical, mental and visual disabilities." Thus, when the statute is read contextually, it is clear that the General Assembly did not intend the narrow definition of "visually handicapped" in § 111-11 to control the meaning of the term "visual disabilities" in § 168-1; rather, the General Assembly intended that the definition in § 111-11 would apply only when the specific term "visually handicapped" was used. *Burgess v. Joseph Schlitz Brewing Co.*, 298 N.C. 520, 259 S.E.2d 248 (1979).

§ 168-6. Right to employment.

Handicapped persons shall be employed in the State service, the service of the political subdivisions of the State, in the public schools, and in all other employment, both public and private, on the same terms and conditions as the ablebodied, unless it is shown that the particular disability impairs the performance of the work involved. (1973, c. 493, s. 1.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For note on employment discrimination against the handicapped, see 16 Wake Forest L. Rev. 836 (1980).

CASE NOTES

Application of Term "Visually Handicapped". — The restrictive definition of "visually handicapped" in § 111-11 should not be applied in a manner which limits the meaning of "visual disability" in § 168-1. The narrowly defined term "visually handicapped," which refers only to persons who are blind or functionally blind, is used solely in connection with those sections of the statute dealing exclusively with problems unique to the type of handicap identified by that term, i.e., §§ 168-4, 168-5 and 168-7. On the other hand, those sections of the statute which address problems common to all handicapped citizens, i.e., §§ 168-2, 168-3, 168-8, 168-9, 168-10, and this section, utilize the broadly defined term "handicapped person," which encompasses all persons "with physical, mental and visual disabilities." Thus, when the statute is read contextually, it is clear that the General Assembly did not intend the narrow definition of "visually handicapped" in § 111-11 to control the meaning of

the term "visual disabilities" in § 168-1; rather, the General Assembly intended that the definition in § 111-11 would apply only when the specific term "visually handicapped" was used. *Burgess v. Joseph Schlitz Brewing Co.*, 298 N.C. 520, 259 S.E.2d 248 (1979).

Status as Handicapped Person Essential to Cause of Action. — In order to state a cause of action for violation of the right to employment granted in this section, plaintiff must establish that he is a "handicapped person" to whom such rights are granted. *Burgess v. Joseph Schlitz Brewing Co.*, 298 N.C. 520, 259 S.E.2d 248 (1979).

Person who has eye disease but whose vision is functioning normally with glasses is not visually disabled within the meaning of § 168-1, and thus is not a "handicapped person" who is granted a right of employment by this section. *Burgess v. Joseph Schlitz Brewing Co.*, 298 N.C. 520, 259 S.E.2d 248 (1979).

§ 168-7. Guide dogs.

Every visually handicapped person who has a guide dog, or who obtains a guide dog, shall be entitled to keep the guide dog on the premises leased, rented or used by such handicapped person. He shall not be required to pay extra compensation for such guide dog but shall be liable for any damage done to the premises by such a guide dog. No person, firm or corporation shall refuse to sell, rent, lease or otherwise disallow a visually handicapped person to use any premises for the reason that said visually handicapped person has or will obtain a guide dog for mobility purposes. (1973, c. 493, s. 1; 1977, c. 659.)

Legal Periodicals. — For note on employment discrimination against the handicapped, see 16 Wake Forest L. Rev. 836 (1980).

CASE NOTES

Legislative Intent. — The legislature intended to grant broad protection of basic rights to all persons with any type of disability, and additionally sought to grant particular protection to an especially disabled group, the "visually handicapped," by three sections dealing with that group, as defined in § 111-11: §§ 168-4, 168-5 and this section. *Burgess v. Joseph Schlitz Brewing Co.*, 39 N.C. App. 481, 250 S.E.2d 687 (1979), rev'd on other grounds, 298 N.C. 520, 259 S.E.2d 248 (1979).

Application of Term "Visually Handicapped". — The restrictive definition of

"visually handicapped" in § 111-11 should not be applied in a manner which limits the meaning of "visual disability" in § 168-1. The narrowly defined term "visually handicapped," which refers only to persons who are blind or functionally blind, is used solely in connection with those sections of the statute dealing exclusively with problems unique to the type of handicap identified by that term, i.e., §§ 168-4, 168-5 and this section. On the other hand, those sections of the statute which address problems common to all handicapped citizens, i.e., §§ 168-2, 168-3, 168-6, 168-8, 168-9, and

168-10, utilize the broadly defined term "handicapped person," which encompasses all persons "with physical, mental and visual disabilities." Thus, when the statute is read contextually, it is clear that the General Assembly did not intend the narrow definition of "visually handicapped" in § 111-11 to control the meaning of

the term "visual disabilities" in § 168-1; rather, the General Assembly intended that the definition in § 111-11 would apply only when the specific term "visually handicapped" was used. *Burgess v. Joseph Schlitz Brewing Co.*, 298 N.C. 520, 259 S.E.2d 248 (1979).

§ 168-7.1. Hearing-ear dogs.

Every hearing impaired person as defined in G.S. 8B-1(2) who has a hearing-ear dog especially trained for the purpose and designated as such by the North Carolina Council for the Hearing Impaired, or who obtains such a hearing-ear dog, may keep the dog on premises the person leases, rents or uses. He is not required to pay extra compensation for the dog but is liable for any damages done by the dog to the premises. No person, firm or corporation shall refuse to sell, rent, lease or otherwise disallow a hearing impaired person to use any premises for the reason that the person has or will obtain a hearing-ear dog. The hearing impaired person qualifies for this right upon the showing of a card issued by the North Carolina Council for the Hearing Impaired designating the holder as the user of a trained hearing-ear dog. (1981 (Reg. Sess., 1982), c. 1177, s. 4.)

§ 168-8. Right to habilitation and rehabilitation services.

Handicapped persons shall be entitled to such habilitation and rehabilitation services as available and needed for the development or restoration of their capabilities to the fullest extent possible. Such services shall include, but not be limited to, education, training, treatment and other services to provide for adequate food, clothing, housing and transportation during the course of education, training and treatment. Handicapped persons shall be entitled to these rights subject only to the conditions and limitations established by law and applicable alike to all persons. (1973, c. 493, s. 1.)

CASE NOTES

Application of Term "Visually Handicapped". — The restrictive definition of "visually handicapped" in § 111-11 should not be applied in a manner which limits the meaning of "visual disability" in § 168-1. The narrowly defined term "visually handicapped," which refers only to persons who are blind or functionally blind, is used solely in connection with those sections of the statute dealing exclusively with problems unique to the type of handicap identified by that term, i.e., §§ 168-4, 168-5 and 168-7. On the other hand, those sections of the statute which address problems common to all handicapped citizens, i.e.,

§§ 168-2, 168-3, 168-6, 168-8, 168-9, and 168-10, utilize the broadly defined term "handicapped person," which encompasses all persons "with physical, mental and visual disabilities." Thus, when the statute is read contextually, it is clear that the General Assembly did not intend the narrow definition of "visually handicapped" in § 111-11 to control the meaning of the term "visual disabilities" in § 168-1; rather, the General Assembly intended that the definition in § 111-11 would apply only when the specific term "visually handicapped" was used. *Burgess v. Joseph Schlitz Brewing Co.*, 298 N.C. 520, 259 S.E.2d 248 (1979).

§ 168-9. Right to housing.

Each handicapped citizen shall have the same right as any other citizen to live and reside in residential communities, homes, and group homes, and no person or group of persons, including governmental bodies or political subdivisions of the State, shall be permitted, or have the authority, to prevent any

handicapped citizen, on the basis of his or her handicap, from living and residing in residential communities, homes, and group homes on the same basis and conditions as any other citizen. Nothing herein shall be construed to conflict with provisions of Chapter 122 of the General Statutes. (1975, c. 635.)

Legal Periodicals. — For comment on exclusionary zoning of community facilities, see 12 N.C. Cent. L.J. 167 (1980).

CASE NOTES

Application of Term "Visually Handicapped". — The restrictive definition of "visually handicapped" in § 111-11 should not be applied in a manner which limits the meaning of "visual disability" in § 168-1. The narrowly defined term "visually handicapped," which refers only to persons who are blind or functionally blind, is used solely in connection with those sections of the statute dealing exclusively with problems unique to the type of handicap identified by that term, i.e., §§ 168-4, 168-5 and 168-7. On the other hand, those sections of the statute which address problems common to all handicapped citizens, i.e.,

§§ 168-2, 168-3, 168-6, 168-8, 168-9, and 168-10, utilize the broadly defined term "handicapped person," which encompasses all persons "with physical, mental and visual disabilities." Thus, when the statute is read contextually, it is clear that the General Assembly did not intend the narrow definition of "visually handicapped" in § 111-11 to control the meaning of the term "visual disabilities" in § 168-1; rather, the General Assembly intended that the definition in § 111-11 would apply only when the specific term "visually handicapped" was used. *Burgess v. Joseph Schlitz Brewing Co.*, 298 N.C. 520, 259 S.E.2d 248 (1979).

§ 168-10. Eliminate discrimination in treatment of handicapped and disabled.

Each handicapped person shall have the same consideration as any other person for individual accident and health insurance coverage, and no insurer, solely on the basis of such person's handicap, shall deny such coverage or benefits. The availability of such insurance shall not be denied solely due to the handicap, provided, however, that no such insurer shall be prohibited from excluding by waiver or otherwise, any pre-existing conditions from such coverage, and further provided that any such insurer may charge the appropriate premiums or fees for the risk insured on the same basis and conditions as insurance issued to other persons. Nothing contained herein or in any other statute shall restrict or preclude any insurer governed by Chapter 57 or Chapter 58 of the General Statutes from setting and charging a premium or fee based upon the class or classes of risks and on sound actuarial and underwriting principles as determined by such insurer, or from applying its regular underwriting standards applicable to all classes of risks. The provisions of this section shall apply to both corporations governed by Chapter 57 and Chapter 58 of the General Statutes. (1977, c. 894, ss. 1, 2.)

CASE NOTES

Application of Term "Visually Handicapped". — The restrictive definition of "visually handicapped" in § 111-11 should not be applied in a manner which limits the meaning of "visual disability" in § 168-1. The narrowly defined term "visually handicapped," which refers only to persons who are blind or functionally blind, is used solely in connection

with those sections of the statute dealing exclusively with problems unique to the type of handicap identified by that term, i.e., §§ 168-4, 168-5 and 168-7. On the other hand, those sections of the statute which address problems common to all handicapped citizens, i.e., §§ 168-2, 168-3, 168-6, 168-8, 168-9, and 168-10, utilize the broadly defined term "handi-

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the term "visual disabilities" in § 168-1; rather, the General Assembly intended that the definition in § 111-11 would apply only when the specific term "visually handicapped" was used. *Burgess v. Joseph Schlitz Brewing Co.*, 298 N.C. 520, 259 S.E.2d 248 (1979).

§§ 168-11 to 168-13: Reserved for future codification purposes.

ARTICLE 2.

Vocational Rehabilitation.

§ 168-14. Vocational rehabilitation services for deaf persons.

The Department of Human Resources shall promote the employment of deaf persons in this State. The Department shall assist deaf persons whose disability limits employment opportunities in obtaining gainful employment commensurate with their abilities and in maintaining such employment.

The Department, in furtherance of these objectives, shall maintain statistics regarding trades and occupations in which deaf persons are employed.

The Department shall attempt to employ deaf persons in its vocational rehabilitation services for deaf persons and shall have at least one deaf person so employed. (1975, c. 412, s. 2.)

Editor's Note. — Session Laws 1975, c. 412, s. 3, provides: "The intent of this act is to transfer the Bureau of Labor for the Deaf from the Department of Labor to the Department of

Human Resources as a Type I transfer as defined in G.S. 143A-6(a)." Section 1 of the 1975 act repealed §§ 95-70 to 95-72, which formerly provided for the Bureau of Labor for the Deaf.

§§ 168-15 to 168-19: Reserved for future codification purposes.

ARTICLE 3.

Family Care Homes.

§ 168-20. Public policy.

The General Assembly has declared in Article 1 of this Chapter that it is the public policy of this State to provide handicapped persons with the opportunity to live in a normal residential environment. (1981, c. 565, s. 1.)

§ 168-21. Definitions.

As used in this Article:

- (1) "Family care home" means a home with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than six resident handicapped persons.
- (2) "Handicapped person" means a person with a temporary or permanent physical, emotional, or mental disability including but not limited to mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances and orthopedic impair-

ments but not including mentally ill persons who are dangerous to others as defined in G.S. 122-58.2(1)b. (1981, c. 565, s. 1.)

§ 168-22. Zoning; family care home.

A family care home shall be deemed a residential use of property for zoning purposes and shall be a permissible use in all residential districts of all political subdivisions. No political subdivision may require that a family care home, its owner, or operator obtain, because of the use, a conditional use permit, special use permit, special exception or variance from any such zoning ordinance or plan; provided, however, that a political subdivision may prohibit a family care home from being located within a one-half mile radius of an existing family care home. (1981, c. 565, s. 1.)

§ 168-23. Certain private agreements void.

Any restriction, reservation, condition, exception, or covenant in any subdivision plan, deed, or other instrument of or pertaining to the transfer, sale, lease, or use of property which would permit residential use of property but prohibit the use of such property as a family care home shall, to the extent of such prohibition, be void as against public policy and shall be given no legal or equitable force or effect. (1981, c. 565, s. 1.)

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 25, 1982

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing recompilation of the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

RUFUS L. EDMISTEN
Attorney General of North Carolina

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**GENERAL STATUTES OF
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VOLUME 3D PART II**

There is no 1987 Cumulative Supplement for Volume 3D Part II due to the pending replacement of Volume 3D Part II in December. Retain the 1982 Replacement Volume, its 1985 Cumulative Supplement, the 1986 Interim Supplement to the General Statutes and the 1987 Advance Legislative Service until Volume 3D Part II is replaced.

Place this insert in the back of Volume 3D Part I over the 1985 Cumulative Supplement.

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