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ELECTION AND RELATED LAWS
AND RULES AND REGULATIONS
OF
NORTH CAROLINA

1995 EDITION



MICHIE
CHARLOTTESVILLE, VIRGINIA
1995



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January 1996



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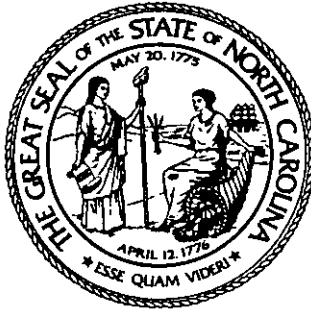
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January 1996

ELECTION LAWS OF NORTH CAROLINA

1995 EDITION



**Issued by
THE STATE BOARD OF ELECTIONS**

Gary O. Bartlett
Executive Secretary-Director

Reprinted from General Statutes of North Carolina
and 1995 Cumulative Supplement

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ELECTION LAWS

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Editor's Note. — Legislation affecting certain counties in North Carolina, and therefore legislation affecting the entire State, may be subject to Section 5 of the Voting Rights Act of 1965. For

information on receipt of preclearance, please refer to the *North Carolina Register* or the appropriate agency as described in Article 6A.1 of Chapter 120 of the General Statutes.

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; provided, that in the case of a candidate for President of the United States who has

qualified to have his name printed on the general election ballot as an unaffiliated candidate under G.S. 163-122, that candidate shall nominate presidential electors. One presidential elector shall be nominated from each congressional district and two from the state-at-large, and in addition, the State convention of each party and the unaffiliated candidate shall each nominate first and second alternate electors who shall serve if their slate is elected as provided by G.S. 163-209 and if there is a vacancy as provided by G.S. 163-210.

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

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TIME OF PRIMARIES AND ELECTIONS

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OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
Commissioner 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
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 the 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

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
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 after next election
Judges of the district courts	District court district	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
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

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
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
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; 1991 (Reg. Sess., 1992), c. 782, s. 1; 1993 (Reg. Sess., 1994), c. 738, s. 2.)

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 applied 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 that 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 that such candidates should be nominated by convention 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.

Local Modification to Former § 163-129. — Avery: 1933, c. 327; 1935, c. 141; 1937, c. 263; Stanly: 1945, c. 958. 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 conflicted with the 1971 act. Session Laws 1975, c. 246, provided that the provisions of the general primary laws of this Chapter should be applicable in Mitchell County for the purpose of nominating the candidates of the Republican Party for all county offices. (As to this Chapter) Caswell: 1987 (Reg. Sess., 1988), c. 1016, ss. 5, 12; (As to this Chapter) Cumberland: 1991, c. 445; 1991

(Reg. Sess., 1992), c. 810; Tyrell: 1995, c. 69, s. 1; (As to this Chapter) city of Albemarle: 1987 (Reg. Sess., 1988), c. 881, s. 2; city of Clinton: 1989 (Reg. Sess., 1990), c. 886; town of Calabash: 1987, c. 468, s. 6; Grandfather Village: 1987, c. 549, s. 6.9; (As to this Chapter) Anson County Bd. of Commissioners: 1991 (Reg. Sess., 1992), c. 781 (but shall only be enforced as provided by Section 5 of the Voting Rights Act of 1965); Vance County Board of Education: 1987 (Reg. Sess., 1988), c. 974, ss. 3, 4.

Local Modification. — Cumberland: 1991 (Reg. Sess., 1992), c. 810; (As to this Chapter) Anson County Bd. of Commissioners: 1991 (Reg. Sess., 1992), c. 781 (but shall only be enforced as provided by Section 5 of the Voting Rights Act of 1965).

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, provided 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."

An amendment to this and other sections by Session Laws 1981, c. 504, ss. 11 to 13, was made effective upon certification of approval of the constitutional amendments proposed by ss. 1 to 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.

Amendments to this and other sections by Session Laws 1985, c. 768 were made contingent on approval by the voters of the constitutional amendments proposed by c. 768. Since the proposed constitutional amendments were defeated by a vote of the people on May 6, 1986, the amendments to this section by Session Laws 1985, c. 768 never went into effect.

Session Laws 1991, Ex. Sess., c. 1, which was submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973c), received preclearance from the United States Department of Justice on January 3, 1992.

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 2, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, provides: "Wherever the term 'registrar' appears in Chapter 163 of the General Statutes, the term shall be changed to read 'chief judge'."

Session Laws 1993 (Reg. Sess., 1994), c. 771, ss. 3.1-3.7 provides: "Sec. 3.1. (a) There is created an Election Laws Review Commission to be composed of 18 members appointed as follows:

- "(1) The President Pro Tempore of the Senate shall appoint six members;
- "(2) The Speaker of the House of Representatives shall appoint six members; and
- "(3) The Governor shall appoint six members.

"As used in this Part and unless otherwise clearly indicated, 'Commission' shall refer to the Election Laws Review Commission.

"(b) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Commission from their appointees. Either cochair may call the first meeting of the Commission.

"(c) Members shall serve until the termination of the Commission or, in case of a State legislator member, until the member either does not file for reelection to the General Assembly or is not reelected, whichever occurs first. Vacancies shall be filled in the same manner as the original appointments were made.

"Sec. 3.2. (a) The Election Laws Review Commission shall study thoroughly:

- "(1) The election laws, policies, and procedures of the State, specifically to include those relating to campaign finance regulation, the appropriateness of their sanctions, and the appropriate handling and disposition of campaign contributions;
- "(2) The administration of those laws, policies, and procedures at the State and local levels and the responsibilities of those administering these laws; and

"(3) Federal and State case rulings impinging on these laws, policies, and practices.

"(b) The Commission shall recommend changes to the law that will:

"(1) Clarify the present law by removing inconsistencies and outdated provisions, including those of dubious constitutionality;

"(2) Incorporate in the law any desirable uncodified procedures, practices, and rulings of a general nature that have been implemented by the State Board of Elections and its Executive Secretary-Director;

"(3) Conform the law to State and federal case law and to any requirements of federal statutory law and regulation;

"(4) Ensure the efficient and effective administration of elections in this State;

"(5) Continue the impartial, professional administration of elections, which the citizens of the State expect and demand; and

"(6) Recodify the election laws, as necessary, to produce a comprehensive current statement of law and practice of elections in North Carolina.

"Sec. 3.3. With the prior approval of the Legislative Services Commission, the Legislative Administrative Officer shall assign professional and clerical staff to assist in the work of the Election Laws Review Commission. Clerical staff shall be furnished to the Commission through the Offices of the House of Representatives and Senate Supervisors of Clerks. The expenses of employment of the clerical staff shall be borne by the Commission. With the prior approval of the Legislative Services Commission, the Election Laws Review Commission may hold its meetings in the State Legislative Building or the Legislative Office Building.

"Sec. 3.4. The Commission shall submit a final written report of its findings and recommendations on or before the convening of the 1995 Session of the General Assembly. All reports shall be filed with the President Pro Tempore of the Senate and the Speaker of the House of Representatives, the Principal Clerks of the Senate and the House of Representatives, and the Legislative Librarian. Upon filing its final report, the Commission shall terminate.

"Sec. 3.5. Members of the Commission

shall be paid per diem, subsistence, and travel allowances as follows:

- "(1) Commission members who are also members of the General Assembly, at the rate established in G.S. 120-3.1;
- "(2) Commission members who are officials or employees of the State or local government agencies, at the rate established in G.S. 138-6;
- "(3) All other Commission members, at the rate established in G.S. 138-5.

"Sec. 3.6. The State Board of Elections and its Executive Secretary-Director, local boards of election, and all other State departments and agencies, and local governments and their subdivisions shall cooperate with the Commission and, upon request, shall furnish to the Commission and its staff any information in

their possession or available to them.

"Sec. 3.7. The Election Laws Review Committee, created by the Legislative Research Commission in 1993, is abolished."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 13, 1994, added "and in addition, the State convention of each party and the unaffiliated candidate shall each nominate first and second alternate electors who shall serve if their slate is elected as provided by G.S. 163-209 and if there is a vacancy as provided by G.S. 163-210" in the last sentence of subsection (c).

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

Method of Electing Superior Court Judges Held Constitutional.

— The method of electing superior court judges does not infringe upon Republicans' rights to free speech and association in violation of the First Amendment. *Republican Party v. Martin*, 980 F.2d 943 (4th Cir. 1992), rehearing denied, 991 F.2d 1202 (4th Cir.), cert. denied, — U.S. —, 114 S. Ct. 93, 126 L. Ed. 2d 60 (1993).

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); *Lake v. State Bd. of Elections*, 798 F. Supp. 1199 (M.D.N.C. 1992); *Republican Party v. Hunt*, 841 F. Supp. 722 (E.D.N.C. 1994).

§ 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; 1991, c. 727, s. 2.)

Editor's Note. — Session Laws 1991, c. 727, s. 2 of which rewrote this section, effective with respect to elections occurring on or after January 1, 1992, pro-

vided in s. 9 that s. 2 would expire with respect to all primaries and elections occurring on or after January 1, 1995.

CASE NOTES

Extension of Voting Hours. — Where plaintiffs alleged that § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c (1988), was violated because the order of the superior court judge, which extended voting hours from 7:30 p.m. to 8:30 p.m., was a “change” under § 5 which was not precleared by the United States Attorney General, plaintiffs could not show that the county superior court order was a change from the existing law or from the procedures in effect at the

time; the order effected no change, but merely mirrored a previously precleared statute, doing no more than this section allowed the county boards to do. It extended the hours for the same length of time allowed by statute and imposed no additional restrictions. *Lake v. State Bd. of Elections*, 798 F. Supp. 1199 (M.D.N.C. 1992).

Cited in *Democratic Party v. Guilford County Bd. of Elec.*, 117 N.C. App. 633, 453 S.E.2d 243 (1995).

§§ 163-3 through 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 60 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 Article III, Section 7 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; 1983, c. 324, s. 1; 1985 (Reg. Sess., 1986), c. 920, s. 5.)

Cross References. — As to the constitutional amendments by Session Laws 1985 (Reg. Sess., 1986), c. 920, ss. 1 and 2, see N.C. Const., Art. III, § 7(3) and Art. IV, § 19.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 920, s. 5, effective January 1, 1987, but only upon approval by the voters of the constitutional amendments set forth in Session Laws

1985 (Reg. Sess., 1986), c. 920, ss. 1 and 2, substituted "60 days" for "30 days" in the third sentence. The constitutional

amendments were approved at the election held November 4, 1986.

§ 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 to the office of Justice of the Supreme Court or judge of the Court of Appeals shall hold office until January 1 next following the election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held for an eight-year term and until a successor is elected and qualified. An appointee to the office of judge of superior court shall hold his place until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill the unexpired term of the office. 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. 763, s. 3; 1985 (Reg. Sess., 1986), c. 920, s. 6; 1995, c. 98, s. 1.)

Cross References. — As to the constitutional amendments by Session Laws 1985 (Reg. Sess., 1986), c. 920, ss. 1 and 2, see N.C. Const., Art. III, § 7(3) and Art. IV, § 19.

Editor's Note. — Session Laws 1981, c. 763, which amended this section, in s. 13 provided: "All local acts in conflict with this act are repealed to the extent of the conflict."

Session Laws 1985 (Reg. Sess., 1986), c. 920, s. 6, effective January 1, 1987, but only upon approval by the voters of the constitutional amendments set forth in Session Laws 1985 (Reg. Sess., 1986), c. 920, ss. 1 and 2, substituted "60 days" for "30 days" in the second sentence of the first paragraph. The constitutional amendments were approved at the election held November 4, 1986.

Session Laws 1995, c. 98, s. 2, effective May 23, 1995, specified the terms of all duly elected judges of the Supreme Court and Judges of the Court of Appeals who were not already serving full eight year terms of office.

Session Laws 1995, c. 98, s. 3, effective May 23, 1995, provides that if any provision of the act is held invalid, the remaining provisions shall also be invalidated as the provisions are inseparable.

Effect of Amendments. — The 1995 amendment, effective May 23, 1995, in the first paragraph, added the second sentence, and in the third sentence, inserted "to the office of judge of superior court" following "appointee", and at the end of the third sentence substituted "office. When" for "office: Provided, that when".

CASE NOTES

Constitutionality. — This section, insofar as it provides for elections of judges to fill only the unexpired portions of eight-year terms, is authorized by

N.C. Const., Art. IV, § 19; therefore, it does not violate N.C. Const., Art. IV, § 16, providing that judges "shall be elected ... and shall hold office for terms

of eight years." *Brannon v. North Carolina State Bd. of Elections*, 331 N.C. 335, 416 S.E.2d 390 (1992).

§ 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 60 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; 1985 (Reg. Sess., 1986), c. 920, s. 7.)

Cross References. — As to the constitutional amendments by Session Laws 1985 (Reg. Sess., 1986), c. 920, ss. 1 and 2, see N.C. Const., Art. III, § 7(3) and Art. IV, § 19.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 920, s. 7, effective January 1, 1987, but only upon approval

by the voters of the constitutional amendments set forth in Session Laws 1985 (Reg. Sess., 1986), c. 920, ss. 1 and 2, substituted "60 days" for "30 days" in the second sentence. The constitutional amendments were approved at the election held November 4, 1986.

§ 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 (Reg. Sess., 1982), c. 1265, s. 3.)

CASE NOTES

Cited in *Baker v. Martin*, 330 N.C. 331, 410 S.E.2d 887 (1991).

§ 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 60 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; 1985, c. 759, s. 2.)

§ 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 beginning on the tenth day before the filing period ends under G.S. 163-106(c) 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 before the tenth day before the filing period ends under G.S. 163-106(c) 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 opening and closing dates for filing notices of candidacy with the State Board of Elections shall be fixed by the Governor in his call for the special primary. The Governor may also fix the absentee voting period for the special election and for the special first primary, but such period shall not be less than 30 days. (1901, c. 89, s. 60; Rev., s. 4369; C.S., s. 6007; 1947, c. 505, s. 5; 1967, c. 775, s. 1; 1985, c. 759, ss. 3-5.)

§§ 163-14 through 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. The Governor shall appoint the members from a list of nominees

submitted to him by the State party chairman of each of the two political parties having the highest number of registered affiliates as reflected by the latest registration statistics published by the State Board of Elections. Each party chairman shall submit a list of five nominees who are affiliated with that political party.

Any vacancy occurring in the Board shall be filled by the Governor, and the person so appointed shall fill the unexpired term. The Governor shall fill the vacancy from a list of three nominees submitted to him by the State party chairman of the political party that nominated the vacating member as provided by the preceding paragraph. The three nominees must be affiliated with that political party.

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; 1985, c. 62, ss. 1, 1.1.)

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.

§ 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

Venue of State Board of Elections.
— Members of State Board of Elections reside in Wake County for venue purposes, since it is there that they act in their capacities as members of the State Board. *Republican Party v. Martin*, 682 F. Supp. 834 (M.D.N.C. 1988).

The mere fact of the State Board's

supervisory role, does not give it an official residence in each of the 100 counties in this state where county boards of elections are located for purposes of venue. *Republican Party v. Martin*, 682 F. Supp. 834 (M.D.N.C. 1988).

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 municipal 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 50 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.

(m) The State Board of Elections shall issue rules to regulate recounts held under the provisions of G.S. 163-179.1 or G.S. 163-192.1.

(n) The State Board of Elections shall provide specific training to county boards of elections regarding rules for registering students.

(o) The State Board of Elections shall promulgate minimum requirements for the number of pollbooks, voting machines and curbside ballots to be available at each precinct, such that more of such will be available at general elections and a sufficient number will be available to allow voting without excessive delay. The State Board of Elections shall provide for a training and screening program for chief judges and judges. The State Board of Elections shall provide additional testing of voting machines to ensure that they operate properly even with complicated ballots.

The State Board of Elections shall require counties with voting systems to have sufficient personnel available on election day with technical expertise to make repairs in such equipment, to investigate election day problems, and assist in curbside voting. (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; 1985 (Reg. Sess., 1986), c. 986, ss. 2, 3; 1987, c. 485, ss. 2, 5; c. 509, s. 9; c. 642, s. 3; 1989, c. 635, s. 5; 1991, c. 727, ss. 5.2, 7; 1993 (Reg. Sess., 1994), c. 762, s. 12; 1995, c. 509, s. 114.)

Editor's Note. — G.S. 163-67, referred to above, has been repealed.

Section 4 of Session Laws 1985 (Reg. Sess., 1986), c. 986, provided that ss. 2 and 3 thereof, which amended subsection (k), would expire with respect to primaries and elections held on or after December 31, 1986.

Session Laws 1985 (Reg. Sess., 1986), c. 987, ss. 2, 3 made the same changes to this section as c. 986, but was only to become effective if the U.S. Attorney General interposed objection to Session Laws 1985 (Reg. Sess., 1986), c. 986 as to the fact that such bill provided for designating vacancies for all unexpired terms separately from full terms. Chapter 987 also provided that the act would expire with respect to primaries and elections held on or after December 31, 1986. Objection to c. 986 was not made. Moreover, Session Laws 1987, c. 509, s. 9 repealed Session Laws 1985 (Reg. Sess., 1986), c. 987. Therefore, c. 987 never went into effect.

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1991, c. 727, added subsections (n) and (o) effective with respect to elections occurring on or after January 1, 1992.

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 12, amended this section, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date.

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, substituted "tally" for "talley" preceding "sheets" in the first sentence of subsection (e).

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 perforce 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 Regula-

tions 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. (now § 150B-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).

Venue of State Board of Elections.

— The mere fact of the State Board's supervisory role does not give it an official residence in each of the 100 counties in this state where county boards of elections are located for purposes of venue. *Republican Party v. Martin*, 682 F. Supp. 834 (M.D.N.C. 1988).

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 assistance 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. The State Board shall be authorized to order a new election without conducting a public hearing provided a public hearing on the allegations was held by the county or municipal board of elections and the State Board is satisfied that such hearing gave sufficient opportunity for presentation of evidence and provided further that the State Board adopts the findings of the county or municipal board of elections.

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; 1983, c. 210.)

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 out-

come 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).

Cited in *Lake v. State Bd. of Elections*, 798 F. Supp. 1199 (M.D.N.C. 1992); *Farnsworth v. Jones*, 114 N.C. App. 182, 441 S.E.2d 597 (1994).

§ 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, local board of education, or city officer 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 of 1965 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 60 days after the convening of the next regular 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; c. 1265, ss. 1, 2; 1985, c. 563, s. 15; 1986, Ex. Sess., c. 3, s. 1.)

CASE NOTES

Construction. — Remedial statutes, such as this section, must be construed liberally in the light of the evils sought to be eliminated, the remedies intended to be applied, and the legislative objective. *Newsome v. North Carolina State Bd. of*

Elections, 105 N.C. App. 499, 415 S.E.2d 201 (1992).

Quoted in *United States v. Onslow County*, 683 F. Supp. 1021 (E.D.N.C. 1988).

§ 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 to whom the same shall be delivered, or if a sheriff 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; 1995, c. 379, s. 14(e).)

Effect of Amendments. — The 1995 amendment, effective July 6, 1995, but not affecting pending litigation, deleted “or constable” following both occurrences of “sheriff” in the third sentence.

§ 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 Chapter 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.

If the Attorney General recommends employment of private counsel, the State Board may employ counsel with the approval of the Governor. (1969, c. 408, s. 1; 1973, c. 793, s. 6; 1983, c. 324, s. 2.)

§ 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.)

§ 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, 1989, 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; 1985, c. 62, s. 2.)

§ 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.)

§ 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 last Tuesday in June 1985, 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 last Tuesday in June 1985, 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 July 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; 1983, c. 617, ss. 1, 2; 1985, c. 472, s. 4.)

Editor's Note. — Session Laws 1991, Ex. Sess., c. 1, which was submitted to the Attorney General of the United States pursuant to Section 5 of the Voting

Rights Act of 1965, as amended (42 U.S.C. 1973c), received preclearance from the United States Department of Justice on January 3, 1992.

OPINIONS OF ATTORNEY GENERAL

Member of County Board of Elections May Not Also Hold an Elective Office. — See opinion of Attorney Gen-

eral 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 July 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 third Monday in August of the year in which they are appointed the county board of elections shall meet and appoint precinct chief judges 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 director 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; 1983, c. 617, s. 3; 1993 (Reg. Sess., 1994), c. 762, s. 13; 1995, c. 243, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993

(Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judges" for "registrars" in the second sentence of the first paragraph.

The 1995 amendment, effective January 1, 1996, substituted "director of elections" for "supervisor of elections" in the last sentence of the second paragraph.

§ 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 meeting 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; provided that members are not entitled to be compensated for more than one meeting held in any one 24-hour period. 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 meeting 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 directors of elections 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; 1991, c. 338, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 14; 1995, c. 243, s. 1.)

Local Modification to Former § 163-12. — Hyde, Iredell and Nash: 1941, c. 305, s. 2.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and

the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, deleted "and special reg-

istration commissioners" following "supervisors of elections" in the second sentence of the second paragraph.

The 1995 amendment, effective Janu-

ary 1, 1996, substituted "directors of elections" for "supervisors of elections" in the last sentence of the second paragraph.

§ 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 chief judges, judges, assistants, and other officers of elections, and designate the precinct in which each shall serve; and, after notice and hearing, to remove any chief judge, 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. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. 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; and to appoint and remove precinct transfer assistants as provided in G.S. 163-72.3.
- (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; 1983, c. 392, s. 1; 1989, c. 93, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 15.)

Local Modification. — Town of Calabash: 1989, c. 593, s. 3; towns of Hazelwood and Waynesville: 1987, c. 338, s. 8; Anson County Bd. of Commissioners: 1991 (Reg. Sess., 1992), c. 781, s. 8 (but shall only be enforced as provided by Section 5 of the Voting Rights Act of 1965).

Editor's Note. — G.S. 163-72.3, referred to above, has been repealed.

Session Laws 1991, Ex. Sess., c. 1, which was submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973c), received preclearance from the United

States Department of Justice on January 3, 1992.

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or

after that date, substituted "chief judges" for "registrars" and "chief judge" for "registrar" in subdivision (2).

CASE NOTES

County 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).

Action against three county boards of elections challenging method of electing North Carolina superior court judges would be dismissed, since the county boards have no authority to act in a manner inconsistent with the statute governing election of superior court judges. They merely act in a ministerial capacity and can only carry out duties as detailed by statute and the State Board. *Republican Party v. Martin*, 682 F. Supp. 834 (M.D.N.C. 1988).

§ 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.)

Editor's Note. — G.S. 163-80, referred to above, has been repealed.

§ 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. Director of elections to county board of elections; appointment; compensation; duties; dismissal.

(a) In the event a vacancy occurs in the office of county director 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 director 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 director 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 director by the county board of elections. A copy of the specified duties, responsibilities and designated authority assigned to the director shall be filed with the State Board of Elections.

The county board of elections may, by petition signed by a majority of the board, recommend to the Executive Secretary-Director of the State Board of Elections the termination of the employment of the county board's director of elections. The petition shall clearly state

the reasons for termination. Upon receipt of the petition, the Executive Secretary-Director shall forward a copy of same by certified mail, return receipt requested, to the county director of elections involved. The county director of elections may reply to said petition within 15 days of receipt thereof. Within 20 days of receipt of the county director of elections' reply or the expiration of the time period allowed for the filing of said reply, the State Executive Secretary-Director shall render a decision as to the termination or retention of the county director of elections. The decision of the Executive Secretary-Director of the State Board of Elections shall be final unless such decision shall, within 20 days from the official date on which it was made, be deferred by the State Board of Elections, in which event a public hearing shall be conducted by said State Board or any single member designated by the remaining four members, in the county seat of the county involved. Following the conduct of such public hearing and a decision by the State Board of Elections, the chairman of said Board shall notify the Executive Secretary-Director of the State Board of Elections, in writing, of the decision resulting from the public hearing. If the decision, rendered by the State Board of Elections, results in concurrence with the decision entered by the Executive Secretary-Director, the decision becomes final. If the decision rendered by the Board is contrary to that entered by the Executive Secretary-Director, then the Executive Secretary-Director shall, within 15 days from the written notification, enter an amended decision consistent with the results of the decision by the State Board of Elections. The employment of any director of elections presently employed or hereafter employed shall not be terminated except in compliance with the procedures herein prescribed. For the purposes of this subsection the individual designated by the remaining four members of the State Board shall possess the same authority conferred upon the chairman pursuant to G.S. 163-23.

(c) Compensation of Directors of Elections. — Compensation paid to directors of elections in all counties maintaining full-time registration (five days per week) shall be in the form of a salary in an amount recommended by the county board of elections and approved by the Board of County Commissioners and shall be commensurate with the salary paid to directors in counties similarly situated and similar in population and number of registered voters.

Beginning July 1, 1991, in any county operating under modified registration PLAN A, B, C, or D, the Board of County Commissioners shall compensate the director of elections at a minimum rate of eight dollars (\$8.00) per hour for hours worked in attendance to his or her duties as prescribed by law, including rules and regulations adopted by the State Board of Elections. In addition, the county shall pay to the director an hourly wage of at least eight dollars (\$8.00) per hour for all hours worked in excess of those prescribed in rules and regulations adopted by the State Board of Elections, when such additional hours have been approved by the county board of elections and such approval has been recorded in the official minutes of the county board of elections.

In addition to the compensation provided for herein, the director 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 director of elections when authorized leave is taken.

(d) Duties. — The director 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, the director 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 director 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 director 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 director 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; 1983, c. 697; 1985, c. 763; 1991, c. 338, s. 2; 1993 (Reg. Sess., 1994), c. 762, s. 16; 1995, c. 243, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all

primaries and elections occurring on or after that date, deleted the second sentence of the first paragraph of subsection (d), which read: "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."

The 1995 amendment, effective January 1, 1996, substituted "director of elections" for "supervisor of elections" in the catchline and throughout the section.

CASE NOTES

As to determination of compensation under subsection (c) of this section as it read prior to the 1977 amendments

to this section, see *Goodman v. Wilkes County Bd. of Comm'rs*, 37 N.C. App. 226, 245 S.E.2d 590 (1978).

§ 163-36. Modified full-time offices.

The State Board of Elections shall promulgate rules permitting counties that have fewer than 14,001 registered voters to operate a modified full-time elections office to the extent that the operation of a full-time office is not necessary. Nothing in this section shall preclude any county from keeping an elections office open at hours consistent with the hours observed by other county offices. (1993 (Reg. Sess., 1994), c. 762, s. 6.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73, made this section effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, and provided, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

§§ 163-37 through 163-40: Reserved for future codification purposes.

ARTICLE 5.

Precinct Election Officials.

§ 163-41. Precinct chief judges and judges of election; appointment; terms of office; qualifications; vacancies; oaths of office.

(a) Appointment of Chief Judge and Judges. — At the meeting required by G.S. 163-31 to be held on the Tuesday following the third Monday in August of the year in which they are appointed, the county board of elections shall appoint one person to act as chief judge 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 chief judge.

The term "precinct official" shall mean chief judges 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 two 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 chief judge 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. Provided that if only one name is submitted by the fifth day preceding the date on which appointments are to be made, by a party for judge of election by the chairman of one of the two political parties in the county having the greatest numbers of registered voters in the State, the county board of elections must appoint that person.

If, at any time other than on the day of a primary or election, a chief judge 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. If at all possible, the chairman of the county board of elections shall consult with the county chairman of the political party of the vacating official, and if the chairman of the county political party nominates a qualified voter of that precinct to fill the vacancy, the chairman of the county board of elections shall appoint that person. 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 the chairman of the county board of elections did not appoint a person upon recommendation of the chairman of the party to fill such a vacancy, then the term of office of the person appointed to fill the vacancy shall expire upon the conclusion of the next canvass held by the county board of elections under this Chapter, and any successor must be a person nominated by the chairman of the party of the vacating officer.

If any person appointed chief judge 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 chief judge until such time as the chairman of the county board of elections shall appoint to fill the vacancy. If such appointment by the chairman of the county board of elections is not a person nominated by the county chairman of the political party of the vacating officer, then the term of office of the person appointed to fill the vacancy shall expire upon the conclusion of the next canvass held by the county board of elections under this Chapter. 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 chief judge 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.

As soon as practicable, following their training as prescribed in G.S. 163-82.24, each chief judge and judge of election 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 chief judge of (judge of election in) 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."

Notwithstanding the previous paragraph, a person appointed chief judge by the judges of election under this section, or appointed judge of election by the chief judge under this section may take the oath of office immediately upon appointment.

Before the opening of the polls on the morning of the primary or election, the chief judge shall administer the oath set out in the preceding paragraph to each assistant, and any judge of election not previously sworn, substituting for the words "chief judge of" the words "assistant in" or "judge of election in" whichever is appropriate.

(b) **Special Registration Commissioners Abolished; Optional Training.** — The office of special registration commissioner is abolished. The State Board of Elections and county boards of elections may provide training to persons assisting in voter registration.

(b1) Repealed by Session Laws 1985, c. 387, s. 1.1.

(c) **Publication of Names of Precinct Officials.** — Immediately after appointing chief judges and judges 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. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. (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; 1983, c. 617, s. 5; 1985, c. 387; c. 563, ss. 9, 10; c. 600, s. 7.1; c. 759, ss. 7, 7.1, 8; 1987, c. 80; c. 491, s. 4.1; 1987 (Reg. Sess., 1988), c. 1028, s. 12; 1989, c. 93, s. 2; 1993 (Reg. Sess., 1994), c. 762, s. 3.)

Local Modification to Former § 163-15. — Durham: 1937, c. 299.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecu-

tions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective

January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judges" for "registrars" and deleted "special registration commissioners" following "judges of election" in the section catchline; substituted "chief judge" for "registrar" and "judge of election" for "judge of elections" throughout the section; substituted "G.S. 163-82.24" for "G.S. 163-80(d)" in the ninth paragraph of

subsection (a); rewrote subsection (b), which provided for the appointment of special registration commissioners; and, in subsection (c), substituted "chief judges and judges" for "registrars, judges, and special registration commissioners" in the first sentence.

Legal Periodicals. — For article on "Racial Gerrymandering and the Voting Rights Act in North Carolina," see 9 Campbell L. Rev. 255 (1987).

CASE NOTES

The board of elections had no authority to appoint two registrars (now chief judges) 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 (now chief judge) for one day under former § 163-17 resided in the area in

which the special 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 of Burlington*, 249 N.C. 569, 107 S.E.2d 147 (1959).

Cited in *United States v. McLean*, 808 F.2d 1044 (4th Cir. 1987).

OPINIONS OF ATTORNEY GENERAL

Special Registration Commissioners. — Under Session Laws 1985, c. 387, each county is required to appoint at least one special registration commissioner per 2,500 residents from each political party (Democrat and Republican). However, no county is required to appoint more than 100 special registration commissioners from each political party, and each county must appoint at least five from each party. See opinion of At-

torney General to Mr. Alex K. Brock, Executive Secretary-Director, State Board of Elections, 55 N.C.A.G. 5 (1985).

County election boards may appoint special registration commissioners in numbers exceeding statutory requirements. See opinion of Attorney General to Mr. Alex K. Brock, Executive Secretary-Director, State Board of Elections, 55 N.C.A.G. 5 (1985).

§ 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 chief judge 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 no later than the thirtieth day prior to the primary or election, 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 chief judge of the precinct for which the assistant is appointed. Assistants serve for the particular primary or election for which they are appointed, unless the county board of elections appoints them for a term to expire on the date appointments are to be made pursuant to G.S. 163-41. (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; 1983, c. 617, s. 4; 1985, c. 563, ss. 8, 8.1; 1993 (Reg. Sess., 1994), c. 762, s. 17.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that

would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" in the first sentence of the first and third paragraphs.

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 chief judges 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 chief judge, specifying the number of ballot counters to be appointed for each precinct. A ballot counter must be a resident of that 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 chief judge 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 chief judge:

"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 chief judge, shall be reported by the chief judge 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; 1985, c. 563, s. 10.1; 1993 (Reg. Sess., 1994), c. 762, s. 18.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions

of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judges" for "registrars" in the first sentence of the first paragraph, and substituted "chief judge" for "registrar" in the second sentence of the third paragraph, twice in the sixth paragraph, and twice in the sentence following the oath.

§ 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 chief judge 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 chief judge for each affected precinct. He shall retain the other copy. The chairman, or the chief judge 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 chief judge 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 chief judge and judges of elections shall permit him to make such observation and take such notes as he may desire.

Whether or not the observer attends to the polls for the requisite time provided by this section, each observer shall be entitled to obtain at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart, a list of the persons who have voted in the precinct so far in that election day. Counties that use an "authorization to vote document" instead of poll books may comply with the requirement in the previous sentence by permitting each observer to inspect election records so that the observer may create a list of persons who have voted in the precinct so far that election day; each observer shall be entitled to make the inspection at times specified

by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart. (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; 1991, c. 727, s. 3; 1993 (Reg. Sess., 1994), c. 762, s. 19.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that

would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" four times in the second paragraph and once in the third paragraph.

§ 163-46. Compensation of precinct officials and assistants.

The precinct chief judge 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.

Chief judges 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.

The chairman of the county board of elections, along with the director of elections, shall conduct an instructional meeting prior to each primary and general election which shall be attended by each chief judge 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 chief judges, 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 chief judge, or judge of election when a previously appointed chief judge 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 chief judge 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; 1993 (Reg. Sess., 1994), c. 762, s. 20; 1995, c. 243, s. 1.)

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.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecu-

tions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" and "chief judges" for "registrars" throughout the section, inserted "dollars" following "fifteen" in the second paragraph, and deleted "or for attending the polling place for the purpose of registering voters upon instruction from the chairman of the county board of elections" at the end of the second paragraph.

The 1995 amendment, effective January 1, 1996, substituted "director of elections" for "supervisor of elections" near the beginning of the third paragraph.

§ 163-47. Powers and duties of chief judges and judges of election.

(a) The chief judges 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 chief judge 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) On the day of an election or primary, the chief judge shall have charge of the registration list for the purpose of passing on the registration of persons who present themselves at the polls to vote.

(c) The chief judge and judges shall hear challenges of the right of registered voters to vote as provided by law.

(d) The chief judge and judges shall count the votes cast in their precincts and make such returns of the same as is provided by law.

(e) The chief judge 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 chief judge and judges of election shall act by a majority vote on all matters not assigned specifically by law to the chief judge 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; 1993 (Reg. Sess., 1994), c. 762, s. 4.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person

who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or

after that date, substituted "chief judges" for "registrars" in the section catchline and in the first sentence of subsection (a); substituted "chief judge" for "registrar" in the second sentence of subsection (a), in subsection (b), and twice in subsection (f), and substituted "chief judge" for "registrars" in subsections (c), (d), and (e); and, in subsection (b), deleted the former first two sentences, relating to duties of the registrar, and substituted "list" for "book" in the remaining sentence.

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 chief judge 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 chief judge 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, 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 chief judge 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; 1993 (Reg. Sess., 1994), c. 762, s. 21.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief

judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any

section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all

primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" in the first sentence of the first paragraph and the first and last sentences of the second paragraph, and deleted "constables" following "sheriff" in the third sentence of the second paragraph.

§§ 163-49 through 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 U.S. Const., Amend. XIV 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), *aff'd*, 411 U.S. 961, 93 S. Ct. 2151, 36 L. Ed. 2d 681 (1973).

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 U.S. Const., Amend. XIV. *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. 578, 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 (1876).

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 (1876); *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).

Cited in *Broughton v. North Carolina*, 717 F.2d 147 (4th Cir. 1983); *United States v. McLean*, 904 F.2d 216 (4th Cir. 1990).

§ 163-56: Repealed by Session Laws 1973, c. 793, s. 19.

§ 163-57. Residence defined for registration and voting.

All election officials 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.

- (11) So long as a student intends to make his home in the community where he is physically present for the purpose of attending school while he is attending school and has no intent to return to his former home after graduation, he may claim the college community as his domicile. He need not also intend to stay in the college community beyond graduation in order to establish his domicile there. This subdivision is intended to codify the case law. (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; 1991, c. 727, s. 5.1; 1993 (Reg. Sess., 1994), c. 762, s. 22.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those

prosecutions or sentences."

Session Laws 1991, c. 727, s. 5.1, added subdivision (11), effective with respect to elections occurring on or after January 1, 1992.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "election officials" for "registrars and judges" in the undesignated introductory language.

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 Judi-

cial 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 circum-

stances 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, rehearing denied, 229 N.C. 797, 48 S.E.2d 37 (1948).

Domicile Not Properly Established. — Board of Elections erred in determining that defendant was a qualified candidate in an election because he was not legally registered to vote in the ward as he had not properly established domicile. *Farnsworth v. Jones*, 114 N.C. App. 182, 441 S.E.2d 597 (1994).

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 resi-

dent 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 students' 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 (now chief judge) 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 (now chief judge) 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 classifications 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 (now chief judges) 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 (now chief judges) 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: Repealed by Session Laws 1985, c. 563, s. 3.

§ 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.

Notwithstanding the previous paragraph, any unaffiliated voter who is authorized under G.S. 163-116 may also vote in the primary if the voter is otherwise eligible to vote in that primary except for subdivisions (2) and (3) of the previous paragraph.

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 last day for making application to register under G.S. 163-82.6(c) prior to the primary. In addition, persons who will become qualified by age to register and vote in the general election or regular municipal election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections. (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; 1983, c. 324, s. 3; 1987, c. 408, s. 4; c. 457, s. 1; 1991 (Reg. Sess., 1992), c. 1032, s. 5; 1993 (Reg. Sess., 1994), c. 762, s. 23.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1991 (Reg. Sess., 1992), c. 1032, s. 5, made amendments to this section effective with respect to elections occurring on or after July 1, 1993.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all

primaries and elections occurring on or after that date, substituted "G.S. 163-116" for "G.S. 163-74(a1)" in the second paragraph and "G.S. 163-82.6(c)" for "G.S. 163-67" in the second sentence of the third paragraph.

Cross References. — 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.

Legal Periodicals. — For note, "North Carolina General Assembly Amends Election Laws to Allow Unaffiliated Voters to Vote in Party Primaries," see 66 N.C.L. Rev. 1208 (1988).

CASE NOTES

Cited in *Hooks v. Eure*, 423 F. Supp. 55 (W.D.N.C. 1976).

OPINIONS OF ATTORNEY GENERAL

Elected member of town council who ceases to reside in town may not continue to serve on town council. See opinion of Attorney General to Mr. John C. Wessell, III, Town Attorney, Surf City (Pender County), 58 N.C.A.G. 28 (1988).

Section 160A-63 Provides for Filling Vacancy Created by Official's Departure. — Upon arriving at a determi-

nation that an elected town official has removed his residence to another electoral jurisdiction, a town council, pursuant to the provisions of § 160A-63, may fill the vacancy created by the official's departure. See opinion of Attorney General to Mr. John C. Wessell, III, Town Attorney, Surf City (Pender County), 58 N.C.A.G. 28 (1988).

§§ 163-60 through 163-64: Reserved for future codification purposes.

ARTICLE 7.

Registration of Voters.

§§ 163-65 through 163-82: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 1, effective January 1, 1995.

Editor's Note. — As of the date of printing, the Revisor of Statutes has been informed that preclearance has not been received for the repeal of some or all of former G.S. 163-69, 163-69.2, and 163-67(d). Please consult the *North Carolina Register* or the appropriate agency as described in Article 6A.1 of Chapter 120 of the General Statutes.

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those

prosecutions or sentences."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 72, effective July 16, 1994, provides for circumstances under which a voter registration application is valid if, before January 1, 1995, the applicant submits the form by mail or in person.

Former § 163-66.1 had previously been repealed by Session Laws 1989 (Reg. Sess., 1990), c. 1066, s. 30; former § 163-67.1 had previously been repealed by Session Laws 1973, c. 859, s. 2; former § 163-68 had previously been repealed by Session Laws 1973, c. 793, s. 24; and former § 163-73 had previously been repealed by Session Laws 1973, c. 793, s. 29.

ARTICLE 7A.

Registration of Voters.

§ 163-82.1. General principles of voter registration.

(a) **Prerequisite to Voting.** — No person shall be permitted to vote who has not been registered under the provisions of this Article or registered as previously provided by law.

(b) **County Board's Duty to Register.** — A county board of elections shall register, in accordance with this Article, every person qualified to vote in that county who makes an application in accordance with this Article.

(c) **Permanent Registration.** — Every person registered to vote by a county board of elections in accordance with this Article shall remain registered until:

- (1) The registrant requests in writing to the county board of elections to be removed from the list of registered voters; or
- (2) The registrant becomes disqualified through death, conviction of a felony, or removal out of the county; or
- (3) The county board of elections determines, through the procedure outlined in G.S. 163-82.14, that it can no longer confirm where the voter resides. (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; 1985, c. 211, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 762, s. 2.)

Editor's Note. — As of the date of printing, the Revisor of Statutes has been informed that preclearance has not been received for some or all of G.S. 163-82.14. Please consult the *North Carolina Register* or the appropriate agency as described in Article 6A.1 of Chapter 120 of the General Statutes.

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73, made this Article effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date. Section 73 also provided in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences. G.S. 163-82.20(a)(3) and G.S. 163-82.20(c) as enacted in Section 2 of this act expire January 1, 1996."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 16.1 provided that the State Budget Officer conduct a workload analysis of the Employment Security Commission's expected and actual voter registration activity related to compliance with Article 7A of Chapter 163 of the General Statutes, as enacted by Session Laws 1993, c. 762, or compliance with P.L. 103-31. Session Laws 1995, c. 507, s.

25.10(d) extended s. 16.1(b) of c. 769 of the 1993 Session Laws through December 31, 1995.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994) c. 769, s. 16.1 provided that the State Budget Officer conduct a workload analysis of the Employment Security Commission's expected and actual voter registration activity related to compliance with Article 7A of Chapter 163 of the General Statutes, as enacted by Session Laws 1993, c. 762, or compliance with P.L. 103-31. Session Laws 1995, c. 507, s. 25.10(d) extended s. 16.1(b) of c. 769 of the 1993 Session Laws through December 31, 1995.

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

CASE NOTES

Editor's Note. — *The cases cited below were decided under former § 163-72 and prior law.*

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), overruled on other grounds, *State ex rel. Quinn v. Lattimore*, 120 N.C. 426, 26 S.E. 640 (1897).

But a vote received and deposited by the judges of election is presumed to be a legal vote, although the voter may not have complied with the requirements of the registration law; and it then devolves upon the party contesting to show that it was an illegal vote and this cannot be shown by showing that the registration law had not been complied with. *State ex rel. Quinn v. Lattimore*, 120 N.C. 426, 26 S.E. 640 (1897).

Requirements of the registration act are mandatory. *Harris v. Scarborough*, 110 N.C. 232, 14 S.E. 737 (1892), overruled on other grounds, *State*

ex rel. Quinn v. Lattimore, 120 N.C. 426, 26 S.E. 640 (1897).

But Right to Register Differs from Right to Reject a Vote. — But, while a party offering to vote without registration may be refused for not complying with the registration law, if the party is allowed to vote and his vote is received and deposited, the vote will not afterwards be held to be illegal if he is otherwise qualified to vote. State ex rel. Quinn v. Lattimore, 120 N.C. 426, 26 S.E. 640 (1897).

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. Rutherford Ry. Constr. Co., 96 N.C. 514, 2 S.E. 351 (1887). See also, Perry v. Whitaker, 17 N.C. 475 (1874); People ex rel. Van 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 (now chief judge's) appoint-

ment, etc. State ex rel. DeBerry v. Nicholson, 102 N.C. 465, 9 S.E. 545 (1889).

Registration by One Other Than Registrar. — The fact that a qualified voter was registered by a third person, with whom the registrar (now chief judge) had left the books, does not disqualify him to vote, where such registration has been accepted as sufficient by the registrar. State ex rel. Quinn v. Lattimore, 120 N.C. 426, 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).

§ 163-82.2. Chief State Election Official.

The Executive Secretary-Director of the State Board of Elections is the "Chief State Election Official" of North Carolina for purposes of P.L. 103-31, The National Voter Registration Act of 1993, subsequently referred to in this Article as the "National Voter Registration Act". As such the Executive Secretary-Director is responsible for coordination of State responsibilities under the National Voter Registration Act. (1993 (Reg. Sess., 1994), c. 762, s. 2.)

§ 163-82.3. Voter registration application forms.

(a) Form Developed by State Board of Elections. — The State Board of Elections shall develop an application form for voter registration. Any person may use the form to apply to do any of the following:

- (1) Register to vote;
- (2) Change party affiliation or unaffiliated status;
- (3) Report a change of address within a county;
- (4) Report a change of name.

The county board of elections for the county where the applicant resides shall accept the form as application for any of those purposes if the form is submitted as set out in G.S. 163-82.3.

(b) Interstate Form. — The county board of elections where an applicant resides shall accept as application for any of the purposes set out in subsection (a) of this section the interstate registration

form designed by the Federal Election Commission pursuant to section 9 of the National Voter Registration Act, if the interstate form is submitted in accordance with G.S. 163-82.6.

(c) Agency Application Form. — The county board of elections where an applicant resides shall accept as application for any of the purposes set out in subsection (a) of this section a form developed pursuant to G.S. 163-82.19 or G.S. 163-82.20. (1991 (Reg. Sess., 1992), c. 1044, s. 18(a); 1993, c. 74, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2.)

§ 163-82.4. Contents of application form.

(a) Information Requested of Applicant. — The form required by G.S. 163-82.3(a) shall request the applicant's:

- (1) Name,
- (2) Date of birth,
- (3) Residence address,
- (4) County of residence,
- (5) Date of application,
- (6) Gender,
- (7) Race,
- (8) Political party affiliation, if any, in accordance with subsection (c) of this section,
- (9) Telephone number (to assist the county board of elections in contacting the voter if needed in processing the application),

and any other information the State Board finds is necessary to enable officials of the county where the person resides to satisfactorily process the application. The form shall require the applicant to state whether currently registered to vote anywhere, and at what address, so that any prior registration can be cancelled. The county board shall make a diligent effort to complete for the registration records any information requested on the form that the applicant does not complete, but no application shall be denied because an applicant does not state race, gender, or telephone number. The application shall conspicuously state that provision of the applicant's telephone number is optional. If the county board maintains voter records on computer, the free list provided under this subsection shall include telephone numbers if the county board enters the telephone number into its computer records of voters.

(b) Notice of Requirements, Attestation, Notice of Penalty, and Notice of Confidentiality. — The form required by G.S. 163-82.3(a) shall contain, in uniform type, the following:

- (1) A statement that specifies each eligibility requirement (including citizenship) and an attestation that the applicant meets each such requirement, with a requirement for the signature of the applicant, under penalty of a Class I felony under G.S. 163-275(a).
- (2) A statement that, if the applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.
- (3) A statement that, if the applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(c) **Party Affiliation or Unaffiliated Status.** — The application form described in G.S. 163-82.3(a) shall provide a place for the applicant to state a preference to be affiliated with one of the political parties in G.S. 163-96, or a preference to be an “unaffiliated” voter. Every person who applies to register shall state his preference. If the applicant fails to declare a preference for a party or for unaffiliated status, that person shall be listed as “unaffiliated”, except that if the person is already registered to vote in the county and that person’s registration already contains a party affiliation, the county board shall not change the registrant’s status to “unaffiliated” unless the registrant clearly indicates a desire in accordance with G.S. 163-82.17 for such a change. An unaffiliated registrant shall not be eligible to vote in any political party primary, except as provided in G.S. 163-116, but may vote in any other primary or general election. The application form shall so state. (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; 1991 (Reg. Sess., 1992), c. 1044, s. 18(a); 1993, c. 74, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2.)

§ 163-82.5. Distribution of application forms.

The State Board of Elections shall make the forms described in G.S. 163-82.3 available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration drives. (1991 (Reg. Sess., 1992), c. 1044, s. 18(a); 1993, c. 74, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2.)

§ 163-82.6. Acceptance of application forms.

(a) **How the Form May Be Submitted.** — The county board of elections shall accept any form described in G.S. 163-82.3 if the applicant submits the form by mail or in person. The applicant may delegate the submission of the form to another person.

(b) **Signature.** — The form shall be valid only if signed by the applicant.

(c) **Registration Deadlines for an Election.** — In order to be valid for an election, the form:

(1) If submitted by mail, must be postmarked at least 25 days before the election, except that any mailed application on which the postmark is missing or unclear is validly submitted if received in the mail not later than 20 days before the election,

(2) If submitted in person (by the applicant or another person), must be received by the county board of elections by 5:00 p.m. on the twenty-fifth day before the election,

except as provided in subsection (d) of this section.

(d) **Instances When Person May Register and Vote on Election Day.** — If a person has become qualified to register and vote between the twenty-fifth day before an election and election day, then that person may apply to register on election day by submitting an application form described in G.S. 163-82.3(a) or (b) to:

(1) A member of the county board of elections;

- (2) The county director of elections; or
- (3) The chief judge or a judge of the precinct in which the person is eligible to vote,

and, if the application is approved, that person may vote the same day. The official in subdivisions (1) through (3) of this subsection to whom the application is submitted shall decide whether the applicant is eligible to vote. The applicant shall present to the official written or documentary evidence that the applicant is the person he represents himself to be. The official, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to that official as to the applicant's qualifications. If the official determines that the person is eligible, the person shall be permitted to vote in the election and the county board shall add the person's name to the list of registered voters. If the official denies the application, the person shall be permitted to vote a challenged ballot under the provisions of G.S. 163-88.1, and may appeal the denial to the full county board of elections. The State Board of Elections shall promulgate rules for the county boards of elections to follow in hearing appeals for denial of election-day applications to register. No person 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. For purposes of this subsection, persons who "become qualified to register and vote" during a time period:

- (1) Include those who during that time period are naturalized as citizens of the United States or who are restored to citizenship after a conviction of a felony; but
- (2) Do not include persons who reach the age of 18 during that time period, if those persons were eligible to register while 17 years old during an earlier period. (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; 1983, c. 553; 1985, c. 260, s. 1; 1991, c. 363, s. 1; 1991 (Reg. Sess., 1992), c. 1032, s. 1; 1991 (Reg. Sess., 1992), c. 1044, s. 18(a); 1993, c. 74, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1995, c. 243, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 72, effective July 16, 1994, provides for circumstances under which a voter registration application is valid if, before January 1, 1995, the applicant submits the form by mail or in person.

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, substituted "director of elections" for "supervisor of elections" in subdivision (d)(2).

CASE NOTES

Editor's Note. — *The cases cited below were decided under former § 163-67 and prior law.*

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 statutory 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).

§ 163-82.7. Verification of qualifications and address of applicant; denial or approval of application.

(a) Tentative Determination of Qualification. — When a county board of elections receives an application for registration submitted pursuant to G.S. 163-82.6, the board either:

- (1) Shall make a determination that the applicant is not qualified to vote at the address given, or
- (2) Shall make a tentative determination that the applicant is qualified to vote at the address given, subject to the mail verification notice procedure outlined in subsection (c) of this section

within a reasonable time after receiving the application.

(b) Denial of Registration. — If the county board of elections makes a determination pursuant to subsection (a) of this section that the applicant is not qualified to vote at the address given, the board shall send, by certified mail, a notice of denial of registration. The notice of denial shall contain the date on which registration was denied, and shall be mailed within two business days after denial. The notice of denial shall inform the applicant of alternatives that the applicant may pursue to exercise the franchise. If the applicant disagrees with the denial, the applicant may appeal the decision under G.S. 163-82.18.

(c) Verification of Address by Mail. — If the county board of elections tentatively determines that the applicant is qualified to vote at the address given, then the county board shall send a notice to the applicant, by nonforwardable mail, at the address the applicant provides on the application form. The notice shall state that the county will register the applicant to vote if the Postal Service does not return the notice as undeliverable to the county board. The notice shall also inform the applicant of the precinct and voting place to which the applicant will be assigned if registered.

(d) **Approval of Application.** — If the Postal Service does not return the notice as undeliverable, the county board shall register the applicant to vote.

(e) **Second Notice if First Notice Is Returned as Undeliverable.** — If the Postal Service returns the notice as undeliverable, the county board shall send a second notice by nonforwardable mail to the same address to which the first was sent. If the second notice is not returned as undeliverable, the county board shall register the applicant to vote.

(f) **Denial of Application Based on Lack of Verification of Address.** — If the Postal Service returns as undeliverable the notice sent by nonforwardable mail pursuant to subsection (e) of this section, the county board shall deny the application. The county board need not try to notify the applicant further.

(g) **Voting When Verification Process Is Incomplete.** — In cases where an election occurs before the process of verification outlined in this section has had time to be completed, the county board of elections shall be guided by the following rules:

(1) If the county board has made a tentative determination that an applicant is qualified to vote under subsection (a) of this section, then that person shall not be denied the right to vote in person in an election unless the Postal Service has returned as undeliverable two notices to the applicant: one mailed pursuant to subsection (c) of this section and one mailed pursuant to subsection (e) of this section. This subdivision does not preclude a challenge to the voter's qualifications under Article 8 of this Chapter.

(2) If the Postal Service has returned as undeliverable a notice sent within 25 days before the election to the applicant under subsection (c) of this section, then the applicant may vote only in person in that first election and may not vote by mailed absentee ballot. The county board of elections shall establish a procedure at the voting site for:

- a. Obtaining the correct address of any person described in this subdivision who appears to vote in person; and
- b. Assuring that the person votes in the proper place and in the proper contests.

If a notice mailed under subsection (c) or subsection (e) of this section is returned as undeliverable after a person has already voted by absentee ballot, then that person's ballot may be challenged in accordance with G.S. 163-89.

(3) If a notice sent pursuant to subsection (c) or (e) of this section is returned by the Postal Service as undeliverable after a person has already voted in an election, then the county board shall treat the person as a registered voter but shall send a confirmation mailing pursuant to G.S. 163-82.14(d)(2) and remove or retain the person on the registration records in accordance with that subdivision. (1991 (Reg. Sess., 1992), c. 1044, s. 18(a); 1993, c. 74, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2.)

CASE NOTES

Editor's Note. — *The cases cited below were decided under former § 163-72 and prior law.*

Inquiry as to Qualifications of Voters. — Registrars (now chief judges) 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), overruled on other grounds, *State ex rel. Quinn v. Lattimore*, 120 N.C. 426, 26 S.E. 638 (1897).

§ 163-82.8. Voter registration cards.

(a) **Authority to Issue Card.** — With the approval of the board of county commissioners, the county board of elections may issue to each voter in the county a voter registration card, or may issue cards to all voters registered after January 1, 1995.

(b) **Content and Format of Card.** — At a minimum, the voter registration card shall:

- (1) List the voter's name, address, and voting place;
- (2) Contain the address and telephone number of the county board of elections, along with blanks to report a change of address within the county, change of name, and change of party affiliation; and
- (3) Be wallet size.

No voter registration card may be issued by a county board of elections unless the State Board of Elections has approved the format of the card.

(c) **Ways County Board and Registrant May Use Card.** — If the county board of elections issues voter registration cards, the county board may use that card as a notice of tentative approval of the voter's application pursuant to G.S. 163-82.7(c), provided that the mailing contains the statements and information required in that subsection. The county board may also satisfy the requirements of G.S. 163-82.15(b), 163-82.16(b), or 163-82.17(b) by sending the registrant a replacement of the voter registration card to verify change of address, change of name, or change of party affiliation. A registrant may use the card to report a change of address, change of name, or change of party affiliation, satisfying G.S. 163-82.15, 163-82.16, or 163-82.17.

(d) **Card as Evidence of Registration.** — A voter registration card shall be evidence of registration but shall not preclude a challenge as permitted by law.

(e) **Display of Card May Not Be Required to Vote.** — No county board of elections may require that a voter registration card be displayed in order to vote. (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; 1983, c. 553; 1985, c. 260, s. 1; 1991, c. 363, s. 1; 1991 (Reg. Sess., 1992), c. 1032, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2.)

§ 163-82.9. Cancellation of prior registration.

If an applicant indicates on an application form described in G.S. 163-82.3 a current registration to vote in any other county, municipality, or state, the county board of elections, upon registering the person to vote, shall send a notice to the appropriate officials in the other county, municipality, or state and shall ask them to cancel the person's voter registration there. (1973, c. 793, s. 28; c. 1223, s. 4; 1977, c. 265, s. 3; 1983, c. 411, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1995, c. 509, s. 115.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, twice substituted "state" for "State".

§ 163-82.10. Official record of voter registration.

(a) **Application Form Becomes Official Record.** — A completed and signed registration application form described in G.S. 163-82.3, once approved by the county board of elections, becomes the official registration record of the voter. The county board of elections shall maintain custody of the official registration records of all voters in the county and shall keep them in a place where they are secure.

(b) **Access to Registration Records.** — Upon request by that person, the county board of elections shall provide to any person a list of the registered voters of the county or of any precinct or precincts in the county. The county board may furnish selective lists according to party affiliation, gender, race, date of registration, or any other reasonable category. The county board shall require each person to whom a list is furnished to reimburse the board for the actual cost incurred in preparing it, except as provided in subsection (c) of this section.

(c) **Free Lists.** — Free lists of all registered voters in the county shall be provided in the following cases:

- (1) A county board that maintains voter records on computer shall provide, upon written request, one free list to:
 - a. The State chair of each political party; and
 - b. The county chair of each political party
 once in every odd-numbered year, once during the first six calendar months of every even-numbered year, and once during the latter six calendar months of every even-numbered year.
- (2) A county board that does not maintain voter records on computer shall provide one free paper list every two years to the county chair of each political party.

Each free list shall include the name, address, gender, date of birth, race, political affiliation, voting history, and precinct of each registered voter. The free paper list to the county party chairs shall group voters by precinct. All free lists shall be provided as soon as practicable but no later than 30 days after written request. Each State party chair shall provide the discs or tapes received from the county boards to candidates of that party who request the discs or tapes in writing. Each State party chair shall return discs and tapes to the county boards within 30 days after receiving them. As used in this section, "political party" means a political party as defined in G.S. 163-96. (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; 1965, c. 1116, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 22, 25; 1975, c. 12; c. 395; 1979, 2nd Sess., c. 1242; 1981, c. 39, s. 1; c. 87, s. 1; c. 308, s. 1; c. 656; 1983, c. 218, ss. 1, 2; 1985, c. 211, ss. 1, 2; c. 472, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2.)

OPINIONS OF ATTORNEY GENERAL

Editor's Note. — *The opinions below were decided under former § 163-65.*

Loose-Leaf Registration Required in Municipality Where Local Act Contains No Provisions Regarding Registration. — See opinion of Attorney General to Mr. Herman Edwards, Murphy Twn 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).

§ 163-82.11. Establishment of statewide computerized voter registration.

The State Board of Elections shall develop and implement a statewide computerized voter registration system to facilitate voter registration and to provide a central database containing voter registration information for each county. The system shall encompass both software development and purchasing of the necessary hardware for the central and distributed-network systems.

The State Board of Elections shall develop and implement the system so that each county board of elections can:

- (1) Verify that an applicant to register in its county is not also registered in another county;
- (2) Be notified automatically that a registered voter in its county has registered to vote in another county; and
- (3) Receive automatically data about a person who has applied to vote at a drivers license office or at another public agency that is authorized to accept voter registration applications.

Each county board of elections shall be responsible for registering voters within its county according to law. Each county board of elections shall maintain its own computer file of registered voters in accordance with rules promulgated by the State Board of Elections. Each county board of elections shall transmit through the computer network all additions, deletions, and changes in its list of registered voters promptly to the statewide computer file. The State Board of Elections shall maintain a continually updated duplicate file of each county's registered voters. (1993 (Reg. Sess., 1994), c. 762, s. 2.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 16 provided that the State Board of Elections conduct a needs assessment and requirements analysis for computerized voter registration, and further provided that \$1,500,000 be deposited into a reserved fund for computerized voter registration.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have ef-

fects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and

cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 13.2, provides for the State Board of Elections to promulgate rules for a statewide computerized voter registration system; and s. 13.2(d) provides that s. 13 or actions taken under it prevail over G.S. 163-82.11 through G.S. 163-82.13 or Section 16 of Chapter 769 of the 1993 Session Laws, to the extent of any conflict, and

that, except to the extent of the conflict, Section 16 of Chapter 769 of the 1993 Session Laws remains in effect.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

§ 163-82.12. Promulgation of rules relating to computerized voter registration.

The State Board of Elections shall make all rules necessary to administer the statewide voter registration system established by this Article. These rules shall include provisions for:

- (1) Establishing, developing, and maintaining a computerized central voter registration file;
- (2) Linking the central file through a network with computerized voter registration files in each of the counties;
- (3) Interacting with the computerized drivers license records of the Division of Motor Vehicles and with the computerized records of other public agencies authorized to accept voter registration applications;
- (4) Protecting and securing the data; and
- (5) Converting current voter registration records in the counties in computer files that can be used on the statewide computerized registration system. (1993 (Reg. Sess., 1994), c. 762, s. 2.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 16 provided that the State Board of Elections conduct a needs assessment and requirements analysis for computerized voter registration, and further provided that \$1,500,000 be deposited into a reserved fund for computerized voter registration.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 16.1, provided that the State Budget Officer conduct a workload analysis of the Employment Security Commission's expected and actual voter registration activity related to compliance with Article 7A of Chapter 163 of the General Statutes, as enacted by Session Laws 1993, c. 762, or compliance with P.L. 103-31.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the

textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 13.2, provides for the State Board of Elections to promulgate rules for a statewide computerized voter registration system; and s. 13.2(d) provides that s. 13 or actions taken under it prevail over G.S. 163-82.11 through G.S. 163-82.13 or Section 16 of Chapter 769 of the 1993 Session Laws, to the extent of any conflict, and that, except to the extent of the conflict, Section 16 of Chapter 769 of the 1993 Session Laws remains in effect.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

§ 163-82.13. Access to statewide voter registration file.

(a) **Free Copy for Political Parties.** — Beginning January 1, 1996, the State Board of Elections shall make available free of charge, upon written request, one magnetic copy of the statewide computerized voter registration file to the chairman of each political party as defined in G.S. 163-96 as soon as practicable after the close of registration before every statewide primary and election. The file made available to the political party chairmen shall contain the name, address, gender, date of birth, race, voting history, political affiliation, and precinct of every registered voter in the State. If a county board enters telephone numbers into its computer lists of registered voters, then the free list provided under this subsection shall include telephone numbers.

(b) **Copies for Sale to Others.** — Beginning January 1, 1996, the State Board of Elections shall sell, upon written request, to other public and private organizations and persons magnetic copies of the statewide computerized voter registration file. The State Board of Elections may sell selective lists of registered voters according to county, congressional or legislative district, party affiliation, gender, date of birth, race, date of registration, or any other reasonable category, or a combination of categories. The State Board of Elections shall require all persons to whom any list is furnished under this subsection to reimburse the board for the actual cost incurred in preparing it. (1993 (Reg. Sess., 1994), c. 762, s. 2.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 16 provided that the State Board of Elections conduct a needs assessment and requirements analysis for computerized voter registration, and further provided that \$1,500,000 be deposited into a reserved fund for computerized voter registration.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 16.1 provided that the State Budget Officer conduct a workload analysis of the Employment Security Commission's expected and actual voter registration activity related to compliance with Article 7A of Chapter 163 of the General Statutes, as enacted by Session Laws 1993, c. 762, or compliance with P.L. 103-31.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994),

c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 13.2, provides for the State Board of Elections to promulgate rules for a statewide computerized voter registration system; and s. 13.2(d) provides that s. 13 or actions taken under it prevail over G.S. 163-82.11 through G.S. 163-82.13 or Section 16 of Chapter 769 of the 1993 Session Laws, to the extent of any conflict, and that, except to the extent of the conflict, Section 16 of Chapter 769 of the 1993 Session Laws remains in effect.

Session Laws 1995, c. 507, s. 28.9, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 fiscal biennium, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1995-97 biennium."

§ 163-82.14. List maintenance.

(a) **Uniform Program.** — The State Board of Elections shall adopt a uniform program that makes a reasonable effort:

- (1) To remove the names of ineligible voters from the official lists of eligible voters, and
- (2) To update the addresses and other necessary data of persons who remain on the official lists of eligible voters.

That program shall be nondiscriminatory and shall comply with the provisions of the Voting Rights Act of 1965, as amended, and with the provisions of the National Voter Registration Act. The State Board of Elections, in addition to the methods set forth in this section, may use other methods toward the ends set forth in subdivisions (1) and (2) of this subsection, including address-updating services provided by the Postal Service. Each county board of elections shall conduct systematic efforts to remove names from its list of registered voters in accordance with this section and with the program adopted by the State Board.

(b) **Death.** — The Department of Environment, Health, and Natural Resources, on or before the fifteenth day 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. The Department of Environment, Health, and Natural Resources shall base each list upon information supplied by death certifications it received during the preceding quarter. Upon the receipt of the certified list, the county board of elections shall remove from its voter registration records any person the list shows to be dead. The county board need not send any notice to the address of the person so removed.

(c) **Conviction of a Felony.** —

- (1) **Report of Conviction Within the State.** — The clerk of superior court, on or before the fifteenth day of March, June, September, and December of every year, shall report to the county board of elections of that county the name, county of residence, and residence address if available, of each individual against whom a final judgment of conviction of a felony has been entered in that county in the preceding calendar quarter. Any county board of elections receiving such a report about an individual who is a resident of another county in this State shall forward a copy of that report to the board of elections of that county as soon as possible.
- (2) **Report of Federal Conviction.** — The Executive Secretary-Director of the State Board of Elections, upon receipt of a notice of conviction sent by a United States Attorney pursuant to section 8(g) of the National Voter Registration Act, shall notify the appropriate county boards of elections of the conviction.
- (3) **County Board's Duty Upon Receiving Report of Conviction.** — When a county board of elections receives a notice pursuant to subdivision (1) or (2) of this subsection relating to a resident of that county and that person is registered to vote in that county, the board shall, after giving 30 days' written notice to the voter at his registration address, and if the voter makes no objection, remove the person's name from its registration records. If the voter notifies the county

board of elections of his objection to the removal within 30 days of the notice, the chairman of the board of elections shall enter a challenge under G.S. 163-85(c)(5), and the notice the county board received pursuant to this subsection shall be prima facie evidence for the preliminary hearing that the registrant was convicted of a felony.

(d) **Change of Address.** — A county board of elections shall conduct a systematic program to remove from its list of registered voters those who have moved out of the county, and to update the registration records of persons who have moved within the county. The county board shall remove a person from its list if the registrant:

- (1) Gives confirmation in writing of a change of address for voting purposes out of the county. "Confirmation in writing" for purposes of this subdivision shall include:
 - a. A report to the county board from the Department of Transportation or from a voter registration agency listed in G.S. 163-82.20 that the voter has reported a change of address for voting purposes outside the county;
 - b. A notice of cancellation received under G.S. 163-82.9; or
 - c. A notice of cancellation received from an election jurisdiction outside the State.
- (2) Fails to respond to a confirmation mailing sent by the county board in accordance with this subdivision and does not vote or appear to vote in an election beginning on the date of the notice and ending on the day after the date of the second general election for the United States House of Representatives that occurs after the date of the notice. A county board sends a confirmation notice in accordance with this subdivision if the notice:
 - a. Is a postage prepaid and preaddressed return card, sent by forwardable mail, on which the registrant may state current address;
 - b. Contains or is accompanied by a notice to the effect that if the registrant did not change residence but remained in the county, the registrant should return the card not later than the deadline for registration by mail in G.S. 163-82.6(c)(1); and
 - c. Contains or is accompanied by information as to how the registrant may continue to be eligible to vote if the registrant has moved outside the county.

A county board shall send a confirmation mailing in accordance with this subdivision if the registrant remains on the list, the registrant has not voted in two successive presidential elections or in any election in between, and the county board has not confirmed the registrant's address by another means. The county board may send a confirmation mailing in accordance with this subdivision if the registrant has been identified as residing outside the county through change-of-address information supplied by the Postal Service through its licensees. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1965, c. 1116, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 25, 28; c. 1223, s. 4; 1975, c. 395; 1977, c. 265, s. 3; 1981, c. 39, s. 1; c. 87, s. 1; c. 308, s. 1; 1983, c. 411, ss. 1, 2; 1985, c. 211, ss. 1, 2; 1987, c. 691, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2.)

§ 163-82.15. Change of address within the county.

(a) **Registrant's Duty to Report.** — No registered voter shall be required to re-register upon moving from one precinct to another within the same county. Instead, a registrant shall notify the county board of the change of address by the close of registration for an election as set out in G.S. 163-82.6(c). The registrant shall make the notification by means of a voter registration form as described in G.S. 163-82.3, or by another written notice, signed by the registrant, that includes the registrant's full name, former residence address, new residence address, and date of moving from the old to the new address.

(b) **Verification of New Address by Mail.** — When a county board of elections receives a notice that a registrant in that county has changed residence within the same county, the county board shall send a notice, by nonforwardable mail, to the registrant at the new address. The notice shall inform the registrant of any new precinct and voting place that will result from the change of address, and it shall state whether the registrant shall vote at the new voting place during the upcoming election or at a later election. If the Postal Service returns the county board's notice to the registrant as undeliverable, the county board shall either:

- (1) Send a second notice by nonforwardable mail to the new address and, if it is returned as undeliverable, send to the registrant's old address a confirmation notice as described in G.S. 163-82.14(d)(2); or
- (2) Send to the registrant's old address a confirmation notice as described in G.S. 163-82.14(d)(2) without first sending a second nonforwardable notice to the new address.

In either case, if the registrant does not respond to the confirmation notice as described in G.S. 163-82.14(d)(2), then the county board shall proceed with the removal of the registrant from the list of voters in accordance with G.S. 163-82.14(d).

(c) **Board's Duty to Make Change.** — If the county board confirms the registrant's new address in accordance with subsection (b) of this section, the county board shall as soon as practical change the record to reflect the new address.

(d) **Unreported Move Within the Same Precinct.** — A registrant who has moved from one address to another within the same precinct shall, notwithstanding failure to notify the county board of the change of address before an election, be permitted to vote at the voting place of that precinct upon oral or written affirmation by the registrant of the change of address before a precinct official at that voting place.

(e) **Unreported Move to Another Precinct Within the County.** — If a registrant has moved from an address in one precinct to an address in another precinct within the same county more than 30 days before an election and has failed to notify the county board of the change of address before the close of registration for that election, the county board shall permit that person to vote in that election. The county board shall permit the registrant described in this subsection to vote at the registrant's new precinct, upon the registrant's written affirmation of the new address, or, if the registrant prefers, at a central location in the county to be chosen by the county board. If the registrant appears at the old precinct, the precinct officials there shall send the registrant to the new precinct

or, if the registrant prefers, to the central location, according to rules which shall be prescribed by the State Board of Elections. At the new precinct, the registrant shall be processed by a precinct transfer assistant, according to rules which shall be prescribed by the State Board of Elections.

(f) When Registrant Disputes Registration Records. — If the registration records indicate that the registrant has moved outside the precinct, but the registrant denies having moved from the address within the precinct previously shown on the records, the registrant shall be permitted to vote at the voting place for the precinct where the registrant claims to reside, if the registrant gives oral or written affirmation before a precinct official at that voting place.

(g) Precinct Transfer Assistants. — The county board of elections shall either designate a board employee or appoint other persons to serve as precinct transfer assistants to receive the election-day transfers of the voters described in subsection (e) of this section. In addition, board members and employees may perform the duties of precinct transfer assistants. The State Board of Elections shall promulgate uniform rules to carry out the provisions of this section, and shall define in those rules the duties of the precinct transfer assistant. (1979, c. 135, s. 2; 1983, c. 392, s. 2; 1984, Ex. Sess., c. 3, ss. 1, 2; 1987, c. 549, s. 1; 1989, c. 427; 1991, c. 12, s. 1; 1991 (Reg. Sess., 1992), c. 1032, s. 3; 1993 (Reg. Sess., 1994), c. 762, s. 2.)

§ 163-82.16. Change of name.

(a) (Effective until July 1, 1996) Registrant's Duty to Report. — If the name of a registrant is changed in accordance with G.S. 48-36, G.S. 50-12, or Chapter 101 of the General Statutes, or if a married registrant assumes the last name of the registrant's spouse, the registrant shall not be required to re-register, but shall report the change of name to the county board not later than the last day for applying to register to vote for an election in G.S. 163-82.6. The registrant shall report the change on a form described in G.S. 163-82.3 or on a voter registration card described in G.S. 163-82.8 or in another written statement that is signed, contains the registrant's full names, old and new, and the registrant's current residence address.

(a) (Effective July 1, 1996) Registrant's Duty to Report. — If the name of a registrant is changed in accordance with G.S. 48-1-104, G.S. 50-12, or Chapter 101 of the General Statutes, or if a married registrant assumes the last name of the registrant's spouse, the registrant shall not be required to re-register, but shall report the change of name to the county board not later than the last day for applying to register to vote for an election in G.S. 163-82.6. The registrant shall report the change on a form described in G.S. 163-82.3 or on a voter registration card described in G.S. 163-82.8 or in another written statement that is signed, contains the registrant's full names, old and new, and the registrant's current residence address.

(b) Verification of New Name by Mail. — When a county board of elections receives a notice of name change from a registrant in that county, the county board shall send a notice, by nonforwardable mail, to the registrant's residence address. The notice shall state that the registrant's records will be changed to reflect the new name

if the registrant does not respond that the name change is incorrect. If the Postal Service returns the county board's notice to the registrant as undeliverable, the county board shall send to the registrant's residence address a confirmation notice as described in G.S. 163-82.14(d)(2).

If the registrant does not respond to the confirmation notice as described in G.S. 163-82.14(d)(2), then the county board shall proceed with the removal of the registrant from the list of voters in accordance with G.S. 163-82.14(d).

(c) **Board's Duty to Make Change.** — If the county board confirms the registrant's address in accordance with subsection (b) of this section and the registrant does not deny making the application for the name change, the county board shall as soon as practical change the record of the registrant's name to conform to that stated in the application.

(d) **Unreported Name Change.** — A registrant who has not reported a name change in accordance with subsection (a) of this section shall be permitted to vote if the registrant reports the name change to the chief judge at the voting place, or to the county board along with the voter's application for an absentee ballot. (1979, c. 480; 1981, c. 33, s. 3; 1989 (Reg. Sess., 1990), c. 991, s. 3; 1991 (Reg. Sess., 1992), c. 1032, s. 2; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1995, c. 457, s. 9.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective until July 1, 1996. The second version of subsection (a) set out above is effective July 1, 1996.

Editor's Note. — Session Laws 1995, c. 457, which amended this section, in s. 12 provides that any petition for adop-

tion filed prior to and still pending on July 1, 1996, shall be completed in accordance with the law in effect immediately prior to that date.

Effect of Amendments. — The 1995 amendment, effective July 1, 1996, substituted "G.S. 48-1-104" for "G.S. 48-36" in the first sentence of subsection (a).

§ 163-82.17. Change of party affiliation.

(a) **Registrant's Duty to Report.** — Any registrant who desires to have the record of his party affiliation or unaffiliated status changed on the registration list shall, no later than the last day for making application to register under G.S. 163-82.6 before the election, indicate the change on an application form as described in G.S. 163-82.3 or on a voter registration card described in G.S. 163-82.8. No registrant shall be permitted to change party affiliation or unaffiliated status for a primary, second primary, or special or general election after the deadline for registration applications for that election as set out in G.S. 163-82.6.

(b) **Verification of Affiliation Change by Mail.** — When a county board of elections receives a notice of change of party affiliation or unaffiliated status from a registrant in that county, the county board shall send a notice, by nonforwardable mail, to the registrant's residence address. The notice shall state that the registrant's records will be changed to reflect the change of status if the registrant does not respond by stating that he does not desire a change in status. The notice shall also inform the registrant of the time that the change of affiliation status will occur, and shall explain the provisions of subsection (d) of this section. If the Postal Service returns the county board's notice to the registrant as undeliverable, the county board shall send to the registrant's residence address a

confirmation notice as described in G.S. 163-82.14(d)(2). If the registrant does not respond to the confirmation notice as described in G.S. 163-82.14(d)(2), then the county board shall proceed with the removal of the registrant from the list of voters in accordance with G.S. 163-82.14(d).

(c) **Board's Duty to Make Change.** — If the county board confirms the registrant's address in accordance with subsection (b) of this section and the registrant does not deny making the application to change affiliated or unaffiliated status, the county board of elections shall as soon as practical change the record of the registrant's party affiliation, or unaffiliated status, to conform to that stated in the application. Thereafter the voter shall be considered registered and qualified to vote in accordance with the change, except as provided in subsection (d) of this section.

(d) **Deadline to Change Status Before Primary.** — If a registrant applies to change party affiliation or unaffiliated status later than the last day for applying to register under G.S. 163-82.6 before a primary, the registrant shall not be entitled to vote in the primary of a party in which the registrant's status on that last day did not entitle the registrant to vote.

(e) **Authority of County Board or Director to Make Correction.** — If at any time the chairman or director of elections of the county board of elections is satisfied that an error has been made in designating the party affiliation of any voter on the registration records, then the chairman or director of elections of the county board of elections shall make the necessary correction after receiving from the voter a sworn statement as to the error and the correct status. (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; 1983, c. 576, s. 4; 1987, c. 408, ss. 1, 6; 1989, c. 635, s. 2; 1991 (Reg. Sess., 1992), c. 1032, s. 4; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1995, c. 243, s. 1.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, substituted "director" for "supervisor" three times in subsection (e).

Legal Periodicals. — For note,

"North Carolina General Assembly Amends Election Laws to Allow Unaffiliated Voters to Vote in Party Primaries," see 66 N.C.L. Rev. 1208 (1988).

CASE NOTES

Editor's Note. — *The cases cited below were decided under former § 163-74 and prior law.*

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).

§ 163-82.18. Appeal from denial of registration.

(a) **Right to Appeal.** — Any applicant who receives notice of denial of registration pursuant to G.S. 163-82.7 may appeal the denial within five days after receipt of the notice of denial. The county board of elections shall promptly set a date for a public hearing. The notice of appeal shall be in writing and shall be signed by the appealing party, shall include the appealing party's name, date of birth, address, and reasons for the appeal.

(b) **Hearing 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.

(c) **Appeal 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 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 in that court.

If the decision of the court is 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, dd. 2-4; 1967, c. 775, s. 1; 1969, c. 44, s. 82; 1981, c. 542, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 762, s. 2.)

§ 163-82.19. Voter registration at drivers license offices.

The Division of Motor Vehicles shall, pursuant to the rules adopted by the State Board of Elections, modify its forms so that any eligible person who applies for original issuance, renewal or correction of a drivers license, or special identification card issued under G.S. 20-37.7 may, on a part of the form, complete an application to register to vote or to update his registration if the voter has changed his address or moved from one precinct to another or from one county to another. Any person who willfully and knowingly and with fraudulent intent gives false information on the application is guilty of a Class I felony. The application shall state in clear language the penalty for violation of this section. The necessary forms shall be prescribed by the State Board of Elections. The form must ask for the previous voter registration address of the voter, if any. If a previous address is listed, and it is not in the county of residence of the applicant, the appropriate county board of elections shall treat the application as an authorization to cancel the previous registration and also process it as such under the procedures of G.S. 163-82.9. If a previous address is listed and that address is in the county where the voter applies to register, the application shall be processed as if it had been submitted under G.S. 163-82.9.

Registration shall become effective as provided in G.S. 163-82.7. Applications to register to vote accepted at a drivers license office under this section until the deadline established in G.S. 163-82.6(c)(2) shall be treated as timely made for an election, and no person who completes an application at that drivers license office shall be denied the vote in that election for failure to apply earlier than that deadline.

All applications shall be forwarded by the Department of Transportation to the appropriate board of elections not later than five business days after the date of acceptance, according to rules which shall be promulgated by the State Board of Elections. (1983, c. 854, s. 1; 1991 (Reg. Sess., 1992), c. 1044, s. 19(a); 1993, c. 74, s. 2; 1993 (Reg. Sess., 1994), c. 762, s. 2.)

§ 163-82.20. Voter registration at other public agencies.

(a) Voter Registration Agencies. — Every office in this State which accepts:

- (1) Applications for a program of public assistance under Article 2 of Chapter 108A of the General Statutes or under Article 13 of Chapter 130A of the General Statutes;
- (2) Applications for State-funded State or local government programs primarily engaged in providing services to persons with disabilities, with such office designated by the State Board of Elections; or

§ 163-82.20(c) has a delayed expiration date. See notes.

(3) (**Expires July 1, 1996**) Claims for benefits under Chapter 96 of the General Statutes, the Employment Security Law, is designated as a voter registration agency for purposes of this section.

(b) Duties of Voter Registration Agencies. — A voter registration agency described in subsection (a) of this section shall, unless the applicant declines, in writing, to register to vote:

(1) Distribute with each application for service or assistance, and with each recertification, renewal, or change of address relating to such service or assistance:

a. The voter registration application form described in G.S. 163-82.3(a) or (b); or

b. The voter registration agency's own form, if it is substantially equivalent to the form described in G.S. 163-82.3(a) or (b) and has been approved by the State Board of Elections, provided that the agency's own form may be a detachable part of the agency's paper application or may be a paperless computer process, as long as the applicant is required to sign an attestation as part of the application to register.

(2) Provide a form that contains the elements required by section 7(a)(6)(B) of the National Voter Registration Act; and

(3) Provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the registration application as is provided by the office with regard to the completion of its own forms.

(c) (**Expires July 1, 1996**) Provided that voter registration agencies designated under subdivision (a)(3) of this section shall only be required to provide the services set out in this subsection to applicants for new claims, reopened claims, and changes of address under Chapter 96 of the General Statutes, the Employment Security Law.

(d) Home Registration for Disabled. — If a voter registration agency provides services to a person with disability at the person's home, the voter registration agency shall provide the services described in subsection (b) of this section at the person's home.

(e) Prohibitions. — Any person providing any service under subsection (b) of this section shall not:

(1) Seek to influence an applicant's political preference or party registration, except that this shall not be construed to prevent the notice provided by G.S. 163-82.4(c) to be given if the applicant refuses to declare his party affiliation;

(2) Display any such political preference or party allegiance;

(3) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(4) Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

(f) Confidentiality of Declination to Register. — No information relating to a declination to register to vote in connection with an

application made at a voter registration agency may be used for any purpose other than voter registration.

(g) **Transmittal From Agency to Board of Elections.** — Any voter registration application completed at a voter registration agency shall be accepted by that agency in lieu of the applicant's mailing the application. Any such application so received shall be transmitted to the appropriate board of elections not later than five business days after acceptance, according to rules which shall be promulgated by the State Board of Elections.

(h) **Twenty-Five-Day Deadline for an Election.** — Applications to register accepted by a voter registration agency shall entitle a registrant to vote in any primary, general, or special election unless the registrant shall have made application later than the twenty-fifth calendar day immediately preceding such primary, general, or special election, provided that nothing shall prohibit voter registration agencies from continuing to accept applications during that period.

(i) **Ineligible Applications Prohibited.** — No person shall make application to register to vote under this section if that person is ineligible to vote on account of age, citizenship, lack of residence for the period of time provided by law, or because of conviction of a felony. (1993 (Reg. Sess., 1994), c. 762, s. 2; 1995, c. 507, s. 25.10(c).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73, as amended by Session Laws 1995, c. 507, s. 25.10(c), provides in part: "G.S. 163-82.20(a)(3) and G.S. 163-82.20(c) as enacted in Section 2 of this act expire July 1, 1996."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 16.2 provides for a Grant-in-Aid program for counties to offset costs associated with Article 7A of Chapter 160A [163] of the General Statutes, as enacted by 1993 Session Laws (Reg. Sess., 1994), c. 762, or with P.L. 103-31 (The National Voter Registration Act of 1993).

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the

textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Subsections (b1) and (c) through (h) were redesignated as subsections (c) through (i) at the direction of the Revisor of Statutes.

Session Laws 1995, c. 507, s. 1.1, provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

§ 163-82.21. Voter registration at military recruitment offices.

The Executive Secretary-Director, jointly with the Department of Defense, shall develop and implement procedures for persons to apply to register to vote at recruitment offices of the armed forces of the United States in compliance with section 7(c) of the National Voter Registration Act. (1993 (Reg. Sess., 1994), c. 762, s. 2.)

§ 163-82.22. Voter registration at public libraries.

Every library covered by G.S. 153A-272 shall make available to the public the application forms described in G.S. 163-82.3, and shall keep a sufficient supply of the forms so that they are always

available. Every library covered by G.S. 153A-272 shall designate at least one employee to assist voter registration applicants in completing the form during all times that the library is open. (1975, c. 234, s. 1; 1977, c. 626, s. 1; 1983, c. 588, ss. 2, 3; c. 707; 1991 (Reg. Sess., 1992), c. 973, ss. 1, 2; c. 1044, s. 19(b); 1993, c. 74, s. 2; 1993 (Reg. Sess., 1994), c. 762, s. 2.)

§ 163-82.23. Voter registration at public high schools.

Every public high school shall make available to its students and others who are eligible to register to vote the application forms described in G.S. 163-82.3, and shall keep a sufficient supply of the forms so that they are always available. A local board of education may, but is not required to, designate high school employees to assist in completing the forms. Only employees who volunteer for this duty may be designated by boards of education. (1975, c. 234, s. 1; 1977, c. 626, s. 1; 1983, c. 588, ss. 2, 3; c. 707; 1991 (Reg. Sess., 1992), c. 973, ss. 1, 2; c. 1044, s. 19(b); 1993, c. 74, s. 2; 1993 (Reg. Sess., 1994), c. 762, s. 2.)

§ 163-82.24. Statewide training for election officials.

The State Board of Elections shall conduct training programs in election law and procedures. Every county elections director shall receive training conducted by the State Board at least as often as required in the following schedule:

- (1) Once during each odd-numbered year before the municipal election held in the county;
- (2) Once during each even-numbered year before the first partisan primary; and
- (3) Once during each even-numbered year after the partisan primaries but before the general election.

Every member of a county board of elections shall receive training conducted by the State Board at least once during the six months after the member's initial appointment and at least once again during the first two years of the member's service. The State Board of Elections shall promulgate rules for the training of precinct officials, which shall be followed by the county boards of elections. (1993 (Reg. Sess., 1994), c. 762, s. 2; 1995, c. 243, s. 1.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, substituted "director" for "supervisor" in the introductory paragraph.

§ 163-82.25. Mandated voter registration drive.

The Governor shall proclaim as Citizens Awareness Month the month designated by the State Board of Elections during every even-numbered year. During that month, the State Board of Elections shall initiate a statewide voter registration drive and shall adopt rules under which county boards of elections shall conduct the drives. Each county board of elections shall participate in the statewide voter registration drives in accordance with the rules adopted by the State Board. (1991 (Reg. Sess., 1992), c. 1044, s. 19(e); 1993 (Reg. Sess., 1994), c. 762, s. 2.)

§ 163-82.26. Rule-making authority.

The State Board of Elections shall promulgate rules necessary to implement the provisions of this Article. (1993 (Reg. Sess., 1994), c. 762, s. 2.)

§ 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 chief judge 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. 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; 1993 (Reg. Sess., 1994), c. 762, s. 24.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73, provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions

of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" in the first sentence and deleted "pursuant to G.S. 163-67" at the end of that sentence.

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 twenty-fifth day 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, provided that no such challenge may be made if the person removed his residency and the period of removal has been less than 30 days, or
- (3) That a person is not a resident of the precinct in which the person is registered, provided that no such challenge may be made if the person removed his residency and the period of removal has been less than 30 days, 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), (7) Repealed by Session Laws 1985, c. 563, ss. 11.1, 11.2.
- (7a) That a person is dead,
- (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; 1985, c. 563, ss. 11-11.2, 11.5; c. 589, s. 60; 1993 (Reg. Sess., 1994), c. 762, s. 25.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the

effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for

the provisions of this act remain applicable to those prosecutions or sentences.”

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted “twenty-fifth

day” for “close of the registration books, pursuant to G.S. 163-67” in the second sentence of subsection (a).

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).

Cited in *Farnsworth v. Jones*, 114 N.C. App. 182, 441 S.E.2d 597 (1994).

§ 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 ofprecinct; 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 ofprecinct 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).

Cited in *Farnsworth v. Jones*, 114 N.C. App. 182, 441 S.E.2d 597 (1994).

§ 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 primary or election, any other registered voter of the precinct may challenge a person for one or more of the following reasons:

- (1) One or more of the reasons listed in G.S. 163-85(c), or
- (2) That the person has already voted in that primary or election, or
- (3) That the person presenting himself to vote is not who he represents himself to be.

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 chief judge 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; provided that no challenge may be made on the grounds specified in the paragraph against an unaffiliated voter voting in the primary under G.S. 163-74(a1).

If a person is challenged under this subsection, and the challenge is sustained under G.S. 163-85(c)(3), the voter may still transfer his registration under G.S. 163-82.15(e) if eligible under that section, and the registration shall not be cancelled under G.S. 163-90.2(a) if the transfer is made. A person who has transferred his registration under G.S. 163-82.15(e) may be challenged at the precinct to which the registration is being transferred. (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; 1985, c. 563, ss. 11.4, 14; 1987, c. 408, s. 7; 1993 (Reg. Sess., 1994), c. 762, s. 26.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those

prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" in the third paragraph, and twice substituted "G.S. 163-82.15(e)" for "G.S. 163-72.3" in the last paragraph.

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 chief judge 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 sworn testimony, 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 chief judge 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 chief judge 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.

A letter or postal card mailed by returnable mail and returned by the United States Postal Service purportedly because the person no longer lives at that address or because a forwarding order has expired shall not be admissible evidence in a challenge heard under this section which was made under G.S. 163-87. (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; 1985, c. 380, ss. 1, 1.1; 1993 (Reg. Sess., 1994), c. 762, s. 27.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecu-

tions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted “chief judge” for “registrar” in the first and last sentences of the first paragraph and in the

last sentence of the paragraph following the oath.

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 chief judge 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 chief judge, 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 chief judge shall write across the top of the ballot “Challenged Ballot #,” and shall insert the same serial number as entered in the pollbook. The chief judge 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 chief judge in such manner that the chief judge shall not know how the ballot is marked. He shall then fold the ballot in the presence of the chief judge so as to conceal the markings and deposit and seal it in the serially numbered envelope. He shall then deliver such envelope to the chief judge. The chief judge 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; 1993 (Reg. Sess., 1994), c. 762, s. 28.)

Editor’s Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: “Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41.”

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: “Prosecutions for, or sentences based on, offenses

occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.”

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective

January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" throughout subsections (a) and (b).

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 chief judge at the time of closing of the polls as provided in G.S. 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 chief judge of the precinct in which the challenger and absentee voter are registered. If it is delivered to the chief judge, the chief judge 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 chief judge 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; 1993 (Reg. Sess., 1994), c. 762, s. 29.)

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.

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that

would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" once in subsection (a), three times in subsection (d), and once in the seventh paragraph of subsection (e), and substituted "G.S. 163-232" for "G.S. 163-233" in subsection (a).

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.

(d) A decision by a county board of elections on any challenge made under the provisions of this Article shall be appealable to the Superior Court of the county in which the offices of that board are located within 10 days. Only those persons against whom a challenge is sustained or persons who have made a challenge which is overruled shall have standing to file such appeal. (1979, c. 357, s. 4; 1987 (Reg. Sess., 1988), c. 1028, s. 11.)

§ 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 a Class I felony. (1979, c. 357, s. 4; 1987, c. 565, s. 2.)

§§ 163-91 through 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 registered and qualified voters in this State equal in number to two percent (2%) of the total number of voters who voted in the most recent general election for Governor. 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 TO BE NAMED AND WHOSE STATE CHAIRMAN IS, RESIDING AT AND WHO CAN BE REACHED BY TELEPHONE AT 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 or in all capital letters, double spaced typewriter size. In addition to the form of the petition, the organizers and petition circulators shall inform the signers of the general purpose and intent of the new party.

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) Repealed by Session Laws 1983, c. 576, s. 3, effective July 1, 1983. (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; 1983, c. 576, ss. 1-3.)

Legal Periodicals. — For note on definition of political parties, see 11 N.C.L. Rev. 148 (1933).

For review and comment on former § 163-1, relating to the formation of new

political parties, see 11 N.C.L. Rev. 226 (1933).

As to the 1949 amendment, which rewrote former § 163-1, see 27 N.C.L. Rev. 455 (1949).

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 be-

liefs, 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.

Signature Verification Fee and Notarization Requirement Unconstitutional. — The dual combination of the signature verification fee and the notarization requirement clearly, unduly burdens minor party resources and violates equal protection. The State should be enjoined from enforcing the fourth paragraph of this section and the further requirement that the county board of elections "shall require a fee of five cents (5¢) for each signature appearing" on the petitions. *McLaughlin v. North Carolina Bd. of Elections*, 850 F. Supp. 373 (M.D.N.C. 1994).

Constitutionality of "Intend to Organize" Language. — The "intend to organize" language of subsection (b) does not impose an unconstitutional restriction on voter-signers in signing petitions. *McLaughlin v. North Carolina Bd. of*

Elections, 850 F. Supp. 373 (M.D.N.C. 1994).

Injunction against Requirement That Petition Signatories Become Party Members. — The State Board of Elections was enjoined from enforcing portions of subsection (b) of this section against a new political party which required its petitions for 1982 ballot positions to contain a clause to the effect that any signatories to the petition would automatically become members of the new party despite other affiliations. The Board was enjoined as the party's likelihood of success in challenging the subsection's legality under U.S. Const., Amends. I and XIV was likely and the balance of the hardships was on the party given the near date of the election. *North Carolina Socialist Workers Party v. North Carolina State Bd. of Elections*, 538 F. Supp. 864 (E.D.N.C. 1982).

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).

Quoted in New Alliance Party v. North Carolina State Bd. of Elections, 697 F. Supp. 904 (E.D.N.C. 1988).

Cited in Republican Party v. Hunt, 841 F. Supp. 722 (E.D.N.C.), *aff'd sub nom. Republican Party v. North Carolina State Bd. of Elections*, 27 F.3d 563 (4th Cir. 1994).

§ 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.)

CASE NOTES

Constitutionality of Two-Tier System. — A two-tier system differentiating between ballot access and ballot retention for major parties and minor parties is a reasonable and legitimate one for the

state to impose, and is not unconstitutional. *McLaughlin v. North Carolina Bd. of Elections*, 850 F. Supp. 373 (M.D.N.C. 1994).

§ 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.)

Editor's Note. — G.S. 163-72.4, referred to above, has been repealed.

CASE NOTES

Constitutionality. — There is nothing unconstitutional in the state purging the designation of an "expired political party" from its records pursuant to this

section. *McLaughlin v. North Carolina Bd. of Elections*, 850 F. Supp. 373 (M.D.N.C. 1994).

§ 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).

Exclusion of Candidates' Names from Local Ballots Held Unconstitutional. — This section, insofar as it

prohibits the names of candidates for offices other than state, congressional and national from being printed on official ballots, violates the Constitution of the United States. *New Alliance Party v. North Carolina State Bd. of Elections*, 697 F. Supp. 904 (E.D.N.C. 1988).

No legitimate state or local concern is promoted by prohibiting the placement

on ballots of the names of candidates for county and local offices while at the same time allowing the placement on the ballot of the names of candidates for state offices. *New Alliance Party v. North Carolina State Bd. of Elections*, 697 F. Supp. 904 (E.D.N.C. 1988).

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 annual or 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 school buildings, and such use shall be subject to reasonable rules and regulations of the school boards and other governing authorities. (1975, c. 465; 1983, c. 519, ss. 1, 2.)

§§ 163-100 through 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 senates.

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 elec-

tion 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 electorate. *Rider v. Lenoir County*, 236 N.C. 620, 73 S.E.2d 913 (1953); *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).

Cited in *Republican Party v. Martin*, 980 F.2d 943 (4th Cir. 1992); *Republican Party v. Hunt*, 841 F. Supp. 722 (E.D.N.C. 1994).

§ 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. 163-109(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. 163-109(c) to be furnished by counties, and the per diem (or salary) and expenses of the county board of

elections and the chief judges 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; 1985, c. 563, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 30.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or

affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judges" for "registrars" in the second paragraph.

§ 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 candidate may also, in lieu of his legal first name and legal middle initial or middle name (if any) sign his nickname, provided that he appends to the notice of candidacy an affidavit that he has been commonly known by that nickname for at

least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way his name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

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. 163-82.17, 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 90 days 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 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. If a candidate does not withdraw before the filing deadline, except as provided in G.S. 163-112, his name shall be printed on the primary ballot, any votes for him shall be counted, and he shall not be refunded his filing fee.

(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 director 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 director 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 director 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.**

(h) **No person may file a notice of candidacy for more than one office described in subsection (c) of this section for any one election. If a person has filed a notice of candidacy with a board of elections under this section for one office, then a notice of candidacy may not later be filed for any other office under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (e) of this section; provided that this subsection shall not apply unless the deadline for filing notices of candidacy for both offices is the same. Notwithstanding this subsection, a person may file a notice of candidacy for a full term as United States Senator, and also file a notice of candidacy for the remainder of the unexpired term of that same seat in an election held under G.S. 163-12, and may file a notice of candidacy for a full term as a**

member of the United States House of Representatives, and also file a notice of candidacy for the remainder of the unexpired term in an election held under G.S. 163-13.

(i) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Article IV Section 9(1) of the North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected. (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; 1983, c. 330, s. 1; 1985, c. 472, s. 2; c. 558, s. 1; c. 759, s. 6; 1985 (Reg. Sess., 1986), c. 957, s. 1; 1987, c. 509, s. 13; c. 738, s. 124; 1987 (Reg. Sess., 1988), c. 1028, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 31; 1995, c. 243, s. 1.)

Local Modification. — Halifax County Board of Elections: 1983 (Reg. Sess., 1984), c. 984.

Editor's Note. — Session Laws 1991, Ex. Sess., c. 1, which was submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973c), received preclearance from the United States Department of Justice on January 3, 1992.

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecu-

tions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "G.S. 163-82.17" for "G.S. 163-74(b)" in the second sentence of subsection (b).

The 1995 amendment, effective January 1, 1996, substituted "director of elections" for "supervisor of elections" in 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).

1987 Amendment Held Constitutional. — The provisions in Session

Laws 1987, c. 509, which amended this section, did not violate the North Carolina Constitution. *State ex rel. Martin v. Preston*, 325 N.C. 438, 385 S.E.2d 473 (1989).

Failure to Preclear Acts. — Where superior court judges were elected pursuant to Session Laws 1965, c. 262, Session Laws 1967, c. 997, Session Laws 1977, cc. 1119, 1130 and 1238, and Session Laws 1983, c. 1109, and such legislative acts had not been precleared by the Attorney General as required by sec-

tion 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, the federal district court would enjoin such elections retroactively in those counties subject to section 5 of the Voting Rights Act; the fact that an election law deals with the election of members of the judiciary does not remove it from the ambit of section 5 of the Voting Rights Act. *Haith v. Martin*, 618 F. Supp. 410 (E.D.N.C. 1985), *aff'd*, 477 U.S. 901, 106 S. Ct. 3268, 91 L. Ed. 2d 559 (1986).

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 the defendants 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).

Action against three county boards of elections challenging method of electing North Carolina superior court judges would be dismissed, since the county boards have no authority to act in a manner inconsistent with the statute governing election of superior court judges. They merely act in a ministerial capacity and can only carry out duties as detailed by statute and the State Board. *Republican Party v. Martin*, 682 F. Supp. 834 (M.D.N.C. 1988).

Timeliness of Motion to Enjoin Elections. — Plaintiffs initiated motion to enjoin judicial elections prior to the inception of the electoral process, providing the court the opportunity to effectively remedy any defect prior to significant and potentially detrimental reliance on the present electoral scheme by defendants and potential candidates. *Republican Party v. Hunt*, 841 F. Supp. 722 (E.D.N.C.), *aff'd sub nom. Republican Party v. North Carolina State Bd. of Elections*, 27 F.3d 563 (4th Cir. 1994).

Harm to Political Party Justified Preliminary by Injunction. — Plaintiffs, political party, made a sufficient showing that they had been and would continue to be irreparably harmed by the present superior court electoral process, and because corresponding harm to defendants upon the granting of this provisional relief was minor, plaintiff's motion for preliminary injunction modifying superior court elections was granted. *Republican Party v. Hunt*, 841 F. Supp. 722 (E.D.N.C.), *aff'd sub nom. Republican Party v. North Carolina State Bd. of Elections*, 27 F.3d 563 (4th Cir. 1994).

Cited in Republican Party v. Martin, 980 F.2d 943 (4th Cir. 1992).

§ 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

Office Sought	Amount of Filing Fee
All State executive offices	One percent (1%) of the annual salary of the office sought
All Justices, Judges, and District Attorneys 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)
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 cause a warrant to be drawn on the Treasurer of the State for the refund payment. If the fee was paid to a county board of elections, the chairman of the Board shall certify to the county finance officer that the refund should be made, and the county finance officer shall make the refund in accordance with the provisions of the Local Government Budget and Fiscal Control Act. If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section dies prior to the date of the primary election provided by G.S. 163-1, the personal repre-

sentative of the estate shall be entitled to have the fee refunded if application is made to the board of elections to which the fee was paid no later than one year after the date of death, and refund shall be made in the same manner as in withdrawal of notice of candidacy.

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. 47, s. 2; c. 793, s. 37; 1977, c. 265, s. 6; 1983, c. 913, s. 56; 1995, c. 464, s. 1.)

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.

Editor's Note. — Session Laws 1994, Extra Session, c. 1, s. 5 provides: "Notices of candidacy for 1994 validly filed in:

- "(1) Superior Court Districts 3B, 9, 9A, 10A, 15A, 17B, 20B, 25B, and 27B prior to the filing deadline of February 18, 1994;
- "(2) Prosecutorial Districts 9 and 17A prior to the filing deadline of February 7, 1994; and
- "(3) District Court District 17A prior to the filing deadline of February 7, 1994

"are not voided, but shall continue to apply. Except as to Superior Court District 9, Prosecutorial Districts 9 and 17A, and District Court District 17A, they may, however, be withdrawn as provided in G.S. 163-106(e) if such withdrawal is made before the filing deadline established by this act, and in such case the filing fee shall be refunded as provided by G.S. 163-107(b). Provided, that notices of candidacy in District Court District 17A for the seat which is reallocated from District 17A to District 9A by Sec-

tion 200.4(f) of Chapter 321 of the 1993 Session Laws are voided, and that person's filing fee shall be credited to any new filing under this act or refunded if the candidate does not file or is not eligible to file."

Session Laws 1994, Extra Session, c. 1, s. 6 provides: "This act is effective upon ratification [February 17, 1994], but may not be enforced except as provided by section 5 of the Voting Rights Act of 1965."

Session Laws 1995, c. 464, which amended this section, in s. 2 provides for the refund of the filing fee of a candidate who died before the primary in 1994 if application is made before January 1, 1996.

Effect of Amendments. — The 1995 amendment, effective retroactively to January 1, 1994, in the first paragraph of subsection (b), in the third sentence twice substituted "county finance officer" for "county accountant", and substituted "Local Government Budget and Fiscal Control Act" for "County Fiscal Control Act", and added the last sentence of that paragraph.

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, except that in the case of a political party as defined by G.S. 163-96(a)(2) which will be making nominations by primary election, the petition must be signed by ten percent (10%) of the registered voters of the State 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 10,000 registered voters regardless of the voter's political party affiliation, whichever requirement is greater. 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; 1985, c. 563, s. 13.)

Local Modification. — Anson County Bd. of Commissioners: 1991 (Reg. Sess., 1992), c. 781, s. 10 (but shall only be enforced as provided by Section 5 of the Voting Rights Act of 1965).

Editor's Note. — Session Laws 1991, Ex. Sess., c. 1, which was submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973c), received preclearance from the United States Department of Justice on January 3, 1992.

Session Laws 1994, Extra Session, c. 1, s. 4(a) provides that the provisions of G.S. 163-107.1 do not apply to any offices covered by c. 1 (positions as superior court judge, district court judge, and district attorney in certain Districts) in the 1994 primary.

Session Laws 1994, Extra Session, c. 1, s. 6 provides: "This act is effective upon ratification [February 17, 1994], but may not be enforced except as provided by section 5 of the Voting Rights Act of 1965."

§ 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 district attorney.

(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 ballot.

(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; 1983, c. 331, s. 1.)

CASE NOTES

Cited in *Holshouser v. Scott*, 335 F. Supp. 928 (M.D.N.C. 1971).

§ 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 chief judge of each precinct in his county, and the chief judge shall give him a receipt for the ballots received. On the day of the primary it shall be the chief judge'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; 1993 (Reg. Sess., 1994), c. 762, s. 32.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that

would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" twice and "chief judge's" for "registrar's" in the last paragraph of subsection (c).

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).

Stated in Republican Party v. Hunt, 841 F. Supp. 722 (E.D.N.C. 1994).

§ 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.)

§ 163-111. Determination of primary results; second primaries.

(a) **Nomination Determined by Substantial Plurality; Definition of Substantial Plurality.** — Except as otherwise provided in this section, nominations in primary elections shall be determined by a substantial plurality of the votes cast. A substantial plurality 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 substantial plurality shall be ascertained by multiplying the total vote cast for all aspirants by forty percent (40%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirant who obtains a substantial plurality shall be declared the nominee. If two candidates receive a substantial plurality, the candidate receiving the highest vote 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 substantial plurality shall be ascertained by dividing the total vote cast for all aspirants by the number of positions to be filled, and by multiplying the result by forty percent (40%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirants who obtain a substantial plurality shall be declared the nominees. If more candidates obtain a substantial plurality 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 substantial plurality 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 substantial plurality 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 substantial plurality 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 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 director 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 substantial plurality, 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; 1989, c. 549; 1995, c. 243, s. 1.)

Local Modification. — Lenoir: 1989, c. 291, s. 7(a); Pamlico: 1987 (Reg. Sess., 1988), c. 939, s. 5; Richmond: 1989, c. 88, s. 1.1; city of Albemarle: 1987 (Reg. Sess., 1988), c. 881, s. 5; Vance County Board of Education: 1987 (Reg. Sess., 1988), c. 974, ss. 3, 4.

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; Chapter 104, Sessions Laws of 1989 was repealed by Sessions Laws 1993, c. 96, s. 8.

Session Laws 1989, c. 549, made amendments to this section effective with respect to all primary elections held on or after January 1, 1990.

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, substituted "director of the county board" for "supervisor of the county board" in subdivision (c)(2).

Legal Periodicals. — For note, "The Primary Runoff: Racism's Reprieve?" see 65 N.C.L. Rev. 359 (1987).

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 sec-

ond 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).

Applied in *Gingles v. Edmisten*, 590 F. Supp. 345 (E.D.N.C. 1984).

Cited in *McGhee v. Granville County*, 860 F.2d 110 (4th Cir. 1988).

§ 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 die 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; 1993, c. 553, s. 60.)

Local Modification. — Anson County Bd. of Commissioners: 1991 (Reg. Sess., 1992), c. 781, s. 6 (but shall only be enforced as provided by Section 5 of the Voting Rights Act of 1965).

Editor's Note. — Session Laws 1991, Ex. Sess., c. 1, which was submitted to

the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973c), received preclearance from the United States Department of Justice on January 3, 1992.

§ 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 District Attorney 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, 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
Judge of Superior Court in a single-county superior court district where the district is the whole county or part of the county	}	County executive committee of political party in which vacancy occurs; provided, in the case of a superior court judge 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
Judge of Superior Court in a multi-county superior court district	} Appropriate district executive committee of political party in which vacancy occurs.

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. If any person nominated as a candidate of a political party vacates such nomination and such vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.

In a county which is partly in a multi-county superior court district, in choosing that county's member or members of the superior court 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.

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; 1987, c. 509, s. 10; c. 526; c. 738, s. 124; 1987 (Reg. Sess., 1988), c. 1037, s. 126.1; 1991, c. 727, s. 8.)

Editor's Note. — Session Laws 1991, c. 727, s. 8, made amendments to this section effective with respect to elections occurring on or after January 1, 1992.

§ 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 the 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.

If a vacancy occurs on a county board of commissioners and G.S. 153A-27 or G.S. 153A-27.1 requires that a person shall be elected to the seat vacated for the remainder of the unexpired term, and the vacancy occurs:

- (1) Beginning on the tenth day before the filing period ends under G.S. 163-106(c), a nomination shall be made by the county executive committee of each political party and the names of the nominees shall be printed on the general election ballots.
- (2) Prior to the tenth day before the filing period ends under G.S. 163-106(c), nominations shall be made by primary election as provided by this Article.

If a vacancy occurs in the office of United States Senator, and the vacancy occurs:

- (1) Beginning on the tenth day before the filing period ends under G.S. 163-106(c), a nomination shall be made by the State executive committee of each political party and the names of the nominees shall be printed on the general election ballots.
- (2) Prior to the tenth day before the filing period ends under G.S. 163-106(c), nominations shall be made by primary election as provided by this Article. (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; 1985, c. 563, ss. 7, 7.1; c. 759, s. 1.)

§§ 163-116 through 163-118: Repealed by Session Laws 1973, c. 793, ss. 47-49.

§ 163-119. Voting by unaffiliated voter in party primary.

If a political party has, by action of its State Executive Committee reported to the State Board of Elections by resolution delivered no later than the first day of December preceding a primary, provided that unaffiliated voters may vote in the primary of that party, an unaffiliated voter may vote in the primary of that party by announc-

ing that intention under G.S. 163-150(a). For a party to withdraw its permission, it must do so by action of its State Executive Committee, similarly reported to the State Board of Elections no later than the first day of December preceding the primary where the withdrawal is to become effective. (1993 (Reg. Sess., 1994), c. 762, s. 7.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 7 was codified as this section at the direction of the Revisor of Statutes.

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73, made this section effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date.

Session Laws 1993 (Reg. Sess., 1994),

c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

§§ 163-120 through 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 district equal in number to four percent (4%) 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 director 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 four percent (4%) 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, except if the office is for a district consisting of less than the entire county and only the voters in that district vote for that office, the petitions must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of voters in the district according to the most recent figures certified by the State Board of Elections. Each petition shall be presented to the chairman or director 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 director 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. 163-140.

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; 1991, c. 297, s. 1; 1995, c. 243, s. 1.)

Local Modification. — Anson County Bd. of Commissioners: 1991 (Reg. Sess., 1992), c. 781, s. 6 (but shall only be enforced as provided by Section 5 of the Voting Rights Act of 1965).

Editor's Note. — Session Laws 1991, c. 297, s. 1, made amendments to this

section effective with respect to elections held on or after July 1, 1991.

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, substituted "director of the county board" for "supervisor of the county board" in subdivisions (a)(3) and (a)(4).

CASE NOTES

Subdivision (a)(3) of this section, unconstitutionally infringed upon the rights of the plaintiff to associate for the advancement of his political beliefs and to cast his votes effectively. *Obie v. North Carolina State Bd. of Elections*, 762 F. Supp. 119 (E.D.N.C. 1991).

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 signa-

tures 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 §§ 163-98, 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).

Stated in *North Carolina Socialist Workers Party v. North Carolina State Bd. of Elections*, 538 F. Supp. 864 (E.D.N.C. 1982).

§ 163-123. Declaration of intent and petitions for write-in candidates in partisan elections.

(a) Procedure for Qualifying as a Write-In Candidate. — Any qualified voter who seeks to have write-in votes for him counted in a general election shall file a declaration of intent in accordance with subsection (b) of this section and petition(s) in accordance with subsection (c) of this section.

(b) Declaration of Intent. — The applicant for write-in candidacy shall file his declaration of intent at the same time and with the same board of elections as his petition, as set out in subsection (c) of this section. The declaration shall contain:

- (1) Applicant's name,
- (2) Applicant's residential address,
- (3) Declaration of applicant's intent to be a write-in candidate,
- (4) Title of the office sought,
- (5) Date of the election,
- (6) Date of the declaration,
- (7) Applicant's signature.

(c) Petitions for Write-in Candidacy. — An applicant for write-in candidacy 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 shall be filed on or before noon on the 90th day before the general election. They shall be signed by 500 qualified voters of the State. Before being filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county. The chairman of the county board of elections shall examine the names on the petition and place a check mark by the name of each signer who is qualified and registered to vote in his county. The chairman of the county board shall attach to the petition his signed certificate. On his certificate the chairman shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers who are qualified and registered to vote in his county and eligible to vote for that office. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. The chairman of the county board shall complete the verification within two weeks from the date the petition is presented. At the time of submitting the petition, a fee of five cents (5¢) shall be paid for each name appearing on the petition.

- (2) If the office is a district office comprising all or part 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 noon on the 90th day before the general election and must be signed by 250 qualified voters. Before being filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county who are eligible to vote for that office. The chairman of the county board shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1).
- (3) If the office is a county office, or is a school administrative unit office elected on a partisan basis, or is a legislative district consisting of a single county or a portion of a county, file written petitions with the county board of elections supporting his candidacy for a specified office. A petition presented to a county board of elections shall contain only names of voters registered in that county. These petitions must be filed on or before noon on the 90th day before the general election and must be signed by 100 qualified voters who are eligible to vote for the office, unless fewer than 5,000 persons are eligible to vote for the office as shown by the most recent records of the appropriate board of elections. If fewer than 5,000 persons are eligible to vote for the office, an applicant's petition must be signed by not less than one percent (1%) of those registered voters. Before being filed with the county board of elections, each petition shall be presented to the county board of elections for examination. The chairman of the county board of elections shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1).

(d) Form of Petition. — Petitions requesting the qualification of a write-in candidate in a general election shall contain on the heading of each page of the petition in bold print or in capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN COUNTY HEREBY PETITION ON BEHALF OF AS A WRITE-IN CANDIDATE IN THE NEXT GENERAL ELECTION. THE UNDERSIGNED HEREBY PETITION THAT SUBJECT CANDIDATE BE PLACED ON THE LIST OF QUALIFIED WRITE-IN CANDIDATES WHOSE VOTES ARE TO BE COUNTED AND RECORDED IN ACCORDANCE WITH G.S. 163-123."

(e) Defeated Primary Candidate. — No person whose name appeared on the ballot in a primary election preliminary to the general election shall be eligible to have votes counted for him as a write-in candidate for the same office in that year.

(f) Counting and Recording of Votes. — If a qualified voter has complied with the provisions of subsections (a), (b), and (c) and is not excluded by subsection (e), the board of elections with which petition has been filed shall count votes for him according to the procedures set out in G.S. 163-170(5), and the appropriate board of elections

shall record those votes on the official abstract. Write-in votes for names other than those of qualified write-in candidates shall not be counted for any purpose and shall not be recorded on the abstract.

(g) **Municipal and Nonpartisan Elections Excluded.** — This section does not apply to municipal elections conducted under Subchapter IX of Chapter 163 of the General Statutes, and does not apply to nonpartisan elections. (1987, c. 393, ss. 1; 2; 1989, c. 92, s. 1.)

§ **163-124:** Reserved for future codification purposes.

ARTICLE 11A.

Resign-to-Run.

§ **163-125:** Repealed by Session Laws 1995, c. 379, s. 18, effective July 6, 1995.

§§ **163-126, 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. 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 may be temporarily transferred, for the purpose of voting, to an adjacent precinct. 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 precinct 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 precinct in which such voters reside. The polling place for a precinct shall be located within the precinct or on a lot or tract adjoining the precinct.

Except as provided by Article 12A of this Chapter, 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 45 days' notice thereof

prior to the next primary or election. 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. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice.

(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; 1985, c. 757, s. 205(b); 1989, c. 93, s. 4; c. 440, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 33; 1995, c. 423, s. 1.)

Local Modification. — Buncombe: 1993, c. 72, s. 2 (effective May 24, 1993 to July 1, 1994); Cabarrus: 1983, c. 225; Caswell: 1989, c. 284, s. 1; Catawba: 1981, c. 850; Cleveland: 1981, c. 411; Davidson: 1989, c. 70; Granville: 1989, c. 282, s. 1; Hertford: 1981, c. 204; Mecklenburg: 1981, c. 433; Montgomery: 1991 (Reg. Sess., 1992), c. 866; Moore: 1987, c. 549, s. 6.8; Pitt: 1987, c. 411; Randolph: 1985 (Reg. Sess., 1986), c. 827; Stanly: 1981, c. 433; Stokes: 1983, c. 225; Sampson: 1989, c. 474, s. 1; city of Rocky Mount: 1969, c. 1051.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or

after that date, substituted "45 days' notice thereof prior to the next primary or election" for "20 days' notice thereof prior to the date on which the registration books or records next close pursuant to G.S. 163-67" in the second sentence of the second paragraph of subsection (a).

The 1995 amendment, effective July 12, 1995, in subsection (a) divided the former first sentence into the present first and second sentences, deleted "and there shall be at least one precinct encompassed within the territory of each township; provided, however, that upon" from the end of the present first sentence, in the present second sentence deleted "within a township" preceding "may be temporarily", and substituted "an adjacent precinct" for "a precinct in an adjacent township", substituted "precinct" for "township" following "more than one" and following "properly identify the" in the fourth sentence, and in the fifth sentence deleted "Except as provided in G.S. 163-132.2(a)(1)" from the beginning of the sentence, and added "or on a lot or tract adjoining the precinct".

§ 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, or any other building, or a part thereof, which is supported or maintained, in whole or in part by or through tax revenues provided, however, that this section shall not be construed

to permit any board of elections to demand and use any tax exempt church property for such purposes without the express consent of the individual church involved, 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 chief judge 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; 1983, c. 411, s. 3; 1993 (Reg. Sess., 1994), c. 762, s. 34.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that

would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" in the first sentence of the second paragraph.

§ 163-130. Satellite voting places.

A county board of elections may, upon approval of a request submitted in writing to the State Board of Elections, establish a plan whereby elderly or disabled voters in a precinct may vote at designated sites within the precinct other than the regular voting place for that precinct. The State Board of Elections shall approve a county board's proposed plan if:

- (1) All the satellite voting places to be used are listed in the county's written request;
- (2) The plan will in the State Board's judgment overcome a barrier to voting by the elderly or disabled;
- (3) Adequate security against fraud is provided for; and
- (4) The plan does not unfairly favor or disfavor voters with regard to race or party affiliation. (1991 (Reg. Sess., 1992), c. 1032, s. 10.)

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 1032, s. 11 made this section effective January 31, 1993.

§§ 163-131, 163-132: Reserved for future codification purposes.

ARTICLE 12A.

Precinct Boundaries.

§ 163-132.1. Participation in 2000 Census Redistricting Data Program of the United States Bureau of the Census.

(a) Purpose. — The State of North Carolina shall participate in the 2000 Census Redistricting Data Program, conducted pursuant to P.L. 94-171, of the United States Bureau of the Census, including Phase I (Block Boundary Suggestion Program) and Phase II (concerning the designation of precincts on 2000 Census maps or databases), so that the State will receive 2000 Census data by voting precinct and be able to revise districts at all levels without splitting precincts and in compliance with the United States and North Carolina Constitutions and the Voting Rights Act of 1965, as amended.

(b) Phase I (Block Boundary Suggestion Program). — The State shall participate in the Block Boundary Suggestion Program of the United States Bureau of the Census so that the maps the Census Bureau will use in the 2000 Census will contain adequate features to permit reporting of Census data by precinct for use in the 2001 redistricting efforts. The Legislative Services Office shall send preliminary maps produced by the Census Bureau in preparation for the 2000 Census, as soon as practical after the maps are available, to the county boards of elections to determine which of their precincts have boundaries that are not coterminous with a physical feature, a current township boundary, or a current municipal boundary, as shown on those preliminary 2000 Census maps. The Legislative Services Office shall:

- (1) Assist county boards of elections in identifying the precincts with boundaries not shown on the preliminary Census maps and in identifying physical features the county boards may wish to have available for future precinct boundaries;
- (2) Place those boundaries and features on maps deemed appropriate by the State Board;
- (3) Request the U.S. Census Bureau to hold for census block identification in the 2000 U.S. Census all physical features the county boards have identified as current or potential precinct boundaries; and
- (4) Request the U.S. Census Bureau to hold for census block identification in the 2000 U.S. Census all other physical features already on 1990 Census maps.

(c) Phase II. — The State shall participate in Phase II of the 2000 Census Redistricting Data Program so that, to the extent practical, the precinct boundaries of all North Carolina counties will appear on the 2000 Census maps or database. The State's effort shall be conducted as follows:

- (1) By January 1, 1998, or as soon thereafter as they become available, the Legislative Services Office shall send to the

county boards of elections the Census Bureau's official block maps, on paper or electronically, to be used in the 2000 Census.

- (2) After receiving the maps, the county boards of elections shall designate their precinct lines along the block boundary lines on the maps. Where necessary, the county boards of elections shall alter precincts, including any precincts approved under the provisions of G.S. 163-132.1A, 163-132.2, or 163-132.3 or designated by local act, to conform to Census block boundaries as shown on the official block maps to be used for the 2000 Census and to consist only of contiguous territory. The county boards of elections, at a time deemed necessary by the Executive Secretary-Director of the State Board of Elections, shall file with the Legislative Services Office the maps sent to them and marked by them pursuant to this subsection.
- (3) After examining the returned maps, the Legislative Services Office shall submit to the Executive Secretary-Director of the State Board of Elections its opinion as to whether the county board of elections has complied with the provisions of this subsection, with notations as to where those boundaries do not comply with these standards.
- (4) If the Executive Secretary-Director determines that the county board of elections has complied, he shall approve the precinct boundaries as filed and those precincts shall be the official precincts.
- (5) If the Executive Secretary-Director determines that the county board of elections has not complied, he shall not approve those precinct boundaries but shall alter the precinct boundaries so that each precinct consists solely of contiguous territory and that each precinct's boundaries are coterminous with 2000 Census block boundaries nearest to the precinct boundaries shown by the county boards on the maps. These altered precincts shall then be the official precincts.
- (6) Upon the adoption of a resolution by a county board of elections and instead of altering precinct lines as required by G.S. 163-132.1(c)(5), the Executive Secretary-Director may combine for Census reporting purposes only two or more adjacent precincts of the county into a Combined Reporting Unit, if the Executive Secretary-Director finds that:
 - a. The boundaries of the Combined Reporting Unit conform with the Census block boundaries as shown on the official block maps to be used in the 2000 Census;
 - b. The Combined Reporting Unit consists only of contiguous territory;
 - c. The precincts of which the Combined Reporting Unit consists were bounded as of January 1, 1996, by ridgelines, as certified on official county maps by the county manager of the relevant county, or if there is no county manager the chair of the board of commissioners, and the boundaries failed to comply with subdivision (2) of this subsection only because those ridgelines were unrecognized as Census block boundaries in the 2000 official Census maps;

- d. The Combined Reporting Unit does not contain a majority of the territory of more than one township; and
- e. To alter those precinct boundaries would result in significant voter dislocation.

If the Executive Secretary-Director recognizes a Combined Reporting Unit for specific precincts, the official boundaries of those individual precincts forming the Combined Reporting Unit shall be those which the Legislative Services Office submitted to the Executive Secretary-Director under subdivision (3) of this subsection.

- (7) The Executive Secretary-Director shall file the completed maps with the Census Bureau and request that the Census Bureau provide summaries of 2000 Census data by precinct and Combined Reporting Units.

(d) Freezing of Precincts. — Notwithstanding the provisions of G.S. 163-132.3, after the Executive Secretary-Director approves the precincts in accordance with subsection (c) of this section and before January 2, 2000, no county board of elections may establish, alter, discontinue, or create any precinct except by division of one precinct into two or more precincts using 2000 Census block boundaries for that division. Provided that, whenever an annexation ordinance adopted under Parts 1, 2, or 3 of Article 4A of Chapter 160A of the General Statutes, or a local act of the General Assembly annexing property to a municipality, becomes effective during the period beginning with the date of the annexation as reported through the U.S. Census Bureau's 1998 Boundary and Annexation Survey and ending January 2, 2000, and any part of the boundary of the area being annexed which is actually contiguous to the city is also a precinct boundary for elections administered by the county board of elections then the annexed area is automatically moved into the "city precinct", provided that if the annexed area is adjacent to more than one city precinct, the board of elections shall place the area in any one or more of the adjacent city precincts. The county board of elections may delay the effective date of any change under this subsection to a date not later than January 1, 2002.

(e) Municipal and Township Boundaries. — Notwithstanding the provisions of subsections (c) and (d) of this section, the county boards of elections may designate precinct boundaries on municipal or township boundaries that are not designated on the 2000 official Census block maps, according to directives promulgated by the Executive Secretary-Director of the State Board of Elections and adopted to insure that all precincts shall be included on the 2000 Census database.

(f) Additional Rules. — In addition to the directives promulgated by the Executive Secretary-Director of the State Board of Elections under G.S. 163-132.4, the Legislative Services Commission may promulgate rules to implement this section. (1985, c. 757, s. 205(a); 1987, c. 1074, s. 2; 1993 (Reg. Sess., 1994), c. 762, s. 69; 1995, c. 423, s. 2.)

Editor's Note. — This section, which was enacted by Session Laws 1985, c. 757, s. 205(a) and repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1074, s. 2, was reenacted and rewritten by Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 69, effective upon ratification and ap-

plicable to all primaries and elections occurring on or after the date of ratification. Session Laws 1993 (Reg. Sess., 1994), c. 762 was ratified July 16, 1994.

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses

occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1995 amendment, effective July 12, 1995, substituted "2000 Census Redistricting Data Program" for "Block Boundary Suggestion Program" in the catchline; added subsection (a); added the subsection (b) designation; in subsection (b) added the

subsection catchline, in the first sentence deleted "of North Carolina" following "The State", and substituted "so" for "to the end", in the second sentence deleted "Not later than December 1, 1995" from the beginning of the sentence, and added "as soon as practical after the maps are available", and in subdivision (b)(4) substituted "1990 Census" for "U.S. Census Bureau"; added subsections (c) through (e); and added the subsection (f) designation and subsection catchline before the former last sentence.

§ 163-132.1A. Precinct boundaries for certain counties.

(a) The boundaries of precincts for the counties listed in subsection (b) of this section are those recorded in the Legislative Services Office's automated redistricting system as of May 1, 1991, except as changed in accordance with G.S. 163-132.3, and except in Caldwell County, the boundaries of Lenoir #3, North Catawba, Gamewell #1, and Gamewell #2 Precincts shall be as provided on the precinct map of the county adopted by the Caldwell County Board of Elections and in effect on January 1, 1992, unless changed in accordance with G.S. 163-132.1 or G.S. 163-132.3, whichever occurs later.

(b) This section shall apply only to the following counties: Alamance, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Chowan, Cleveland, Craven, Cumberland, Davidson, Duplin, Durham, Edgecombe, Forsyth, Gaston, Granville, Guilford, Halifax, Harnett, Henderson, Iredell, Johnston, Jones, Lenoir, Mecklenburg, Nash, New Hanover, Onslow, Orange, Pender, Pitt, Randolph, Richmond, Robeson, Rockingham, Rowan, Sampson, Scotland, Surry, Union, Wake, Washington, Wayne, Wilkes, Wilson, and Yancey. (1991 (Reg. Sess., 1992), c. 927, s. 1; 1995, c. 423, s. 2.)

Local Modification. — Buncombe: 1993, c. 72, s. 1 (effective May 24, 1993 to July 1, 1994).

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 927, s. 6 made this section effective July 1, 1992.

Session Laws 1991 (Reg. Sess., 1992), c. 927, s. 5 provides: "Notwithstanding the provisions of G.S. 163-132.3, as amended by Section 1 of this act, the validity of the boundaries of a precinct of a county subject to G.S. 163-132.1A which consists of noncontiguous territory as of January 1, 1992, shall not be affected by provisions of G.S. 163-132.3;

provided, however, that any change to the boundaries of that precinct after that date shall be subject to G.S. 163-132.3, as amended by this act. Notwithstanding the preceding sentence, not later than January 1, 1997, the relevant county board of elections shall change any non-conforming precinct to eliminate noncontiguous territory in a precinct."

Effect of Amendments. — The 1995 amendment, effective July 12, 1995, substituted "G.S. 163-132.1 or G.S. 163-132.3, whichever occurs later" for "G.S. 163-132.3" in subsection (a).

§ 163-132.2. Precinct boundaries for other counties.

(a) The Legislative Services Office shall send as directed by the schedule contained in subsection (g) of this section the relevant

copies of the United States Census Bureau's official census block maps of the 1990 United States Census to each county board of elections. The county board of elections shall:

- (1) Alter, where necessary, precinct boundaries to be coterminous with those of:
 - a. Townships, as certified by the county manager, or the chairman of the board of county commissioners if there is not a county manager, on the official map of the county;
 - b. The census blocks established under the latest U.S. Census;
 - c. The following visible physical features, readily distinguishable upon the ground:
 1. Roads or streets;
 2. Water features or drainage features;
 3. Ridgelines;
 4. Ravines;
 5. Jeep trails;
 6. Rail features;
 7. Above-ground power lines; or
 8. Major footpaths
 as certified by the North Carolina Department of Transportation on its highway maps or the county manager of the relevant county or, if there is no county manager, the chair of the county board of commissioners, on official county maps.
 - d. Municipalities, as certified by the city clerk on the official map of the city; or
 - e. A combination of these boundaries;
- (1a) Alter, where necessary, precinct boundaries so that each precinct is composed solely of contiguous territory;
- (2) Mark all precinct boundaries on the maps sent by the Legislative Services Office or on other maps or electronic databases approved by the Executive Secretary-Director, showing the precinct boundaries in effect as of the time of marking, but with any changes effective at a later time as provided by subsection (d) of this section; and
- (3) File, at a time deemed necessary by the Executive Secretary-Director of the State Board of Elections, with the State Board and the Legislative Services Office the maps identifying the precinct boundaries. The Executive Secretary-Director may require a county board of elections to file a written description of the boundaries of any precinct or part thereof.

(b) The Executive Secretary-Director of the State Board of Elections and the Legislative Services Office shall examine the returned maps and their written descriptions. After its examination of the maps and their written descriptions, the Legislative Services Office shall submit to the Executive Secretary-Director of the State Board of Elections its opinion as to whether the county board of elections has complied with the provisions of subsection (a) of this section, with notations as to where those boundaries do not comply with these standards. If the Executive Secretary-Director of the State Board determines that the county board of elections has complied with the provisions of subsection (a) of this section, the Executive Secretary-Director of the State Board shall approve the maps and

written descriptions as filed and these precincts shall be the official precincts.

(c) If the Executive Secretary-Director of the State Board determines that the county board of elections has not complied with the provisions of subsection (a) of this section, he shall not approve those precinct boundaries but shall alter the precinct boundaries so that each precinct consists solely of contiguous territory and that each precinct's boundaries are coterminous with those boundaries set forth in subsection (a)(1) of this section nearest to those existing precinct boundaries. These altered precincts shall then be the official precincts.

(d) The changes in precinct boundaries under subsections (b) and (c) of this section shall be made effective not later than January 1, 1997; unless the change would result in placing a precinct in more than one State House of Representatives, State Senate, or Congressional district, in which case it shall be made effective not later than January 1, 2002.

(e), (f) Repealed by Session Laws 1991 (Reg. Sess., 1992), c. 927, s. 1.

(g) The Legislative Services Office shall send maps, under subsection (a) of this section, to the counties named below by the dates indicated:

(1) Maps to be sent not later than January 1, 1993, to the following counties: Alexander, Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Caswell, Currituck, Cherokee, Clay, Franklin, Gates, and Hoke;

(2) Maps to be sent not later than January 1, 1994, to the following counties: Columbus, Dare, Davie, Graham, Greene, Haywood, Hertford, Hyde, Jackson, Lee, Lincoln, Madison, Martin, Mitchell, Montgomery, Northampton, and Pasquotank; and

(3) Maps to be sent not later than January 1, 1995, to the following counties: Macon, McDowell, Moore, Pamlico, Perquimans, Person, Polk, Rutherford, Stanly, Stokes, Swain, Transylvania, Tyrrell, Vance, Warren, Watauga, and Yadkin.

(h) This section shall apply only to the following counties: Alexander, Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Caswell, Cherokee, Clay, Columbus, Currituck, Dare, Davie, Franklin, Gates, Graham, Greene, Haywood, Hertford, Hoke, Hyde, Jackson, Lee, Lincoln, Macon, Madison, Martin, McDowell, Mitchell, Montgomery, Moore, Northampton, Pamlico, Pasquotank, Perquimans, Person, Polk, Rutherford, Stanly, Stokes, Swain, Transylvania, Tyrrell, Vance, Warren, Watauga, and Yadkin.

(i) Any county board of elections whose precincts were not approved by the Executive Secretary-Director under the provisions of this section during the year by which maps were to be sent to the county under subsection (g) of this section shall submit precinct boundary changes that comply with subsection (a) of this section to the Legislative Services Office before January 1, 1996, according to directives promulgated by the Executive Secretary-Director. (1985, c. 757, s. 205(a); 1987, c. 715, s. 5; c. 879, ss. 5, 6; 1987 (Reg. Sess., 1988), c. 1074, s. 2; 1989, c. 440, s. 2; 1989 (Reg. Sess., 1990), c. 1024, s. 43; 1991 (Reg. Sess., 1992), c. 927, s. 1; 1993, c. 352, s. 2; 1993 (Reg. Sess., 1994), c. 762, s. 70; 1995, c. 423, s. 2.)

Editor's Note. — Session Laws 1993, c. 352, which amended this section, s. 4 provides: "Notwithstanding any deadline set by G.S. 163-132.2, this act validates any resolution of a county board of elections revising precinct lines that the Executive Secretary-Director of the State Board of Elections determines meets the boundary requirements set out in G.S. 163-132.2, if the county is one of those listed in G.S. 163-132.2(g)(1) and the county board of elections has passed that resolution and the Executive Secretary-Director has approved it before January 1, 1994. If the office of Executive Secretary-Director is not filled, the requirement of approval in this section will be met if the county's resolution is approved by an official designated by the State Board of Elections as either Executive Secretary of the State Board of Elections or as Acting Director of Elections."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or

affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 16, 1994, and applicable to all primaries and elections occurring on or after that date, in subdivision (a)(1)c., added "8. Major footpaths", made related changes, and substituted "county manager of the relevant county or, if there is no county manager, the chair of the county board of commissioners" for "planning department of the relevant county".

The 1995 amendment, effective July 12, 1995, in subsection (a) deleted the last sentence of subdivision (1) following subdivision (1)e., regarding polling places which are no longer in the precinct as a result of alterations, and added "or on other maps or electronic databases approved by the Executive Secretary-Director"; and added subsection (i).

§ 163-132.3. Alterations to approved precinct boundaries.

(a) (See editor's note) No county board of elections of a county listed in G.S. 163-132.1A(b), after January 1, 1990, and no county board of elections of a county listed in G.S. 163-132.2(h), after its precinct boundaries are approved pursuant to G.S. 163-132.2, may change any precinct boundary unless the proposed new precinct consists solely of contiguous territory and its new boundaries are coterminous with those of:

- (1) Townships, as certified by the county manager, or the chairman of the board of county commissioners if there is not a county manager, on the official map of the county;
- (2) The census blocks established under the latest U.S. Census or the boundaries contained on the latest preliminary U.S. Census maps, issued under P.L. 94-171, whichever occurs later;
- (3) The following visible physical features, readily distinguishable upon the ground:
 - a. Roads or streets;
 - b. Water features or drainage features;
 - c. Ridgelines;
 - d. Ravines;
 - e. Jeep trails;
 - f. Rail features;
 - g. Above-ground power lines; or
 - h. Major footpaths
 as certified by the North Carolina Department of Transportation on its highway maps or the county manager of the relevant county or, if there is no county manager, the chair

of the county board of commissioners, on official county maps.

(4) Municipalities, as certified by the city clerk on the official map of the city; or

(5) A combination of these boundaries.

The county boards of elections shall report precinct boundary changes by filing with the Legislative Services Office on current official census maps or maps certified by the North Carolina Department of Transportation or the county's planning department or on other maps or electronic databases approved by the Executive Secretary-Director the new boundaries of these precincts. The Executive Secretary-Director may require a county board of elections to file a written description of the boundaries of any precinct or part thereof. No newly created or altered precinct boundary is effective until approved by the Executive Secretary-Director of the State Board as being in compliance with this subsection.

(b) The Executive Secretary-Director of the State Board of Elections and the Legislative Services Office shall examine the maps of the proposed new or altered precincts and any required written descriptions. After its examination of the maps and their written descriptions, the Legislative Services Office shall submit to the Executive Secretary-Director of the State Board of Elections its opinion as to whether all of the proposed precinct boundaries are in compliance with subsection (a) of this section, with notations as to where those boundaries do not comply with these standards. If the Executive Secretary-Director of the State Board determines that all precinct boundaries are in compliance with this section, the Executive Secretary-Director of the State Board shall approve the maps and written descriptions as filed and these precincts shall be the official precincts.

(c) If the Executive Secretary-Director of the State Board determines that the proposed precinct boundaries are not in compliance with subsection (a) of this section, he shall not approve those precinct boundaries. He shall notify the county board of elections of his disapproval specifying the reasons. The county board of elections may then resubmit new precinct maps and written descriptions to cure the reasons for their disapproval. (1985, c. 757, s. 205(a); 1987 (Reg. Sess., 1988), c. 1074, s. 2; 1991 (Reg. Sess., 1992), c. 927, s. 1; 1993, c. 352, s. 3; 1993 (Reg. Sess., 1994), c. 762, s. 71; 1995, c. 423, s. 2.)

Local Modification. — Buncombe: 1993, c. 72, s. 2 (effective May 24, 1993 to June 1, 1994).

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 927, which amended this section, in s. 5 provides: "Notwithstanding the provisions of G.S. 163-132.3, as amended by Section 1 of this act, the validity of the boundaries of a precinct of a county subject to G.S. 163-132.1A which consists of noncontiguous territory as of January 1, 1992, shall not be affected by provisions of G.S. 163-132.3; provided, however, that any change to the boundaries of that precinct after that date shall be subject to G.S. 163-132.3, as amended by this

act. Notwithstanding the preceding sentence, not later than January 1, 1997, the relevant county board of elections shall change any nonconforming precinct to eliminate noncontiguous territory in a precinct."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1995, c. 423, s. 3, effec-

tive January 2, 2000, in subsection (a), as amended by Session Laws 1995, c. 423, s. 2, deleted "of a county listed in G.S. 163-132.1A(b), after January 1, 1990, and no county board of elections of a county listed in G.S. 163-132.2(h), after its precinct boundaries are approved pursuant to G.S. 163-132.2" following "No county board of elections" in the introductory language, and in subdivision (a)(3) deleted subdivisions (a)(3)c., (a)(3)d., (a)(3)e., and (a)(3)h., regarding ridgelines, ravines, jeep trails and major footpaths, added "or" at the end of subdivision (a)(3)f., and deleted "or" at the end of subdivision (a)(3)g. Because of the delayed effective date, this amendment has not been set out.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 16, 1994, and applicable to all pri-

maries and elections occurring on or after that date, in subdivision (a)(3), added "h. Major footpaths", made related changes, and substituted "county manager of the relevant county or, if there is no county manager, the chair of the county board of commissioners" for "planning department of the relevant county".

Session Laws 1995, c. 423, s. 2, effective July 12, 1995, in subdivision (a)(2) added "or the boundaries contained on the latest preliminary U.S. Census maps, issued under P.L. 94-171, whichever occurs later", and in the first sentence of the second paragraph of subsection (a), following subdivision (a)(5), added "or on other maps or electronic databases approved by the Executive Secretary-Director".

§ 163-132.4. Directives.

The Executive Secretary-Director of the State Board of Elections may promulgate directives concerning its duties and those of the county boards of elections under this Article. (1985, c. 757, s. 205(a); 1987 (Reg. Sess., 1988), c. 1074, s. 2.)

§ 163-132.5. Cooperation of State and local agencies.

The State Budget Office, the Department of Transportation and county and municipal planning departments shall cooperate and assist the Legislative Services Office, the Executive Secretary-Director of the State Board of Elections and the county boards of elections in the implementation of this Article. (1985, c. 757, s. 205(a); 1987, c. 715, s. 4; 1987 (Reg. Sess., 1988), c. 1074, s. 2; 1989, c. 440, s. 3, c. 770, s. 75.3.)

§ 163-132.5A: Repealed by Session Laws 1991 (Regular Session, 1992), c. 927, s. 1.

§ 163-132.5B. Exemption from Administrative Procedure Act.

The State Board of Elections is exempt from the provisions of Chapter 150B of the General Statutes while acting under the authority of this Article. Appeals from a final decision of the Executive Secretary-Director of the State Board of Elections under this Article shall be taken to the State Board of Elections within 30 days of that decision. The State Board shall approve, disapprove or modify the Executive Secretary's decision within 30 days of receipt of notice of appeal. Failure of the State Board to act within 30 days of receipt of notice of appeal shall constitute a final decision approving that of the Executive Secretary. Appeals from a final decision of the State Board under this Article shall be taken to the

Superior Court of Wake County. (1987, c. 715, s. 4; 1987 (Reg. Sess., 1988), c. 1074, s. 2.)

§ 163-132.5C. Local acts and township lines.

(a) Notwithstanding the provisions of any local act, a county board of elections need not have the approval of any other county board or commission to make precinct boundary changes required by this Article.

(b) Precinct boundaries established, retained or changed under this Article, or changed to follow a district line where a precinct has been divided in a districting plan, may cross township lines. (1987, c. 715, s. 4; 1989, c. 440, s. 5; 1991 (Reg. Sess., 1992), c. 927, s. 1; 1995, c. 423, s. 2.)

Local Modification. — Buncombe: amendment, effective July 12, 1995, deleted "Notwithstanding G.S. 163-128" from the beginning of subsection (b).

Effect of Amendments. — The 1995

§ 163-132.5D. Retention of precinct maps.

The Executive Secretary-Director of the State Board of Elections shall retain the maps and written descriptions which he approves pursuant to G.S. 163-132.3. (1991 (Reg. Sess., 1992), c. 927, s. 1.)

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 927, s. 6 made this section effective July 1, 1992.

§ 163-132.5E. Precinct maps and voter statistics filed with the Legislative Services Office.

(a) No later than January 31 of each year, the chairman of each county board of elections shall file with the Legislative Services Office a map showing the county's precincts as of January 1 of that year.

(b) Not later than January 31 of each year, the chair of each county board of elections shall file with the Legislative Services Office a list of each precinct in the county as of January 1 of that year and the number of registered voters, in each precinct, by political party and race; and, no later than January 31 of each year beginning in 1996, with a numerical breakdown as to the race of registered voters of each political party.

(c) The Legislative Services Office shall develop and send by mail to each county board of elections by September 15 of each year a standard electronic data format that can be used in the following year by county boards of election as an alternative method of filing the list required by subsection (b) of this section. The standard electronic data format shall be for data provided in international standard ASCII file format on 9-track magnetic tape, 8-millimeter magnetic tape, 5¼ inch diskettes, or 3½ inch diskettes. The standard electronic data format shall contain the name of the precinct, and for each precinct the total number of registered voters, the number of registered voters by party affiliation, the number of

registered voters by race, and a numerical breakdown as to the race of registered voters in each political party. (1991 (Reg. Sess., 1992), c. 927, s. 1.)

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 927, s. 6 made this section effective July 1, 1992.

§ 163-132.5F. U.S. Census data by precinct.

The State shall request the U.S. Census Bureau for each decennial census to provide summaries of census data by precinct and shall participate in any U.S. Bureau of the Census' program to effectuate this provision. (1991 (Reg. Sess., 1992), c. 927, s. 1.)

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 927, s. 6 made this section effective July 1, 1992.

§ 163-132.6: Repealed by Session Laws 1991 (Regular Session, 1992), c. 927, s. 1.

§§ 163-133, 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 *Phillips v. Slaughter*, 209 N.C. 543, 183 S.E. 897 (1935); *McLean v. Durham County Bd. of Elections*, 222 N.C. 6, 21 S.E.2d 842 (1942).

§ 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 establish contracts through competition pursuant to Article 3 of Chapter 143 of the General Statutes 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; 1995, c. 324, s. 14.)

Editor's Note. — Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Effect of Amendments. — The 1995 amendment, effective July 1, 1995, substituted "establish contracts through

competition pursuant to Article 3 of Chapter 143 of the General Statutes" for "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" in the last sentence of subdivision (b)(3).

§ 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 parentheses. Notwithstanding the previous sentence, if the candidate has used his nickname in lieu of first and middle names as permitted by G.S. 163-106(a), unless another candidate for the same office who files a notice of candidacy has the same last name, the nickname shall be printed on the ballot immediately before the candidate's surname but shall not be enclosed by parentheses. If another candidate for the same office who filed a notice of candidacy has the same last name, then the candidate's name shall be printed on the ballot in accordance with the alternate indicated by the candidate on his affidavit under G.S. 163-106(a). 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; 1985, c. 558, s. 2; 1993, c. 553, s. 61.)

§ 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, except that if the two ballots being combined do not contain a multi-seat race, then the second sentence of instruction b. shall not appear on the ballot.

Contests in the general election for seats in the State House of Representatives and State Senate shall be on ballots that are separate from ballots containing non-legislative contests, except where the voting system used makes separation of ballots impractical. State House and State Senate contests shall be on the same ballot, unless one is a single-seat contest and the other a multi-seat contest.

If the State Board of Elections divides the State ballot into two or more ballots, all candidates for superior court shall appear on the same ballot except that the State Board of Elections may divide the election of superior court judges into two ballots either because of length of the ballot or to provide a separate ballot for multi-seat races but only superior court judges shall be on those ballots, and all candidates for the Appellate Division shall appear on the same ballot.

(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, and the names of the unaffiliated candidates for President and Vice-President qualified under the provisions of G.S. 163-122 and G.S. 163-209. A separate column shall be assigned to each political party with candidates on the ballot, and a separate column shall be assigned to each pair of unaffiliated candidates for President and Vice-President, if any, and the columns shall be separated by distinct black lines. At the head of each party 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. At the head of the columns for unaffiliated candidates shall be printed in large type the words "Unaffiliated Candidates", and below it a circle, one-half inch in diameter, and below the circle the names of a pair of unaffiliated candidates for President and Vice-President. 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 or below the heading for the unaffiliated candidates for whom 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, and a vote for the names of unaffiliated candidates for President and Vice-President is a vote for electors named by the unaffiliated candidate for President, 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. You may vote a split ticket by marking a cross (X) mark in the party circle and then making a cross (X) mark in the square opposite the name of the candidate(s) of a different party for whom you wish to vote.
 - c. You may also vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.
 - d. 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 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 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. You may vote a split ticket by marking a cross (X) mark in the party circle and then making a cross (X) mark in the square opposite the name of the candidate(s) of a different party for whom you wish to vote.
- c. You may also vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X)

mark in the square opposite the name of each candidate for whom you wish to vote.

- d. 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 single-seat contests for State officers, and for all State officers where mechanical voting machines are used (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, and the words “you must also” in instruction c. shall be underlined:

- “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. You may vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.
- c. You may also vote a split ticket by marking a cross (X) mark in the party circle and then making a cross (X) mark in the square opposite the name of any candidate you choose of a different party. In any multi-seat race where a party circle is marked and you vote for candidates of another party, you must also make a cross (X) mark opposite the name of any candidate you choose of the party for which you marked the party circle to assure your vote will count.

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. If the State ballot contains no multi-seat race, then the second sentence of instruction b. shall not appear on the ballot.

- (5) **County Ballot:** Beneath the title and general instructions set out in this subsection, the ballot for single-seat contests for county officers (including district attorney for the prosecutorial 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), and for all county offices where mechanical voting machines are used, 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, and the words “you must also” in instruction c. shall be underlined:

- “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. You may vote a split ticket by not marking a cross (X) mark in the party circle, but by making a cross (X) mark in the square opposite the name of each candidate for whom you wish to vote.

- c. You may also vote a split ticket by marking a cross (X) mark in the party circle and then making a cross (X) mark in the square opposite the name of any candidate you choose of a different party. In any multi-seat race where a party circle is marked and you vote for candidates of another party, you must also make a cross (X) mark opposite the name of any candidate you choose of the party for which you marked the party circle to assure your vote will count.
- 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. If the county ballot contains no multi-seat race, then the second sentence of instruction b. shall not appear on the ballot.

- (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.
 - (8) Order of candidates in multi-seat races. In a multi-seat race, within each political party that has nominated more than one candidate, the names of candidates shall appear on the ballot in alphabetical order from A to Z within that party's column.
- (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.

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.

(f) **Multi-seat Races.** — The General Assembly finds that since the federal court opinion voiding the law which provided that a straight-ticket ballot shall take precedence in counting over a ballot marked for individual candidates, confusion has occurred in the counting of ballots in multi-seat races. In order to minimize the confusion of instructions for marking ballots in multi-seat races, which must be different than those in single-seat races, the General Assembly finds it necessary that these ballots be printed separately, except in the case of mechanical voting machines. On such machines, where it is physically impossible to vote both a straight-ticket and for an individual candidate, without pulling up the lever of an individual candidate, clearly showing the voter's intention, it is unnecessary to have a separate ballot for multi-seat races, and having such a separate ballot would result in more columns and rows on the machine than the mechanical machine can handle.

Multi-seat races in partisan general elections, which except as provided in this section would have appeared on the State ballot or

county ballot, and except for multi-seat races on mechanical voting machines, shall be placed on a separate multi-seat ballot or ballots, which shall not be combined with any ballot other than a multi-seat ballot. Beneath the title and general instructions set out in this subsection, the ballot(s) for multi-seat races 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 in multi-seat races 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, and 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 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 red type to contrast with the type of the rest of the ballot:

- a. To vote for all candidates of one party (a straight ticket), make a cross (X) mark in the circle of the party of your choice.
- b. You may vote a split ticket in one of two ways:
 - (1) By making a cross mark opposite the name of each candidate for whom you wish to vote and making no mark in the party circle, or
 - (2) By marking the party circle and then making a cross mark opposite the name of each candidate you choose of the party whose circle you marked as well as each candidate you choose of any other party in the race(s) where you wish to vote a split ticket.
- c. If you tear or deface or wrongly mark this ballot, return it and get another."

Ballot instructions need not be printed in red type except on the separate ballot(s) for multi-seat races. (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; 1987, c. 491, s. 1; c. 504; c. 580; c. 713, ss. 1, 8-12; 1991, c. 641, ss. 1-4; c. 761, ss. 32, 32.1; 1991 (Reg. Sess., 1992), c. 782, s. 3; 1993, c. 553, ss. 62, 63.)

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).

Failure of ballots to comply fully with the statutory requirements of this section pertaining to the printing of the ballots did not constitute a violation of the due process clause, where there was no indication that the failure was other than simple negligence on the part of election officials, and where the ballots used in the election sufficiently complied with the state law so that voters should not have been confused or deceived. *Hendon v. North Carolina State Bd. of Elections*, 710 F.2d 177 (4th Cir. 1983).

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).

Applied in *Hendon v. North Carolina State Bd. of Elections*, 710 F.2d 177 (4th Cir. 1983).

§ 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 chief judge 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; 1993 (Reg. Sess., 1994), c. 762, s. 35.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that

would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" in the first sentence of the second paragraph.

§ 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 at least eighty percent (80%) of the number of persons registered to vote in the primary or election in the precinct. Provided that in those instances where precincts are provided with less than a number of ballots equal to one hundred percent (100%) of the number of voters registered to vote in the primary or election in the precinct, the responsible board of elections shall ensure that a number of additional ballots are stored in its offices for distribution to precincts where the need for additional ballots becomes evident so that a number of ballots equal to one hundred percent (100%) of the number of registered voters in the primary or election in each precinct is available.

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 chief judge the required number of ballots of each kind to be voted in his precinct, and the chief judge 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 chief judge 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 chief judge 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; 1985, c. 472, s. 3; 1989, c. 635, s. 3; 1993 (Reg. Sess., 1994), c. 762, s. 36.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that

would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" twice in the third paragraph and in the first and last sentences of the fourth paragraph.

§ 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 chief judge 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 chief judge the number of ballot boxes required for his precinct, and the chief judge 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; 1993 (Reg. Sess., 1994), c. 762, s. 37.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a regis-

trar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecu-

tions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" in the second sentence of the second paragraph and twice in the third paragraph.

§ 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 chief judge 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; 1993 (Reg. Sess., 1994), c. 762, s. 38; 1995, c. 509, s. 116.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecu-

tions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" in the second paragraph.

The 1995 amendment, effective July 29, 1995, substituted "Chapter" for "chapter" in the first paragraph.

§ 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 chief judge 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 chief judge and judges as well as of the qualified voters present at the voting place.

The chief judge'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; 1993 (Reg. Sess., 1994), c. 762, s. 39.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that

would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" in subdivision (1) in the second paragraph and in the third and fourth paragraphs.

§ 163-147. No loitering or electioneering at voting place.

(a) 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 chief judge 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 chief judges shall have full authority to enforce the provisions of this section.

(b) This section does not prohibit establishment of or approval by the county board of elections of a simulated election within the voting place or voting enclosure for persons ineligible to vote because of their age, but the prohibitions of this section as to activities within the voting place or within 50 feet apply to that simulated election. The State Board of Elections shall adopt rules to ensure that the simulated election is not disruptive of the regular process of voting. (1929, c. 164, s. 19; 1967, c. 775, s. 1; 1971, c. 537; 1993, c. 236, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 40.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecu-

tions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" in the second sentence of subsection (a) and substituted "chief judges" for "registrars" in the last sentence of that subsection.

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 candi-

dates 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 chief judge at the precinct voting place, at which time the chief judge shall administer to them the appropriate oaths set out in G.S. 163-41(a) and G.S. 163-42.

The chief judge 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 chief judge'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 chief judge 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; 1993 (Reg. Sess., 1994), c. 762, s. 41.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecu-

tions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" twice in the first paragraph, twice in the second paragraph, and once in the first sentence of the third paragraph.

§ 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, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party under G.S. 163-116, the voter shall state the name of the authorizing political party in whose primary he wishes 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 chief judge 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, except that unaffiliated voters who are permitted to vote in a party primary under G.S. 163-116 shall be furnished ballots for that primary. No such unaffiliated voter shall vote in the primary of more than one party on the same day. It shall be the duty of the chief judge 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 chief judge 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 chief judge. 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 chief judge 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 chief judge 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 chief judge 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 chief judge and judges of election shall sign the pollbook or other approved record immediately beneath the last voter's name entered therein. The chief judge 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; 1987, c. 408, ss. 2, 3; 1993 (Reg. Sess., 1994), c. 762, s. 42.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a regis-

trar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecu-

tions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all

primaries and elections occurring on or after that date, substituted "G.S. 163-116" for "G.S. 163-74(a1)" in the first sentence of subsections (a) and (b), and substituted "chief judge" for "registrar" throughout the section.

Legal Periodicals. — For note, "North Carolina General Assembly Amends Election Laws to Allow Unaffiliated Voters to Vote in Party Primaries," see 66 N.C.L. Rev. 1208 (1988).

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 (1960).

§ 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 do so in either of the following ways:
- 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. Mark the party circle of one party and also mark the voting square opposite the name of any candidate or candidates of any other party. The ballot shall be counted as a straight ticket for all candidates of the party whose circle was marked except for a candidate for an office for which the voter has marked the candidate of any other party, in which case the vote marked for any candidate or candidates of any other party shall be counted instead for that office.
- (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 or as an unaffiliated candidate. 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 may, except as prohibited by G.S. 163-123(f), write in the name of a person under the name of a candidate in any other party. In such case, the write-in shall be counted, and otherwise the ballot shall be counted for all candidates of the party whose circle was marked except for the office for which there is a write-in.
 - e. No voter shall write the name of any person on a primary ballot.
- (7) Multi-Seat Races. — 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 in a multi-seat race, only those candidates of any party beside whose name the voting square is marked shall receive a vote. (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; 1983, c. 324, s. 4; 1987, c. 713, ss. 1.1, 2, 5.)

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), decided under prior law.

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), decided under prior law.

Legislative directive to count an improperly split ballot as a vote for the straight party ticket is unconstitutional. This provision of the statute denies the equal protection of the laws to both the voter and the opponent of the candidate named on the straight party ticket. *Hendon v. North Carolina State Bd. of Elections*, 710 F.2d 177 (4th Cir. 1983).

Although subdivision (5)a of this section is not facially unconstitutional, it may turn out to be unconstitutionally applied if (1) the electronic punch card system (CES) and optically scanned paper ballot system (Airmac) can be programmed to record split tickets in substantially the same manner as voting machines, and (2) the State offers no rational explanation for requiring voters who are furnished the CES and Airmac systems to suffer a

much more onerous burden than voters who are furnished voting machines. *Hendon v. North Carolina State Bd. of Elections*, 710 F.2d 177 (4th Cir. 1983).

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).

Extrinsic Evidence to Determine Voter's Choice. — If a write-in candidate's name is on the ballot, but not in exact accordance with mandatory statutory requirements, the court may look to extrinsic evidence to see if the voter's choice can be determined. In re Manteo Town Election, 117 N.C. App. 213, 450 S.E.2d 519 (1994).

Ballots which had no name written on them did not express an intention of the voter's choice because they did not contain a write-in candidate's name, a variation of his name, or any name at all, and completely disregarded the requirements of this section and § 163-170, or the instructions on the ballot. In re Manteo Town Election, 117 N.C. App. 213, 450 S.E.2d 519 (1994).

Cited in Hendon v. North Carolina State Bd. of Elections, 633 F. Supp. 454 (W.D.N.C. 1986).

§ 163-152. Assistance to voters in primaries and general elections.**(a) In Primaries or General Elections. —**

(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. Any voter in any of the following four categories shall be entitled to assistance from a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union:
 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;
 4. One who, on account of blindness, is unable to enter the voting booth or 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 chief judge to permit him to have assistance, stating his reasons. If the chief judge determines that the voter is entitled to assistance, he shall ask the voter to point out and identify the person he desires to help him and to whose assistance he is entitled under this section. The chief judge shall thereupon request the person indicated to render the requested aid. The chief judge, one of the judges, or one of the assistants may provide aid to the voter if so requested, if the election official is not prohibited by sub-subdivision (a)(1)b. of this section. 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 a Class 2 misdemeanor 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; 1985, c. 563, ss. 16-16.4; 1985 (Reg. Sess., 1986), c. 900, s. 1; 1987, c. 565, s. 3; 1993, c. 539, s. 1099; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 762, s. 43.)

Local Modification to Former §§ 163-172 and 163-173. — Brunswick: 1933, c. 164; 1935, c. 221; Cumberland: 1937, c. 426; Sampson: 1941, c. 166.

Local Modification to Former § 163-174. — Cumberland, Wilson: 1939, c. 402.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applica-

ble but for this act remain applicable to those prosecutions."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 2" preceding "misdemeanor" in subsection (e).

The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" four times in subdivision (a)(2).

CASE NOTES

Violations. — It was a violation of a former version of § 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 may record 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 appropriate election official 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. The certification presented to the precinct chief judge, the county board of elections, or the person accepting the application to register 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; 1985, c. 563, ss. 16.5, 16.6; 1993 (Reg. Sess., 1994), c. 762, s. 44.)

Editor's Note. — G.S. 163-65, referred to above, has been repealed.

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecu-

tions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "appropriate election official" for "registrar or special registration commissioner" in the second sentence, and substituted "chief judge, the county board of elections, or the person accepting the application to register" for "registrar or special registrar" in the third sentence.

§ 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, directors of elections, and the precinct chief judge, 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 chief judge and judges for the purpose of preventing disorder; at the request of the chief judge 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.
- (8) Persons working at, supervising, or voting in a simulated election for persons ineligible to vote because of their age. (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; 1983, c. 411, s. 4; 1993, c. 236, s. 2; 1993 (Reg. Sess., 1994), c. 762, ss. 5, 45; 1995, c. 243, s. 1.)

Local Modification to Former § 163-170. — Cumberland: 1937, c. 426.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 5, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, provides: "Wherever the term 'registrar' appears in Chapter 163 of the General Statutes, the term shall be changed to read 'chief judge.'"

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecu-

tions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" in subdivisions (1) and (5).

The 1995 amendment, effective January 1, 1996, substituted "directors of elections" for "supervisors of elections" in subdivision (1).

§ 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 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 chief judge 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 one thousand dollars (\$1,000) or imprisonment not to exceed six months, or both.

Date

Signature of Voter

Address

Signature of assistant
who administered oath."

- (2) The chief judge 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 chief judge or one of the precinct judges, to be designated by the voter, if he chooses, or, if he does not, by the precinct chief judge, shall perform those duties.

A violation of this section is a Class 2 misdemeanor. (1971, c. 746, s. 1; 1973, c. 793, s. 65; 1979, c. 425, s. 1; 1987, c. 300; c. 565, s. 4; 1993, c. 539, s. 1100; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 762, s. 46.)

Local Modification. — Gaston: 1995, c. 197, s. 1; Guilford: 1995, c. 197, s. 1; Mecklenburg: 1995, c. 197, s. 1; Union: 1995, c. 197, s. 1.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 2" preceding "misdemeanor" in the last sentence.

The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" in subdivisions (1) and (2) and twice in subdivision (5).

§ 163-156. Rules when vacancies for superior court judge are to be voted on.

(a), (b) Repealed by Session Laws 1987 (Regular Session, 1988), c. 1037, s. 125, effective January 1, 1989.

(c) When there is no election in a judicial district for any offices of superior court judge for full terms, and there is to be an election for one or more unexpired terms in that district at that same election in accordance with Article VI, Section 19 of the North Carolina Constitution, the nomination and election shall be determined by the following special rules in addition to any other provisions of law:

- (1) If the unexpired term occurs prior to the tenth day before the filing period ends under G.S. 163-106(c), nominations shall be made by primary election as provided by Article 10 of this Chapter, without designation as to the vacancy;
- (2) If the unexpired term occurs beginning on the tenth day before the filing period ends under G.S. 163-106(c), and ending on the sixtieth day before the general election, a nomination shall be made by the appropriate district executive committee of each political party and the names of the nominees shall be printed on the general election ballots, without designation as to the vacancy;
- (3) Repealed by Session Laws 1987, c. 485, s. 3.
- (4) The general election ballot shall contain, without designation as to vacancy, spaces for the election of all unexpired terms where nominations were made under subdivisions (1) or (2) of this subsection. The persons receiving the highest numbers of votes equal to the unexpired term or terms, shall be elected to the unexpired term or terms.
- (5) Repealed by Session Laws 1987, c. 485, s. 3. (1985 (Reg. Sess., 1986), c. 986, s. 1; 1987, c. 485, s. 3; 1987 (Reg. Sess., 1988), c. 1037, s. 125.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 987, s. 1, amended this section. However, Session Laws 1985 (Reg. Sess., 1986), c. 987, s. 4 provided that the amendment by s. 1 would only become effective if the Attorney General of the United States interposed objection to Session Laws 1985 (Reg. Sess., 1986), c. 986 as to the fact that such bill provided for designating vacan-

cies for all unexpired terms separately from full terms. Section 4 further provided that the act would expire with respect to primaries and elections held on or after December 31, 1986. Objection to c. 986 was not made. Moreover, Session Laws 1987, c. 509, s. 9, repealed Session Laws 1985 (Reg. Sess., 1986), c. 987. Therefore, c. 987 never went into effect.

CASE NOTES

Quoted in *Republican Party v. Hunt*, 841 F. Supp. 722 (E.D.N.C. 1994).

§§ 163-157 through 163-159: Reserved for future codification purposes.

ARTICLE 14.

Voting Systems.

§ 163-160. Voting systems; approval; rules and regulations.

The State Board of Elections shall have authority to approve types of voting systems for use in primaries and elections held in this State. The use of voting systems that 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 systems, including, but not limited to, the following:

- (1) Types of voting systems approved for use in this State;
- (2) Form of ballot labels to be used on voting systems;
- (3) Operation and manner of voting on voting systems;
- (4) Instruction of precinct officials in the use of voting systems;
- (5) Instruction of voters in the use of voting systems;
- (6) Assistance to voters using voting systems;
- (7) Duties of custodians of voting systems;
- (8) Examination of voting systems before use in a primary election; and
- (9) Use of paper or other ballots where voting systems 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; 1987, c. 106.)

Local Modification to Former

§ 163-187.4. — Forsyth: 1965, c. 732, s.

1.

§ 163-160.1. Definition of "voting systems".

As used in this Article, "voting systems" shall mean mechanical voting machines and computer-based and optical-scan election systems. (1987, c. 106, s. 1.)

§ 163-161. Adoption of voting systems by local governments.

(a) Discretionary Authority. — The board of county commissioners, with the approval of the county board of elections, may adopt and purchase or lease a voting system 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 a voting system upon an installment basis or otherwise, or it may lease a voting system with or without an option to purchase.

The board of county commissioners may decline to adopt and purchase or lease any voting system recommended by the county

board of elections, but may not adopt and purchase or lease any voting system that has not been approved by the county board of elections. Provided that no board of county commissioners may purchase any item of equipment of an optical-scanning voting system if the manufacturer or supplier is no longer certified as an authorized vendor by the State Board of Elections, unless the county board of elections specifically approves the purchase of that item of equipment.

(b) Requirements for County Board of Elections. — Before approving the adoption and purchase or lease of any voting system by the board of county commissioners, the county board of elections shall:

- (1) Obtain a current financial statement from the proposed vendor or lessor of the voting system, and send copies of the statement to the county attorney and the chief county financial officer, and
- (2) Witness a demonstration, in that county or at a site designated by the State Board of Elections, of the voting system by the proposed vendor or lessor, and also witness a demonstration of at least one other type of voting system approved by the State Board of Elections.
- (3) Test, during a primary or election, the proposed voting system in at least one precinct in the county where the system would be used if adopted.

(c) Implementation of Decision. — When the board of county commissioners has decided to adopt and purchase or lease a voting system for voting places under the provisions of subsection (a) of this section, the board of county commissioners shall, as soon as practical, provide for each of those voting places sufficient equipment of the approved voting system in complete working order. If it is impractical to furnish each voting place with the equipment of the approved voting system, that which has been obtained may be placed in voting places chosen by the county board of elections. In that case, the county board of elections shall choose the voting places and allocate the equipment in a way that as nearly as practicable provides equal access to the voting system for each voter.

The county board of elections shall appoint as many voting system custodians as may be necessary for the proper preparation of the system for each primary and election and for its maintenance, storage and care.

(d) Municipalities. — The governing board of the municipality shall have the same authority with respect to the acquisition and use of a voting system for municipal primaries and elections that boards of county commissioners are granted in subsection (a) with respect to other primaries and elections.

The decision of the governing board of the municipality shall be subject to approval of the county board of elections, as described in subsection (a), if the county board of elections administers the elections of the municipality, or by the approval of the municipal board of elections if the municipal board of elections administers the elections of the unit. Before approving the adoption and purchase or lease of a voting system, the county or municipal board of elections shall be subject to all the requirements of subsection (b), except that in the case of a municipal board of elections, the financial statement shall be sent to the municipal attorney and the chief municipal finance officer, the demonstration shall be conducted in the munic-

ipality or at a site designated by the State Board of Elections, and the testing shall be done in a precinct of the municipality.

When a municipal governing body has decided to adopt and purchase a voting system for voting places under the provisions of this subsection, that governing body shall have all the duties parallel to those imposed by subsection (c) on a board of county commissioners and a county board of elections: that is, the municipal governing body shall, as soon as practical, provide for each of those voting places sufficient equipment of the approved voting system or, if that is impractical, provide the available equipment of the approved voting system in the places it chooses, and shall appoint the necessary number of voting-system custodians. In the case that equipment of the approved system for every voting place is impractical, the municipal governing board shall choose the voting places and allocate the equipment in a way that as nearly as practicable provides equal access to the voting system for every voter. (1949, c. 301; 1953, c. 1001; 1955, c. 1066, s. 1; 1967, c. 775, s. 1; 1987, c. 106; 1989, c. 635, s. 4.)

CASE NOTES

Cited in *Lake v. State Bd. of Elections*,
798 F. Supp. 1199 (M.D.N.C. 1992).

§ 163-162. Use of paper ballots where voting systems are 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 systems for use by:

- (1) Persons required to sign their ballots under the provisions of G.S. 163-150(e), and persons who vote pursuant to G.S. 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 systems 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, and
- (3) Persons who vote at the office of the county board of elections. For voters who vote at the county board office, the county board may furnish, in lieu of paper ballots, ballots of a voting system approved by the State Board of Elections, provided those ballots are identifiable and retrievable. (1967, c. 775, s. 1; 1973, c. 793, s. 66; 1975, c. 149, s. 2; 1981, c. 630; 1987, c. 106.)

CASE NOTES

Cited in *Lake v. State Bd. of Elections*,
798 F. Supp. 1199 (M.D.N.C. 1992).

§ 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 on January 1, 1981.

§ 163-163. Standardized straight-party designation.

In any general election in which voting devices are used upon which the voter must punch or mark a number in order to cast a straight-party ticket, the number used for each party shall be uniform statewide. The State Board of Elections shall adopt regulations to implement this section. (1987, c. 36, s. 1.)

§ 163-164. Use of paper ballots in multi-candidate contests where optical scan ballot counters cannot be used.

The State Board of Elections shall, upon written request, authorize counties to utilize paper ballots in multi-candidate contests where the optical scan ballot counters are not programmable to count such ballots in accordance with law. (1987, c. 549, s. 6.12.)

§ 163-165: Reserved for future codification purposes.

§ 163-166. Allocation of voting systems.

(a) In allocating to precincts voting systems as defined in G.S. 163-160.1, the sole criteria shall be voter registration in the precinct.

(b) This act applies only to counties of 450,000 or more population according to the 1990 census. (1993, c. 460, ss. 1, 2.)

Editor's Note. — Session Laws 1993, c. 460, s. 3 made this section effective with respect to elections conducted on or after January 1, 1994. Session Laws 1993, c. 460, s. 2 has been codified as subsection (b) of this section at the direction of the Revisor of Statutes.

§ 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 chief judge 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 chief judge, or a judge designated by the chief judge, 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; 1993 (Reg. Sess., 1994), c. 762, s. 47.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that

would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" once in the first paragraph and twice in the second paragraph.

CASE NOTES

Cited in *Lake v. State Bd. of Elections*, 798 F. Supp. 1199 (M.D.N.C. 1992).

§ 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 chief judge written instructions on how ballots shall be marked and counted. Before starting the counting of ballots in his precinct, the chief judge 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 chief judge 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 chief judge 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 chief judge 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 chief judge or judge chosen to deliver them to the county board of elections, the precinct chief judge 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 the ballots shall be emptied on a table in full view of the precinct election officials, ballot counters, if used, and witnesses present. Identically marked ballots may be arranged in orderly piles to be counted. The results of those counts shall be stated aloud and the totals recorded on the tally sheet. For all other ballots, 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 boxes being counted.

(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 chief judge 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 chief judge, or one of the judges selected by the chief judge, 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; 1983, c. 411, s. 5; 1993 (Reg. Sess., 1994), c. 762, s. 48.)**

Editor's Note. — Session Laws 1993 January 1, 1995, provides: "Any person (Reg. Sess., 1994), c. 762, s. 61, effective who on December 31, 1994, was a regis-

trar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, §. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecu-

tions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" throughout the section.

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. *Roberts 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 Properly 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 or as an unaffiliated candidate 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, except as prohibited by G.S. 163-123(f), the write-in shall be counted, and otherwise the ballot shall be counted as a vote for all candidates of the party in whose circle he has marked except for the office for which there is a write-in.
 3. In a multi-seat race, 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, only the write-in and those other candidates of any party beside whose name the voting square is marked shall receive a vote. This subparagraph does not apply if the write-in cannot be counted because of G.S. 163-123(f).
- (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 ticket for all candidates of the party whose circle was marked except for a candidate for an office for which the voter has marked the candidate of any other party, in which case the vote marked for any candidate or candidates of any other party shall be counted instead for that office.
 - 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.

- c. In a multi-seat race, if the voter has marked the party circle at the top of the column of a political party and has marked the voting square of a candidate of any other party, only those candidates of any party beside whose names the voting squares are marked shall receive a vote.
- (7) **Voting a Straight Ticket.** — If a voter desires to vote for all candidates of one political party, a straight ticket, he shall either:
- a. Mark the party circle printed at the top of the party column; or
 - b. Mark the voting squares at the left of the name of every candidate of the same party printed on the ballot; or
 - c. 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. 1-2; 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; 1983, c. 324, s. 5; 1987, c. 713, ss. 3, 4, 6, 7; 1993, c. 553, s. 64.)

CASE NOTES

Legislative directive to count an improperly split ballot as a vote for the straight party ticket is unconstitutional. This provision of the statute denies the equal protection of the laws to both the voter and the opponent of the candidate named on the straight party ticket. *Hendon v. North Carolina State Bd. of Elections*, 710 F.2d 177 (4th Cir. 1983).

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 prop-

erly 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).

Extrinsic Evidence to Determine Voter's Choice. — If a write-in candidate's name is on the ballot, but not in exact accordance with mandatory statutory requirements, the court may look to extrinsic evidence to see if the voter's choice can be determined. *In re Manteo Town Election*, 117 N.C. App. 213, 450 S.E.2d 519 (1994).

Ballots which had no name written on them did not express an intention of the voter's choice because they did not contain a write-in candidate's name, a variation of his name, or any name at all, and completely disregarded the requirements of § 163-151 and this section, or the instructions on the ballot. *In re Manteo Town Election*, 117 N.C. App. 213, 450 S.E.2d 519 (1994).

Applied in *In re Cleveland County Comm'rs*, 56 N.C. App. 187, 287 S.E.2d 451 (1982).

Cited in *Hendon v. North Carolina State Bd. of Elections*, 633 F. Supp. 454 (W.D.N.C. 1986).

§ 163-170.1. Counting of ballots in multi-seat races where voter votes straight-party ticket and for individual candidates of that party but not for individual candidates of another party.

Notwithstanding any other provision of this act, in the case of a multi-seat race, if a voter votes a straight-party ticket, and also votes for individual candidates of that party but not for individual candidates of another party, the ballot shall be counted for that office only for the individual candidates so marked. The State Board of Elections shall by directive amend the instructions provided by this act, if necessary, to effectuate this section. (1987, c. 713, s. 12.1; 1987 (Reg. Sess., 1988), c. 1028, s. 13.)

Editor's Note. — The words "this act" 1987, c. 713, which also amended in this section refer to Session Laws §§ 163-140, 163-151, and 163-170.

§ 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 chief judge 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 chief judge 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 chief judge, subject to the orders of the chairman of the county board of elections as to their disposition; provided that ballot boxes with paper ballots shall be delivered in person to the office of the county board of elections; provided further that in the case of paper ballots which have been counted either mechanically or electronically either the counting machines with the paper ballots sealed inside shall be delivered in person to the office of the county board of elections, or the paper ballots shall be placed in ballot boxes, sealed, and those boxes shall be delivered in person to the office of the county board of elections. The ballots and ballot boxes shall be delivered at a time specified by the county board of elections. 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 chief judge 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 Class 2 misdemeanor.

In the event that a recount is requested as provided by law or there is other filing of an appeal of the election results, the county board of elections shall seal and secure the ballots, ballot boxes, and voting machines within a uniform period of time set by the State Board of Elections, to the extent that such actions have not already been taken as required by law. The aforementioned items shall then be stored in locations that are securely locked by members of the county board of elections. In counties that utilize voting machines or voting systems the county board of elections shall be required to store in one location that record on which the official vote cast is recorded. (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; 1987, c. 416; 1991, c. 727, s. 4; 1993, c. 539, s. 1101; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 762, s. 49.)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that

would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1991, c. 727, s. 4 made amendments to this section, effective with respect to elections occurring on or after January 1, 1992.

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date inserted "Class 2" preceding "misdemeanor" in the fifth paragraph.

The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" in the first and second sentences of the first paragraph, in the first sentence of the second paragraph, and in the fourth paragraph.

CASE NOTES

Cited in *Lake v. State Bd. of Elections*, 798 F. Supp. 1199 (M.D.N.C. 1992).

§ 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 chief judge 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 chief judge 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 director of elections if authorized by the chairman to receive the statement.

Any chief judge 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 Class 2 misdemeanor, unless the failure resulted from illness or other good cause. (1933, c. 165, s. 8; 1967, c. 775, s. 1; 1981, c. 153; 1993, c. 539, s. 1102; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 762, s. 50; 1995, c. 243, s. 1.)

Editor's Note. -- Session Laws 1993, c. 539, which amended this section in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected

by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or

after that date, inserted "Class 2" preceding "misdemeanor" in the third paragraph.

The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" in each paragraph.

The 1995 amendment, effective January 1, 1996, substituted "director of elections" for "supervisor of elections" in the last sentence of the second paragraph.

CASE NOTES

As to admissibility of returns as substantive evidence, see State ex rel.

Freeman 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 chief judge (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; 1993 (Reg. Sess., 1994), c. 762, s. 51.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or

affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar".

§ 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 or at the office of the county board of elections (the choice of location to be at the option of the county board of elections) 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; 1987, c. 491, s. 4.)

Local Modification. — Town of Calabash: 1989, c. 639, s. 1.1.

Local Modification to Former § 163-143. — Brunswick: 1951, c. 462; Halifax: 1951, c. 462.

Editor's Note. — Apparently through inadvertence, the amendment by Session Laws 1981, c. 304 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 version of § 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. *Ledwell 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 (now chief judge) 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 Adjudgments 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 chief judge 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 (now chief judges) 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 ex rel. Freeman 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 Class 2 misdemeanor. 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; 1987, c. 565, s. 5; 1993, c. 539, s. 1103; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected

by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 2" preceding "misdemeanor" in the first sentence of the second paragraph.

§ 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.

§ 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.)

§ 163-179.1. Mandatory recounts.

(a) Whenever, according to the canvass made under this Article, the difference between the number of votes received by a candidate who:

- (1) Has received the number of votes necessary to be declared nominated for an office in a primary election with a majority; or
- (2) Has received the number of votes necessary to be declared nominated for an office in a second primary election

and the number of votes received by any candidate in the race is not more than one percent (1%) of the total votes which were cast for that office, except in multi-seat races one percent (1%) of the total votes cast for those two candidates, the county board of elections shall, before declaring the person nominated, order a recount of the primary if a candidate whose votes fell within one percent (1%) of a successful candidate shall, by noon on the second day (Saturdays and Sundays excepted) following the canvass, request in writing such a recount.

(b) Whenever, according to the canvass made under this Article, the difference between the number of votes received by a candidate who has been declared elected to an office in a general election and the number of votes received by any candidate in the race shall be not more than one percent (1%) of the total votes which were cast for that office, except in multi-seat races one percent (1%) of the total votes cast for those two candidates, or where there is a tie vote between those candidates, the county board of elections shall, before issuing a certificate of election, order a recount of the election if a candidate whose votes fell within one percent (1%) of a successful candidate (or in the case of a tie, either candidate) shall, by noon on the second day (Saturdays and Sundays excepted) following the canvass, request in writing such a recount.

(c) The recount shall be conducted under the supervision of the county board of elections.

(d) This section applies to offices other than those covered by G.S. 163-192.1; except that it does not apply to elections conducted under Subchapter IX of this Chapter. (1987, c. 642, s. 1; 1989, c. 89, s. 1.)

Editor's Note. — Session Laws 1989, c. 89, s. 1, made amendments to this section, effective for all elections held on or after January 1, 1990.

§ 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 ex rel. Freeman v. Ponder, 234 N.C. 294, 67 S.E.2d 292 (1951).

§ 163-181. Certification of election stayed when election is contested.

The chairman of the county or city board of elections shall not issue a certification of election or nomination or the results of a referendum if there is an election contest pending before the county or city board of election or before the State Board of Elections on appeal or otherwise.

Appeals from a decision of the State Board of Elections shall be to the Superior Court of Wake County.

A copy of the State Board of Elections' final decision shall be served on the parties personally or by certified mail. After the decision by the State Board of Elections has been served on the parties, the certification of election shall issue unless the appealing party petitions the Superior Court of Wake County for a stay of the certification within 10 days after the date of service.

The Superior Court of Wake County shall not issue a stay of certification unless the petitioner shows the court that he intends to appeal the decision of the State Board of Elections and that he is likely to prevail and that the results of the election would be changed in his favor. Mere irregularities in the election which would not change the results of the election shall not be sufficient for the court to issue a stay of certification. (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; 1983, c. 329.)

Legal Periodicals. — For comment on election contests in North Carolina, see 55 N.C.L. Rev. 1228 (1977).

CASE NOTES

Cited in *Lake v. State Bd. of Elections*,
798 F. Supp. 1199 (M.D.N.C. 1992).

§§ 163-182 through 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 perforce 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 perforce 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 Elec-

tions, 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).

§ 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. — Section 163-178, by Session Laws 1981, c. 564, s. 1, effective July 1, 1981, referred to in this section, was repealed

§ 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 district court districts in the State.
- (4) For district attorney in the several prosecutorial 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 district court districts as defined in G.S. 7A-133 in the State.
- (5) For district attorney in the several prosecutorial 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. Upon the request of the Legislative Services Office, the Secretary of State shall submit a copy of the original abstracts to that Office. (1933, c. 165, s. 9; 1966, Ex. Sess., c. 5, s. 7; 1967, c. 775, s. 1; 1969, c. 44, s. 87; 1987, c. 491, ss. 2, 3; 1987 (Reg. Sess., 1988), c. 1037, s. 126; 1991 (Reg. Sess., 1992), c. 927, s. 2; 1993, c. 553, s. 65.)

§ 163-192.1. Mandatory recounts.

(a) Whenever, according to the canvass made under this Article, the difference between the number of votes received by a candidate who:

- (1) Has received the number of votes necessary to be declared nominated for an office in a primary election with a majority; or
- (2) Received the number of votes necessary to be declared nominated for an office in a second primary election

and the number of votes received by any candidate in the race is not more than one percent (1%) of the total votes which were cast for that office, except in multi-seat races one percent (1%) of the total votes cast for those two candidates, the State Board of Elections shall, before declaring the person nominated, order a recount of the primary if a candidate whose votes, according to a tally of the canvasses made under Article 15 of this Chapter, fell within one percent (1%) of a successful candidate shall, by noon on the eighth day (Saturdays and Sundays included) following the election, request in writing such a recount. Provided, however, that in a statewide contest, no candidate shall be entitled to an automatic recount under this section unless the difference is at least one-half of one percent (0.5%) of the votes cast, or 10,000 votes, whichever is less. Provided further that if the canvass made under this Article determines that a candidate who was not originally thought to be within the percentage entitling him to a recount based on the tally of canvasses made under Article 15 of this Chapter is in fact within the percentage entitling him to a recount, the Executive Secretary-Director of the State Board of Elections shall immediately notify the candidate and the candidate shall be entitled to a recount if he so requests within 48 hours of notification.

(b) Whenever, according to the canvass made under this Article, the difference between the number of votes received by a candidate who has been declared elected to an office in a general election and the number of votes received by any other candidate in the race shall be not more than one percent (1%) of the total votes which were cast for that office, except in multi-seat races one percent (1%) of the total votes cast for those two candidates, or where there is a tie vote between those candidates, the State Board of Elections shall, before certifying the result to the Secretary of State under G.S. 163-193, order a recount of the election if a candidate whose votes, according to a tally of the canvasses made under Article 15 of this Chapter, fell within one percent (1%) of a successful candidate (or in the case of a tie, either candidate) shall, by noon on the eighth day (Saturdays and Sundays included) following the election, request in writing such a recount. Provided, however, that in a statewide contest, no candidate shall be entitled to an automatic recount under this section unless the difference is at least one-half of one percent (0.5%) of the votes cast, or 10,000 votes, whichever is less. Provided further that if the canvass made under this Article determines that a candidate who was not originally thought to be within the percentage entitling him to a recount based on the tally of canvasses made under Article 15 of this Chapter is in fact within the percentage entitling him to a recount, the Executive Secretary-Director of the State Board of Elections shall immediately notify the candidate and the candidate shall be entitled to a recount if he so requests within 48 hours of notification.

(c) The recount shall be conducted under the supervision of the State Board of Elections.

(d) This section applies to the offices listed in G.S. 163-192. (1987, c. 642, s. 2; 1989, c. 89, s. 2.)

Editor's Note. — Session Laws 1989, section effective for all elections held on c. 89, s. 2, made amendments to this or after January 1, 1990.

§ 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 District Attorneys 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; 1973, c. 47, s. 2.)

§ 163-195. Secretary of State to record abstracts and general election results.

(a) 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.

(b) Within seven days after the county board of elections meets to canvass the returns for the general election, the chairman of that board shall mail, or otherwise deliver, to the Secretary of State results of elections for:

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
Members of the State House of Representatives
Constitutional amendments and propositions submitted to the voters of the State.

The chairman shall deliver the results in a format prescribed by the Secretary of State. The chairman shall use the same format to amend the results to reflect any recounts or changes in the data that he learns of later after the initial results are sent in. In prescribing the format for any county, the Secretary of State shall, to the extent practicable, work within the limits of that county's existing reporting system.

The Secretary of State shall compile the results he receives in a document and deliver copies to the State Senate and the State House of Representatives within 90 days after the general election.

The Secretary of State shall amend the document to correct any inaccuracies that later counts reveal in the data, and shall provide the House and Senate with the corrected data. (1933, c. 165, s. 9; 1967, c. 775, s. 1; 1991, c. 428, s. 1; 1991 (Reg. Sess., 1992), c. 927, s. 4.)

§§ 163-196 through 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 1992 and every two years thereafter, the State of North Carolina shall be divided into 12 districts as follows:

District 1: Beaufort County: Chocowinity township, Richland township, Washington township: Tract 9903, Tract 9904; Bertie County, Bladen County: Abbotts township: Tract 9504: Block Group 5: Block 546A; Tract 9506: Block Group 5: Block 508A; Block Group 7: Block 701, Block 702A, Block 703A, Block 703B, Block 705, Block 706, Block 707, Block 708, Block 709, Block 710, Block 711, Block 712, Block 713, Block 714, Block 715, Block 716, Block 717, Block 718, Block 719A, Block 720A, Block 720B, Block 721, Block 722, Block 723A, Block 724A, Block 725, Block 726, Block 727, Block 728A, Block 729, Block 730, Block 731, Block 732, Block 733, Block 734, Block 735, Block 736, Block 737, Block 738, Block 739, Block 740, Block 741, Block 742, Block 743, Block 744, Block 745, Block 746, Block 747A, Block 748, Block 749, Block 750, Block 751A, Block 752A, Block 753A, Block 754A, Block 759A, Block 760, Block 783, Block 784, Block 785, Block 786A; Brown Marsh township, Carvers Creek township, Central township, Elizabethtown township, Frenchs Creek township, Lake Creek township, Turnbull township, White Oak township, Whites Creek township; Chowan County, Columbus County: Bolton township, Chadbourn township: Tract 9905: Block Group 4: Block 415A, Block 416A, Block 417A, Block 424A, Block 425A, Block 426, Block 427, Block 428A, Block 429, Block 430, Block 431, Block 432; Tract 9907: Block Group 1: Block 103A, Block 105A, Block 106A, Block 107A, Block 108A, Block 109, Block 110A, Block 110B, Block 111, Block 112, Block 113, Block 114, Block 115, Block 119, Block 120A, Block 121, Block 122, Block 123; Block Group 2: Block 210A, Block 210B, Block 211, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218, Block 230, Block 232, Block 233, Block 234, Block 235, Block 236, Block 237, Block 238, Block 239; Block Group 4: Block 410A, Block 410B, Block 411A, Block 411B, Block 412, Block 413, Block 414, Block 415, Block 416A, Block 416B, Block 417; Block Group 5: Block 501A, Block 502A, Block 503A, Block 508B, Block 508C, Block 509, Block 510, Block 511, Block 512, Block 513, Block 514, Block 515, Block 516B, Block 517B, Block 520; Tract 9909: Block Group 6: Block 606A, Block 607A, Block 608, Block 612, Block 613, Block 614, Block 615A; Ransom township, Welch Creek township, Western Prong

township, Whiteville township: Tract 9907: Block Group 1: Block 120B; Tract 9908: Block Group 1: Block 118, Block 121; Block Group 2: Block 206A, Block 206B, Block 210; Block Group 3: Block 302, Block 303, Block 307, Block 308, Block 309, Block 310, Block 311A, Block 311B, Block 312, Block 313A, Block 313B, Block 313C, Block 314, Block 315A, Block 315B, Block 316, Block 317, Block 318, Block 319, Block 320, Block 321, Block 322, Block 323, Block 324, Block 325, Block 326, Block 327, Block 328, Block 329, Block 330; Block Group 4: Block 401, Block 402, Block 403, Block 404A, Block 404B, Block 404C, Block 407, Block 408, Block 409A, Block 409B, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415, Block 416, Block 417; Tract 9909: Block Group 1: Block 101A, Block 101B, Block 102A, Block 102B, Block 102C, Block 102D, Block 103, Block 107, Block 121A, Block 121B, Block 121C, Block 122; Block Group 3: Block 301A, Block 301B, Block 302, Block 303, Block 304, Block 305, Block 306, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318, Block 319, Block 320, Block 321, Block 322, Block 323, Block 324, Block 325, Block 326, Block 327, Block 328, Block 329, Block 330, Block 331, Block 332, Block 333, Block 334, Block 335, Block 336, Block 337, Block 338, Block 339, Block 340, Block 341, Block 342, Block 346, Block 347, Block 348, Block 349, Block 350, Block 351, Block 352A, Block 352B, Block 353, Block 354, Block 355, Block 356; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406, Block 407, Block 408A, Block 408B, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415, Block 416, Block 417, Block 418, Block 419, Block 420A, Block 420B, Block 421A, Block 421B, Block 422, Block 423B, Block 427, Block 428, Block 429; Block Group 5: Block 501, Block 502, Block 503, Block 504, Block 505, Block 506, Block 507A, Block 507B, Block 507C, Block 508, Block 509, Block 510, Block 511, Block 512, Block 513, Block 514, Block 515, Block 516, Block 517, Block 518, Block 519, Block 520, Block 521, Block 522, Block 525, Block 526; Block Group 6: Block 601A, Block 601B, Block 602, Block 603, Block 604, Block 605, Block 606B, Block 607B, Block 615B, Block 616, Block 619, Block 620B; Tract 9910: Block Group 1: Block 101A, 101B, Block 101D, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108A, Block 108B, Block 108C, Block 108D, Block 109, Block 110A, Block 110B, Block 110C, Block 110D, Block 111, Block 112, Block 113A, Block 113B, Block 113C, Block 114, Block 115A, Block 115B, Block 116A, Block 116B, Block 117, Block 118A, Block 118B, Block 118C, Block 119A, Block 119B, Block 120, Block 121A, Block 121B, Block 122A, Block 122B, Block 123A, Block 123B, Block 123C, Block 124, Block 125A, Block 125B, Block 126A, Block 126B, Block 127, Block 128, Block 129, Block 130, Block 131, Block 132A; Craven County: Cove City *, Dover *, Fort Barnwell *, Harlowe *, Croatan *: Tract 9610: Block Group 7: Block 711, Block 712, Block 714, Block 715, Block 716, Block 717, Block 718, Block 719, Block 720, Block 721, Block 722, Block 723, Block 724, Block 725, Block 726, Block 727, Block 728, Block 729, Block 730, Block 731, Block 732, Block 733, Block 734, Block 735, Block 736, Block 737, Block 738, Block 739, Block 740, Block 741, Block 742, Block 743, Block 744, Block 745, Block 746, Block 747, Block 748, Block 749, Block 750, Block 751, Block 752, Block 753, Block 754, Block 755; Tract 9611: Block Group 1: Block 116; Block Group 2: Block 202, Block 203, Block 204, Block 206, Block 207, Block 208, Block 209, Block

210, Block 211, Block 212, Block 213, Block 214, Block 223, Block 236, Block 237, Block 238, Block 239, Block 240, Block 241, Block 242, Block 243, Block 244, Block 245, Block 246, Block 247, Block 248, Block 289, Block 290; Havelock *: Tract 9611: Block Group 2: Block 249, Block 250, Block 283, Block 284, Block 285, Block 286, Block 287, Block 288, Block 291, Block 292, Block 293, Block 294, Block 295, Block 296, Block 297; Tract 9613: Block Group 2: Block 219A, Block 219B, Block 222, Block 223; Block Group 3: Block 323B, Block 324, Block 325, Block 326, Block 327, Block 328, Block 329; Block Group 5: Block 503G, Block 525B; First Ward *, Second Ward *, Third Ward *, Fourth Ward *, Fifth Ward *, Clarks *, Rhems *: Tract 9604: Block Group 5: Block 516, Block 517, Block 518, Block 521D, Block 530B, Block 531C, Block 533, Block 534, Block 535, Block 536, Block 537, Block 538, Block 539, Block 540, Block 541, Block 542, Block 543, Block 544, Block 545, Block 546, Block 547A, Block 547B, Block 548, Block 549, Block 550, Block 556, Block 558, Block 559, Block 560, Block 561, Block 562B, Block 563, Block 564, Block 565, Block 566, Block 567, Block 568, Block 569, Block 570, Block 571, Block 572; Block Group 7: Block 701, Block 702, Block 711B, Block 712B, Block 738B, Block 739, Block 740, Block 741, Block 742, Block 743; Jasper *: Cumberland County: Beaver Dam *: Tract 0029: Block Group 1: Block 116; Block Group 2: Block 222A, Block 224A, Block 225A, Block 226A, Block 227A, Block 228A, Block 229, Block 230, Block 231, Block 232, Block 233A, Block 234A, Block 235, Block 236, Block 237, Block 238A, Block 239A, Block 250A, Block 251A, Block 252A, Block 253, Block 254, Block 255, Block 256, Block 257, Block 258, Block 259, Block 260, Block 261, Block 262, Block 263, Block 264, Block 265, Block 266; Block Group 3: Block 311, Block 336; Cedar Creek *, Cross Creek #1 *, Cross Creek #3 *, Cross Creek #5 *, Cross Creek #9 *: Tract 0012: Block Group 2: Block 203; Tract 0024: Block Group 9: Block 901A, Block 902, Block 903, Block 904, Block 905, Block 908, Block 909, Block 910, Block 911, Block 912, Block 913, Block 914; Tract 0025.01: Block Group 9: Block 911, Block 931, Block 933; Cross Creek #10 *, Cross Creek #13 *, Cross Creek #15 *: Tract 0004: Block Group 2: Block 231, Block 232; Tract 0006: Block Group 1: Block 133; Block Group 3: Block 301, Block 302, Block 304, Block 307, Block 308; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406, Block 407, Block 408, Block 409, Block 413, Block 414, Block 415; Cross Creek #16 *, Cross Creek #17 *: Tract 0010: Block Group 1, Block Group 3: Block 313, Block 314, Block 315, Block 316; Block Group 9; Tract 0011: Block Group 1: Block 102, Block 103, Block 104, Block 108, Block 109, Block 112, Block 113, Block 115, Block 117, Block 118, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124; Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 308, Block 309A, Block 309B, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316; Tract 0024: Block Group 1: Block 101B, Block 101C, Block 104, Block 105A, Block 105B, Block 106B, Block 107A, Block 107B, Block 108, Block 109, Block 110, Block 111, Block 115, Block 116, Block 117, Block 118, Block 138; Block Group 2: Block 201A, Block 201B, Block 202, Block 203, Block 204, Block 205, Block 206; Block Group 4: Block 406A; Block Group 5; Cross Creek #19 *, Sherwood *, Pearces Mill #3 *: Duplin County: Glisson *: Tract 9901: Block Group 2: Block 201, Block 202, Block 208, Block 209, Block 210, Block 211, Block 225, Block 227, Block 234, Block 235,

Block 237, Block 257A, Block 257B; Charity *, Kenansville *, Magnolia *, Rockfish *, Warsaw *; Edgecombe County: Precinct 1-1 *, Precinct 1-2 *: Tract 0209: Block Group 2: Block 201, Block 202, Block 203, Block 204A, Block 204B, Block 205, Block 206, Block 207A, Block 207B, Block 208A, Block 208B, Block 211, Block 212, Block 213, Block 214, Block 215, Block 219, Block 224, Block 228, Block 229; Precinct 3-1 *, Precinct 4-1 *, Precinct 5-1 *, Precinct 6-1 *, Precinct 7-1 *, Precinct 12-1 *, Precinct 12-2 *, Precinct 12-3 *: Tract 0202: Block Group 5: Block 513B; Block Group 6: Block 614, Block 625; Tract 0204: Block Group 7: Block 702, Block 703B, Block 704B, Block 705, Block 706, Block 707, Block 708C, Block 709B, Block 710, Block 712, Block 713, Block 714, Block 721B, Block 722B; Precinct 12-4 *, Precinct 12-5 *; Gates County, Greene County, Halifax County: Hollister *: Tract 9906: Block Group 3: Block 301A, Block 302A, Block 303B, Block 325A, Block 325B, Block 326A, Block 326B; Tract 9908: Block Group 1: Block 113A, Block 113B, Block 127, Block 128, Block 134A, Block 134B, Block 135A, Block 138A, Block 138B, Block 139; Block Group 3: Block 322, Block 323, Block 324, Block 325, Block 326, Block 327, Block 328, Block 329, Block 330; Block Group 4: Block 401, Block 402, Block 403, Block 417, Block 422, Block 423, Block 424, Block 425, Block 426, Block 427, Block 428, Block 429, Block 430, Block 431, Block 432, Block 433, Block 434, Block 435, Block 436, Block 437, Block 438, Block 439, Block 440, Block 441, Block 442, Block 443, Block 444, Block 445, Block 446, Block 447, Block 448, Block 449, Block 450, Block 451; Ringwood *, Butterwood *, Tract 9907: Block Group 4: Block 411A, Block 412, Block 446A, Block 448, Block 449; Conoconnara *, Enfield #1 *, Enfield #2 *, Enfield #3 *, Faucett *: Tract 9905: Block Group 7: Block 707A, Block 715, Block 716; Tract 9906: Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 206, Block 207, Block 208, Block 209, Block 210, Block 211, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218, Block 219, Block 226, Block 227, Block 228, Block 236, Block 237, Block 240, Block 241, Block 247, Block 248; Block Group 3: Block 310, Block 314, Block 317, Block 318, Block 319, Block 320, Block 321, Block 322, Block 323, Block 324, Block 325C, Block 326C, Block 326D, Block 327, Block 328, Block 329, Block 330, Block 331, Block 332, Block 333; Tract 9908: Block Group 2: Block 201C; Tract 9909: Block Group 1: Block 101B, Block 101C, Block 102C, Block 102D, Block 103B, Block 103C, Block 104A, Block 104B; Tract 9910: Block Group 1: Block 110, Block 111, Block 112, Block 113, Block 114; Halifax *, Littleton #1 *: Tract 9907: Block Group 2: Block 240, Block 241, Block 242, Block 256, Block 257, Block 258, Block 259, Block 260, Block 261, Block 262, Block 263, Block 264, Block 265, Block 266, Block 269, Block 270, Block 271; Block Group 3: Block 308, Block 309, Block 310, Block 311, Block 312, Block 313A, Block 313B, Block 314, Block 315, Block 316A, Block 316B, Block 318, Block 320, Block 333, Block 334, Block 335, Block 336, Block 337, Block 338, Block 339, Block 344, Block 345, Block 346, Block 347, Block 348A, Block 348B, Block 349, Block 350, Block 351; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 407, Block 411B, Block 414, Block 415, Block 416, Block 417, Block 418, Block 419, Block 420, Block 421, Block 422, Block 423, Block 424, Block 425A, Block 425B, Block 426A, Block 426B, Block 427, Block 428, Block 429A, Block 429B, Block 430, Block 431, Block 432, Block 433, Block 434, Block 435, Block 436, Block 437,

Block 438, Block 439, Block 440, Block 441, Block 442, Block 443, Block 444, Block 445, Block 446B, Block 447; Tract 9908: Block Group 1: Block 108; Hobgood *, Palmyra *, Roanoke Rapids #7 *, Roanoke Rapids #9 *: Tract 9905: Block Group 5: Block 509, Block 510, Block 511A, Block 511B, Block 512A, Block 512B, Block 513, Block 514, Block 515, Block 516, Block 517A, Block 519, Block 520A, Block 520B, Block 521A, Block 521B; Block Group 6: Block 601A, Block 601B, Block 602A, Block 602B, Block 602C, Block 603, Block 604A, Block 604B, Block 605, Block 606, Block 607A, Block 607B, Block 608, Block 609, Block 610A, Block 613, Block 614, Block 615, Block 616, Block 617, Block 618, Block 619, Block 620, Block 621, Block 622; Roseneath *, Scotland Neck #1 *, Scotland Neck #2 *, Weldon #1 *, Weldon #2 *, Weldon #3 *; Hertford County, Jones County: Pollocksville *, Trenton *; Lenoir County: Contentnea *, Kinston #1 *, Kinston #2 *, Kinston #6 *, Kinston #7 *, Kinston #8 *, Moseley Hall *, Trent #2 *: Tract 0112: Block Group 4: Block 406, Block 407, Block 410, Block 411, Block 412, Block 422, Block 423, Block 424, Block 425, Block 445, Block 449, Block 450; Vance *, Martin County: Goose Nest, Hassell, Hamilton, Poplar Point, Robersonville #1, Robersonville #2, Williamston #1, Williamston #2, VTD's not defined; Nash County: Griffins *: Tract 0108: Block Group 1: Block 166A, Block 167; Tract 0109: Block Group 1: Block 101, Block 102, Block 103, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127, Block 128, Block 129, Block 130, Block 131, Block 132, Block 133, Block 134, Block 135, Block 136, Block 137, Block 138, Block 139, Block 140, Block 141, Block 142, Block 143, Block 144, Block 145, Block 146, Block 147, Block 148, Block 149, Block 150, Block 151, Block 152, Block 153A, Block 153B, Block 156B, Block 156C, Block 157; Block Group 2: Block 206E, Block 206F, Block 207D; Block Group 3: Block 301, Block 302, Block 303A, Block 304; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415, Block 416, Block 417, Block 418, Block 419, Block 420, Block 421, Block 422, Block 423, Block 424, Block 425, Block 426, Block 427, Block 430, Block 431, Block 432, Block 433, Block 434, Block 435, Block 436, Block 437, Block 438A, Block 438B, Block 439, Block 440A, Block 441, Block 445, Block 446, Block 447, Block 448, Block 449, Block 450, Block 451, Block 453, Block 454; No. Whitakers #1 *, No. Whitakers #2 *, Rocky Mount #3 *, Rocky Mount #4 *, Battleboro *; New Hanover County: Cape Fear #1 *: Tract 0115: Block Group 1: Block 141, Block 142, Block 143; Block Group 2: Block 209; Block Group 4: Block 401; Block Group 5: Block 501, Block 502, Block 503, Block 504, Block 505, Block 506, Block 507, Block 508, Block 509, Block 510, Block 511, Block 512, Block 513, Block 514, Block 515, Block 516, Block 517, Block 518, Block 519, Block 520, Block 521, Block 522, Block 523, Block 524, Block 525, Block 526, Block 527, Block 528, Block 529, Block 530, Block 531, Block 532, Block 533, Block 534, Block 535, Block 536, Block 537, Block 538, Block 539, Block 540, Block 541, Block 542, Block 543, Block 544, Block 545, Block 546, Block 547, Block 548, Block 549, Block 550, Block 551, Block 552, Block 553, Block 554, Block 555, Block 556, Block 557, Block 558, Block 559; Wilmington #1 *, Wilmington #2 *, Wilmington #3 *, Wilmington #6 *, Wilmington

#7 *, Wilmington #8 *: Tract 0110: Block Group 1: Block 102, Block 124, Block 129; Block Group 2: Block 201, Block 207, Block 208, Block 209, Block 210, Block 211, Block 213, Block 223; Block Group 3: Block 312, Block 313, Block 314, Block 318, Block 319, Block 322, Block 323; Wilmington #9 *: Tract 0103: Block Group 2: Block 208, Block 209, Block 210; Tract 0116.02: Block Group 4: Block 420A; Wilmington #10 *, Wilmington #15 *, Northampton County, Pasquotank County: Newland, Nixonton, Elizabeth City 1-A, Elizabeth City 3-A, Elizabeth City 3-B, Elizabeth City 4-A, Elizabeth City 4-B; Pender County: Canetuck *, Caswell *, Columbia *, Grady *: Tract 9805: Block Group 1: Block 182B, Block 183B, Block 184B, Block 185, Block 186, Block 187, Block 188; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406, Block 408, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415, Block 416, Block 417, Block 419, Block 425, Block 426, Block 427, Block 428, Block 457, Block 468, Block 469, Block 470, Block 472, Block 484, Block 486, Block 487, Block 488, Block 489, Block 490, Block 491, Block 492, Block 495; Upper Holly *, Upper Union *; Perquimans County, Pitt County: Arthur *, Ayden East *, Belvoir *, Bethel *, Carolina *, Falkland *, Farmville West *, Farmville East *, Fountain *, Grifton *, Grimesland *, Pactolus *, Greenville #1 *, Greenville #2, Greenville #3 *, Greenville #4 *, Greenville #5 *, Greenville #6 *, Greenville #13 *, Greenville #2 Noncontiguous; Vance County: Middleburg, Townsville, Williamsboro, East Henderson I, East Henderson II, North Henderson I, North Henderson II, South Henderson I; Warren County, Washington County, Wayne County: White Hall *: Tract 0006: Block Group 6: Block 650, Block 651, Block 659, Block 660, Block 661; Block Group 7: Block 743, Block 744, Block 746, Block 747; Wilson County: Gardners *, Saratoga *, Stantonsburg *: Tract 0010: Block Group 1: Block 101A, Block 101B, Block 112, Block 116A, Block 117A, Block 117B, Block 117C, Block 118A, Block 118B, Block 119, Block 120A, Block 120B, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127, Block 128, Block 129, Block 130, Block 131, Block 132, Block 133, Block 134, Block 135, Block 136, Block 137, Block 138, Block 139A, Block 139B, Block 140, Block 141A, Block 141B, Block 142, Block 143, Block 144A, Block 144B, Block 145, Block 146A, Block 146B, Block 147A, Block 147B, Block 148, Block 149, Block 150, Block 151, Block 152, Block 153, Block 154, Block 155, Block 156, Block 158, Block 159, Block 160, Block 161, Block 162, Block 163, Block 164; Tract 0011: Block Group 2: Block 230B; Toisnot *: Tract 0013: Block Group 1: Block 101A, Block 101B, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 124, Block 125, Block 134, Block 135, Block 136, Block 137, Block 138, Block 143, Block 144, Block 145, Block 146; Block Group 2: Block 201, Block 202, Block 203, Block 205, Block 213, Block 214; Block Group 3: Block 301, Block 302A, Block 302B, Block 302C, Block 303A, Block 303B, Block 304, Block 305, Block 306, Block 307, Block 308, Block 309, Block 310, Block 311A, Block 311B, Block 311C, Block 312A, Block 312B, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318, Block 319, Block 320, Block 321, Block 322, Block 323, Block 324, Block 325A, Block 326, Block 327, Block 329, Block 336, Block 337, Block 338, Block 339; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406, Block

407A, Block 408, Block 409, Block 410, Block 411, Block 412A; Block Group 5: Block 508, Block 509, Block 512, Block 513, Block 514, Block 521, Block 522, Block 523A, Block 523B, Block 524A, Block 524B, Block 525A, Block 526, Block 527, Block 528, Block 529A, Block 529B, Block 529C, Block 530A, Block 530B, Block 531A, Block 532, Block 533, Block 534, Block 535, Block 536, Block 537, Block 538, Block 539, Block 540, Block 541A, Block 541B, Block 542, Block 543, Block 544, Block 545, Block 546, Block 547, Block 548; Wilson A *, Wilson B *, Wilson C *, Wilson E *: Tract 0001: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 114, Block 115, Block 116, Block 117, Block 122, Block 123; Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 213, Block 214, Block 215, Block 217, Block 218, Block 219; Tract 0006: Block Group 2: Block 206, Block 210, Block 213, Block 214, Block 216, Block 217; Block Group 5: Block 518B; Tract 0013: Block Group 4: Block 416; Wilson F *, Wilson G *, Wilson H *, Wilson I *: Tract 0003: Block Group 1: Block 119, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 127, Block 128, Block 129; Block Group 2: Block 207, Block 208, Block 213, Block 214, Block 223; Wilson N *, Wilson Q *

District 2: Durham County: Neal Junior H.S. *, Brogden Junior H.S. *, Club Blvd. School *, Edison Johnson Community Center *, E.K. Powe School *, Fire Station #6 *, Hillandale School *, Holy Infant Catholic Church *, Hope Valley School *, Multi-Purpose Building/Duke *, NC School of Science & Math *, Rogers-Herr Junior H.S. *, St. Stephens/Parish Hall *: Tract 0020.07: Block Group 4: Block 406, Block 410; Tract 0020.08: Block Group 1, Block Group 2, Block Group 3: Block 301A, Block 301B, Block 302A, Block 302B, Block 303, Block 304, Block 305, Block 306, Block 307, Block 308, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315; Block Group 4; Cole Mill Church of Christ *, Eno Valley School *, Bethesda Ruritan Club *, Oak Grove School *, Durham Academy Gym *, Five Oaks Seventh Day Adventist Church *, Jordan H.S. *, Nelson Community Center *, Parkwood School *, Edgecombe County: Precinct 1-2 *: Tract 0209: Block Group 2: Block 209, Block 210, Block 216A, Block 216B, Block 217A, Block 217B, Block 217C, Block 217D, Block 218, Block 225, Block 226, Block 227; Tract 0210: Block Group 5: Block 506, Block 507, Block 516, Block 517, Block 518, Block 530, Block 531, Block 532; Block Group 9; Tract 0212: Block Group 2, Block Group 5; Tract 0213: Block Group 2: Block 248A, Block 248B, Block 250; Block Group 3: Block 301A, Block 301B, Block 302, Block 303, Block 304A, Block 304B, Block 305, Block 306A, Block 306B, Block 307, Block 308, Block 318A; Precinct 1-3 *, Precinct 1-4 *, Precinct 2-1 *, Tract 0209: Block Group 2: Block 220, Block 221, Block 222, Block 223; Precinct 8-1 *, Tract 0213: Block Group 3: Block 301C, Block 306C, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318B, Block 319, Block 320, Block 321, Block 322, Block 323, Block 324, Block 325, Block 326; Precinct 9-1 *, Precinct 10-1 *, Precinct 11-1 *, Tract 0213: Block Group 1: Block 102, Block 122, Block 123, Block 124; Precinct 12-3 *: Tract 0202: Block Group 1: Block 151B, Block 151C, Block 153; Block Group 4: Block 411B, Block 416B, Block 417B, Block 424C, Block 424D, Block 425; Block Group 5: Block 506B, Block 513C, Block 516, Block 520C; Block Group 6: Block 601, Block 602,

Block 603, Block 604, Block 605, Block 606, Block 607, Block 608, Block 609, Block 610, Block 611, Block 612, Block 613, Block 615, Block 616, Block 617, Block 618, Block 619, Block 620, Block 621, Block 622, Block 623, Block 624, Block 626, Block 627, Block 628, Block 632, Block 633; Tract 0203: Block Group 5: Block 501B; Block Group 6: Block 618, Block 619; Block Group 7: Block 701, Block 702, Block 703, Block 704, Block 705, Block 706B, Block 707B, Block 708B, Block 709B, Block 710, Block 711, Block 712, Block 713, Block 714, Block 715C, Block 716B, Block 717B, Block 718B, Block 729B, Block 730B, Block 735B; Tract 0204: Block Group 7: Block 701, Block 711; Tract 0213: Block Group 1: Block 101, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121, Block 125, Block 126, Block 127, Block 128, Block 129, Block 130, Block 131, Block 132, Block 133, Block 134, Block 135; Block Group 2: Block 211, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217B, Block 218B; Tract 0214: Block Group 1: Block 101, Block 104, Block 105; Precinct 13-1 *, Precinct 14-1 *; Franklin County, Granville County: Brassfield *, Butner *, Creedmoor *, Antioch *, Corinth *, Credle *, East Oxford *, South Oxford *, Salem *, Tally Ho *; Halifax County: Hollister *; Tract 9906: Block Group 3: Block 301B, Block 302B, Block 302C, Block 303A, Block 303C; Tract 9908: Block Group 1: Block 117A, Block 117B, Block 124A, Block 124B, Block 124C, Block 125A, Block 126, Block 129, Block 130, Block 131A, Block 131B, Block 131C, Block 132, Block 133, Block 140, Block 141, Block 142, Block 143, Block 144, Block 145, Block 146; Block Group 2: Block 205, Block 206; Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 305, Block 306, Block 307, Block 308, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318, Block 319, Block 320, Block 321, Block 331, Block 332; Block Group 4: Block 404, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415, Block 416, Block 418, Block 419, Block 420, Block 421; Faucett *: Tract 9906: Block Group 2: Block 220, Block 221C, Block 223B, Block 225B, Block 229, Block 230, Block 231B, Block 232, Block 233, Block 234, Block 235, Block 242, Block 243, Block 244, Block 245, Block 246, Block 249, Block 250, Block 251, Block 252, Block 253, Block 254, Block 255, Block 256, Block 257, Block 258, Block 259, Block 260, Block 261, Block 262, Block 263, Block 264; Block Group 3: Block 301C, Block 301D, Block 302D, Block 304, Block 305, Block 306, Block 307, Block 308, Block 309, Block 311, Block 312, Block 313, Block 315, Block 316; Tract 9907: Block Group 4: Block 408A; Littleton #1 *: Tract 9907: Block Group 4: Block 405, Block 406, Block 408B, Block 409, Block 410, Block 413; Littleton #2 *, Roanoke Rapids #1 *, Roanoke Rapids #2 *, Roanoke Rapids #3 *, Roanoke Rapids #4 *, Roanoke Rapids #5 *, Roanoke Rapids #6 *, Roanoke Rapids #8 *, Roanoke Rapids #9 *: Tract 9905: Block Group 2: Block 216, Block 218, Block 219; Block Group 5: Block 517B, Block 518; Block Group 6: Block 610B, Block 611, Block 612; Block Group 7: Block 701, Block 702, Block 703, Block 704, Block 705, Block 706, Block 707B, Block 708, Block 709, Block 710, Block 711, Block 712, Block 713, Block 714, Block 717, Block 718; Roanoke Rapids #10 *, Roanoke Rapids #11 *; Harnett County, Johnston County, Lee County, Moore County: Township 4, Ritters: Tract 9501:

Block Group 2: Block 202A, 203A, Block 210, Block 211A, Block 212, Block 213, Block 214, Block 215, Block 231, Block 242; Township 5, Deep River, Tract 9501: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109C, Block 110B, Block 142B, Block 142C, Block 142D, Block 142E, Block 142F, Block 145G, Block 146B, Block 156, Block 157, Block 158, Block 159, Block 160, Block 161, Block 162, Block 163, Block 164, Block 165, Block 166, Block 167, Block 168, Block 169, Block 170, Block 171, Block 172, Block 173, Block 179B, Block 179C; Township 6, Greenwood, Township 7, McNeill, Township 8, Sand Hill, Township 9, Mineral Springs, Township 10, Little River; Nash County: Bailey *, Castalia *, Coopers *, Drywells *, Ferrells *, Griffins *: Tract 0109: Block Group 1: Block 104, Block 105, Block 106, Block 107, Block 108, Block 109; Block Group 4: Block 452; Jacksons *, Mannings #1 *, Mannings #2 *, Nashville *, Oak Level, Oak Level Noncontiguous, Red Oak *, Rocky Mount #1 *, Rocky Mount #2 *, Rocky Mount #5 *, Rocky Mount #6 *, Rocky Mount #7 *, Stony Creek #1, Stony Creek Noncontiguous A, Stony Creek Noncontiguous B; Vance County: Dabney, Hilltop, Kittrell, Sandy Creek, Watkins, South Henderson II, West Henderson I, West Henderson IIA, West Henderson IIB; Wake County: New Light #1 *; Wilson County: Black Creek *, Cross Roads *, Old Fields *, Spring Hill *, Stantonsburg *: Tract 0008.02: Block Group 2: Block 238, Block 239, Block 240, Block 245, Block 246, Block 247, Block 248, Block 249, Block 250; Block Group 3: Block 319A, Block 320, Block 321A, Block 322, Block 323; Tract 0009: Block Group 3: Block 301B; Tract 0010: Block Group 1: Block 101C, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 113, Block 114, Block 115, Block 116B; Taylors *, Toisnot *: Tract 0012: Block Group 1: Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 114, Block 118, Block 119, Block 120, Block 121; Tract 0013: Block Group 1: Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121, Block 122, Block 123, Block 126, Block 127, Block 128, Block 129, Block 130, Block 131, Block 132, Block 133, Block 139, Block 140, Block 141, Block 142; Block Group 2: Block 204, Block 206, Block 207, Block 208, Block 209, Block 210, Block 211, Block 212, Block 215, Block 216, Block 217, Block 218, Block 219, Block 220, Block 221, Block 222, Block 223, Block 224, Block 225, Block 226, Block 227, Block 228, Block 229, Block 230, Block 231, Block 232, Block 233, Block 234, Block 235, Block 236, Block 237, Block 238, Block 239, Block 240, Block 241, Block 242, Block 243, Block 244, Block 245, Block 246, Block 247, Block 251; Block Group 3: Block 325B, Block 328; Block Group 4: Block 407B, Block 412B, Block 413, Block 414; Block Group 5: Block 501, Block 502, Block 503, Block 504, Block 505, Block 506, Block 507, Block 510, Block 511, Block 515, Block 516A, Block 516B, Block 517, Block 518, Block 519, Block 520, Block 525B, Block 531B, Block 549; Wilson D *, Wilson E *: Tract 0006: Block Group 2: Block 201, Block 202, Block 205, Block 207, Block 208, Block 209, Block 211; Block 212, Block 215; Block Group 3, Block Group 5: Block 517, Block 518A; Tract 0013: Block Group 4: Block 415, Block 417, Block 418; Wilson I *: Tract 0003: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 126; Block Group

2: Block 209, Block 210, Block 211, Block 212; Tract 0004: Block Group 5: Block 520B, Block 520X, Block 520Y, Block 520Z, Block 521, Block 522, Block 523, Block 524A, Block 524B, Block 525, Block 526, Block 527A, Block 527B, Block 528A, Block 528B, Block 529A, Block 529B, Block 529C, Block 531A, Block 531B, Block 532A, Block 532B, Block 535; Tract 0008.02: Block Group 2: Block 207, Block 208, Block 209, Block 210, Block 211A, Block 211B, Block 211C, Block 212, Block 213, Block 214, Block 234A, Block 234B, Block 235, Block 251A, Block 251B, Block 252, Block 253A, Block 253B, Block 254, Block 255, Block 256, Block 257; Tract 0009: Block Group 1: Block 108, Block 109; Wilson J *, Wilson K *, Wilson L *, Wilson M *, Wilson P *.

District 3: Beaufort County: Bath township, Long Acre township, Pantego township, Washington township: Tract 9902: Block Group 1: Block 129B, Block 130B, Block 131, Block 132, Block 133, Block 134, Block 135, Block 136, Block 137, Block 138, Block 139, Block 140, Block 141, Block 142, Block 143, Block 144, Block 145, Block 146, Block 147, Block 148, Block 149, Block 150, Block 151, Block 152, Block 153, Block 154, Block 155, Block 156, Block 157B, Block 158B, Block 159B, Block 160B, Block 175B, Block 176B, Block 185B, Block 186B, Block 187B, Block 189, Block 190, Block 191, Block 197; Block Group 2; Tract 9905: Block Group 5: Block 522A, Block 528A; Camden County, Carteret County; Craven County: Ernul *, Epworth *, Vanceboro *, Bridgeton *, Truitt *, Croatan *: Tract 9611: Block Group 1: Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 117, Block 118A, Block 118B, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127; Block Group 2: Block 201, Block 205, Block 215, Block 216, Block 217, Block 218, Block 219, Block 220, Block 221, Block 222, Block 224, Block 225; Havelock *: Tract 9611: Block Group 1: Block 128A, Block 128B, Block 129, Block 130, Block 131, Block 132, Block 133, Block 134; Block Group 2: Block 226, Block 227, Block 228, Block 229, Block 230, Block 231, Block 232, Block 233, Block 234, Block 235, Block 251, Block 252, Block 253, Block 254A, Block 254B, Block 255A, Block 255B, Block 256, Block 257, Block 258, Block 259A, Block 259B, Block 260, Block 261, Block 262A, Block 262B, Block 262C, Block 263, Block 264, Block 265, Block 266, Block 267, Block 268, Block 269, Block 270, Block 271, Block 272, Block 273, Block 274, Block 275, Block 276, Block 277, Block 278, Block 279, Block 280A, Block 280B, Block 280C, Block 281, Block 282; Block Group 3; Tract 9612, Tract 9613: Block Group 1, Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 206, Block 207, Block 208, Block 209, Block 210A, Block 210B, Block 210C, Block 211A, Block 211B, Block 211C, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217A, Block 217B, Block 217C, Block 218A, Block 218B, Block 218C, Block 220, Block 221, Block 224, Block 225; Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 305, Block 306A, Block 306B, Block 307, Block 308, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316A, Block 316B, Block 317A, Block 317B, Block 318, Block 319, Block 320, Block 321, Block 322, Block 323A, Block 323C; Block Group 4, Block Group 5: Block 503A, Block 503B, Block 503C, Block 503D, Block 503E, Block 505A, Block 505B, Block 506A, Block 506B, Block 507A, Block 507B, Block 508A, Block 508B, Block 509, Block 510, Block 511, Block 512, Block 513, Block 514, Block 515,

Block 516, Block 517, Block 518, Block 519, Block 520, Block 521, Block 522, Block 523, Block 524, Block 525A, Block 526, Block 527, Block 528, Block 529, Block 530, Block 531, Block 532, Block 533, Block 534, Block 535, Block 536, Block 537, Block 540B; Block Group 6: Block 642, Block 643, Block 644A, Block 644B, Block 645; Grantham *, Sixth Ward *, Country Club *, Rhems *: Tract 9604: Block Group 7: Block 704; River Bend *, Tract 9604: Block Group 5: Block 562A; Block Group 7: Block 703, Block 705, Block 706, Block 707, Block 708, Block 709, Block 710, Block 711A, Block 712A, Block 713, Block 714, Block 715, Block 716, Block 717, Block 718, Block 719, Block 720, Block 721, Block 722, Block 723, Block 724, Block 725, Block 726, Block 727, Block 728, Block 729, Block 730, Block 731, Block 732, Block 733, Block 734, Block 735, Block 736, Block 737, Block 738A; Trent Woods *, Woodrow *, Currituck County; Dare County; Duplin County: Albertson *, Chinquapin *, Cypress Creek *, Calypso *, Faison *, Glisson *: Tract 9901: Block Group 2: Block 203, Block 204, Block 205, Block 206, Block 207, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218, Block 219, Block 220, Block 221, Block 222, Block 223, Block 224, Block 226, Block 238, Block 239, Block 240, Block 241, Block 242, Block 243, Block 244, Block 245, Block 246, Block 247, Block 248, Block 249, Block 250, Block 251, Block 252, Block 253, Block 254, Block 255, Block 256; Wallace *, Beulaville *, Cedar Fork *, Rose Hill *, Smith/Cabin *, Wolfscrape *, Hyde County; Jones County: Beaver Creek *, Chinquapin *, Cypress Creek *, Tuckahoe *, White Oak *; Lenoir County: Falling Creek *, Institute *, Kinston #3 *, Kinston #4 *, Kinston #5 *, Kinston #9 *, Neuse *, Pink Hill #1 *, Pink Hill #2 *, Tract 0112: Block Group 3: Block 339A, Block 341; Sandhill *, Southwest *, Trent #1 *, Trent #2 *: Tract 0112: Block Group 3: Block 301; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 408, Block 409, Block 413, Block 414, Block 415, Block 416, Block 417, Block 418, Block 419, Block 420, Block 421, Block 426, Block 427, Block 428, Block 429, Block 430, Block 431, Block 432, Block 433, Block 434, Block 435, Block 436, Block 437, Block 438, Block 439, Block 440, Block 441, Block 442, Block 443, Block 444, Block 446, Block 447, Block 448; Woodlington *, Martin County: Bear Grass, Cross Roads, Griffins, Jamesville, Williams; Onslow County: East Northwoods *, West Northwoods *, Half Moon *: Tract 0012: Block Group 1: Block 101B, Block 102B, Block 108B, Block 109B, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 128, Block 129, Block 132, Block 136, Block 137; Block Group 2: Block 201, Block 203, Block 204, Block 205, Block 206, Block 207, Block 208, Block 209, Block 210, Block 211, Block 212A, Block 212B, Block 213, Block 214, Block 215, Block 216; Block Group 3: Block 306B, Block 307A; Jacksonville, New River *, Catherine Lake *, Haw Branch *, Gum Branch *, Richlands *, Harris Creek *, Haws Run *, Tract 0004: Block Group 4: Block 408; Holly Ridge *: Tract 0004: Block Group 4: Block 406, Block 407, Block 409, Block 410, Block 414, Block 415, Block 416, Block 417, Block 418, Block 426; Swansboro *, Mills *, Tract 0001: Block Group 1: Block 101, Block 102, Block 103, Block 104B, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 114, Block 115, Block 119, Block 120, Block 125B, Block 129B, Block 133, Block 134B, Block 135B, Block 136, Block 137B; Mortons *, Northeast *, VTD ZZZZ: Tract 0001: Block Group

1: Block 104A, Block 125A, Block 126, Block 127, Block 128, Block 129A, Block 130, Block 131, Block 132, Block 134A, Block 135A, Block 137A, Block 138, Block 139A, Block 140, Block 141, Block 142, Block 143, Block 144A, Block 144B, Block 144C, Block 145, Block 146, Block 147, Block 148, Block 149, Block 150, Block 151, Block 152, Block 153, Block 154, Block 155, Block 156, Block 157, Block 158, Block 159, Block 160, Block 161, Block 162, Block 163, Block 164, Block 165, Block 166, Block 167, Block 168, Block 169A, Block 170, Block 171A, Block 172, Block 173, Block 174, Block 175, Block 176, Block 177A, Block 177B, Block 178, Block 179, Block 185, Block 186, Block 196A, Block 196B, Block 197A, Block 197B; Tract 0002: Block Group 6: Block 627A, Block 628, Block 629A, Block 629B, Block 630A, Block 631, Block 632, Block 633, Block 634A, Block 635A, Block 648A, Block 649A; Tract 0012: Block Group 1: Block 101A, Block 102A, Block 103, Block 104, Block 105, Block 106, Block 107A, Block 108A, Block 109A; Tract 0013: Block Group 1: Block 107; Pamlico County: Pamlico County; Pasquotank County: Mount Hermon, Providence, Salem, Elizabeth City 1-B, Elizabeth City 2-A, Elizabeth City 2-B; Pender County: North Burgaw *, South Burgaw *, Grady *: Tract 9805: Block Group 4: Block 407, Block 409, Block 418, Block 420, Block 421, Block 422, Block 423, Block 424, Block 429, Block 430, Block 431, Block 432, Block 433, Block 434, Block 435, Block 436, Block 437, Block 438, Block 439, Block 440, Block 441, Block 442, Block 443, Block 444, Block 445, Block 446, Block 447, Block 448, Block 449, Block 450, Block 451, Block 452, Block 453, Block 454, Block 455, Block 456, Block 458, Block 459, Block 460, Block 461, Block 462, Block 463, Block 464, Block 465, Block 466, Block 467, Block 471, Block 473, Block 474, Block 475, Block 476, Block 477, Block 478, Block 479, Block 480, Block 481, Block 482, Block 483, Block 485, Block 493, Block 494, Block 496; Tract 9806: Block Group 3: Block 339; Middle Holly *, Long Creek *, Penderlea *, Lower Union *, Rocky Point *, Upper Topsail *; Pitt County: Ayden West *, Chicod *, Simpson *, Swift Creek *, Winterville West *, Winterville East *, Greenville #7 *, Greenville #8 *, Greenville #9 *, Greenville #10 *, Greenville #11 *, Greenville #12 *; Sampson County, Tyrrell County, Wayne County: Brogden *, Mt. Olive *, Buck Swamp *, Fork *, Grantham *, Great Swamp *, Goldsboro #1 *, Goldsboro #2 *, Goldsboro #3 *, Goldsboro #4 *, Goldsboro #5 *, Indian Springs *, White Hall *: Tract 0006: Block Group 6: Block 605, Block 624, Block 625, Block 626, Block 627, Block 628, Block 629, Block 630, Block 631, Block 632, Block 633, Block 634, Block 635, Block 636, Block 644, Block 645, Block 646, Block 647, Block 652, Block 653, Block 654, Block 655, Block 656, Block 657, Block 658; Block Group 7: Block 701, Block 702, Block 703, Block 704A, Block 704B, Block 705, Block 706, Block 707, Block 708, Block 709, Block 710, Block 711, Block 712, Block 713, Block 714A, Block 714B, Block 715, Block 716A, Block 716B, Block 717, Block 718, Block 719, Block 720, Block 721, Block 722, Block 723, Block 724, Block 725, Block 726, Block 727, Block 728A, Block 728B, Block 729A, Block 729B, Block 730, Block 731, Block 732, Block 733, Block 734, Block 735, Block 736, Block 737, Block 738, Block 739, Block 740, Block 741, Block 742, Block 745, Block 748; Eureka *, Fremont *, New Hope *, Pikeville *, Saulston *, Pinewood *, Stoney Creek *.

District 4: Chatham County, Orange County: Orange Grove *, White Cross *, Carr *: Tract 0108: Block Group 1: Block 130, Block

131, Block 132, Block 154, Block 185, Block 186, Block 187; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415, Block 416, Block 417, Block 418, Block 419, Block 420, Block 421, Block 422, Block 423, Block 424, Block 425, Block 426, Block 427, Block 428, Block 429, Block 430, Block 431, Block 432, Block 433, Block 434, Block 435, Block 436, Block 437, Block 438, Block 439, Block 440, Block 441, Block 442, Block 443, Block 444, Block 445, Block 446, Block 447, Block 448, Block 449, Block 450, Block 451, Block 452, Block 453, Block 454, Block 472, Block 475, Block 476A, Block 477, Block 478, Block 479A, Block 480, Block 481, Block 482, Block 483A, Block 484A, Block 485A; Tract 0111: Block Group 2: Block 206A, Block 207, Block 209, Block 210, Block 211A, Block 212A, Block 213, Block 214A, Block 215A; Cedar Grove *: Tract 0108: Block Group 1: Block 145, Block 147, Block 149, Block 150, Block 151, Block 152, Block 153, Block 158, Block 159, Block 160, Block 161, Block 162, Block 163, Block 164, Block 165, Block 166, Block 167, Block 168, Block 169, Block 170, Block 171, Block 172, Block 173, Block 174, Block 175, Block 176, Block 177, Block 178, Block 179, Block 180, Block 181, Block 182, Block 183, Block 184, Block 188, Block 189, Block 190; Block Group 4: Block 455, Block 456, Block 457, Block 458, Block 459, Block 460, Block 461, Block 462, Block 463A, Block 464, Block 465, Block 466A, Block 467A, Block 468, Block 469A, Block 470A, Block 471A, Block 473, Block 474; Tolars *: Tract 0108: Block Group 2: Block 271, Block 272, Block 273, Block 274, Block 278, Block 279, Block 280, Block 281, Block 282, Block 283, Block 284A; Block Group 3: Block 307A, Block 308, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318, Block 319A, Block 342A, Block 342B, Block 343, Block 344, Block 345, Block 346A, Block 347, Block 348, Block 349, Block 350, Block 351, Block 354A, Block 355A, Block 356A, Block 357, Block 358A, Block 359, Block 360A, Block 361A, Block 361B, Block 381, Block 382; Tract 0109: Block Group 2: Block 213A; Battle Park *, Coker Hills *, Coles Store *, Colonial Heights *, Country Club *, Dogwood Acres *, East Franklin *, Eastside *, Estes Hills *, Foxcroft *, Glenwood *, Greenwood *, Kings Mill *, Lincoln *, Lions Club *, Mason Farm *, North Carrboro *, Norside *, Owasa *, Patterson *, Ridgefield *, St. John *, Town Hall *, Weaver Dairy *, Westwood *, Cheeks *, Efland *, St. Marys *, Cameron Park *, Grady Brown *, Hillsborough *, West Hillsborough *, Caldwell *: Tract 0108: Block Group 3: Block 338, Block 339, Block 340, Block 346B, Block 352, Block 353, Block 354B, Block 355C, Block 356B, Block 361E, Block 362B, Block 363, Block 364, Block 365, Block 366, Block 367, Block 368, Block 369, Block 376, Block 377, Block 378, Block 379, Block 380B; Wake County: Raleigh 01-01 *, Raleigh 01-02 *, Raleigh 01-03 *, Raleigh 01-04 *, Raleigh 01-05 *, Raleigh 01-06 *, Raleigh 01-07 *, Raleigh 01-09 *, Raleigh 01-10 *, Raleigh 01-11 *, Raleigh 01-12 *, Raleigh 01-13 *, Raleigh 01-14 *, Raleigh 01-15 *, Raleigh 01-16 *, Raleigh 01-17 *, Raleigh 01-18 *, Raleigh 01-19 *, Raleigh 01-20 *, Raleigh 01-21 *, Raleigh 01-22 *, Raleigh 01-23 *, Raleigh 01-26 *, Raleigh 01-27 *, Raleigh 01-28 *, Raleigh 01-29 *, Raleigh 01-30 *, Raleigh 01-31 *, Raleigh 01-32 *, Raleigh 01-33 *, Raleigh 01-34 *, Raleigh 01-35 *, Raleigh 01-36 *, Raleigh 01-37 *, Raleigh 01-38 *, Raleigh 01-39 *, Raleigh 01-40 *, Raleigh

01-41 *, Raleigh 01-42 *, Raleigh 01-43 *, Raleigh 01-44 *, Raleigh 01-45 *, Raleigh 01-46 *, Bartons Creek #1 *, Bartons Creek #2 *, Buckhorn *, Cary #1 *, Cary #2 *, Cary #3 *, Cary #4 *, Cary #5 *, Cary #6 *, Cary #7 *, Cary #8 *, Cary #9 *, Cary #10 *, Cedar Fork *, Holly Springs *, House Creek #1 *, House Creek #2 *, House Creek #3 *, House Creek #4 *, House Creek #5 *, House Creek #6 *, Leesville #1 *, Leesville #2 *, Leesville #3 *, Little River #1 *, Little River #2 *, Marks Creek #1 *, Marks Creek #2 *, Meredith *, Middle Creek #1 *, Middle Creek #2 *, Raleigh 01-27 Part, Neuse #1 *, Neuse #2 *, New Light #2 *, Panther Branch *, St. Marys #1 *, St. Marys #2 *, St. Marys #3 *, St. Marys #4 *, St. Marys #5 *, St. Marys #6 *, St. Marys #7, St. Matthews #1 *, St. Matthews #2 *, St. Matthews #3 *, St. Matthews #4 *, Swift Creek #1 *, Swift Creek #2 *, Swift Creek #3 *, Swift Creek #4 *, Wake Forest #1 *, Wake Forest #2 *, White Oak #1 *, White Oak #2 *.

District 5: Alleghany County; Ashe County; Burke County: Drexel #1 *, Drexel #2 *, Linville #2 *, Lower Creek *, Morganton #1 *, Morganton #3 *, Morganton #4 *, Morganton #5 *, Morganton #6 *, Morganton #7 *, Morganton #8 *, Morganton #9 *, Morganton #10 *, Quaker Meadow #1 *, Quaker Meadow #2 *, Silver Creek #1 *, Silver Creek #3 *, Silver Creek #4 *, Smoky Creek *, Caldwell County: Kings Creek *, Lenoir #1 *, Lenoir #2 *, Lenoir #3 *, Lenoir #4 *, Lower Creek #1 *, Lower Creek #4 *, Yadkin Valley *, Caswell County, Forsyth County: Abbotts Creek #3 *, Belews Creek *, Bethania #1 *, Bethania #3 *, Kernersville #1 *, Kernersville #2 *, Kernersville #3 *, Kernersville #4 *, Middlefork #2 *, Middlefork #3 *, Old Town #2 *, Salem Chapel #1 *, Salem Chapel #2 *, Ardmore Baptist Church *, Bethabara Moravian Church *, Bible Wesleyan Church *, Bishop McGuinness *, Bolton Swimming Center *, Brown/Douglas Recreation *, Brunson Elementary School *, Christ Moravian Church *, Country Club Fire St. *, Covenant Presbyterian Church *, Easton Elementary School *, First Christian Church *, Forest Hill Fire Station *, Forsyth Tech W. Camp. *, Greek Orthodox Church *, Hanes Community Center *, Hill Middle School *, Latham Elementary School *, Memorial Coliseum *, Miller Park Recreation Center *, Mineral Springs F. St. *, Mt. Tabor High School *, New Hope United Methodist Church *, Old Town Presbyterian Church *, Parkland High School *, Parkway United Church *, Philo Middle School *, Polo Park Recreation Center *, Reynolds High School Gym *, South Fork Elem School *, St. Anne's Episcopal Church *, Summit School *, Trinity Moravian Church *, Trinity United Methodist Church *, Whitaker Elementary School *; Granville County: Oak Hill *, West Oxford Elementary *, Sassafras Fork *, Walnut Grove *, Guilford County: North Madison *, Stokesdale *: Tract 0158: Block Group 1: Block 105A, Block 107A, Block 108A; Tract 0159: Block Group 1: Block 105A, Block 114A, Block 115A, Block 116, Block 117A, Block 118A, Block 118B, Block 125, Block 126, Block 127, Block 128A, Block 129A; Block Group 2: Block 203, Block 204, Block 205, Block 206, Block 207, Block 208, Block 209, Block 210, Block 211, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218, Block 219, Block 220, Block 221, Block 222, Block 223, Block 224, Block 225, Block 226, Block 227, Block 228, Block 229, Block 230, Block 231, Block 232B, Block 233, Block

234, Block 235, Block 236, Block 237, Block 238, Block 239A, Block 240, Block 241, Block 242, Block 243A, Block 244, Block 245, Block 246, Block 247, Block 248, Block 249, Block 250, Block 251A, Block 252, Block 253; Block Group 3: Block 306A, Block 314A, Block 315A, Block 320, Block 321B, Block 322B, Block 323A, Block 323B; Person County, Rockingham County, Stokes County; Surry County, Watauga County; Wilkes County: Beaver Creek *, Boomer *, Elk No. 2 *, Moravian Falls *, No. Wilkesboro-1 *, No. Wilkesboro-3 *, Wilkesboro No. 1 *.

District 6: Alamance County: Albright*, Central Boone *, North Boone *, South Boone *, West Boone *, Boone #5 *, East Burlington *, North Burlington *: Tract 0201.01: Block Group 1: Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 117, Block 118; Block Group 2: Block 201, Block 209, Block 224; Tract 0202: Block Group 1: Block 104, Block 112, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121, Block 122, Block 123; Tract 0203: Block Group 1: Block 102, Block 103, Block 106, Block 111A, Block 111B, Block 112, Block 113A, Block 113B, Block 113C; Block Group 2: Block 203, Block 204, Block 205, Block 206, Block 207, Block 209, Block 210; Block Group 3; Tract 0204: Block Group 3: Block 301, Block 302, Block 303, Block 305, Block 348, Block 349; Tract 0205: Block Group 8: Block 807, Block 823; South Burlington *, West Burlington *, Burlington #5 *, Burlington #6 *, Burlington #8 *, Burlington #9 *, Coble *, East Graham *, North Graham *, South Graham *, West Graham *, Graham #3 *, North Melville *, South Melville *, Melville #3 *, North Newlin *, South Newlin *, Patterson *, North Thompson *, South Thompson *; Davidson County: Abbotts Creek *: Tract 0601: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127, Block 128, Block 129, Block 130, Block 131; Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 206, Block 207, Block 208, Block 209, Block 211, Block 212, Block 213, Block 214, Block 218, Block 219, Block 220, Block 221, Block 222, Block 223, Block 224, Block 225, Block 226, Block 227, Block 228, Block 230, Block 231, Block 232, Block 233, Block 234, Block 235, Block 236, Block 238, Block 239, Block 240, Block 241, Block 242, Block 243, Block 248, Block 250; Block Group 3, Block Group 9: Block 901A, Block 901B, Block 902, Block 903, Block 904, Block 905, Block 906, Block 907, Block 908, Block 909, Block 910, Block 911, Block 912, Block 915, Block 916A, Block 916B, Block 917, Block 918, Block 920, Block 921, Block 922; Alleghany *, Arcadia *, Boone *, Central *, Holly Grove *, Liberty *, Cotton *: Tract 0615: Block Group 4: Block 443; Tract 0618.01: Block Group 2: Block 204B, Block 207A, Block 207B, Block 208A, Block 208B, Block 227, Block 235C, Block 236, Block 237C, Block 238; Block Group 3: Block 301, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318, Block 319, Block 320, Block 321, Block 322, Block 323; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406, Block 407, Block 414, Block 415, Block 416, Block 417, Block 418, Block 419, Block 420, Block 421, Block 422, Block 423, Block 424, Block 425, Block 426, Block 427, Block 428, Block 429; Block Group 5: Block 541, Block

542, Block 543, Block 544, Block 545; Block Group 6: Block 601, Block 602, Block 603, Block 604, Block 605, Block 606, Block 607, Block 622, Block 623, Block 624; Block Group 7: Block 701, Block 702, Block 703, Block 704, Block 705, Block 706, Block 707, Block 708, Block 709, Block 710, Block 711, Block 714, Block 715, Block 716, Block 745; Southmont *, Denton *, Emmons *, Silver Valley *, Hampton *, Healing Springs *, Jackson Hill *, Lexington No. 1 *: Tract 0604: Block Group 2: Block 206, Block 213, Block 226; Tract 0612: Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 305, Block 307, Block 309, Block 310, Block 311, Block 312, Block 314, Block 315, Block 316, Block 317B, Block 318, Block 319, Block 320, Block 321, Block 322, Block 324B, Block 325B, Block 326B, Block 327B, Block 348B, Block 349C, Block 350C, Block 350D, Block 370E, Block 371B, Block 372, Block 373B, Block 374, Block 375, Block 382; Lexington No. 2 *, Lexington No. 3 *, Lexington No. 4 *, Ward No. 2 *: Tract 0613: Block Group 2: Block 220, Block 221, Block 222, Block 223, Block 237; Block Group 3: Block 340, Block 341, Block 342; Tract 0614: Block Group 2: Block 210, Block 211; Tract 0615: Block Group 1: Block 106, Block 107, Block 109, Block 110, Block 111, Block 112, Block 113, Block 120, Block 121; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 407, Block 408, Block 409, Block 410, Block 411, Block 412, Block 449, Block 450, Block 451, Block 452, Block 453A; Tract 0616: Block Group 1: Block 101, Block 102, Block 103, Block 105, Block 106, Block 107, Block 108, Block 109, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127, Block 128, Block 129, Block 130, Block 131; Block Group 2, Block Group 3: Block 301A, 302A, Block 314A, Block 315A, Block 319A, Block 320, Block 321, Block 322; Tract 0618.01: Block Group 2: Block 211; Ward No. 3 *, Ward No. 6 *: Tract 0614: Block Group 3: Block 340; Block Group 4: Block 413B, Block 413C, Block 414, Block 415, Block 416; Tract 0615: Block Group 1: Block 131, Block 132; Block Group 2: Block 204, Block 205, Block 206, Block 207, Block 208, Block 209, Block 210, Block 211, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218, Block 219, Block 220, Block 221, Block 222, Block 223, Block 224, Block 225, Block 226, Block 227, Block 228, Block 229, Block 230, Block 231, Block 232, Block 233, Block 234, Block 235, Block 236, Block 237, Block 238, Block 239, Block 240, Block 241, Block 242; Block Group 3: Block 301C, Block 301D, Block 302B, Block 303, Block 304, Block 305, Block 306, Block 307, Block 308, Block 309, Block 310, Block 311, Block 312, Block 313A, Block 313B, Block 314, Block 315, Block 316, Block 317A, Block 317B, Block 368A, Block 368B, Block 369, Block 370, Block 371; Tract 0618.01: Block Group 2: Block 201, Block 202, Block 203, Block 204A, Block 205, Block 206A, Block 206B, Block 228, Block 229, Block 230, Block 231, Block 232, Block 233, Block 234A, Block 234B, Block 235A, Block 235B, Block 237A, Block 237B; Tract 0618.02: Block Group 1: Block 101A, Block 135; Welcome *, Midway *, Reeds *, Tyro *, Reedy Creek *, Silver Hill *, Thomasville No. 4*: Tract 0609: Block Group 1, Block Group 2, Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 305, Block 306, Block 307, Block 308A, Block 310, Block 313A, Block 315A, Block 316, Block 317A, Block 317B, Block 318, Block 319, Block 320, Block 321, Block 322A, Block 322B, Block 324A, Block 324B, Block 324C, Block 325, Block 326A, Block 327, Block 328A;

Block Group 4, Block Group 5: Block 501, Block 502, Block 503, Block 504, Block 505, Block 506, Block 507, Block 508, Block 509, Block 510, Block 511, Block 512, Block 513, Block 514, Block 515, Block 518, Block 519, Block 520, Block 521, Block 522; Block Group 9: Block 901A, Block 903A, Block 911A, Block 911B; Tract 0611: Block Group 1: Block 101, Block 102, Block 103A; Thomasville No. 5 *, Thomasville No. 7 *: Tract 0605: Block Group 1: Block 107, Block 108, Block 109, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 119, Block 126, Block 127; Block Group 9: Block 903, Block 904, Block 905, Block 906, Block 907, Block 908, Block 915, Block 917; Thomasville No. 8 *: Tract 0605: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 110, Block 111; Block Group 9: Block 901, Block 902, Block 909, Block 910, Block 911, Block 912; Tract 0606: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112B, Block 113B, Block 114, Block 115, Block 116, Block 117, Block 118B, Block 119B, Block 120B, Block 121B, Block 122B, Block 123, Block 124; Block Group 4: Block 401A, Block 401B, Block 401C, Block 402A, Block 402B, Block 403, Block 404, Block 405A, Block 405B, Block 405C, Block 405D, Block 405E, Block 406A, Block 406B, Block 407, Block 413, Block 414; Block Group 9: Block 901, Block 902, Block 905, Block 906B, Block 907, Block 908, Block 909, Block 910, Block 930B, Block 934, Block 935B, Block 956, Block 959B; Tract 0607: Block Group 1: Block 101B, Block 102B; Block Group 3: Block 324B, Block 325, Block 326B; Tract 0608: Block Group 1: Block 101, Block 102B, Block 104B; Thomasville No. 9 *, Thomasville No. 10 *, Yadkin College *, Davie County: Fulton township, Jerusalem township, Mocksville township, Shady Grove township; Guilford County: GB-10 *, GB-11 *, GB-12 *, GB-13 *, GB-14 *, GB-15 *: Tract 0116.01: Block Group 1: Block 105, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114; Block Group 2: Block 201; Block Group 4: Block 410, Block 411, Block 412, Block 415, Block 417; GB-16 *, GB-17 *, GB-18 *, GB-20 *, GB-21 *, GB-22 *, GB-27A *, GB-28 *, GB-31 *, GB-32 *, GB-34A *, GB-35A *, GB-37A *, GB-38 *, GB-39 *, GB-40A *, GB-41A *, GB-43 *, HP-01 *, HP-02 *, HP-04 *, HP-08 *, HP-09 *, HP-10 *, HP-13 *, HP-14 *, HP-16 *, HP-18 *, HP-19 *, HP-20 *, HP-21 *, HP-23 *, HP-24 *, Bruce *, North Center Grove *, South Center Grove *, Clay *, Deep River *, Fentress-1 *, Fentress-2 *, Friendship-1 *, Friendship-2 *, Whitsett *, Greene *, Jamestown-1 *: Tract 0164.01: Block Group 2: Block 221Y, Block 221Z, Block 223A; Tract 0164.02: Block Group 4: Block 401W, Block 401Z, Block 402, Block 403C, Block 403D, Block 403E, Block 403F, Block 403G, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 412, Block 424, Block 425, Block 426, Block 434, Block 435, Block 443X, Block 443Y, Block 443Z, Block 444, Block 445, Block 446, Block 447Y, Block 447Z; Block Group 9: Block 901A; Tract 0165.02: Block Group 3: Block 315X, Block 315Y, Block 315Z, Block 317; Jamestown-2 *: Tract 0164.01: Block Group 2: Block 201F, Block 201G, Block 211B, Block 212B, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218, Block 219, Block 220, Block 221C, Block 221D, Block 222, Block 223B; Tract 0164.02: Block Group 4: Block 401C; Tract 0165.01: Block Group 2: Block 201D, Block 201E, Block 202, Block 211B, Block 211C; Tract 0165.02: Block Group 1: Block 103D, Block 103E, Block 104, Block 108B,

Block 109C, Block 110B, Block 111B, Block 112, Block 113; Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 211, Block 224; Block Group 3: Block 303, Block 304, Block 305, Block 306, Block 307, Block 308, Block 309, Block 310, Block 311, Block 315B, Block 316, Block 318, Block 319, Block 320, Block 321, Block 322; Block Group 4: Block 407A, Block 415A, Block 415B, Block 418A; Tract 0166: Block Group 9: Block 904, Block 905, Block 906, Block 907, Block 930A, Block 952, Block 953; Tract 0167: Block Group 1: Block 105A, Block 106A, Block 106B, Block 110A, Block 111A, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118A, Block 119A, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125; Block Group 5: Block 501A, Block 502, Block 503, Block 504, Block 505, Block 506A, Block 507A, Block 508A, Block 510A, Block 511; Jamestown-3 *, North Jefferson *: Tract 0127.07: Block Group 2: Block 201C, Block 201D; Tract 0128.03: Block Group 2: Block 208, Block 209, Block 210, Block 211, Block 212, Block 215, Block 216, Block 218, Block 219, Block 220, Block 221, Block 222, Block 223, Block 225, Block 226, Block 227B, Block 232, Block 233, Block 234C; Tract 0153: Block Group 1: Block 101A, Block 102A, Block 103, Block 104A, Block 105A, Block 106A, Block 112A, Block 113, Block 114A, Block 133, Block 134; Block Group 2, Block Group 3: Block 302A, Block 304, Block 305, Block 306, Block 307, Block 308, Block 313, Block 314, Block 315, Block 316; Tract 0154: Block Group 5: Block 511A, Block 520A, Block 521, Block 522A, Block 523, Block 524A, Block 525A, Block 526A, Block 527, Block 528A; Block Group 6: Block 601, Block 602A, Block 603, Block 604, Block 605B, Block 606, Block 607, Block 608, Block 609, Block 610, Block 611; South Jefferson *, South Madison *, North Monroe *, South Monroe *, Oak Ridge *, Stokesdale *: Tract 0159: Block Group 2: Block 201A, Block 201B, Block 202, Block 232A; Block Group 3: Block 303A, Block 307A, Block 308A, Block 309A, Block 310, Block 311, Block 312, Block 313, Block 316, Block 321A, Block 322A; South Sumner *, North Washington *, South Washington *: Tract 0151: Block Group 1: Block 149; Tract 0152: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415B, Block 416B; Tract 0153: Block Group 1: Block 101B, Block 102C, Block 104C; Tract 0154: Block Group 4: Block 401C, Block 404B; Block Group 5: Block 501, Block 502, Block 506B; GB-27B *, GB-34B *, GB-35B *, GB-37B *, GB-40B *, GB-41B *, GB-24C *, GB-27C *; Randolph County, Rowan County: Franklin *: Tract 0505: Block Group 2: Block 201B, Block 202B, Block 202C; Block Group 3: Block 301B; Tract 0513.01: Block Group 2: Block 201, Block 202, Block 203, Block 204B, Block 205C, Block 205D, Block 206B, Block 207; Block Group 3: Block 301, Block 303, Block 304, Block 305, Block 306, Block 307, Block 308, Block 309C, Block 310, Block 311, Block 313, Block 314; Tract 0513.02: Block Group 1: Block 101, Block 102, Block 103B, Block 103C, Block 104B, Block 105B, Block 106, Block 107, Block 108B, Block 114B, Block 119B; Block Group 2, Block Group 3: Block 302, Block 303, Block 304, Block 305, Block 306, Block 319, Block 320; Tract 0519: Block Group 2: Block 224A; Block Group 3: Block 301A; Barnhardt Mill *, Rockwell *, Bostian Crossroads *, Faith, Sumner *: Tract 0502: Block Group 4: Block 411A, Block 411D, Block 411E, Block 416B, Block 417; Tract 0511: Block

Group 1: Block 101, Block 102; Block Group 2: Block 202, Block 203, Block 204, Block 206, Block 208, Block 209, Block 210, Block 211, Block 212, Block 213, Block 214A, Block 214B, Block 215, Block 216, Block 217, Block 218, Block 219, Block 220, Block 221, Block 222, Block 223, Block 224, Block 225; Tract 0512.01: Block Group 1: Block 102C, Block 102D, Block 108C, Block 122B, Block 123B, Block 123C; Block Group 2: Block 205, Block 207, Block 208, Block 209, Block 210, Block 211; Block Group 3: Block 312A, Block 312B, Block 312C, Block 312D, Block 313, Block 314, Block 318, Block 319; Block Group 4: Block 401, Block 402A, Block 402B, Block 403, Block 411, Block 412A, Block 412B, Block 413, Block 414, Block 415, Block 416, Block 417, Block 418, Block 419, Block 420, Block 421, Block 422, Block 423; Tract 0517: Block Group 1: Block 102B, 103B; Morgan I *, Morgan II *, Gold Knob *, Granite Quarry *, Hatters Shop *, West Innes *: Tract 0505: Block Group 2: Block 202A; Block Group 3: Block 301A, Block 301C, Block 302, Block 303, Block 304, Block 305, Block 306, Block 307, Block 308, Block 309, Block 310, Block 312, Block 313, Block 314; Tract 0513.02: Block Group 1: Block 103A, Block 104A, Block 105A, Block 108A, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114A, Block 115, Block 116, Block 117, Block 118, Block 119A, Block 120, Block 121, Block 122, Block 123; Block Group 3: Block 321B; North Ward II *: Tract 0505: Block Group 1: Block 101A, Block 102, Block 103, Block 105, Block 106, Block 108, Block 109, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121, Block 123, Block 124, Block 126, Block 128, Block 129, Block 130, Block 131, Block 132; Block Group 2: Block 201A, Block 203, Block 204, Block 205, Block 206, Block 207, Block 208, Block 209, Block 210; Tract 0506: Block Group 1: Block 134, Block 135.

District 7: Bladen County: Abbotts township: Tract 9505: Block Group 2: Block 213A, Block 214A, Block 224A, Block 226A, Block 227A, Block 229; Block Group 4: Block 418B, Block 419B, Block 451A; Block Group 5: Block 501, Block 502, Block 503, Block 504, Block 505, Block 506A, Block 508A, Block 509, Block 510, Block 511, Block 512, Block 513, Block 514, Block 515, Block 516, Block 517, Block 518, Block 519, Block 520, Block 521, Block 522, Block 523, Block 524, Block 525, Block 526A, Block 527A, Block 527B, Block 534A, Block 539, Block 540, Block 541, Block 542, Block 543, Block 544, Block 545, Block 546, Block 547, Block 548, Block 549, Block 550, Block 551, Block 552A, Block 554, Block 555, Block 556, Block 557, Block 558, Block 559, Block 560, Block 561, Block 562, Block 563, Block 564, Block 565, Block 566; Bethel township, Bladenboro township, Colly township, Cypress Creek township, Hollow township; Brunswick County: Brunswick County; Columbus County: Bogue township, Bug Hill township, Cerro Gordo township, Chadbourn township: Tract 9906: Block Group 4: Block 401A, Block 403B, Block 404B; Tract 9907: Block Group 1: Block 101A, Block 116, Block 117A, Block 118, Block 124A; Block Group 2: Block 201A, Block 201B, Block 202A, Block 202B, Block 203A, Block 203B, Block 204A, Block 204B, Block 205A, Block 205B, Block 206, Block 207, Block 208A, Block 208B, Block 209A, Block 209B, Block 219, Block 220, Block 221, Block 222, Block 223, Block 224, Block 225, Block 226, Block 227, Block 228, Block 229, Block 231, Block 240; Block Group 3, Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406A, Block 406B, Block 407, Block 408, Block 409,

Block 418, Block 419, Block 420, Block 421, Block 422, Block 423, Block 424, Block 425, Block 426, Block 427, Block 428, Block 429, Block 430, Block 431, Block 432, Block 433, Block 434, Block 435; Block Group 5: Block 521B, Block 522, Block 523, Block 524, Block 525B, Block 526, Block 527, Block 528, Block 529, Block 530B, Block 531B, Block 532; Tract 9909: Block Group 6: Block 609, Block 610, Block 611, Block 618A, Block 620A, Block 621, Block 622, Block 623, Block 624, Block 625, Block 626A, Block 627A, Block 628, Block 629; Tract 9910: Block Group 2: Block 210A, Block 210B, Block 211A, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218, Block 219, Block 220A, Block 228, Block 229; Block Group 3: Block 302A, Block 303, Block 304, Block 305, Block 306, Block 327, Block 328, Block 329, Block 330, Block 331, Block 332, Block 333, Block 334, Block 335, Block 336, Block 337, Block 338, Block 339; Tract 9911: Block Group 1: Block 101, Block 102A; Fair Bluff township, Lees township, South Williams township, Tatums township, Waccamaw township, Whiteville township: Tract 9905: Block Group 4: Block 401, Block 402, Block 403, Block 404B; Tract 9907: Block Group 1: Block 101C, Block 102, Block 117B, Block 124B, Block 125, Block 126; Tract 9908: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 119, Block 120B, Block 122, Block 123, Block 124, Block 125, Block 126; Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 207, Block 208A, Block 208B, Block 209, Block 211, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218, Block 219, Block 220, Block 221, Block 222, Block 223, Block 224, Block 225, Block 226; Block Group 3: Block 301, Block 304, Block 305, Block 306; Block Group 4: Block 405, Block 406; Tract 9909: Block Group 1: Block 104, Block 105, Block 106, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120; Block Group 2, Block Group 3: Block 307, Block 308, Block 343, Block 344, Block 345; Block Group 4: Block 423A, Block 424, Block 425, Block 426, Block 430; Block Group 5: Block 523, Block 524; Block Group 6: Block 617, Block 618B, Block 626B, Block 626C, Block 627B; Tract 9910: Block Group 1: Block 126C, Block 132C; Block Group 2: Block 201A, Block 201B, Block 201C, Block 202, Block 203, Block 204, Block 205, Block 206A, Block 206B, Block 207, Block 208, Block 209, Block 210C, Block 211B, Block 220B, Block 221, Block 222, Block 223, Block 224, Block 225, Block 226, Block 227; Block Group 3: Block 301B, Block 302B, Block 309B; Williams township; Cumberland County: Beaver Dam*: Tract 0029: Block Group 1: Block 108A, Block 109A, Block 110, Block 111A, Block 112A, Block 112B, Block 115A, Block 117A, Block 118, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127, Block 128, Block 129, Block 130; Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 305, Block 306, Block 307, Block 308, Block 309, Block 310, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318, Block 319, Block 320, Block 321, Block 322, Block 323, Block 324, Block 325, Block 326, Block 327, Block 328, Block 329, Block 330, Block 331, Block 332, Block 333, Block 334, Block 335; Black River *, Linden *, Long Hill *, Westarea *, Judson *, Stedman *, Cross Creek #4 *, Cross Creek #6 *, Cross Creek #7 *, Cross Creek #8 *, Cross Creek #9 *: Tract 0012: Block Group 2:

Block 201, Block 202, Block 227, Block 229, Block 230, Block 231, Block 232; Tract 0025.01: Block Group 9: Block 901A, Block 901B, Block 902A, Block 906A, Block 908A, Block 909A, Block 910, Block 912A, Block 913A, Block 914, Block 915, Block 917, Block 919, Block 920, Block 921, Block 922, Block 923, Block 924, Block 925, Block 926, Block 927, Block 928, Block 929, Block 930, Block 932, Block 934C, Block 934D, Block 934H, Block 934J, Block 935, Block 936; Cross Creek #11 *, Cross Creek #12 *, Cross Creek #14 *, Cross Creek #15 *: Tract 0006: Block Group 1: Block 101, Block 102, Block 103, Block 134, Block 135, Block 136, Block 143; Block Group 2, Block Group 3: Block 303, Block 305, Block 306, Block 309; Block Group 4: Block 410, Block 411, Block 412; Tract 0018: Block Group 1: Block 101, Block 102, Block 107, Block 111, Block 123, Block 124A, Block 129, Block 130, Block 131; Block Group 2: Block 203A, Block 204A, Block 205A; Tract 0019.02: Block Group 1: Block 101A; Tract 0020: Block Group 6: Block 619A; Cross Creek #17 *: Tract 0023: Block Group 2: Block 201, Block 208, Block 209, Block 210, Block 215, Block 216B, Block 217, Block 218, Block 219, Block 221, Block 222, Block 223, Block 224, Block 225, Block 226, Block 227, Block 240, Block 251; Block Group 9: Block 901B, Block 903B, Block 906, Block 907B, Block 907C, Block 907D, Block 907E, Block 910; Tract 0024: Block Group 1: Block 103A; Block Group 3: Block 304A, Block 307A, Block 308A; Cross Creek #18 *, Cross Creek #20 *, Cross Creek #21, Cross Creek #22 *, Cross Creek #23 *, Cross Creek #24 *, Cross Creek #2 *, Eastover *, Vander *, Wade *, Alderman *, Spring Lake *: Tract 0035: Block Group 1: Block 110A, Block 119, Block 123; Pearces Mill #2 *, Pearces Mill #4 *, Cumberland #1 *, Cumberland #2 *, Hope Mills #1 *, Hope Mills #2 *, Beaver Lake *, Montclair *, Seventy First #2 *, Seventy First #3 *, New Hanover County: Cape Fear #1 *: Tract 0115: Block Group 1: Block 144, Block 148; Block Group 2: Block 202, Block 205, Block 206, Block 207, Block 208, Block 210, Block 211, Block 212, Block 213, Block 214, Block 215, Block 216; Block Group 3, Block Group 4: Block 402, Block 403, Block 404, Block 405, Block 406, Block 407; Cape Fear #2 *, Cape Fear #3 *, Federal Point #1 *, Federal Point #2 *, Federal Point #3 *, Wrightsville Beach *, Harnett #2 *, Harnett #3 *, Harnett #4 *, Harnett #5 *, Harnett #6 *, Harnett #7 *, Masonboro #2 *, Masonboro #3 *, Masonboro #4 *, Masonboro #5 *, Wilmington #4 *, Wilmington #5 *, Wilmington #8 *: Tract 0107: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 115, Block 127, Block 131, Block 133, Block 134; Tract 0110: Block Group 1: Block 101, Block 103, Block 107, Block 110, Block 115, Block 116, Block 118, Block 123, Block 125, Block 126, Block 127; Block Group 2: Block 203, Block 205, Block 206, Block 212, Block 214, Block 215, Block 219, Block 220, Block 222, Block 224, Block 225, Block 226; Wilmington #9 *: Tract 0102: Block Group 1: Block 102, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 126; Tract 0103: Block Group 3, Block Group 4, Block Group 5: Block 508, Block 509; Wilmington #11 *, Wilmington #12 *, Wilmington #13 *, Wilmington #14 *, Wilmington #16 *, Wilmington #17 *, Wilmington #18 *: Onslow County: Cross Roads *, Half Moon *: Tract 0012: Block Group 1: Block 130, Block 131; Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 305, Block 306A, Block 307B; Block Group 4: Tar Landing *

Brynn Marr *, Folkstone *, Verona *, Bear Creek *, Hubert *, Camp Lejeune Military Base 1, Camp Lejeune Military Base 2, Camp Lejeune Military Base 3, Camp Lejeune Military Base 4, Camp Lejeune Military Base 5, Camp Lejeune Military Base 6, Camp Lejeune Military Base 7, Camp Lejeune Military Base 8, Camp Lejeune Military Base 9, Camp Lejeune Military Base 10, Camp Lejeune Military Base 11, Camp Lejeune Military Base 12, Camp Lejeune Military Base 13, Camp Lejeune Military Base 14; Pender County: Lower Topsail *, Scott's Hill *, Surf City *; Robeson County: Alfordsville *, Back Swamp *, Britts *, Burnt Swamp *, Fairmont #1 *, Fairmont #2 *, Gaddys *, East Howellsville *, West Howellsville *, Lumberton #1 *, Lumberton #2 *, Lumberton #3 *, Lumberton #4 *, Lumberton #5 *, Lumberton #6 *, Lumberton #7 *, Lumberton #8 *, Orrum *, North Pembroke *, South Pembroke *, Philadelphus *, Raft Swamp *, Rowland *, Saddletree *, Smiths *, Smyrna *, Sterlings *, Thompson *, Union *, Whitehouse *, Wishart *.

District 8: Anson County, Cabarrus County, Cumberland County: Manchester *, Spring Lake *: Tract 0034.85: Block Group 1: Block 101, Block 103A; Tract 0035: Block Group 1: Block 101A, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 120, Block 121, Block 122, Block 124, Block 125, Block 126; Block Group 2: Block 201A, Block 202A, Block 203B, Block 204, Block 205A, Block 206A, Block 207, Block 208A, Block 208C, Block 208W, Block 208X, Block 208Y, Block 208Z, Block 209Y, Block 209Z, Block 210, Block 211, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218, Block 219; Block Group 3, Block Group 4, Block Group 5; Tract 0036.85: Block Group 2: Block 203B; Block Group 3: Block 324A, Block 326A; Block Group 4: Block 401C, Block 403A, Block 404A, Block 404B, Block 404C, Block 405, Block 406, Block 407A, Block 407B, Block 407C, Block 408, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415, Block 416A, Block 416B, Block 417; Block Group 5, Block Group 6: Block 606A, Block 608A, Block 608B, Block 609A: Brentwood *, Cottonade *, Morganton Road #1 *, Morganton Road #2 *, Seventy First #1 *; Hoke County, Iredell County: Barringer *: Tract 0613: Block Group 2: Block 216, Block 217A, Block 218, Block 225, Block 226, Block 227; Block Group 4: Block 402A, Block 404A, Block 406A, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415, Block 416, Block 417, Block 418, Block 419, Block 420, Block 421, Block 422, Block 423; Block Group 5: Block 501, Block 502, Block 503, Block 504A, Block 505, Block 506D, Block 507, Block 508A, Block 509, Block 510, Block 514A, Block 517, Block 518, Block 519A, Block 524A, Block 525, Block 526A, Block 527A; Chambersburg *: Tract 0607: Block Group 6: Block 610, Block 611, Block 613, Block 614, Block 615, Block 616, Block 617, Block 618, Block 619, Block 620, Block 621, Block 622, Block 623, Block 624; Tract 0613: Block Group 2: Block 201B; Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 305, Block 306, Block 307, Block 308, Block 309B, Block 314B, Block 315B, Block 316B, Block 318, Block 319, Block 320, Block 321, Block 324, Block 325, Block 326; Block Group 4: Block 401, Block 402B, Block 403, Block 404B, Block 405, Block 406B; Coddle Creek #1 *, Coddle Creek #3 *, Mecklenburg County: COR *: Tract 0064: Block Group 2: Block 217F, Block 217H; Block Group 4: Block 401C; CO2 *: Tract

0056.01: Block Group 3: Block 323; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 407, Block 408, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415, Block 416, Block 417, Block 418, Block 424, Block 425, Block 426; Tract 0056.02: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 110, Block 111, Block 113, Block 114; DAV *: Tract 0064: Block Group 2: Block 207, Block 208, Block 209, Block 210, Block 211, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217G, Block 217K, Block 217M, Block 218, Block 219, Block 220, Block 222, Block 223, Block 224, Block 225, Block 226, Block 227, Block 231A, Block 232A, Block 233B; Block Group 3: Block 301, Block 304, Block 305A, Block 305B, Block 306, Block 307, Block 308, Block 309, Block 310, Block 316, Block 317; Block Group 4: Block 401B, Block 401E, Block 401G; Block Group 6: Block 603B; Montgomery County; Moore County: Township 1, Carthage, Township 2, Bensalem, Township 3, Sheffields, Township 4, Ritters: Tract 9501: Block Group 1: Block 109A, Block 109B, Block 110A, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126B, Block 126C, Block 130B, Block 130C, Block 131B, Block 131C, Block 132, Block 133, Block 134, Block 135, Block 136, Block 137, Block 138, Block 139, Block 140, Block 141, Block 142A, Block 143, Block 144, Block 145A, Block 145B, Block 145C, Block 145D, Block 145E, Block 145F, Block 146A, Block 147, Block 148, Block 149, Block 150, Block 151, Block 152, Block 153, Block 154, Block 155, Block 174, Block 175, Block 176, Block 177, Block 178, Block 179A; Block Group 2: Block 229, Block 230B, Block 232, Block 233, Block 234, Block 235, Block 236, Block 237, Block 238, Block 239, Block 240, Block 241, Block 243, Block 244, Block 250B; Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 305, Block 306, Block 307, Block 308, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318, Block 319, Block 320, Block 321, Block 322, Block 323, Block 324, Block 325, Block 326, Block 327, Block 328, Block 329B, Block 330, Block 331C, Block 333B, Block 334B, Block 335B, Block 340C, Block 341C, Block 342B, Block 346, Block 347, Block 348; Tract 9502: Block Group 1: Block 134B, Block 134C, Block 149B, Block 149C; Block Group 4: Block 401B, Block 401C, Block 402B, Block 402C, Block 403B, Block 403C, Block 414E, Block 415C, Block 415F, Block 415G, Block 416, Block 417D, Block 417E, Block 417G, Block 417H, Block 418, Block 419, Block 420C, Block 420D; Block Group 5: Block 501, Block 502B, Block 502C, Block 502E, Block 502F, Block 533C, Block 533D, Block 534C, Block 534D, Block 535B, Block 536B, Block 537B, Block 541C, Block 541D; Richmond County, Robeson County: Lumber Bridge *, Maxton *, Parkton *, Red Springs #1 *, Red Springs #2 *, Rennert *, Shannon *, North St. Pauls *, South St. Pauls *; Rowan County: Bradshaw *, Enochville *, Blackwelder Park *, Bostian School *, N. China Grove *, S. China Grove *, East Kannapolis *, West Kannapolis *, East Landis *, West Landis *, Cleveland *, Faith Noncontiguous, Locke *, Sumner *: Tract 0502: Block Group 4: Block 402A, Block 402C, Block 403B, Block 409B, Block 410B, Block 410C, Block 411B, Block 411C, Block 411F, Block 412A, Block 412C, Block 413B, Block 413C, Block 415A, Block 415B, Block 416C; Tract 0511: Block Group 2: Block 201C, Block 205; Tract 0512.01: Block Group 2: Block 206; Mt. Ulla *, East Ward I *, West Ward I *, West Ward II *

Steele *, Tract 0519: Block Group 3: Block 334B, Block 335: Scotland County, Stanly County; Union County.

District 9: Cleveland County: Boiling Springs *, Pearl *, East Kings Mountain *, West Kings Mountain *, Grover *, Bethware *, Waco *, Shanghai *, Falston *, Mulls *, Casar *; Gaston County: Cherryville #1 *, Cherryville #2 *, Cherryville #3 *, Landers Chapel *, Tryon *, Bessemer City #1 *, Bessemer City #2 *: Tract 0316: Block Group 2, Block Group 3, Block Group 4: Block 401A, Block 401B, Block 402, Block 403A, Block 403B, Block 403C, Block 404, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411A, Block 411B, Block 412, Block 413, Block 414B, Block 417A, Block 417C; Tract 0317.02: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127, Block 128, Block 129; Block Group 2: Block 202; Block Group 3: Block 301, Block 302; Tract 0318: Block Group 1: Block 101C, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108; Tract 0331: Block Group 1: Block 103D, Block 105A; Crowders Mtn. *, Alexis *, Dallas #1 *, Dallas #2 *, High Shoals *, Armstrong *, Ashbrook *, Firestone *: Tract 0329: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115; Block Group 2: Block 207; Block Group 3: Block 306, Block 307, Block 317; Block Group 4: Block 404, Block 405, Block 406; Tract 0330: Block Group 1: Block 118, Block 119, Block 120, Block 126, Block 127, Block 128, Block 129, Block 131, Block 133, Block 134, Block 135, Block 136, Block 137, Block 157, Block 158, Block 159, Block 160, Block 161; Flint Groves *: Tract 0313.02: Block Group 2: Block 205A, Block 217A, Block 219; Tract 0314: Block Group 2, Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415, Block 416, Block 418, Block 419; Block Group 5: Block 501A, Block 501B, Block 502, Block 503A, Block 503B, Block 504, Block 505A, Block 505B, Block 506A, Block 506B, Block 507, Block 508, Block 509, Block 510, Block 511, Block 512A, Block 513, Block 514, Block 515, Block 516, Block 517, Block 518, Block 519, Block 520, Block 521A, Block 522A; Block Group 6; Tract 0321: Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 306, Block 307, Block 308, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 320, Block 325, Block 326, Block 327; Forest Heights *, Gardner Park *, Gaston Day *, Grier *, Health Center *: Tract 0308: Block Group 7: Block 701, Block 705A, Block 705B, Block 713, Block 714, Block 715, Block 716, Block 717; Tract 0315: Block Group 1: Block 103A, Block 103B, Block 104, Block 106A, Block 106B, Block 107A, Block 107B, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115A, Block 115B, Block 116A, Block 116B, Block 117, Block 118, Block 119A, Block 119B, Block 120, Block 122, Block 123, Block 124, Block 125A, Block 125B, Block 126A, Block 126B, Block 127, Block 128A, Block 128B, Block 129A, Block 129B, Block 130, Block 131, Block 132, Block 133, Block 134, Block 135, Block 136; Block Group 3, Block Group 4, Block Group 5, Block Group 6: Block 602, Block 603, Block 604, Block 605, Block 610, Block 614; Memorial Hall *, Myrtle *: Tract 0316: Block

Group 4: Block 414A, Block 414C, Block 415, Block 416, Block 417B, Block 417D, Block 418, Block 419; Tract 0318: Block Group 5: Block 501, Block 502, Block 503, Block 504, Block 505, Block 506, Block 507, Block 508, Block 509, Block 510, Block 511, Block 512, Block 513, Block 514, Block 515, Block 516, Block 517, Block 523, Block 524, Block 525; Ranlo *: Tract 0303: Block Group 5: Block 502B, Block 505D; Tract 0310.01: Block Group 1: Block 101A, Block 102A, Block 103; Tract 0313.01: Block Group 1, Block Group 2: Block 201A, Block 201B, Block 202, Block 203, Block 204A, Block 204B, Block 205A, Block 205B, Block 205C, Block 206, Block 207, Block 208A, Block 208B, Block 209B, Block 209C, Block 210, Block 211B, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218, Block 219; Tract 0313.02: Block Group 1: Block 104B, Block 105A, Block 105B, Block 106B, Block 107B, Block 110B; Block Group 2: Block 201B, Block 202, Block 203, Block 204, Block 205B, Block 206, Block 207, Block 208, Block 209, Block 210, Block 211, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217B, Block 217C, Block 220B; Tract 0314: Block Group 5: Block 512B, Block 521B, Block 522B; Robinson *, Sherwood *, South Gastonia *, Woodhill *: Tract 0314: Block Group 1: Block 101, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119; Tract 0320: Block Group 1: Block 120; Block Group 3: Block 301, Block 303, Block 304, Block 305, Block 306, Block 307, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 326, Block 327, Block 328, Block 329, Block 330, Block 331, Block 332, Block 333, Block 334, Block 335, Block 336, Block 337, Block 338, Block 349, Block 350, Block 351, Block 352, Block 353, Block 354; Victory *, Lucia *, Mt. Holly #1 *, Mt. Holly #2 *, Stanley #1 *, Stanley #2 *, Belmont #1 *, Belmont #2 *: Tract 0323.01: Block Group 1: Block 102, Block 103, Block 104, Block 106, Block 107A, Block 113, Block 114A, Block 114B, Block 114C, Block 114D, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120C, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127, Block 128A, Block 128B, Block 129, Block 130A, Block 130B, Block 130C, Block 131, Block 132, Block 133, Block 134, Block 135, Block 136; Block Group 2: Block 201A, Block 201D, Block 202B, Block 208, Block 209, Block 210, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218; Block Group 3; Tract 0323.02: Block Group 1: Block 101B, Block 102, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110A, Block 110B, Block 110C, Block 111A, Block 111B, Block 112A, Block 112B, Block 113, Block 114, Block 115, Block 116A, Block 116B, Block 116C, Block 116D, Block 117A, Block 117B, Block 118, Block 119A, Block 119B, Block 120A, Block 120B, Block 121, Block 122, Block 123, Block 124, Block 125; Block Group 2, Block Group 3: Block 301A, Block 301B, Block 301C, Block 302A, Block 302B, Block 303, Block 304A, Block 304B, Block 305, Block 306, Block 307, Block 308, Block 309, Block 310, Block 311, Block 312, Block 313A, Block 313B, Block 314, Block 315, Block 316A, Block 316B, Block 317A, Block 317B, Block 318A, Block 318B, Block 318C; Belmont #3 *: Tract 0310.01: Block Group 3: Block 305, Block 306, Block 307, Block 308, Block 309, Block 310, Block 312A, Block 312B, Block 312C, Block 312D, Block 313A, Block 313B; Tract 0310.02: Block Group 3: Block 313B, Block 314, Block 315; Block Group 4; Tract 0312: Block Group 1: Block 101A, Block 101B, Block 101C, Block 101D, Block 102A, Block 102B, Block 102C, Block 103,

Block 104, Block 105, Block 106A, Block 106B, Block 106C, Block 107, Block 108, Block 109, Block 110, Block 111A, Block 111B, Block 112A, Block 112B, Block 112C, Block 113, Block 114, Block 115, Block 116A, Block 116B, Block 117, Block 118, Block 119A, Block 119B, Block 120, Block 121; Block Group 2: Block 202A, Block 202B, Block 202C, Block 203, Block 204, Block 205; Block Group 3: Block 301, Block 303; Catawba Heights *, Cramerton *, Lowell *: Tract 0313.01: Block Group 2: Block 209A, Block 211A; Tract 0313.02: Block Group 1: Block 101A, Block 103, Block 104A, Block 106A, Block 107A, Block 108, Block 109, Block 110A, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121A, Block 122, Block 123, Block 124, Block 125A, Block 128A, Block 129A; Block Group 2: Block 201A, Block 220A, Block 221, Block 222, Block 223, Block 224; Block Group 3: Block 301A, Block 301B, Block 302A, Block 303, Block 304, Block 305, Block 306, Block 307, Block 308, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318, Block 319, Block 320, Block 321, Block 322, Block 323, Block 324, Block 325, Block 326, Block 327, Block 328, Block 329, Block 330A, Block 331A, Block 333, Block 334, Block 335, Block 336, Block 337, Block 338, Block 339, Block 340, Block 341, Block 342, Block 343, Block 344, Block 345, Block 346, Block 347, Block 348, Block 349, Block 350, Block 351, Block 352; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 412A, Block 415C, Block 416, Block 419, Block 420, Block 421, Block 422, Block 423, Block 424, Block 425, Block 426; Tract 0322: Block Group 1: Block 105A, Block 107A, Block 112, Block 115, Block 116A; Block Group 2: Block 209B, Block 213, Block 214, Block 215A, Block 216A, Block 217B, Block 221B, Block 223; McAdenville *: Tract 0310.01: Block Group 1: Block 101C, Block 105B, Block 106B, Block 107; Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 206, Block 207, Block 208, Block 209, Block 210, Block 211, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218; Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 311; Tract 0313.02: Block Group 1: Block 101B, Block 102, Block 121B, Block 125B, Block 126, Block 127, Block 128B, Block 129B, Block 130, Block 131A, Block 131B, Block 132A, Block 132B; Block Group 3: Block 301C, Block 302B, Block 330B; Tract 0322: Block Group 1: Block 101, Block 102A, Block 102B, Block 103, Block 104B, Block 105B, Block 105C, Block 106, Block 107B, Block 110, Block 111, Block 113, Block 114, Block 116B, Block 116C, Block 117, Block 118, Block 119A, Block 119B, Block 120, Block 121B, Block 122; Block Group 2: Block 201A, Block 201B, Block 201C, Block 202, Block 203, Block 204, Block 205, Block 206, Block 207, Block 208, Block 209C, Block 210, Block 218, Block 225, Block 226; Tract 0323.01: Block Group 1: Block 108A, Block 111, Block 112A, Block 120B, Block 121A; Tract 0325.01: Block Group 5: Block 501; New Hope *, Southpoint *, Union *, Mecklenburg County: Charlotte Pct. 1 *, Charlotte Pct. 4, Charlotte Pct. 5 *, Charlotte Pct. 6 *, Charlotte Pct. 7 *, Charlotte Pct. 8 *, Charlotte Pct. 9 *: Tract 0003: Block Group 1: Block 103, Block 104, Block 105, Block 107, Block 109, Block 110; Tract 0004: Block Group 5: Block 514; Tract 0027: Block Group 3: Block 304; Tract 0035: Block Group 1: Block 101, Block 102, Block 103, Block 107, Block 108, Block 109; Block Group 2, Block Group 3: Block 301, Block 302, Block 305, Block 306,

Block 307, Block 308, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411, Block 412, Block 414; Charlotte Pct. 10 *, Charlotte Pct. 15 *: Tract 0010: Block Group 1: Block 101, Block 103, Block 105, Block 107, Block 108, Block 109, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119; Block Group 2: Block 201, Block 206, Block 207, Block 208, Block 214, Block 218; Block Group 3: Block 307, Block 308, Block 309, Block 313, Block 314, Block 315, Block 317; Tract 0011: Block Group 1: Block 103, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 114, Block 117, Block 120; Block Group 4: Block 408; Tract 0012: Block Group 3: Block 305, Block 306, Block 308Y, Block 308Z; Charlotte Pct. 18 *, Charlotte Pct. 19 *, Charlotte Pct. 20 *, Charlotte Pct. 21 *, Charlotte Pct. 29 *, Charlotte Pct. 32 *, Charlotte Pct. 33 *, Charlotte Pct. 34 *, Charlotte Pct. 35 *, Charlotte Pct. 36 *, Charlotte Pct. 37 *, Charlotte Pct. 38 *, Charlotte Pct. 44 *, Charlotte Pct. 45 *, Charlotte Pct. 47 *, Charlotte Pct. 48 *, Charlotte Pct. 49 *, Charlotte Pct. 50 *, Charlotte Pct. 51 *, Charlotte Pct. 57 *, Charlotte Pct. 58 *, Charlotte Pct. 59 *, Charlotte Pct. 61 *, Charlotte Pct. 62 *, Charlotte Pct. 63 *, Charlotte Pct. 64 *, Charlotte Pct. 65 *, Charlotte Pct. 66 *, Charlotte Pct. 67 *, Charlotte Pct. 68 *, Charlotte Pct. 69 *, Charlotte Pct. 70 *, Charlotte Pct. 71 *, Charlotte Pct. 72 *, Charlotte Pct. 73 *, Charlotte Pct. 74 *, Charlotte Pct. 75 *, Charlotte Pct. 76 *, Charlotte Pct. 77 *: Tract 0058.06: Block Group 1: Block 113; Tract 0059.03: Block Group 3: Block 340A, Block 340B, Block 341A, Block 341B, Block 342, Block 344A, Block 344B, Block 345, Block 346, Block 347, Block 348, Block 349, Block 350, Block 351, Block 352, Block 353, Block 354, Block 355, Block 356, Block 357, Block 361; Charlotte Pct. 79 *, Charlotte Pct. 80 *, Charlotte Pct. 81 *, Charlotte Pct. 83 *, Charlotte Pct. 84 *, Charlotte Pct. 85 *, Charlotte Pct. 86 *, Charlotte Pct. 87 *, Charlotte Pct. 88 *, Charlotte Pct. 89 *, Charlotte Pct. 90 *, Charlotte Pct. 91, Charlotte Pct. 92 *, Charlotte Pct. 93 *, Charlotte Pct. 94 *, Charlotte Pct. 95 *, Charlotte Pct. 96 *, Charlotte Pct. 97 *: Tract 0031.04: Block Group 2: Block 204, Block 205, Block 216, Block 217, Block 218, Block 219; BER *: Tract 0059.01: Block Group 3: Block 301A, Block 301B, Block 302A, Block 302B, Block 303, Block 304, Block 305, Block 306, Block 307, Block 308, Block 309, Block 310, Block 311, Block 315, Block 316, Block 317, Block 318, Block 319, Block 320, Block 321, Block 322, Block 323, Block 324, Block 325, Block 326, Block 327, Block 328, Block 329, Block 330, Block 331, Block 332A, Block 332B, Block 333, Block 334, Block 335, Block 336A, Block 336B, Block 337, Block 338, Block 339, Block 340, Block 341, Block 342; Block Group 4; CCK *, COR *: Tract 0063: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108B, Block 109, Block 110; Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 208, Block 209, Block 212; Tract 0064: Block Group 2: Block 217A, Block 217B, Block 217C, Block 217D, Block 217E, Block 217J, Block 217L, Block 228, Block 229A, Block 229B, Block 229C, Block 230, Block 231B, Block 232B, Block 233A, Block 233C, Block 234, Block 235; Block Group 3: Block 311, Block 312, Block 313, Block 314, Block 315, Block 318, Block 319, Block 320, Block 321, Block 322, Block 323,

Block 324; Block Group 4: Block 401A, Block 401D, Block 401F, Block 402A, Block 402B, Block 403, Block 404, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410; Block Group 5: Block 501D, Block 504A, Block 504B, Block 505, Block 506, Block 507, Block 508, Block 509, Block 510, Block 511, Block 512, Block 513A, Block 513B, Block 514A, Block 514B, Block 514C, Block 514D, Block 515A, Block 515B, Block 516A, Block 516B, Block 517, Block 518A, Block 518B, Block 519, Block 520A, Block 520B, Block 520C, Block 521B, Block 524A; Block Group 6: Block 603A, Block 606, Block 610, Block 611, Block 612, Block 613, Block 614, Block 615, Block 616, Block 617, Block 618, Block 619, Block 620, Block 621, Block 622; CO1 *, CO2 *: Tract 0015.01: Block Group 1: Block 110B; Block Group 2: Block 201; Tract 0056.01: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110; Block Group 2: Block 201, Block 202; Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 305, Block 306, Block 307, Block 308, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318, Block 319, Block 320, Block 321, Block 322, Block 324, Block 325, Block 326, Block 327, Block 328, Block 329, Block 330, Block 331, Block 332, Block 333; Block Group 4: Block 405, Block 406, Block 419, Block 420, Block 421, Block 422B, Block 423; Tract 0056.02: Block Group 1: Block 105, Block 106; HUN *: Tract 0063: Block Group 1: Block 108A, Block 111, Block 112, Block 113, Block 114A, Block 114B, Block 117, Block 118, Block 119; Block Group 2: Block 206, Block 207, Block 210, Block 211, Block 213, Block 214A, Block 214B, Block 214C, Block 215A, Block 215B, Block 216, Block 217; Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 305B, Block 308, Block 309, Block 310, Block 311, Block 315A, Block 315C, Block 316, Block 317, Block 323, Block 324, Block 325, Block 326, Block 327, Block 328, Block 329, Block 330, Block 331; Block Group 4: Block 401, Block 402A, Block 402B, Block 402C, Block 404A, Block 404B, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414A, Block 414B, Block 415, Block 416, Block 417, Block 418, Block 419, Block 420, Block 421, Block 422, Block 423, Block 424, Block 425, Block 426, Block 427, Block 428, Block 429, Block 430, Block 431, Block 432, Block 433, Block 434, Block 435, Block 436, Block 437, Block 438, Block 439, Block 440, Block 441, Block 442, Block 443, Block 444, Block 445, Block 446; Tract 0064: Block Group 5: Block 521A; LEM *, LC1 - North, LC2: Tract 0061: Block Group 1: Block 108B; Block Group 5, Block Group 9; LC1 - South: Tract 0061: Block Group 4: Block 409, Block 410, Block 411, Block 420, Block 421, Block 422, Block 432, Block 471; MC1, MC2: Tract 0051.01: Block Group 1: Block 101; Tract 0054.01: Block Group 3: Block 308, Block 309, Block 310, Block 311, Block 312, Block 316, Block 318, Block 320, Block 325, Block 326; Tract 0054.02: Block Group 1: Block 101A, Block 101B, Block 101C, Block 102A, Block 102B, Block 102C, Block 102D, Block 102E, Block 103, Block 104, Block 105, Block 106B, Block 107A, Block 107B, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114A, Block 114B, Block 114C, Block 114D, Block 114E, Block 114F, Block 114G, Block 115, Block 116, Block 117, Block 123, Block 129A, Block 129D, Block 129F, Block 134, Block 135, Block 136; Tract 0055.01: Block Group 1: Block 101, Block 102, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116,

Block 117, Block 118, Block 119, Block 120, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127, Block 128, Block 129, Block 130, Block 131, Block 132, Block 133, Block 134, Block 135, Block 136, Block 137, Block 138, Block 139, Block 140, Block 141, Block 142, Block 143, Block 144, Block 145A, Block 145B, Block 146, Block 147, Block 148, Block 149, Block 150, Block 151, Block 152, Block 153; Block Group 2: Block 213, Block 214, Block 216, Block 217B, Block 218, Block 219; Block Group 3: Block 301, Block 312B; Tract 0061: Block Group 1: Block 101, Block 102, Block 103, Block 130, Block 131B, Block 132B; Block Group 4: Block 401, Block 402, Block 413, Block 414, Block 415, Block 416, Block 417, Block 478, Block 479, Block 480, Block 481; MA1 *, MA2 *, MA3 *, MA4 *, Charlotte Pct. 102, MH1 *, MH2 *, MH3 *, OAK, PC1 *, PC2 *, PVL *, PR1, PR2, PR3, Charlotte Pct. 93 Part, SC1, SC2, Charlotte Pct. 100 *, Charlotte Pct. 105.

District 10: Alexander County; Avery County; Buncombe County: Broad River *, Fairview *, Limestone #2 *; Burke County: Drexel #3 *, Icard #1 *, Icard #2 *, Icard #3 *, Icard #4 *, Icard #5 *, Jonas Ridge *, Linville #1 *, Lovelady #1 *, Lovelady #2 *, Lovelady #3 *, Lovelady #4 *, Lower Fork *, Silver Creek #2 *, Upper Creek *, Upper Fork *; Caldwell County: Globe *, Hudson #1 *, Hudson #2 *, Johns River *, Gamewell #1 *, Gamewell #2 *, Little River *, Lovelady-Rhodhiss *, Lovelady #2 *, Sawmills *, Lower Creek #2 *, Lower Creek #3 *, Mulberry *, North Catawba *, Patterson *, Wilson Creek *; Catawba County, Davie County: Calahaln township, Clarksville township, Farmington township; Forsyth County: Bethania #2 *, Clemmonsville #1 *, Clemmonsville #2 *, Clemmonsville #3 *, Lewisville #1 *, Lewisville #2 *, Lewisville #3 *, Old Richmond *, Old Town #3 *, South Fork #2 *, South Fork #3 *, Vienna #1 *, Vienna #2 *, Vienna #3 *, Calvary Baptist Church *, Jefferson Elementary School *, Messiah Moravian Church *, Sherwood Forest Elementary School *, Henderson County: Fletcher *, Hoopers Creek *, Park Ridge *; Iredell County: Bethany *, Chambersburg *: Tract 0606: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106A, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118A, Block 118B, Block 122, Block 145, Block 146, Block 147, Block 148; Block Group 2, Block Group 3: Block 301A, Block 302, Block 303A; Tract 0607: Block Group 2: Block 223E, Block 224A, Block 225A, Block 226A; Block Group 3: Block 327A, Block 330A; Block Group 4: Block 422A, Block 423A, Block 425A, Block 426, Block 429A, Block 430A, Block 431A, Block 434A, Block 436, Block 437; Block Group 5; Coddle Creek #4 *: Tract 0614: Block Group 8: Block 823, Block 824, Block 825, Block 826, Block 827A, Block 829, Block 830, Block 831, Block 832, Block 833A, Block 836A, Block 837A, Block 838, Block 840, Block 841, Block 842; Tract 0616: Block Group 3: Block 312, Block 313, Block 314; Block Group 4: Block 402, Block 403A, Block 403B, Block 403C, Block 403D, Block 404A, Block 404B, Block 404C, Block 405, Block 406, Block 407, Block 408, Block 409, Block 410, Block 411, Block 412, Block 413, Block 414, Block 415, Block 416, Block 417, Block 418, Block 419, Block 420, Block 421, Block 422, Block 423, Block 424, Block 425, Block 426A, Block 426B; Block Group 5: Block 501A, Block 501B, Block 502A, Block 502B, Block 503A, Block 503B, Block 504, Block 505, Block 506A, Block 508, Block 509, Block 510, Block 511; Block

Group 6: Block 601, Block 602, Block 603, Block 604, Block 605, Block 606, Block 607A, Block 607B, Block 607C, Block 607D, Block 607E, Block 608, Block 609A, Block 609C, Block 609D, Block 610A, Block 611A, Block 611B, Block 612A, Block 612B, Block 613, Block 614, Block 615, Block 616, Block 617, Block 618, Block 619, Block 620, Block 621, Block 622, Block 623, Block 624, Block 625, Block 626, Block 627, Block 628A; Concord *, Davidson *, Eagle Mills *, Fallstown *, New Hope *, Olin *, Sharpesburg *, Shiloh *, Statesville #1 *, Tract 0610: Block Group 4: Block 401A, Block 402A, Block 429A, Block 430, Block 431, Block 432, Block 433A, Block 434; Statesville #2 *, Statesville #4 *, Statesville #5 *: Tract 0603: Block Group 1: Block 105; Tract 0604: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 121, Block 122, Block 126, Block 127, Block 128, Block 132, Block 133, Block 134; Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 207, Block 208, Block 209, Block 210, Block 216, Block 217, Block 218, Block 219, Block 220, Block 222, Block 223, Block 225; Block Group 3: Block 304, Block 305, Block 306A, Block 307A, Block 309A, Block 317A; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406, Block 407, Block 408A, Block 408B, Block 409A, Block 409B, Block 410A, Block 410B, Block 411, Block 412A, Block 412B, Block 413A, Block 413B, Block 414A, Block 414C, Block 414D, Block 414E, Block 415B, Block 416, Block 417, Block 418, Block 419, Block 420, Block 421, Block 422, Block 423, Block 424, Block 425, Block 426B, Block 427B, Block 429B, Block 430B, Block 431A, Block 431B, Block 432, Block 433, Block 434, Block 435, Block 436A, Block 436B; Tract 0605: Block Group 2: Block 201, Block 202B, Block 203, Block 211, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218, Block 219, Block 220, Block 221; Block Group 3: Block 325, Block 326; Tract 0610: Block Group 4: Block 409A, Block 435B, Block 437A, Block 443, Block 444, Block 445, Block 446; Tract 0611: Block Group 3: Block 321A, Block 322B, Block 323A, Block 323D, Block 324, Block 325, Block 326A, Block 326C; Turnersburg *, Union Grove*; Lincoln County, McDowell County: Brackett township, Crooked Creek township, Glenwood township, Higgins township, Montford Cove township; Mitchell County, Polk County: Cooper Gap township; Rutherford County: Camp Creek township: Tract 9601: Block Group 1: Block 102A, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block 109, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127, Block 128, Block 129, Block 130, Block 131, Block 138, Block 139, Block 141, Block 142, Block 144; Tract 9602: Block Group 1: Block 101A, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127, Block 128, Block 129, Block 130, Block 131, Block 132, Block 133, Block 134, Block 135, Block 136, Block 137, Block 138, Block 139, Block 140, Block 141, Block 142, Block 143, Block 144, Block 150A, Block 151, Block 180, Block 186, Block 191; Chimney Rock township, Tract 9602: Block Group 1: Block 107A, Block 108, Block 193, Block 194, Block 195, Block 196, Block 197; Golden Valley township, Green Hill township, Logan Store township, Morgan township, Wilkes County: Antioch *, Brushy Mountain *, Edwards No. 1 *, Edwards No. 2 *, Edwards

No. 3 *, Elk No. 1 *, Jobs Cabin *, Lewis Fork *, Lovelace *, Mulberry No. 1 *, Mulberry No. 2 *, New Castle *, No. Wilkesboro-2 *, Reddies River-1 *, Reddies River-2 *, Rock Creek *, Somers *, Stanton *, Traphill No. 1 *, Traphill No. 2 *, Union *, Walnut Grove *, Wilkesboro No. 2 *, Yadkin County.

District 11: Buncombe County: Asheville #1 *, Asheville #2 *, Asheville #3 *, Asheville #4 *, Asheville #5 *, Asheville #6 *, Asheville #7 *, Asheville #8 *, Asheville #9 *, Asheville #10 *, Asheville #11 *, Asheville #12 *, Asheville #13 *, Asheville #14 *, Asheville #15 *, Asheville #16 *, Asheville #17 *, Asheville #18 *, Asheville #19 *, Asheville #20, Asheville #21 *, Beaverdam *, Biltmore *, Haw Creek *, Hazel #1 *, Hazel #2 *, Reynolds *, Woodfin *, Averys Creek *, Black Mountain #1 *, Black Mountain #2 *, Black Mountain #3 *, Black Mountain #4 *, Flat Creek *, French Broad *, Lower Hominy #1 *, Lower Hominy #2 *, Lower Hominy #3 *, Upper Hominy #1 *, Upper Hominy #2 *, Ivy #1 *, Ivy #2 *, Leicester *, West Buncombe *, Limestone #1 *, Riceville *, Swannanoa #1 *, Swannanoa #2 *, Reems Creek *, Weaverville #1 *, Weaverville #2 *, Sandy Mush *, Cherokee County; Clay County; Cleveland County: Holly Springs *, Mrb-Yo *, Shelby #1 *, Shelby #2 *, Shelby #3 *, Shelby #4 *, Shelby #5 *, Shelby #6 *, Shelby #7 *, Lattimore *, Polkville *, Lawndale *, Graham County; Haywood County; Henderson County: North Blue Ridge *, South Blue Ridge *, Clear Creek *, Bowmans Bluff *, Crab Creek *, Bat Cave *, Edneyville *, Green River *, Raven Rock *, Armory *, Flat Rock *, Grimesdale *, Hendersonville #1 *, Hendersonville #2 *, Hendersonville #3 *, Horse Shoe *, Laurel Park *, Long John Mountain *, Moores Grove *, Northeast *, Northwest *, Pisgah View *, Rugby *, Southeast *, Southwest *, Valley Hill *, Northwest Non-contiguous *, Brickton, Brickton Noncontiguous, Etowah *, North Mills River *, South Mills River *, Jackson County; McDowell County: Dysartsville township, Marion township, Nebo township, North Cove township, Old Fort township; Macon County; Madison County; Polk County: Columbus township, Greens Creek township, Saluda township, Tryon township, White Oak township; Rutherford County: Camp Creek township: Tract 9601: Block Group 1: Block 140A, Block 143; Block Group 2: Block 201A, Block 202, Block 203A, Block 207A; Tract 9602: Block Group 1: Block 145, Block 146, Block 147, Block 148, Block 149, Block 177, Block 178, Block 179A, Block 181, Block 182, Block 183A, Block 184A, Block 185, Block 187, Block 188, Block 189, Block 190, Block 192; Block Group 3: Block 301, Block 302A, Block 305A, Block 306A; Colfax township, Cool Spring township, Duncans Creek township, Gilkey township, High Shoals township, Rutherfordton township, Sulphur Springs township, Union township; Swain County; Transylvania County; Yancey County.

District 12: Alamance County: North Burlington *: Tract 0201.01: Block Group 1: Block 101; Tract 0202: Block Group 1: Block 101, Block 102, Block 103, Block 105, Block 106, Block 107, Block 108, Block 109, Block 110, Block 111, Block 113; Tract 0203: Block Group 1: Block 107, Block 108, Block 109, Block 110; Block Group 2: Block 201, Block 202, Block 208; Tract 0204: Block Group 3: Block 304A, Block 304B, Block 306A, Block 306B, Block 307A, Block 307B, Block 308, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316A, Block 316B, Block 317, Block 318, Block

319, Block 337, Block 338, Block 339, Block 340; Block Group 4, Block Group 6; Tract 0205: Block Group 8: Block 804, Block 816, Block 817, Block 819; Burlington #7 *, Faucette *, Haw River *, Morton *, Pleasant Grove *, Davidson County: Abbotts Creek *: Tract 0601: Block Group 1: Block 115, Block 116, Block 117, Block 118, Block 119; Block Group 2: Block 210, Block 215, Block 216, Block 217, Block 229, Block 237, Block 244, Block 245, Block 246, Block 247, Block 249, Block 251; Block Group 9: Block 913, Block 914; Cotton *: Tract 0615: Block Group 4: Block 435B, Block 439C, Block 441B, Block 442B, Block 444B, Block 445B, Block 446B, Block 447, Block 448, Block 454, Block 455, Block 456; Tract 0618.01: Block Group 2: Block 209A, Block 209B, Block 210, Block 212A, Block 212B, Block 226; Block Group 3: Block 302, Block 303, Block 304, Block 305, Block 306, Block 307, Block 308, Block 324, Block 325, Block 326, Block 327, Block 328, Block 329, Block 330A, Block 330B; Block Group 4: Block 408, Block 409, Block 410, Block 411, Block 412, Block 413; Block Group 5: Block 537, Block 538, Block 539, Block 540, Block 546, Block 556, Block 557, Block 558; Lexington No. 1 *: Tract 0612: Block Group 3: Block 306, Block 308, Block 323, Block 376, Block 377, Block 378, Block 379, Block 380, Block 381C; Tract 0614: Block Group 1: Block 101B, Block 107C; Block Group 2: Block 227B, Block 228B; Block Group 3: Block 301B, Block 302, Block 305, Block 306B; Block Group 4: Block 401B, Block 401C, Block 401D, Block 402D, Block 402E, Block 403, Block 404, Block 405B, Block 410B, Block 411D, Block 412B; Ward No. 1 *, Ward No. 2 *: Tract 0615: Block Group 1: Block 114, Block 115, Block 116, Block 117, Block 118, Block 141, Block 142, Block 143, Block 144, Block 155, Block 156; Block Group 4: Block 405, Block 406, Block 413, Block 414, Block 415, Block 416, Block 417, Block 421, Block 422; Tract 0616: Block Group 1: Block 104, Block 110, Block 111, Block 112; Ward No. 4 *, Ward No. 5 *, Ward No. 6 *: Tract 0614: Block Group 3: Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318, Block 321, Block 322, Block 337, Block 338, Block 339, Block 341; Tract 0615: Block Group 1: Block 119, Block 129, Block 130, Block 133, Block 134, Block 135, Block 136, Block 137, Block 138, Block 139, Block 140, Block 145, Block 146, Block 147, Block 148, Block 149, Block 150, Block 151, Block 152, Block 153, Block 154; Block Group 2: Block 201, Block 202, Block 203; Thomasville No. 1 *, Thomasville No. 2 *, Thomasville No. 3 *, Thomasville No. 4 *: Tract 0608: Block Group 2: Block 202; Block Group 3: Block 303, Block 304, Block 305, Block 307, Block 308, Block 309, Block 310, Block 311A, Block 339A, Block 342A, Block 342B, Block 343, Block 344A, Block 345A; Tract 0609: Block Group 5: Block 516, Block 517; Block Group 9: Block 906A; Thomasville No. 7 *: Tract 0605: Block Group 1: Block 118, Block 120, Block 121, Block 122, Block 123, Block 124, Block 129; Block Group 9: Block 913, Block 914, Block 916, Block 918, Block 919, Block 920, Block 921, Block 922; Tract 0608: Block Group 3: Block 306B, Block 306C, Block 306D, Block 311B, Block 312, Block 313, Block 314B, Block 322, Block 322B, Block 323B, Block 324, Block 325, Block 326, Block 327, Block 328, Block 329, Block 330, Block 331, Block 332, Block 333, Block 334, Block 335, Block 336, Block 337, Block 338, Block 339B, Block 340, Block 341B, Block 344B, Block 345B, Block 346, Block 347, Block 348; Thomasville No. 8 *: Tract 0606: Block Group 4: Block 408, Block 409, Block 410, Block 411, Block 412, Block 415, Block 416, Block 417; Block Group 9: Block 903, Block

904B, Block 958B; Durham County: Bragtown School *, Burton School *, C.C. Spaulding School *, Durham Co. Main Library *, Durham High School *, Forest Hills Club House *, Holloway Street School *, Holton Junior High School *, Lakewood School *, Moose Lodge *, Morehead School *, North Durham School Building *, Pearson School *, Pearsontown School *, R.N. Harris *, Shephard Junior H.S. *, St. Stephens/Parish Hall *: Tract 0020.07: Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 407, Block 408, Block 409; Watts Street School *, Weaver Street Community Center *, White Rock Baptist Church *, Y.E. Smith School *, Campus Precinct *, Homestead Heights Baptist *, Carrington Junior H.S. *, Northern H.S. *, DNOE VALLEY SCHOOL NONCONTIGUOUS *, Mangum School *, Rougemont United Methodist *, Gorman Ruritan Club *, Forsyth County: Abbotts Creek #1 *, Abbotts Creek #2 *, Broadbay #1 *, Broadbay #2 *, Ashley Middle School *, Carver High School *, East Winston Library *, Forest Pk. Elementary School *, 14th Street Recreation Center *, Happy Hill Recreation Center *, Kennedy Middle School *, Lowrance Middle School *, M. L. King Recreation Center *, Mt. Sinai Church *, St. Andrews United Methodist *, Winston Lake Family YMCA *; Gaston County: Bessemer City #2 *: Tract 0318: Block Group 1: Block 101A; Firestone *: Tract 0329: Block Group 1: Block 106, Block 107, Block 108; Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 206, Block 208, Block 209, Block 210, Block 211, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218; Tract 0330: Block Group 1: Block 121, Block 122, Block 123, Block 124, Block 125, Block 130, Block 132; Flint Groves *: Tract 0313.02: Block Group 2: Block 218A; Tract 0314: Block Group 1: Block 120; Block Group 4: Block 417; Tract 0321: Block Group 3: Block 305, Block 318, Block 319, Block 321, Block 322, Block 323, Block 324, Block 334; Health Center *: Tract 0315: Block Group 6: Block 601, Block 606, Block 607, Block 608, Block 609, Block 611, Block 612, Block 613; Tract 0319: Block Group 2: Block 214, Block 215, Block 221, Block 222; Block Group 3; Highland *, Myrtle *: Tract 0318: Block Group 1: Block 101B, Block 101D, Block 101E, Block 109, Block 110; Block Group 2, Block Group 3, Block Group 4, Block Group 5: Block 518, Block 519, Block 520, Block 521, Block 522, Block 526, Block 527, Block 528, Block 529, Block 530; Tract 0331: Block Group 1: Block 104, Block 105B; Ranlo *: Tract 0313.02: Block Group 2: Block 218B, Block 218C; Block Group 4: Block 413D, Block 414B; Tract 0321: Block Group 3: Block 338D; Woodhill *: Tract 0320: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 108, Block 109, Block 111, Block 112, Block 113, Block 114, Block 115, Block 121, Block 122, Block 123; Belmont #2 *: Tract 0323.01: Block Group 1: Block 101, Block 105, Block 107B, Block 108B, Block 109, Block 110A, Block 110B, Block 121B; Tract 0323.02: Block Group 1: Block 101A, Block 103, Block 104; Block Group 3: Block 319; Belmont #3 *: Tract 0312: Block Group 1: Block 116C; Lowell *: Tract 0313.02: Block Group 3: Block 353A, Block 354, Block 355, Block 356, Block 357; Block Group 4: Block 411, Block 413B, Block 417, Block 418; Tract 0322: Block Group 1: Block 104A, Block 108, Block 109; McAdenville *: Tract 0310.01: Block Group 2: Block 219A, Block 219B, Block 220A, Block 220B; Tract 0313.02: Block Group 3: Block 331B, Block 331C, Block 332, Block 353B; Tract 0323.01: Block Group 1: Block 112B; Guilford County:

GB-01 *, GB-02 *, GB-03 *, GB-04 *, GB-05 *, GB-06 *, GB-07 *, GB-08 *, GB-09 *, GB-15 *: Tract 0115: Block Group 1: Block 103, Block 104, Block 105, Block 111, Block 112, Block 113; Block Group 2: Block 201, Block 202, Block 203Y, Block 203Z, Block 206, Block 207, Block 208, Block 211, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217, Block 218; Block Group 3, Block Group 4, Block Group 5; Tract 0116.01: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 107; Block Group 2: Block 202, Block 203, Block 204, Block 205, Block 214, Block 218, Block 221; Tract 0126.04: Block Group 3: Block 303, Block 304; GB-19 *, Tract 0154: Block Group 6: Block 605A; GB-23 *, GB-24A *, GB-25 *, GB-26A *, GB-29 *, GB-30 *, GB-33 *, GB-36 *, GB-42 *, GB-44 *, GB-45 *, Tract 0128.03: Block Group 2: Block 217A, Block 227A, Block 228, Block 229, Block 230Y, Block 230Z, Block 231, Block 234A; HP-03 *, HP-05 *, HP-06 *, HP-07 *, HP-11 *, HP-12 *, HP-15 *, HP-17 *, HP-22 *, Gibsonville *, Jamestown-1 *: Tract 0164.02: Block Group 4: Block 401Y, Block 403B, Block 404, Block 411Y, Block 411Z, Block 413, Block 414, Block 415, Block 416, Block 417, Block 418, Block 419, Block 420, Block 421, Block 422, Block 423, Block 427, Block 428, Block 429, Block 430, Block 431, Block 432, Block 433, Block 436, Block 437, Block 438B, Block 439B, Block 440, Block 441, Block 442; Tract 0165.01: Block Group 2: Block 212C, Block 213A; Jamestown-2 *: Tract 0126.09: Block Group 4: Block 414C; Tract 0165.01: Block Group 2: Block 212D, Block 213B; Tract 0165.02: Block Group 2: Block 206, Block 207, Block 208, Block 209, Block 210, Block 212, Block 213, Block 214, Block 215, Block 216, Block 217A, Block 218, Block 219, Block 220, Block 221, Block 222, Block 223, Block 225, Block 226, Block 227; Block Group 3: Block 301, Block 302, Block 312, Block 313, Block 314; Block Group 4: Block 407B; North Jefferson *: Tract 0111.02: Block Group 4: Block 422B; Tract 0127.06: Block Group 2: Block 201B; Tract 0128.03: Block Group 1: Block 107B; Block Group 2: Block 201C, Block 202C, Block 205B, Block 206, Block 207, Block 213, Block 214, Block 217B, Block 224, Block 234B, Block 235; Block Group 3: Block 301, Block 303, Block 306; Block Group 9: Block 901, Block 902B, Block 904, Block 905B, Block 906; Tract 0153: Block Group 1: Block 115A, Block 117, Block 118A, Block 120A, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127, Block 128, Block 129, Block 130, Block 131, Block 132; Block Group 3: Block 303A, Block 309, Block 310, Block 311, Block 312, Block 317, Block 318, Block 319, Block 320, Block 321, Block 322, Block 323, Block 324; North Sumner *, South Washington *: Tract 0152: Block Group 1: Block 110, Block 111, Block 115, Block 122, Block 123, Block 124, Block 131, Block 132B, Block 133B, Block 134B, Block 136B; GB-24B *, GB-26B *, GB-35C *: Iredell County: Barringer *: Tract 0612: Block Group 3: Block 317A, Block 317C, Block 321A, Block 322A, Block 323A; Block Group 4: Block 401, Block 402A, Block 402B, Block 402F, Block 410A, Block 410C, Block 411A, Block 412A, Block 412C, Block 412D, Block 413, Block 414, Block 415, Block 416, Block 417, Block 418, Block 419, Block 420, Block 421, Block 422A, Block 422B, Block 423A, Block 423B, Block 424, Block 425; Block Group 5: Block 501C, Block 507A, Block 508, Block 509, Block 510, Block 511; Block Group 9: Block 901A, Block 902A, Block 904A; Tract 0613: Block Group 1: Block 101A; Block Group 2: Block 201A, Block 202, Block 203, Block 204, Block 205, Block 206, Block 207, Block 208, Block 209, Block 210, Block 211,

Block 212, Block 213, Block 214, Block 215, Block 219, Block 220A, Block 221A, Block 222, Block 223, Block 224A; Block Group 3: Block 309A, Block 310A, Block 312A, Block 313, Block 314A, Block 315A, Block 316A, Block 322, Block 323; Block Group 4: Block 407A, Block 408; Chambersburg *: Tract 0606: Block Group 3: Block 323D, Block 324A, Block 325A, Block 327, Block 328, Block 329, Block 330A, Block 331, Block 332; Block Group 4: Block 401, Block 402, Block 403, Block 404, Block 405, Block 406, Block 407, Block 408B, Block 416A, Block 416C, Block 417, Block 418, Block 419, Block 420, Block 421, Block 422, Block 423, Block 424, Block 425, Block 426, Block 427; Block Group 5: Block 501, Block 502, Block 503, Block 504, Block 505, Block 506A, Block 506B, Block 507A, Block 507C, Block 517A, Block 518, Block 519, Block 520; Tract 0607: Block Group 6: Block 601, Block 602, Block 603, Block 604, Block 605, Block 606, Block 607, Block 608, Block 609, Block 612; Tract 0613: Block Group 3: Block 310B, Block 311A, Block 312B, Block 317; Block Group 4: Block 407B; Coddle Creek #2 *, Coddle Creek #4 *: Tract 0614: Block Group 8: Block 820, Block 821, Block 822, Block 843, Block 844, Block 845, Block 846, Block 847, Block 852; Tract 0616: Block Group 2: Block 214; Block Group 3: Block 306, Block 307, Block 308, Block 309, Block 310, Block 311, Block 315, Block 316; Block Group 4: Block 401A, Block 401B, Block 401C, Block 401D, Block 401E; Block Group 5: Block 512, Block 513A, Block 513B, Block 513C, Block 513D, Block 513E, Block 514; Block Group 7: Block 714, Block 718, Block 719; Cool Springs *, Statesville #3 *, Statesville #5 *: Tract 0604: Block Group 1: Block 118, Block 119, Block 120, Block 123, Block 124, Block 125, Block 129, Block 130, Block 131, Block 135, Block 136, Block 137, Block 138; Block Group 2: Block 205, Block 206, Block 214, Block 215, Block 221, Block 224; Block Group 3: Block 301; Statesville #6 *; Mecklenburg County: Charlotte Pct. 2 *, Charlotte Pct. 3, Charlotte Pct. 9 *: Tract 0003: Block Group 1: Block 101, Block 102, Block 106, Block 108; Block Group 2; Tract 0004: Block Group 5: Block 508, Block 513, Block 518, Block 519, Block 520, Block 521; Tract 0035: Block Group 3: Block 303, Block 304; Block Group 4: Block 413; Charlotte Pct. 11 *, Charlotte Pct. 12 *, Charlotte Pct. 13 *, Charlotte Pct. 14 *, Charlotte Pct. 15 *: Tract 0010: Block Group 1: Block 104, Block 106; Block Group 2: Block 209, Block 210, Block 211, Block 217, Block 219, Block 220; Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 305, Block 310, Block 318, Block 319; Tract 0011: Block Group 1: Block 111, Block 118, Block 119; Block Group 4: Block 405, Block 406, Block 407, Block 409, Block 411, Block 412; Charlotte Pct. 16 *, Charlotte Pct. 17 *, Charlotte Pct. 22 *, Charlotte Pct. 23 *, Charlotte Pct. 24 *, Charlotte Pct. 25 *, Charlotte Pct. 26 *, Charlotte Pct. 27 *, Charlotte Pct. 28 *, Charlotte Pct. 30 *, Charlotte Pct. 31 *, Charlotte Pct. 39 *, Charlotte Pct. 40 *, Charlotte Pct. 41 *, Charlotte Pct. 42 *, Charlotte Pct. 43 *, Charlotte Pct. 46 *, Charlotte Pct. 52 *, Charlotte Pct. 53 *, Charlotte Pct. 54 *, Charlotte Pct. 55 *, Charlotte Pct. 56 *, Charlotte Pct. 60, Charlotte Pct. 77 *: Tract 0038.04: Block Group 2; Tract 0058.06: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106A, Block 107, Block 108A, Block 109, Block 110, Block 111A, Block 124A, Block 125, Block 126, Block 127, Block 128A, Block 128B, Block 129, Block 130; Tract 0059.03: Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 343, Block 386, Block 387; Charlotte Pct. 78 *

Charlotte Pct. 82 *, Charlotte Pct. 97 *: Tract 0058.07: Block Group 1, Block Group 2: Block 201A, Block 201B, Block 202B; Charlotte Pct. 98 *, BER *: Tract 0059.01: Block Group 2: Block 208, Block 209, Block 221B, Block 225, Block 226, Block 227, Block 228, Block 229; Block Group 3: Block 312, Block 313, Block 314; COR *: Tract 0062.02: Block Group 2: Block 201A, Block 201B, Block 202A, Block 202B, Block 204A, Block 204B, Block 204C, Block 205A, Block 205B, Block 208, Block 209, Block 217, Block 218, Block 219, Block 220, Block 221; Tract 0064: Block Group 5: Block 501A, Block 501B, Block 501C, Block 501E, Block 501F, Block 502, Block 503, Block 522, Block 523A, Block 523B, Block 524B, Block 525; Block Group 6: Block 601A, Block 601B, Block 601C, Block 601E, Block 601G, Block 604, Block 605, Block 607, Block 608, Block 609; DAV *: Tract 0062.01: Block Group 4: Block 401A, Block 402C; Tract 0064: Block Group 1, Block Group 2: Block 201, Block 202, Block 203A, Block 203B, Block 203C, Block 204A, Block 204B, Block 205, Block 206, Block 221; Block Group 3: Block 302, Block 303; Block Group 6: Block 601D, Block 601F, Block 602; HUN *: Tract 0062.02: Block Group 2: Block 225, Block 226, Block 227, Block 228, Block 248, Block 249, Block 250, Block 251, Block 252, Block 294, Block 295A, Block 295B, Block 295C, Block 295D, Block 296, Block 297; Block Group 3: Block 301, Block 302A, Block 302B, Block 303A, Block 303B, Block 334, Block 335A, Block 335B, Block 336, Block 337, Block 338, Block 339, Block 340, Block 341, Block 342, Block 348, Block 349, Block 350, Block 351; Tract 0063: Block Group 1: Block 115, Block 116; Block Group 3: Block 305A, Block 305C, Block 306, Block 307, Block 312, Block 313, Block 314, Block 315B, Block 318A, Block 318B, Block 319, Block 320, Block 321, Block 322; Block Group 4: Block 403A, Block 403B, Block 403C, Block 403D, Block 447, Block 448; LC2: Tract 0054.01: Block Group 3: Block 304, Block 305, Block 306, Block 313, Block 321, Block 322, Block 323, Block 324, Block 330; Block Group 4: Block 401; Tract 0061: Block Group 1: Block 104A, Block 104B, Block 105, Block 106, Block 107, Block 108A, Block 109, Block 110A, Block 110B, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127A, Block 127B, Block 127C, Block 128A, Block 128B, Block 128C, Block 129A, Block 129B, Block 133, Block 134, Block 135; LC1 - South: Tract 0061: Block Group 4: Block 403, Block 404, Block 405, Block 406, Block 407, Block 408, Block 412, Block 418, Block 419; Tract 0062.02: Block Group 3: Block 331, Block 332, Block 343, Block 344, Block 347, Block 352; MC2: Tract 0054.01: Block Group 3: Block 301, Block 302, Block 303, Block 307, Block 314, Block 317, Block 319, Block 328; Tract 0054.02: Block Group 1: Block 106A, Block 129B, Block 129C, Block 129E, Block 130; Tract 0055.01: Block Group 2: Block 217A; Block Group 3: Block 312A, Block 313, Block 314, Block 315, Block 316; Tract 0061: Block Group 1: Block 131A, Block 132A; Charlotte Pct. 16 Part, MC1 part, XMC2 Noncontiguous: Charlotte Pct. 104; Orange County: Carr *: Tract 0108: Block Group 1: Block 110, Block 111, Block 112, Block 113, Block 114, Block 115, Block 116, Block 117, Block 118, Block 119, Block 120, Block 121, Block 122, Block 123, Block 124, Block 125, Block 126, Block 127, Block 128, Block 129, Block 155, Block 156, Block 157, Block 194, Block 195, Block 196, Block 197; Cedar Grove *: Tract 0108: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106, Block 107, Block 108, Block

109, Block 133, Block 134, Block 135, Block 136, Block 137, Block 138, Block 139, Block 140, Block 141, Block 142, Block 143, Block 144, Block 146, Block 148, Block 191, Block 192, Block 193; Block Group 2: Block 216, Block 217, Block 218; Tolars *: Tract 0108: Block Group 2: Block 211A, Block 212, Block 213, Block 214, Block 215, Block 219, Block 220, Block 221, Block 222, Block 223A, Block 224A, Block 254A, Block 255, Block 256, Block 257, Block 258, Block 259A, Block 260A, Block 261A, Block 262, Block 263, Block 264, Block 265, Block 266, Block 267, Block 268, Block 269, Block 270, Block 275, Block 276, Block 277A, Block 285A; Caldwell *: Tract 0108: Block Group 2: Block 201, Block 202, Block 203, Block 204, Block 205, Block 206, Block 207, Block 208, Block 209, Block 210, Block 211B, Block 223B, Block 224B, Block 225, Block 226, Block 227, Block 228, Block 229, Block 230, Block 231, Block 232, Block 233, Block 234, Block 235, Block 236, Block 237, Block 238, Block 239A, Block 239B, Block 240, Block 241, Block 242, Block 243, Block 244, Block 245, Block 246, Block 247, Block 248, Block 249, Block 250, Block 251, Block 252, Block 253, Block 254B, Block 259B, Block 260B, Block 261B, Block 277B, Block 284B, Block 285B, Block 286, Block 287, Block 288, Block 289, Block 290, Block 291, Block 292, Block 293, Block 294, Block 295, Block 296A, Block 296B, Block 297A, Block 297B; Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 305, Block 306, Block 307B, Block 319B, Block 320, Block 321, Block 322, Block 323, Block 324, Block 325, Block 326, Block 327, Block 328, Block 329, Block 330, Block 331, Block 332, Block 333, Block 334, Block 335, Block 336, Block 337, Block 341, Block 370, Block 371, Block 372, Block 373, Block 374B; Tract 0109: Block Group 2: Block 201B, Block 201C, Block 201D, Block 201E, Block 202, Block 203, Block 204B; Rowan County: Franklin *: Tract 0505: Block Group 1: Block 101E; Tract 0513.01: Block Group 2: Block 208B; Block Group 3: Block 302; Tract 0513.02: Block Group 3: Block 301, Block 307, Block 308, Block 309, Block 310, Block 311, Block 312, Block 313, Block 314, Block 315, Block 316, Block 317, Block 318, Block 321C, Block 321D, Block 322, Block 323, Block 324, Block 325, Block 326, Block 327, Block 328, Block 329, Block 330, Block 331, Block 332, Block 333, Block 334; Tract 0519: Block Group 2: Block 225A, Block 248A, Block 249, Block 250; East Spencer *, Milford Hills *, Spencer *, Trading Ford, West Innes *: Tract 0505: Block Group 2: Block 211, Block 212, Block 213; Block Group 3: Block 311, Block 315, Block 316, Block 317, Block 318, Block 319, Block 320, Block 321, Block 322, Block 323, Block 324, Block 325, Block 326, Block 327, Block 328, Block 329, Block 330, Block 331, Block 332, Block 333, Block 334, Block 335; Tract 0513.02: Block Group 3: Block 321A; East Ward II *, North Ward I *, North Ward II *: Tract 0505: Block Group 1: Block 101B, Block 101C, Block 104, Block 107A, Block 110; Tract 0506: Block Group 1: Block 104A, Block 105, Block 106, Block 107, Block 112, Block 113, Block 114, Block 115, Block 116, Block 119, Block 120, Block 121, Block 122, Block 123, Block 132; West Ward III *, Trading Ford Noncontiguous A, Scotch Irish *, Unity *

(b) The names and boundaries of townships, precincts (voting tabulation districts), tracts, block groups, and blocks, specified in this section are as they were legally defined and recognized in the 1990 U.S. Census, except as provided in subsection (c) of this section. Boundaries are as shown on the IVTD Version of the United States Bureau of the Census 1990 TIGER Files, with such modifi-

cations as made by the Legislative Services Office and shown on its computer database as of May 1, 1991, to reflect census blocks divided by prior district boundaries, and precincts added or modified as outlined in subsection (c) of this section.

(c) For Guilford County, precinct boundaries for High Point Precincts 20, 23, and 24 are as modified by the Guilford County Board of Elections and shown on the Legislative Services Office computer database as of May 1, 1991.

For Mecklenburg County, precinct boundaries are as altered by the Mecklenburg County Board of Elections as reported to the Legislative Services Office and shown on the Legislative Services Office computer database as of May 1, 1991.

For Wake County:

- (1) St. Marys Precinct #7 is as created by the Wake County Board of Elections out of St. Marys Precinct #4;
- (2) Raleigh 01-27 Part is an area reported by the Bureau of the Census as part of Raleigh 01-23 but has been put by the Wake County Board of Elections in Raleigh 01-27; and
- (3) VTD ZZZZ has been assigned to the appropriate parts of Wake Forest #1 and Wake Forest #2,

all as shown on the Legislative Services Office computer database as of May 1, 1991.

For Anson, Bertie, Camden, Caswell, Franklin, Gates, Greene, Hertford, Hoke, Lee, Lincoln, Martin, Mitchell, Northampton, Pasquotank, Perquimans, Person, Tyrrell, Vance, Warren, and Yadkin Counties, precincts are as shown on maps on file with the Legislative Services Office as of May 1, 1991, except that:

- (1) In Anson County, Lanesboro #1 and Lanesboro #2 are listed together as Lanesboro #1 and #2;
- (2) In Vance County, where West Henderson II is not contiguous, the northerly part is listed as West Henderson IIA and the southerly part as West Henderson IIB;
- (3) In Perquimans County, computer VTD Code 0005 (Tract 9801, Block 550A) is actually part of Belvidere Precinct and is districted with it notwithstanding any description above;
- (4) In Greene County, Snow Hill Town Satellite is Tract 9503, Block 301A which is a part of Snow Hill Town Precinct entirely surrounded by Sugg Precinct and is districted with Sugg Precinct notwithstanding any description above;
- (5) In Greene County, Snow Hill Town Sat B is Tract 9503, Block 224B which is a part of Snow Hill Town Precinct entirely surrounded by Snow Hill Rural Precinct and is districted with Snow Hill Rural Precinct notwithstanding any description above;
- (6) In Mecklenburg County, Precinct XMC2 Noncontiguous is Tract 55.01, Block 303C, and is districted with Precinct MC1 notwithstanding any description above;
- (7) In Martin County, any listing of VTDs not defined consists of Tract 9705, Block 413 (which is in Poplar Point Precinct), Tract 9704, Block 202 (which is in Goose Nest Precinct), and Tract 9706, Block 168A (which is in Robersonville #2 Precinct), and those blocks are districted with those respective precincts regardless of any listing above;
- (8) In New Hanover County, Tract 123.98, Blocks 307B, 308A, 309, 310A, 311A, and 312A, listed by the Census Bureau as part of VTD ZZZZ, are districted by this section as part of Wilmington #2.

If any precinct or township boundaries are changed, such changes shall not change the boundaries of the Congressional Districts, which shall remain the same.

In the case where any individual blocks are listed above, the district allocation of unlisted water blocks shall be as found on maps and statistical reports of the districts on file with the Secretary of State.

(c1) In this section:

- (1) Wake County Tract 0510, Block 301 is shown on the computer database as part of Raleigh 01-23 * when it is in fact correctly shown on the Board of Elections map as part of Raleigh 01-27;
- (2) Vance County Tract 9606 Blocks 248 and 227A are shown on the computer database as part of Hilltop, when they are in fact correctly shown on the Board of Elections map as part of North Henderson II and East Henderson I, respectively;
- (3) Lincoln County Tract 0706.98 Block 307 is shown on the computer database as part of North Brook I/II when it is in fact correctly shown on the Board of Elections map as part of North Brook III;
- (4) Mecklenburg County Tract 0044 Block 906F is shown on the computer database as part of OAK when it is in fact correctly shown on the Board of Elections map as part of Charlotte Pct. 16;
- (5) Granville County Tract 9703, Block 330B is districted with Corinth * Precinct notwithstanding any description above.

(c2) If any precinct or township is listed in a district in this section, with a comma after the name of the precinct or township, followed by a listing of census geography within that precinct, and other parts of that precinct or township are not listed in another district, that precinct or township is in fact whole within the district with which it is listed.

(d) If this section does not specifically assign any area within North Carolina to a district, and the area is:

- (1) Entirely surrounded by a single district, the area shall be deemed to have been assigned to that district;
- (2) Contiguous to two or more districts, the area shall be deemed to have been assigned to that district which contains the least population according to the 1990 United States Census; or
- (3) Contiguous to only one district and to another state or the Atlantic Ocean, the area shall be deemed to have been assigned to that district. (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; 1991, c. 601, s. 1; c. 761, s. 33(a), (b); 1991, Ex. Sess., c. 7, s. 1; 1993, c. 553, s. 66.)

Editor's Note. — Session Laws 1991, Ex. Sess., c. 7, which amended this section and which was submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973c), received preclearance from the United States Department of

Justice on February 6, 1992.

Legal Periodicals. — For article, "Political Gerrymandering After Davis v. Bandemer," see 9 Campbell L. Rev. 207 (1987).

For article, "Racial Gerrymandering and the Voting Rights Act in North Carolina," see 9 Campbell L. Rev. 255 (1987).

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 U.S. Const., Amend. XIV. *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.)

§ 163-201.2. Dividing precincts in congressional apportionment acts restricted.

(a) An act of the General Assembly that apportions congressional districts after the return of a census may not divide precincts unless an act that apportioned congressional districts after the return of that same census has been rejected by the United States Department of Justice or the District Court for the District of Columbia under section 5 of the Voting Rights Act of 1965.

(b) If an act that apportioned congressional districts has been rejected by the United States Department of Justice or the District Court for the District of Columbia under section 5 of the Voting Rights Act of 1965, then a subsequent act may only divide the minimum number of precincts necessary to obtain approval of the act under section 5 of the Voting Rights Act of 1965.

(c) This section does not prevent the General Assembly from taking any action to comply with federal law or the Constitution of the United States. (1995, c. 355, s. 2.)

Editor's Note. — Session Laws 1995, c. 355, s. 3, made this section effective upon ratification. The Act was ratified June 29, 1995.

Session Laws 1995, c. 355 was submitted to the Attorney General of the United

States pursuant to Section 5 of the Voting Rights Act, as amended (42 U.S.C. 1973c). As of the date of printing, preclearance was not received for G.S. 163-201.2.

§ 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 through 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, or nominated under G.S. 163-1(c) by a candidate for President of the United States who has qualified to have his name printed on the general election ballot as an unaffiliated candidate under G.S. 163-122, shall be filed with the Secretary of State but shall not be printed on the ballot. In the case of the unaffiliated candidate, the names of candidates for electors must be filed with the Secretary of State no later than 12:00 noon on the first Friday in August. 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, and the name of any candidate for President who has qualified to have his name printed on the general election ballot under G.S. 163-122. A candidate for President who has qualified for the general election ballot as an unaffiliated candidate under G.S. 163-122 shall, no later than 12:00 noon on the first Friday in August, file with the State Board of Elections the name of a candidate for Vice-President, whose name shall also be printed on the ballot. A vote for the candidates named on the ballot shall be a vote for the electors of the party or unaffiliated candidate 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; 1991 (Reg. Sess., 1992), c. 782, s. 2.)

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. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. The Secretary of State is responsible for making the actual arrangements for the meeting, preparing the agenda, and inviting guests.

Before the date fixed for the meeting of the electors, the Governor shall send by registered mail to the Archivist of the United States, either three duplicate original certificates, or one original certificate and two authenticated copies of the Certificates of Ascertainment, 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. These Certificates of Ascertainment should be sent as soon as possible after the election, but must be received before the Electoral College meeting. 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 Gover-

nor. 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, the first and second alternates, respectively, who were nominated under G.S. 163-1(c), shall fill the first two vacancies. If the alternates are absent, ineligible, resign, or were not chosen, or if there are more than two vacancies, then the electors 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; 1989, c. 93, s. 5; 1993 (Reg. Sess., 1994), c. 738, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 13, 1994, added the last sentence of the first paragraph; in the second paragraph substituted "Before" for "On or before," substituted "Archivist of the United States, either three duplicate original certificates, or one original certificate and two authenticated copies of the Certificates of Ascertainment" for

"Administrator of General Services a certificate," added the second sentence; and in the third paragraph inserted "the first and second alternates, respectively, who were nominated under G.S. 163-1(c), shall fill the first two vacancies," and substituted "If the alternates are absent, ineligible, resign, or were not chosen, or if there are more than two vacancies, then the electors" for "those."

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.

On the Tuesday after the first Monday in May, 1992, 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 the last day for making application to register under G.S. 163-67 prior to the said primary. In addition, persons who will become qualified by age to register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections. (1971, c. 225; 1975, c. 744; c. 844, s. 18; 1977, c. 19; c. 661, s. 7; 1983, c. 331, s. 5; 1985 (Reg. Sess., 1986), c. 927, s. 1; 1987, c. 457, s. 3; 1991, c. 689, s. 15(a); 1991 (Reg. Sess., 1992), c. 1032, s. 6.)

Editor's Note. — G.S. 163-67, referred to above, has been repealed.

Session Laws 1991, c. 689, s. 353 is a severability clause.

Session Laws 1991 (Reg. Sess., 1992), c. 1032, s. 6, made amendments to this

section effective with respect to elections occurring on or after July 1, 1993.

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; 1987, c. 81, s. 2; 1991, c. 689, s. 15(b).)

Editor's Note. — Session Laws 1991, c. 689, s. 353 is a severability clause.

OPINIONS OF ATTORNEY GENERAL

Seventeen-year-olds whose 18th birthdays would be reached prior to the presidential general election in November, 1976, could vote in the North Carolina presidential preference pri-

mary 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 first Tuesday 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; 1983, c. 729; 1987, c. 81, s. 1; c. 549, s. 6.1; 1991, c. 689, s. 15(c).)

Editor's Note. — Session Laws 1991, c. 689, s. 353 is a severability clause.

CASE NOTES

Adoption of Federal Criteria for Ensuring That Presidential Candidates Are Qualified. — Where the state determines that its resources do not permit the full investigation of the qualifications of national presidential candidates, the adoption of the federal

criteria is a permissible means for furthering the valid state interest of insuring that only viable candidates compete in the State's presidential primary elections. *LaRouche v. State Bd. of Elections*, 758 F.2d 998 (4th Cir. 1985).

§ 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 the 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 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; 1987, c. 549, s. 6.2.)

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 "Unaffiliated" shall not participate in the presidential primary except as provided in G.S. 163-116. (1971, c. 225; 1975, c. 744; 1993 (Reg. Sess., 1994), c. 762, s. 52.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, rewrote the last sentence, which formerly read: "Persons registered as 'Independents' or 'No Party' shall not participate in the presidential preference primary except upon such affiliation in accordance with law."

§ 163-213.8. Allocation of delegate positions to reflect division of votes in the primary.

(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 shall allocate delegate positions in a manner which reflects the division of votes of the party primary consistent with the national party rules of that political party.

(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; 1983, c. 216, ss. 1, 2.)

§ 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.

§ 163-213.11: Repealed by Session Laws 1991, c. 689, s. 15.

§§ 163-214 through 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 Class 2 misdemeanor. (1977, c. 218, s. 1; 1979, c. 534, s. 1; 1987, c. 565, s. 6; 1993, c. 539, s. 1104; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected

by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 2" preceding "misdemeanor" in subsection (c).

§§ 163-222 through 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.

Editor's Note. — Session Laws 1991, Ex. Sess., c. 1, which was submitted to the Attorney General of the United

States pursuant to Section 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. 1973c), received preclearance from the United States Department of Justice on January 3, 1992.

Session Laws 1994, Extra Session, c. 1, s. 4(b) provides that notwithstanding the provisions of Article 20 or Article 21 of Chapter 163, the time by which absentee ballots are required to be printed and distributed for the 1994 primary is reduced from 50 days to 40 days before the primary election, and that this subsection applies on a statewide basis and to all offices and all elections held on that date.

Session Laws 1994, Extra Session, c. 1, s. 6 provides: "This act is effective upon ratification [February 17, 1994], but may not be enforced except as provided by section 5 of the Voting Rights Act of 1965."

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 (1939).

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 (1935).

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 (1931).

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 Class I felony. 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 director 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 director 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, or officer authorized to administer oaths acting pursuant to G.S. 163-231(a)(1), to mark the voter's absentee ballot or assist such a voter in marking an absentee ballot;
- (5) Repealed by Session Laws 1987, c. 583, s. 8.
- (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, G.S. 163-231(a), G.S. 163-250(a), 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; 1983, c. 331, s. 2; 1985, c. 563, s. 4; 1987, c. 565, s. 7; c. 583, ss. 8, 10; 1995, c. 243, s. 1.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, substituted “director of elections” for “supervisor of elections” in subdivisions (a)(2) and (a)(3).

§ 163-227. State Board to prescribe form of application 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 50 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 Tuesday before that election. Subject to all other provisions contained in this Article, a voter applying for an absentee ballot shall complete the standard application form to be secured by the county board of elections, as designed and prescribed by the State Board of Elections. The form shall contain lines to be checked off by each of the kinds of voters specified below:

- (1) 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(a)(1)).
- (2) 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 day prior to the date of the specified election. (G.S. 163-226(a)(2)).
- (3) Repealed by Session Laws 1991, c. 727, s. 6.1, effective with respect to elections occurring on or after January 1, 1992.
- (4) 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) **Types of Applications; Instructions.** —

- (1) **Expected Absence from County on Election Day.** — 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, or verifiable legal guardian, 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 50 days nor later than 5:00 P.M. on the Tuesday 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 or verifiable legal guardian. 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 director of elections of the county board of elections.

- (2) **Absence for Sickness or Physical Disability Occurring before 5:00 P.M. on the day prior to the Primary or General Election.** — 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 or verifiable legal guardian, 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 50 days nor later than 5:00 P.M. on the day 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 or verifiable legal guardian 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 or verifiable legal guardian. 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 or verifiable legal guardian to the chairman or director of elections of the county board of elections of the county in which the applicant is registered.

- (3) **Repealed by Session Laws 1991, c. 727, s. 6.1, effective with respect to elections occurring on or after January 1, 1992.**
- (4) **“One-Stop” Voting Procedure, in Office of the County Board of Elections.** — A voter falling in the category specified in G.S. 163-227.2 may execute an application form 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 director 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 director of elections may deliver the form to a voter personally or to his near relative or verifiable legal guardian at the office of the county board of elections for the voter's own use; or
- (2) The chairman, secretary or director 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 or verifiable legal guardian.

At the time he issues an application form, the chairman, secretary or director 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 director 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, or verifiable legal guardian, the chairman, secretary or director of elections also shall insert that person's name in the register after the name of the voter.

The chairman, secretary or director of elections shall issue only one application form to a voter or his near relative or verifiable legal guardian unless a form previously issued is returned to the chairman, secretary or director of elections and marked "Void" by him. In such a situation, the chairman, secretary or director of elections may issue another application form to the voter or a near relative or verifiable legal guardian, but he shall retain the voided application form in the board's records. If the application is requested by the voter's near relative or verifiable legal guardian, the chairman, secretary or director of elections shall write the name of the near relative or verifiable legal guardian on the index of near relatives or verifiable legal guardians, 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 verifiable legal guardian and shall be valid only when transmitted to the chairman or director of elections of the county board of elections by mail or delivered in person by the voter or his near relative or legal verifiable 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 verifiable legal guardian. For the purpose of this Article, "near relative" 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 50 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 50 days prior to the election but such applications shall not be mailed or issued to the voter in person earlier than 50 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 verifiable 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; 1983, c. 331, s. 3; 1985, c. 563, s. 2; c. 600, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 986, s. 2; 1987, c. 485, ss. 2, 5; c. 509, s. 9; 1989, c. 635, s. 5; 1989 (Reg. Sess., 1990), c. 991, s. 1; 1991, c. 337, s. 1; c. 636, s. 21; c. 727, s. 6.1; 1995, c. 243, s. 1.)

Editor's Note. — Section 4 of Session Laws 1985 (Reg. Sess., 1986), c. 986, provided that s. 2 thereof, which amended subsection (a), would expire with respect to primaries and elections held on or after December 31, 1986.

Session Laws 1985 (Reg. Sess., 1986), c. 987, s. 2 made the same amendment to this section as Session Laws 1985 (Reg. Sess., 1986), c. 986, s. 2, but was only to become effective if the Attorney General of the United States interposed objection to Session Laws 1985 (Reg. Sess., 1986), c. 986 as to the fact that such bill provided for designating vacancies for all unexpired terms separately from full terms. Chapter 987 also provided that

the act would expire with respect to primaries and elections held on or after December 31, 1986. Objection to c. 986 was not made. Session Laws 1985 (Reg. Sess., 1986), c. 987 was repealed by Session Laws 1987, c. 509, s. 9. Therefore, c. 987 never went into effect.

Session Laws 1989 (Reg. Sess., 1990), c. 991, s. 1, made amendments to this section effective with respect to primaries and elections held on or after January 1, 1991.

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, substituted “director of elections” for “supervisor of elections” 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 Tuesday 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; 1985, c. 600, s. 3.)

§ 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 G.S. 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 twenty-fourth day 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 Friday 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 director of elections of the board, or an employee of the board of elections, authorized by the board, furnish him with an application form as specified in G.S. 163-227. The voter shall complete the application in the presence of the chairman, member, director 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, director 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 envelope to the chairman, member, director of elections of the board, or an employee of the board of elections, authorized by the board, immediately after making and subscribing the certificate printed on the container-return envelope as provided in G.S. 163-229(b). All actions required by this subsection shall be performed in the office of the board of elections. For the purposes of this section only, the chairman, member, director of elections of the board, or full-time employee, authorized by the board shall sign the application and certificate as the witness and indicate the official title held by him or her. Notwithstanding G.S. 163-231(a), in the case of this subsection, only one witness shall be required on the certificate.

(d) Only the chairman, member or director 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 G.S. 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 director 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. 163-36, counties which operate a modified full-time office shall remain open five days each week during regular business hours consistent with 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 Friday 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; 1985, c. 600, s. 4; 1987, c. 583, s. 4; 1989, c. 520; 1989 (Reg. Sess., 1990), c. 991, s. 2; 1993 (Reg. Sess., 1994), c. 762, s. 53; 1995, c. 243, s. 1; c. 509, ss. 117, 118.)

Local Modification. — Gaston: 1995, c. 197, s. 1; Guilford: 1995, c. 197, s. 1; Mecklenburg: 1995, c. 197, s. 1; Union County: 1995, c. 197, s. 1; Orange: 1983, c. 192; 1983 (Reg. Sess., 1984), c. 978; Anson County Bd. of Commissioners: 1991 (Reg. Sess., 1992), c. 781, s. 9 (but shall only be enforced as provided by

Section 5 of the Voting Rights Act of 1965).

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and

the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1989, c. 520, made amendments to this section effective with respect to primaries and elections held on or after January 1, 1990.

Session Laws 1989 (Reg. Sess., 1990), c. 991, s. 2, made amendments to this section effective with respect to primaries and elections held on or after January 1, 1991.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or

after that date, substituted "twenty-fourth day" for "day following the day on which the registration books close" in the first sentence of subsection (b), and substituted "G.S. 163-116" for "G.S. 163-67(b)" in the first sentence of subsection (f).

Session Laws 1995, c. 243, s. 1, effective January 1, 1996, substituted "director of elections" for "supervisor of elections" throughout the section.

Session Laws 1995, c. 509, ss. 117 and 118, effective July 29, 1995, inserted "G.S." preceding "163-230(2)b." in subsection (d); and substituted "G.S. 163-36" for "G.S. 163-119" in subsection (f).

§ 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 50 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; 1985 (Reg. Sess., 1986), c. 986, s. 2; 1987, c. 485, ss. 2, 5; c. 509, s. 9; 1989, c. 635, s. 5.)

Editor's Note. — Section 4 of Session Laws 1985 (Reg. Sess., 1986), c. 986, provided that s. 2 thereof, which amended subsection (a), would expire with respect to primaries and elections held on or after December 31, 1986.

Session Laws 1985 (Reg. Sess., 1986), c. 987, made the same changes to this section as Session Laws 1985 (Reg. Sess., 1986), c. 986, but was only to become effective if the Attorney General of the United States interposed objection to

Session Laws 1985 (Reg. Sess., 1986), c. 986 as to the fact that such bill provided for designating vacancies for all unexpired terms separately from full terms. Chapter 987 also provided that the act would expire with respect to primaries and elections held on or after December 31, 1986. Objection to c. 986 was not made. Moreover, Session Laws 1987, c. 509, s. 9 repealed Sessions Laws 1985 (Reg. Sess., 1986), c. 987. Therefore, c. 987 never went into effect.

§ 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 50 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; 1991, c. 636, s. 21.)

§ 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 50 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 certificate:

“Certificate of Absentee or Sick Voter

State of
County of

I,, do certify 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 misdemeanor, I will be unable to travel to the voting place in the precinct in which I reside.

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 instructions. I understand it is a felony to falsely sign this certificate.

.....
(Signature of voter)

.....
Signature of Witness #1

.....
Signature of Witness #2

.....
Address of Witness #1

.....
Address of Witness #2

(c) Instruction Sheets. — In time for use not later than 50 days before a statewide primary, general or county bond election, the county board of elections 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; 1985, c. 562, ss. 3, 4; 1985 (Reg. Sess., 1986), c. 986, s. 2; 1987, c. 485, ss. 2, 5; c. 509, s. 9; c. 583, s. 3; 1989, c. 635, s. 5.)

Editor's Note. — Section 4 of Session Laws 1985 (Reg. Sess., 1986), c. 986, provided that s. 2 thereof, which amended subsections (b) and (c), would expire with respect to primaries and elections held on or after December 31, 1986.

Session Laws 1985 (Reg. Sess., 1986), c. 987, s. 2 made the same changes to this section as Session Laws 1985 (Reg. Sess., 1986), c. 986, but was only to become effective if the Attorney General of the United States interposed objection

to Session Laws 1985 (Reg. Sess., 1986), c. 986 as to the fact that such bill provided for designating vacancies for all unexpired terms separately from full terms. Chapter 987 also provided that the act would expire with respect to primaries and elections held on or after December 31, 1986. Objection to c. 986 was never made. Moreover, Session Laws 1987, c. 509, s. 9 repealed Session Laws 1985 (Reg. Sess., 1986), c. 987. Therefore, c. 987 never went into effect.

§ 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 election 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 50 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 Tuesday 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 eighth, sixth, fourth 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 any such public meetings at an hour other than 10:00 A.M., and it may hold more than one session on each day it meets 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 no later than [than] 70 days before the election; thereafter, no change shall be made in the hours or dates fixed for the board's public meetings on absentee ballot applications.

The chairman of the county board of elections shall give notice to other board members of the schedule of meetings of the board.

If the county board of elections changes the time of holding its meetings or provides for additional meetings 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 65 days prior to the election. Similar notice shall also be given of the dates and hours of the weekly meetings held until 30 days before the election. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice.

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. 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 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 Tuesday before the election under the provisions of G.S. 163-227(b)(2), 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; 1985, c. 563, s. 6; c. 600, ss. 5, 6; 1985 (Reg. Sess., 1986), c. 986, s. 2; 1987, c. 485, ss. 1, 2, 5; c. 509, s. 9; 1989, c. 93, s. 6; c. 635, s. 5; 1991, c. 727, s. 6.2.)

Editor's Note. — Section 4 of Session Laws 1985 (Reg. Sess., 1986), c. 986, provided that s. 2 thereof, which amended subdivision (2)a, would expire with respect to primaries and elections held on or after December 31, 1986.

Session Laws 1985 (Reg. Sess., 1986), c. 987, s. 2 made the same changes to this section as Session Laws 1985 (Reg. Sess., 1986), c. 986, but was only to become effective if the Attorney General of the United States interposed objection to Session Laws 1985 (Reg. Sess., 1986), c. 986 as to the fact that such bill provided for designating vacancies for all unexpired terms separately from full

terms. Chapter 987 also provided that the act would expire with respect to primaries and elections held on or after December 31, 1986. Objection to c. 986 was never made. Moreover, Session Laws 1987, c. 509, s. 9 repealed Session Laws 1985 (Reg. Sess., 1986), c. 987. Therefore, c. 987 never went into effect.

The word "than" has been inserted in subdivision (2)a to correct an inadvertent grammatical error.

Session Laws 1991, c. 727, s. 6.2, made amendments to this section effective with respect to elections occurring on or after January 1, 1992.

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).

§ 163-230.1. Simultaneous issuance of absentee ballots with application.

(a) When a qualified voter personally requests by mail an application for absentee ballots, the county board of elections shall cause to be mailed to that voter in a single package:

- (1) The official ballots the voter is entitled to vote if his application is approved;
- (2) A container-return envelope for the ballots, upon the outside of which shall be printed the appropriate application form as provided in G.S. 163-227;
- (3) A large envelope (similar to a No. 14 or larger manila envelope) in which the container-return envelope with the ballots may be returned and on which the affidavit provided by G.S. 163-229(b) shall be printed; and
- (4) An instruction sheet.

The ballots, envelopes and instructions shall be mailed to the voter by the county board's chairman, secretary or director as determined by the board and entered in its official minutes.

On the back of the large transmittal envelope shall be clearly printed or stamped the following statement:

DO NOT PLACE THE ENVELOPE CONTAINING YOUR BALLOTS INTO THIS ENVELOPE UNTIL YOU HAVE COMPLETED THE APPLICATION ON THE ENVELOPE CONTAINING YOUR BALLOTS AND SECURED THE SIGNATURE OF A WITNESS.

(b) The application shall be completed, the ballots marked, the ballots sealed in the container-return envelope, and the large envelope affidavit completed as provided in G.S. 163-227 and G.S. 163-231. The container-return envelope shall be placed in the large transmittal envelope for return to the chairman of the county board of elections.

(c) At its next official meeting after return of the completed container-return envelope and large envelope with the voter's ballots, the county board of elections shall determine whether the container-return envelope and large envelope have been properly executed. If the board determines that both the container-return envelope and large envelope have been properly executed, it shall approve the application and deposit the container-return envelope with other container-return envelopes for the envelope to be opened and the ballots counted at the same time as all other container-return envelopes and absentee ballots.

(d) The provisions of this section shall apply only to requests received by mail from and signed by the voter individually and personally. No near relative, guardian, or other person other than the voter himself shall be permitted to apply for absentee ballots under this section.

(e) The State Board of Elections, by regulation or by instruction to the county board of elections, shall establish procedures to provide appropriate safeguards in the implementation of this section. (1983, c. 304, s. 1; 1985, c. 759, ss. 5.1-5.5; 1991, c. 727, s. 6.3; 1993, c. 553, s. 67; 1995, c. 243, s. 1.)

Editor's Note. — Session Laws 1991, c. 727, s. 6.3, made amendments to this section effective with respect to elections occurring on or after January 1, 1992.

Effect of Amendments. — The 1995

amendment, effective January 1, 1996, substituted "director" for "supervisor" in the paragraph immediately following subdivision (a)(4).

§ 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 two other persons who are at least 18 years of age, the voter shall:

- (1) Mark his ballots, or cause them to be marked by one of such persons 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 the certificate printed on the container-return envelope according to the provisions of G.S. 163-229(b).

The persons in whose presence the ballot is marked shall at all times respect the secrecy of the ballot and the privacy of the absentee voter, unless the voter requests their assistance and they are otherwise authorized by law to give assistance. The persons in whose presence the ballot was marked shall sign the certificate as witnesses, and shall indicate their address. 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.

(a1) Repealed by Session Laws 1987, c. 583, s. 1.

(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; 1985, c. 562, ss. 1, 2; 1987, c. 583, ss. 1, 2; 1989 (Reg. Sess., 1990), c. 991, s. 4.)

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, 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, 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 Tuesday or Friday 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. 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 chief judge 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 chief judge 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 chief judge 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 chief judge 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; 1985, c. 600, s. 7; 1993 (Reg. Sess., 1994), c. 762, s. 54.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecu-

tions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, deleted "Post Office Box 1166, Raleigh, N.C. 27602" at the end of the first sentence of the first paragraph following the certificate, and substituted "chief judge" for "registrar" throughout the section.

§ 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 director 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. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. 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 chief judge 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; 1989, c. 93, s. 7; 1993 (Reg. Sess., 1994), c. 762, s. 55; 1995, c. 243, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions

of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" in the third paragraph of subdivision (5).

The 1995 amendment, effective January 1, 1996, substituted "director of elections" for "supervisor of elections" in the introductory paragraph.

§ 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. 163-227(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 this section shall constitute a Class 2 misdemeanor. (1939, c. 159, s. 14; 1963, c. 457, s. 10; 1967, c. 775, s. 1; 1977, c. 469, s. 1; 1987, c. 565, s. 9; 1993, c. 539, s. 1105; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected

by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 2" preceding "misdemeanor" in the third paragraph.

§ 163-237. Certain violations of absentee ballot law made criminal offenses.

(a) False Statements under Oath Made Class 2 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 Class 2 misdemeanor.

(b) False Statements Not under Oath Made Class 2 Misdemeanor. — Except as provided by G.S. 163-275(16), 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 Class 2 misdemeanor.

(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. Attempting to vote by fraudulently signing the name of a regularly qualified voter is a Class I felony.

(d) Violations Not Otherwise Provided for Made Class 2 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 Class 2 misdemeanor. (1929, c. 164, s. 40; 1939, c. 159, ss. 12, 13, 15; 1967, c. 775, s. 1; 1977, c. 469, s. 1, 1985, c. 562, s. 6; 1987, c. 565, s. 8; 1993, c. 539, ss. 1106, 1324; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain

applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 2" preceding "misdemeanor" in the catchlines for subsections (a), (b), and (d) and throughout subsections (a), (b), (c), and (d); and at the beginning of the second sentence of subsection (c) deleted "Any person" and substituted "is a Class I felony" for

"shall be guilty of forgery, and be punished accordingly" at the end of that sentence.

§ 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 through 163-240.5: Expired July 1, 1972.

§§ 163-241 through 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.)

Editor's Note. — Session Laws 1994, Extra Session, c. 1, s. 4(b) provides that notwithstanding the provisions of Article 20 or Article 21 of Chapter 163, the time by which absentee ballots are required to be printed and distributed for the 1994 primary is reduced from 50 days to 40 days before the primary election, and that this subsection applies on a statewide basis and to all offices and all elections held on that date.

Session Laws 1994, Extra Session, c. 1, s. 6 provides: "This act is effective upon ratification [February 17, 1994], but may not be enforced except as provided by section 5 of the Voting Rights Act of 1965."

Legal Periodicals. — For comment on former §§ 163-70 to 163-77, relating to absentee voting in primaries by voters in military and naval service, see 19 N.C.L. Rev. 480 (1941).

§ 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 County Board of Election[s] in County of

Voter's Residence for absentee ballots on the postcard form specified in or promulgated by regulation under 42 U.S.C. 1973cc-14.

- (2) Application to Chairman of County Board of Elections. — In lieu of applying on the federal postcard 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.

- (3) Notwithstanding subdivisions (1) and (2) of this section, if the application under either of those subdivisions so requests, it shall constitute an application for more than one or for all of the primaries and elections held during the calendar year when the application is received. (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; 1987, c. 415, s. 1.)

§ 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 50 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 50 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. I understand it is a felony to falsely sign this certificate.

Witness my hand in the presence of [Insert names and addresses of witnesses] this day of, 19....

.....
(Signature of voter)

Signature of witness # 1
Address of witness # 1
Signature of witness # 2
Address of witness # 2

Note: This certificate must be witnessed by any two persons who are 18 years of age or older, and must contain their signatures and addresses."

(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; 1985 (Reg. Sess., 1986), c. 986, s. 2; 1987, c. 485, ss. 2, 5; c. 509, s. 9; c. 583, s. 5; 1989, c. 635, s. 5.)

Editor's Note. — Section 4 of Session Laws 1985 (Reg. Sess., 1986), c. 986, provided that s. 2 thereof, which amended subsections (b) and (c), would expire with respect to primaries and elections held on or after December 31, 1986.

Session Laws 1985 (Reg. Sess., 1986), c. 987, made the same changes to this section as Session Laws 1985 (Reg. Sess., 1986), c. 986, but was only to become effective if the Attorney General of the United States interposed objection to

Session Laws 1985 (Reg. Sess., 1986), c. 986 as to the fact that such bill provided for designating vacancies for all unexpired terms separately from full terms. Chapter 987 also provided that the act would expire with respect to primaries and elections held on or after December 31, 1986. Objection to c. 986 was not made. Moreover, Session Laws 1987, c. 509, s. 9 repealed Session Laws 1985 (Reg. Sess., 1986), c. 987. Therefore, c. 987 never went into effect.

§ 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 two persons who are at least 18 years of age, the voter shall:

- (1) Mark his ballots, or cause them to be marked by one of such persons 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 persons in whose presence the ballots were marked shall sign the certificate as witnesses, and shall give their addresses.

(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; 1987, c. 583, s. 6.)

§ 163-251. Certified list of approved military absentee ballot applications; record of ballots received; disposition of list; list constitutes registration.

(a) Preparation of List. — The chairman of the county board of elections shall prepare, or cause to be prepared, a list in quadruplicate of all military 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 military 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 and further that I have not delivered military absentee ballots to persons other than those listed herein; 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

.....
 (Signature of Officer administering oath)

.....
 (Title of officer)"

(b) Distribution of List. — 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 military 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. The chairman 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 chief judge of each precinct in the county. The chief judge 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 chief judge 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 chief judge 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.

(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 chief judges 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. Chief judges 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; 1983, c. 331, s. 4; 1993 (Reg. Sess., 1994), c. 762, ss. 56, 57.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions

of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judge" for "registrar" twice in each paragraph of subsection (b), deleted "Post Office Box 1166, Raleigh, North Carolina 27602" at the end of the first sentence of subsection (b), and substituted "chief judges" for "registrars" in each sentence of subsection (c).

§ **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 government, see 56 N.C.L. Rev. 867 (1978).
1977 administrative law affecting state

§ **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. 150B-9. (1977, c. 93; 1987, c. 827, s. 1.)

Editor's Note. — Section 150B-9, referred to in this section, was repealed by Session Laws 1991, c. 418, s. 5. As to rule making, see now § 150B-18 et seq.

§§ 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 through 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 Class 2 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 Class 2 misdemeanor. (1931, c. 348, s. 9; 1951, c. 983, s. 1; 1967, c. 775, s. 1; 1993, c. 539, s. 1107; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the first sentence of the second paragraph inserted "Class 2" preceding "misdemeanor", and in the second sentence of the second paragraph substituted "Class 2 misdemeanor" for "misdemeanor and upon conviction shall be fined or imprisoned, or both, in the discretion of the court".

§ 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 Class 2 misdemeanor.

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; 1987, c. 565, s. 10; 1993, c. 539, s. 1108; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1369, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected

by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 2" preceding "misdemeanor" in the last sentence of the first paragraph.

CASE NOTES

Insurance Company Contributions to Post-election Appreciation Breakfast for Commissioner of Insurance. — 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. A violation of this section is a Class 2 misdemeanor. (1933, c. 165, s. 25; 1967, c. 775, s. 1; 1987, c. 565, s. 11; 1993, c. 539, s. 1109; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1369, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain

applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 2" preceding "misdemeanor" in the last sentence.

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 *McCullum v. Stahl*, 579 F.2d 869 (4th Cir. 1978).

§ 163-272: Repealed by Session Laws 1971, c. 872, s. 3.

§ 163-272.1. Penalties for violation of this Chapter.

Whenever in this Chapter it is provided that a crime is a misdemeanor, the punishment shall be for a Class 2 misdemeanor. (1987, c. 565, s. 1; 1993, c. 539, s. 1110; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would

be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, substituted "for a Class 2 misdemeanor" for "imprisonment for not more than six months, or a fine of not more than one thousand dollars (\$1,000), or both, in the discretion of the court".

§ 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 Class 2 misdemeanor. 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; 1987, c. 565, s. 12; 1993, c. 539, s. 1111; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected

by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 2" preceding "misdemeanor" in the first sentence of subsection (a).

§ 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 Class 2 misdemeanor. It shall be unlawful:

- (1) For any person to fail, as an officer or as a judge or chief judge 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 chief judge 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 chief judge 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;
- (5a) For any person to be a witness under G.S. 163-231(a) or G.S. 163-250(a) in any primary or election in which the person is a candidate for nomination or 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; or
 - (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; 1987, c. 565, s. 13; c. 583, s. 9; 1993, c. 539, s. 1112; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 762, ss. 58(a)-(c).)

Editor's Note. — G.S. 163-72.2, referred to above, has been repealed.

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Chapter 24, section 14 of the North Carolina Extra Session amended the effective date provisions of Chapter 538, section 56 and Chapter 539, section 1359 of the 1993 Session Laws by changing the effective date of the changes made by those chapters from January 1, 1995 to October 1, 1994.

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 2" preceding "misdemeanor" in the first sentence.

The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, and applicable to offenses committed on or after January 1, 1995, substituted "chief judge" for "registrar" in subdivisions (1), (2), and (4).

Legal Periodicals. — For note, "Constitutional Law — Freedom of Speech — State v. Petersilie, 334 N.C. 169, 432 S.E.2d 832 (1993)," see 72 N.C.L. Rev. 1618 (1994).

CASE NOTES

Free Speech Guarantees Not Violated. — Subdivision (7), prohibiting anonymous, derogatory charges against candidates for primary or general elections, does not violate the free speech guarantees of U.S. Const., Amend. I or N.C. Const., Art. I, § 14. *State v. Petersilie*, 334 N.C. 169, 432 S.E.2d 832 (1993).

Indictment Held Insufficient. — An indictment charging that defendant unlawfully and willfully, by his own boisterous and violent conduct, disturbed a

named registrar (now chief judge) 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 I 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;
- (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 chief judge 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 chief judge, 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 chief judge, 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 chief judge, 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) For any officer authorized by G.S. 163-80 to register voters and any other individual to knowingly and willfully receive, complete, or sign an application to register from any voter contrary to the provisions of G.S. 163-72; or
 - (15) Reserved for future codification purposes.
 - (16) For any person falsely to make the certificate provided by G.S. 163-229(b)(2) or G.S. 163-250(a).
 - (17) For any person, directly or indirectly, to misrepresent the law to the public through mass mailing or any other means of communication where the intent and the effect is to intimidate or discourage potential voters from exercising their lawful right to vote. (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; 1981, cc. 63, 179; 1985, c. 562, s. 5; 1987, c. 565, s. 14; c. 583, s. 7; 1989, c. 770, s. 38; 1991, c. 727, s. 1; 1993, c. 553, s. 68; 1993 (Reg. Sess., 1994), c. 762, ss. 58(d)-(g).)

Editor's Note. — G.S. 163-72, referred to above, has been repealed.

G.S. 163-80, referred to above, has been repealed.

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that

would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1991, c. 727, s. 1, made amendments to this section effective with respect to elections occurring on or after January 1, 1992.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, and applicable to offenses committed on or after January 1, 1995, substituted "chief judge" for "reg-

istrar" in subdivisions (8), (10), (11), and (12).

§ 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. (1949, c. 504; 1967, c. 775, s. 1; 1985, c. 563, s. 11.3.)

§ 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 general discussion of the limits to self-incrimination, see 15 N.C.L. Rev. 229 (1937).

§ 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 through 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, with respect to a public office listed in G.S. 163-278.6(18), has filed a notice of candidacy or a petition requesting to be a candidate, or has been certified as a nominee of a political party for a vacancy, or has otherwise qualified as a candidate in a manner authorized by law. Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or cover a deficit or is making expenditures to satisfy obligations from an election already held.
- (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 word 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, or which receives contributions to repay loans or cover a deficit, or which makes expenditures to satisfy obligations of an election already held. 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, or which receives contributions to repay loans or cover a deficit, or which makes expenditures to satisfy obligations of a referendum already held.
- (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; 1983, c. 331, s. 6; 1985, c. 352, ss. 1-3.)

Local Modification. — Town of Carrboro: 1993 (Reg. Sess., 1994), c. 660, s. 2; Town of Chapel Hill: 1987 (Reg. Sess., 1988), c. 1023, s. 2.

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).

Legal Periodicals. — For survey of

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. — When the political committee or referendum committee is created pursuant to G.S. 163-278.19(b), the name shall be or include the name of the corporation, insurance company, business entity, labor union or professional association whose officials, employees, or members established the committee. When the political committee or referendum committee is not created pursuant to G.S. 163-278.19(b), the name shall be or include the economic interest, if identifiable, principally represented by the committee's organizers or intended to be advanced by use of the committee's receipts.
- (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.

(e) Every treasurer of a referendum committee shall receive, prior to every election in which the referendum committee is involved, training from the State Board of Elections as to the duties of the office, including the requirements of G.S. 163-278.13(e1), provided that the treasurer may designate an employee or volunteer of the committee to receive the training. (1973, c. 1272, s. 1; 1979, c. 500, s. 2; c. 1073, ss. 4, 5, 16, 18, 20; 1987, c. 113, s. 1; 1995, c. 315, s. 1.)

Effect of Amendments. — The 1995 1995, and applicable to all elections on or amendment, effective September 1, after that date, added subsection (e).

CASE NOTES

Cited in *In re Wright*, 313 N.C. 495, 329 S.E.2d 668 (1986).

§ 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 individual who is a 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 fifty dollars (\$50.00) shall be made by check only. All expenditures for nonmedia expenses of fifty dollars (\$50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars (\$50.00) shall be accounted for and reported individually and separately, but expenditures of less than fifty dollars (\$50.00) 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 fifty dollars (\$50.00) each, the amounts, dates, and the purposes for which made. In the case of a nonmedia expenditure required to be accounted for individually and separately by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual.

(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; 1985, c. 353, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 744, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to the reporting of all contributions accepted on or after that date and to all reports filed on or after January 1, 1995, but only to

the extent that they describe contributions accepted on or after January 1, 1995, in subsection (d), in the first sentence, inserted "individual who is a".

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 30th day after the primary election if the candidate was eliminated in the primary. If there is a second primary, the treasurer shall file a report with the Board no later than the 30th day after the second primary election if the candidate was eliminated in the second primary.
- (4) **Preelection Report.** — The treasurer shall file a report with the Board not later than the tenth day preceding the general election.
- (5) Repealed by Session Laws 1985, c. 164, s. 1.
- (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 the last Friday in January 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) Repealed by Session Laws 1985, c. 164, s. 6.1.

(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; 1985, c. 164, ss. 1, 6-6.2; 1987 (Reg. Sess., 1988), c. 1028, s. 6; 1991 (Reg. Sess., 1992), c. 1032, s. 10A.)

§ 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.)

§ 163-278.10A. Threshold of \$1,000.00 for Financial Reports.

(a) Notwithstanding any other provision of this Chapter, a candidate shall be exempted from the reports of contributions, loans, and expenditures required in G.S. 163-278.9(a), 163-278.40B, 163-278.40C, 163-278.40D, and 163-278.40E if to further his campaign that candidate:

- (1) Does not receive more than one thousand dollars (\$1,000.00) in contributions, and
- (2) Does not receive more than one thousand dollars (\$1,000.00) in loans, and
- (3) Does not spend more than one thousand dollars (\$1,000.00).

To qualify for the exemption from those reports, the candidate's treasurer shall file a certification under oath that he does not intend to receive in contributions or loans or expend more than one thousand dollars (\$1,000.00) to further his campaign. The certification shall be filed with the Board at the same time the candidate files his Organizational Report as required in G.S. 163-278.7, G.S. 163-278.9, and G.S. 163-278.40A. If the candidate's campaign is being conducted by a political committee which is handling all contributions, loans, and expenditures for his campaign, the treasurer of the political committee shall file a certification of intent to stay within the threshold amount. If the intent to stay within the threshold changes, or if the \$1,000 threshold is exceeded, the treasurer shall immediately notify the Board and shall be responsible for filing all reports required in G.S. 163-278.9 and 163-278.40B, 163-278.40C, 163-278.40D, and 163-278.40E; provided that any contribution, loan, or expenditure which would have been required to be reported on an earlier report but for this section shall be included on the next report required after the intent changes or the threshold is exceeded.

(b) The exemption in subsection (a) of this section applies to political party committees under the same terms as for candidates, except that the term "to further his campaign" does not relate to a political party committee's exemption, and all contributions, expenditures, and loans during an election shall be counted against the political party committee's threshold amount. (1987 (Reg. Sess., 1988), c. 1028, s. 2; c. 1081, s. 3; 1989, c. 449; c. 770, s. 53.)

Editor's Note. — Session Laws 1989, c. 449, made amendments to this section effective with respect to all elections occurring on or after January 1, 1990.

Session Laws 1989, c. 770, s. 53, made amendments to this section effective with respect to all elections occurring on or after January 1, 1990.

§ 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 Class 2 misdemeanor. (1973, c. 1272, s. 1; 1979, c. 1073, ss. 8, 20; 1981, c. 225; 1987, c. 565, s. 15; 1993, c. 539, s. 1113; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected

by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 2" preceding "misdemeanor" in subsection (f).

CASE NOTES

Cited in *State v. Bolt*, 81 N.C. App. 133, 344 S.E.2d 51 (1986).

§ 163-278.13A. No fund-raising from lobbyists for legislators or Council of State members while General Assembly is in regular session.

(a) While the General Assembly is in regular session, none of the following entities may solicit or accept a contribution from, or at the

behest or recommendation of, an individual registered as a lobbyist pursuant to Article 9A of Chapter 120 of the General Statutes:

- (1) A member of the Council of State; or
- (2) A member of the General Assembly; or
- (3) A political committee the principal purpose of which is to assist a member or members of the Council of State or General Assembly.

(b) While the General Assembly is in regular session, no individual registered as a lobbyist under Article 9A of Chapter 120 of the General Statutes may make a contribution to any of the entities listed in subdivisions (1) through (3) of subsection (a) of this section.

(c) This section does not apply to:

- (1) Any contribution made to or by a State, county or congressional district executive committee of a political party; or
- (2) Any contribution made to or solicited for a political committee that operates on a Statewide basis in conjunction with the executive committee of a political party for the purpose of assisting that party's candidates for Council of State or General Assembly; or
- (3) Any contribution made by a member of the Council of State or General Assembly to a political committee the principal purpose of which is to assist himself; or
- (4) Any contribution made to or any solicitation for a nonprofit organization under 26 U.S.C. § 501(c); or
- (5) Any contribution accepted with the intent that it be used to defray legal or other expenses incurred in connection with the contesting of election results; or
- (6) Any contribution to any of the entities listed in subdivisions (1) through (3) of subsection (a) of this section if the member of the Council of State or General Assembly has filed an official notice of candidacy with the appropriate board of elections for any elective office, provided the contribution is for the elective office for which the member has filed.

(d) A violation of this section is a Class 2 misdemeanor, but no individual or person shall be prosecuted under this section for accepting or making a contribution unless the State Board of Elections has notified the individual or person of the apparent violation in writing by certified mail, has given the individual or person an opportunity to return or to request the return of the contribution, and, within 10 days of the receipt of the notification, the individual or person has failed to return or to request the return of the contribution.

(e) For purposes of this section, the General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly either:

- (1) Adjourns sine die; or
- (2) Recesses or adjourns for more than 10 days. (1991, c. 740, s. 2; 1993, c. 539, s. 1114; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1991, c. 740, s. 3 makes this section effective July 16, 1991.

Session Laws 1991, c. 740, s. 3 further provides that the act shall be implemented within funds available to the Secretary of State, and that nothing in

the act shall be construed to obligate the General Assembly to appropriate funds to implement the provisions of the act.

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act

becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 2" preceding "misdemeanor" in subsection (d).

§ 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.

(c) No political committee or referendum committee shall make any contribution unless in doing so it reports to the recipient the contributor's name as required in G.S. 163-278.7(b)(1). (1973, c. 1272, s. 1; 1979, c. 1073, s. 19; 1987, c. 113, s. 2.)

§ 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) through (e) Repealed by Session Laws 1975, c. 565, s. 2.

(f) No media advertisement of any kind may be made by a treasurer, candidate, political committee, referendum committee or individual unless

- (1) It bears the legend or includes the statement: "Paid for by (or Sponsored by) (Name of candidate, political committee, referendum committee, individual)";
- (2) The name used in the labeling required in subdivision (1) of this subsection is the name that appears on the statement of organization as required in G.S. 163-278.7(b)(1), provided that this subdivision applies only if the sponsor is a political committee or referendum committee;
- (3) The sponsor states in the media advertisement its position:
 - a. For or against the candidate; or
 - b. For or against an opposing candidate provided that this subdivision applies only if the media advertisement is made for or against a candidate; and
- (4) The sponsor states in the media advertisement its position for or against the ballot measure; provided this subdivision applies only if the media advertisement is made for or against a ballot measure.

The requirements of subdivisions (3) and (4) of this subsection do not apply to any print advertisement less than two inches by two inches in size, or to any radio or television advertisement of less than 20 seconds in length.

The media shall not publish or broadcast any political advertisement unless it bears the legend or includes the statement required herein. For purposes of this subsection, "media" means broadcasting stations, carrier current stations, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, and newspaper inserts. (1973, c. 1272, s. 1; 1975, c. 565, s. 2; 1979, c. 500, s. 4; c. 1073, ss. 19, 20; 1987, c. 652.)

§ 163-278.17. Statements of media receiving campaign expenditures.

(a) Repealed by Session Laws 1985, c. 183, s. 1.

(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) Repealed by Session Laws 1985, c. 183, s. 2. (1973, c. 1272, s. 1; 1975, c. 565, s. 3; 1979, c. 500, ss. 5, 6; c. 1073, s. 9; 1985, c. 183, ss. 1, 2.)

§ 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 or federal or State savings and loan association made in accordance with the applicable banking or savings and loan association 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 Class 2 misdemeanor, 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) or a referendum committee as defined in G.S. 163-278.6(18b); 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 is a Class 2 misdemeanor. In addition, the acceptance of any contribution, expenditure, payment, reimbursement, indemnification, or anything of value under subsection (a) shall be a Class 2 misdemeanor.

(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)(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; 1985, c. 354; 1987, c. 113, s. 3; c. 565, s. 16; 1993, c. 539, ss. 1115, 1116; c. 553, s. 69; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1369, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 1993, c. 539, ss. 1116, 1117, effective October 1, 1994, and applicable to offenses occurring on or after that date, in the last sentence of subsection (a) substituted "Class 2 misdemeanor" for

"misdemeanor as hereinafter set out"; and in subsection (c), in the first sentence inserted "Class 2" preceding "misdemeanor," and in the second sentence substituted "Class 2 misdemeanor" for "unlawful and the defendant shall be subject to the same punishment as set forth in this subsection."

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).

For note, "Addressing a 'New Corruption' in Campaign Financing," see 69 N.C.L. Rev. 1060 (1991).

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 Reelected Insurance Commissioner. — 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). Mut. Ins. Co., 298 N.C. 270, 258 S.E.2d 343 (1979).

Quoted in *State v. Charlotte Liberty*

§ 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 is a Class 2 misdemeanor. (1973, c. 1272, s. 1; 1979, s. 1073, ss. 10, 19; 1989, c. 94; 1993, c. 539, s. 1117; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1989, c. 94, made amendments to this section effective for elections held on or after January 1, 1990.

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 2" preceding "misdemeanor" in subsection (b).

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 director 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; 1995, c. 243, s. 1.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, substituted "directors of elections" for "supervisors of elections" in subdivision (10).

§ 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 30 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; 1985, c. 759, s. 6.1.)

§ 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. (1973, c. 1272, s. 1; 1979, c. 500, s. 8; c. 1073, s. 14; 1985, c. 183, s. 3.)

§ 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 Class 2 misdemeanor.

(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; 1987, c. 565, s. 17; 1993, c. 539, s. 1118; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected

by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 2" preceding "misdemeanor" in subsection (a).

CASE NOTES

This section is clearly mandatory in its language. *State v. Bolt*, 81 N.C. App. 133, 344 S.E.2d 51 (1986).

Venue. — This section is a legislative determination that the crime of violating any section of this Article, when commit-

ted by an individual other than a candidate, is committed where the individual resides. Thus, venue lies solely in the county, subject only to defendant's right to move for a change of venue. *State v.*

Bolt, 81 N.C. App. 133, 344 S.E.2d 51
(1986).

§ 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: Repealed by Session Laws 1985, c. 183, s. 4.

§ 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 government, see 56 N.C.L. Rev. 867 1977 administrative law affecting state (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.)

Local Modification. — Town of s. 2. Town of Chapel Hill: 1987 (Reg. Carrboro: 1993 (Reg. Sess., 1994), c. 660, Sess., 1988), c. 1023, s. 2.

§ 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 definition 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) **Repealed by Session Laws 1985, c. 164, s. 2.**
- (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 the last Friday in January of the following year. (1981, c. 837, s. 3; 1985, c. 164, s. 2; 1987 (Reg. Sess., 1988), c. 1028, s. 7.)

§ 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) **Repealed by Session Laws 1985, c. 164, s. 3, effective January 1, 1986.**
- (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 the last Friday in January of the following year. (1981, c. 837, s. 3; 1985, c. 164, s. 3; 1987 (Reg. Sess., 1988), c. 1028, s. 8.)

§ 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) Repealed by Session Laws 1985, c. 164, s. 4.
- (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 the last Friday in January of the following year. (1981, c. 837, s. 3; 1985, c. 164, s. 4; 1987 (Reg. Sess., 1988), c. 1028, s. 9.)

§ 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) Repealed by Session Laws 1985, c. 164, s. 5.
- (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 the last Friday in January of the following year. (1981, c. 837, s. 3; 1985, c. 164, s. 5; 1987 (Reg. Sess., 1988), c. 1028, s. 10.)

§ 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 director 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; 1995, c. 243, s. 1.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, substituted "director of the board" for "supervisor of the board" in the introductory paragraph.

§ 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.)

Editor's Note. — Subsection (c) of § 163-278.9, referred to in this section, was repealed by Session Laws 1985, c. 164, s. 6.1, effective January 1, 1986.

ARTICLE 22B.

Appropriations from the North Carolina Political Parties Financing 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 Board of Elections (State Board) for the disbursement of all funds deposited with the State Treasurer on behalf of such party in the North Carolina Political Parties Financing Fund (Political Parties Fund) to be administered by the State Board of Elections and in which shall be placed money contributed by taxpayers, as provided in G.S. 105-159.1. Upon receipt of such application, the State Board shall forthwith, and every 30 days thereafter, pay over to said chairman all funds currently held by the State Treasurer 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 Board 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 by the same procedure as the funds received from the Political Parties Fund are allocated. 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 Board for the disbursement of all funds deposited on behalf of such party in the Political Parties Fund. Upon receipt of such application, the State Board shall forthwith, and every 30 days thereafter, pay over to said chairman all funds currently held by the State Treasurer 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 Political Parties Fund may, on or between August 1 and September 1 thereof, apply to the State Board 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 Board 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 Board shall direct the State Treasurer to 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 by the State Board pursuant to this section. Any interest earned on the funds deposited in such Presidential Election Year Campaign Fund shall be credited thereto. (1977, 2nd Sess., c. 1298, s. 2; 1983, c. 700, s. 5; 1987 (Reg. Sess., 1988), c. 1063, s. 3; 1991, c. 347, s. 1; c. 397, s. 1.)

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 Political Parties Financing Fund to that political party. The remaining fifty percent (50%) of such funds shall be allocated by the special committee established by subsection (d) of this section and used for one or more of the purposes permitted by subsection (e) of this section. Any candidate may elect to decline in whole or in part any funds that the party chooses to distribute to the 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 Political Parties Fund to that political party. The remaining fifty percent (50%) of such funds shall be allocated by the special committee established in subsection (d) of this section and used for one or more of the purposes permitted by subsection (e) of this section. Any candidate may elect to decline

in whole or in part any funds that the party chooses to distribute to the 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 Political Parties Fund to that political party.

(d) The allocation of the remaining fifty percent (50%) of the funds under subsections (a) or (b) of this section shall be made by a committee composed of the State Chairman of that political party, the Treasurer of that party, the Congressional District Chairmen of that party, and two persons appointed by the State Chairman of that party, and the State Chairman shall serve as Chairman of this committee. The allocation of funds shall be in the sole discretion of the committee, but must be for a purpose permitted by subsection (e) of this section and if allocated to a candidate, shall be disbursed by the State Chairman of that party only to the Treasurer of that candidate or committee appointed under Article 22A of this Chapter or under the Federal Election Campaign Act of 1971, Chapter 14 of Title 2, United States Code.

(e) A political party shall expend funds distributed from the Political Parties Fund or from the "Presidential Election Year Candidates Fund" only 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;
- (4a) Expenses to ensure compliance with federal and State campaign finance and reporting laws;
- (4b) Contributions to or expenses on behalf of candidates of that political party;
- (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 (37 ½%) to the eligible candidates as determined by the committee established under this Article.

(g) It shall be unlawful for any political party to use either directly or indirectly any part of funds distributed from the Political Parties 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; 1983, c. 700, ss. 1-4; 1985 (Reg. Sess., 1986), c. 866; 1987 (Reg. Sess., 1988), c. 1063, s. 3; 1991, c. 397, s. 1; c. 636, s. 20(b); 1991 (Reg. Sess., 1992), c. 1032, s. 10B; 1993, c. 553, s. 70.)

§ 163-278.43. Annual report to State Board of Elections; suspension of disbursements; willful violations a misdemeanor; adoption of rules; reporting by candidates and political committees.

(a) The State chairman of each political party receiving funds from the Political Parties Fund or the Presidential Election Year Candidates Fund or both shall maintain a full and complete record of the party's 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.

(b) By December 31 of each year, the State chairman of each political party receiving funds from the Political Parties Fund or a Presidential Election Year Candidates Fund 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 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 to reimburse the amount improperly expended or disbursed to the General Fund of the State and such political party shall not receive further disbursements from the Political Parties 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) Repealed by Session Laws 1985, c. 259.

(c1) The State Board shall review each application and certify that the political party is eligible to receive the funds requested. The

State Board shall establish rules for the administration and enforcement of this Article.

(c2) The treasurer of any political committee or candidate receiving any funds from the Political Parties Fund or a Presidential Election Year Candidates Fund through a political party shall report such receipts as contributions according to the method and timetable set forth in Article 22A of this Chapter. The treasurer shall report disbursements of such funds as expenditures or loans according to the method and timetable set forth in Article 22A of this Chapter. The reports shall be made to the proper board of elections according to Article 22A of this Chapter. There is no requirement that a candidate or a political committee other than a political party shall maintain funds from the Political Parties Fund or a Presidential Election Year Candidates Fund in a separate account.

(d) Repealed by Session Laws 1985, c. 259. (1977, 2nd Sess., c. 1298, s. 2; 1979, c. 926, s. 1; 1985, c. 259; 1987 (Reg. Sess., 1988), c. 1063, s. 3; 1991, c. 347, s. 2; c. 397, s. 1; 1991 (Reg. Sess., 1992), c. 1032, s. 10C.)

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 Class 2 misdemeanor. (1977, 2nd Sess., c. 1298, s. 2; 1987, c. 565, s. 18; 1993, c. 539, s. 1119; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected

by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 2" preceding "misdemeanor".

§ 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.)

ARTICLE 22C.

*Appropriations from the North Carolina Candidates Financing Fund.***§ 163-278.46. Establishment of Candidates Fund; administrative expenses; financing in case of insufficiency.**

There is established in the State Treasury a North Carolina Candidates Financing Fund (Candidates Fund) to be administered by the State Board of Elections (State Board) in which shall be placed money contributed by taxpayers as provided in G.S. 105-163.16(f). If the money in the Candidates Fund is insufficient to fully fund qualifying candidates, available money shall be distributed proportionally. (1987 (Reg. Sess., 1988), c. 1063, s. 1; 1991, c. 397, s. 1.)

Editor's Note. — Subsection (f) of § 105-163.16, referred to in this section, was repealed by Session Laws 1991, c. 45, s. 22.

Session Laws 1987 (Reg. Sess., 1988), c. 1063, s. 5, as amended by Session Laws, 1991, c. 397, s. 1, makes this Article effective January 1, 1996.

Session Laws 1987 (Reg. Sess., 1988), c. 1063, s. 4, as amended by Session Laws 1991, c. 397, s. 1, provides: "The Secretary of Revenue, the State Treasurer, and the Executive Secretary-Director of the State Board of Elections shall monitor and evaluate the response of the taxpayers and the growth of the Candidates Fund and each shall report to the General Assembly by May 15, 1991, and again by May 15, 1993, and again by May 15, 1995. The 1995 General Assembly is urged to review those

reports and to determine if enough money has accumulated in the Candidates fund to warrant distribution according to Section 1 of this act. If the 1995 General Assembly determines that an insufficient amount of money has accumulated to warrant proceeding with Section 1 of this act, the money that has accumulated in the Candidates Fund shall be transferred to the General Fund."

The General Assembly does not appear to have made such a determination in 1995.

Legal Periodicals. — For article, "Campaign Finance Reform in North Carolina: An Act to Limit Campaign Expenditures and to Strengthen Public Financing of Political Campaigns," see 67 N.C.L. Rev. 1349 (1989).

§ 163-278.47. Application; eligibility.

(a) **Application.** — Each candidate for Governor who seeks grants from the Candidates Fund shall file an application for the grants with the State Board on forms provided by the State Board. The candidate may file an application after being certified as a party's nominee for the office, but not after June 15.

(b) **Notice of Other Applicants.** — By June 30, the State Board shall notify each candidate in a contest of all the applications made by candidates in the same contest.

(c) **Eligibility.** — To be eligible to receive grants from the Candidates Fund, a candidate shall have opposition on the ballot in the general election and shall:

- (1) Agree to abide by the expenditure limits provided in G.S. 163-278.48,
- (2) Raise qualifying matching contributions equal to five percent (5%) of the expenditure limit. "Qualifying matching

contributions" are those from political committees or individuals. They are limited to contributions raised after the candidate's certification as nominee, or raised before his certification but left unspent after certification.

- (3) Agree to submit to a postelection audit of the campaign account by the State Board. (1987 (Reg. Sess., 1988), c. 1063, s. 1; 1991, c. 397, s. 1.)

Editor's Note. — Session Laws 1987 1, makes this Article effective January 1, (Reg. Sess., 1988), c. 1063, s. 5, as 1996.
amended by Session Laws 1991, c. 397, s.

§ 163-278.48. Expenditure limits.

Limitation Formulas. — Any candidate for Governor who requests grants from the Candidates Fund shall limit total expenditures after certification as party nominee as follows: One dollar (\$1.00) times the number of votes cast for Governor in the last general election in which more than one candidate appeared on the ballot for Governor. (1987 (Reg. Sess., 1988), c. 1063, s. 1; 1991, c. 397, s. 1.)

Editor's Note. — Session Laws 1987 1, makes this Article effective January 1, (Reg. Sess., 1988), c. 1063, s. 5, as 1996.
amended by Session Laws 1991, c. 397, s.

§ 163-278.49. Qualified campaign expenditures.

A candidate may use the money received from the Candidates Fund under this Article only to further that candidate's election to office through expenditures allowable under North Carolina law. (1987 (Reg. Sess., 1988), c. 1063, s. 1; 1991, c. 397, s. 1.)

Editor's Note. — Session Laws 1987 1, makes this Article effective January 1, (Reg. Sess., 1988), c. 1063, s. 5, as 1996.
amended by Session Laws 1991, c. 397, s.

§ 163-278.50. Distribution of funds.

(a) **Certification and Notice.** — The State Board shall review each request for grants from the Candidates Fund and certify by July 15 before the general election whether the candidate is eligible to receive them. The State Board shall notify the candidate of the certification decision in that candidate's case within seven days after the decision is made.

(b) **Formula for Distribution.** — A candidate certified to receive money from the Candidates Fund shall be entitled to distribution of funds on a one-to-one basis for all qualifying matching contributions as defined in G.S. 163-278.47. No candidate, however, shall receive money from the Candidates Fund in excess of half the amount of that candidate's expenditure limit under G.S. 163-278.48.

(c) **Reporting.** — Certification and distribution of funds shall be based on contributions to the candidate reported pursuant to G.S. 163-278.9 and pursuant to this section. In addition to the reports required in G.S. 163-278.9, a candidate who seeks to receive contributions from the Candidates Fund shall file a report of

contributions and expenditures at each of the following times before the general election:

- (1) The second Wednesday in August, and
- (2) The second Wednesday in September.

Those two reports shall be filed on forms prescribed by the State Board. The State Board may prescribe separate forms on which candidates who seek grants from the Candidates Fund shall file the other reports required by G.S. 163-278.9.

(d) Timetable for Distribution. — Funds shall be distributed to candidates by September 1 before the general election, based on the August reports required in subsection (c) of this section. Further distribution shall be made within seven days after the filing of each succeeding pre-election contribution report required by this section or by G.S. 163-278.9. (1987 (Reg. Sess., 1988), c. 1063, s. 1; 1991, c. 397, s. 1.)

Editor's Note. — Session Laws 1987 1, makes this Article effective January 1, (Reg. Sess., 1988), c. 1063, s. 5, as 1996.
amended by Session Laws 1991, c. 397, s.

§ 163-278.51. Withdrawal of application.

(a) Regular Deadline for Withdrawal. — A candidate, by written notice to the State Board before July 10, may withdraw application to receive money from the Candidates Fund.

(b) Extended Deadline for Withdrawal. — Notwithstanding the provisions of subsection (a) of this section, if withdrawal by any other candidate or candidates leaves a person as the only candidate in a contest applying for money from the Candidates Fund, that candidate may withdraw by written notice to the State Board before August 22.

(c) Consequences of Withdrawal. — A candidate shall receive no money from the Candidates Fund after that candidate's notice of withdrawal. The candidate will not be subject to the limitations or penalties of this Article if the candidate makes a timely withdrawal.

(d) Vacancies and Replacement Nominees. — If a party nominee who has been certified to receive money from the Candidates Fund dies, resigns, or for any reason becomes ineligible or disqualified before the general election but after the applicable deadline in subsection (a) or (b) of this section, that candidate's application for the Candidates Fund is automatically withdrawn without penalty, but the candidate shall return all money received from the Candidates Fund that is unspent at the time that candidate leaves the race. If the nominee is replaced, the new candidate may either:

- (1) Forego participation in the Candidates Fund; in that case, the new candidate will:
 - a. Not be eligible for any of the money the former candidate received or became entitled to before leaving the race, and
 - b. Not be subject to the expenditure limit, or
- (2) Assume the position of the former candidate with respect to the Candidates Fund; in that case, the new candidate will:
 - a. Be eligible for the unspent money the former candidate returned to the Candidates Fund, and for any money to which the former candidate had become entitled through qualifying matching contributions but had not received before leaving the race, and

- b. Be eligible for any money from the Fund the new candidate may earn through qualifying matching contributions, and
- c. Be subject to the remainder of the former candidate's expenditure limit, and
- d. Be subject to all other requirements for participation in the Candidates Fund that the candidate's late entry into the race do not make inappropriate.

If the new candidate elects to forego the Candidates Fund, any other candidate in the race may withdraw his application within seven days after the new candidate has notified the State Board of a decision to forego the Candidates Fund, if the candidate seeking to withdraw is left as the only publicly funded candidate in the race. A candidate who withdraws from participation in the Candidates Fund under the circumstances set out in this paragraph must return all money received from the Candidates Fund at the time of withdrawal. (1987 (Reg. Sess., 1988), c. 1063, s. 1; 1991, c. 397, s. 1.)

Editor's Note. — Session Laws 1987 1, makes this Article effective January 1, (Reg. Sess., 1988), c. 1063, s. 5, as 1996. amended by Session Laws 1991, c. 397, s.

§ 163-278.52. Penalties; fines.

In addition to any other penalties which may be applicable under this Chapter, any candidate who receives contributions from the Candidates Fund and who exceeds the applicable expenditure limit or falsely reports qualifying matching contributions and thereby receives contributions from the Candidates Fund to which the candidate was not entitled shall be fined an amount equal to the amount at issue plus ten percent (10%). (1987 (Reg. Sess., 1988), c. 1063, s. 1; 1991, c. 397, s. 1.)

Editor's Note. — Session Laws 1987 1, makes this Article effective January 1, (Reg. Sess., 1988), c. 1063, s. 5, as 1996. amended by Session Laws 1991, c. 397, s.

§ 163-278.53. Criminal 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 Class I felony. (1987 (Reg. Sess., 1988), c. 1063, s. 1; 1991, c. 397, s. 1; 1993, c. 539, s. 1325; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1063, s. 5, as amended by Session Laws 1991, c. 397, s. 1, makes this Article effective January 1, 1996.

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses com-

mitted before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 1993, c. 539, s. 1325 amends this section, effective October 1, 1994, and applicable to offenses occurring on or after that date, by substituting "Class I felony" for "Class J felony".

§ 163-278.54. Sixty-day post-election report to State Board; audit.

(a) Maintenance of Records. — The treasurer of each candidate shall keep a complete record of receipts from the Candidates Fund and of all subsequent expenditures and disbursements, substantiated by any records, receipts, and information that the State Director of Elections shall require.

(b) Sixty-day Report. — By 60 days after each general election, the treasurer of each candidate receiving funds from the Candidates Fund in that general election campaign shall file with the State Board an itemized statement reporting all receipts of Candidates Fund moneys and of all subsequent expenditures and disbursements and attach to the report the treasurer's verification that all funds were spent in accordance with the provisions of this Article.

(c) Audit. — The State Board shall conduct an audit of the 60-day post-election report. If the Secretary of the State Board finds that any funds were not disbursed or expended in accordance with this Article, the Secretary shall order the candidate to reimburse to the Candidates Fund the amount improperly expended or disbursed. (1987 (Reg. Sess., 1988), c. 1063, s. 1; 1991, c. 397, s. 1.)

Editor's Note. — Session Laws 1987 1, makes this Article effective January 1, (Reg. Sess., 1988), c. 1063, s. 5, as 1996.
amended by Session Laws 1991, c. 397, s.

§ 163-278.55. Return of unspent money within 90 days of election.

Any money a candidate receives from the Candidates Fund that is unspent within 90 days after the general election shall be returned to the Candidates Fund. One-half of any amount in the candidate's campaign account required by G.S. 163-278.8 shall be deemed to be money received from the Candidates Fund; provided that if, pursuant to G.S. 163-278.46, the candidate received grants from the Candidates Fund on less than a one-to-one ratio, the same proportion of the candidate's campaign account shall be deemed to be money received from the Candidates Fund. (1987 (Reg. Sess., 1988), c. 1063, s. 1; 1991, c. 397, s. 1.)

Editor's Note. — Session Laws 1987 1, makes this Article effective January 1, (Reg. Sess., 1988), c. 1063, s. 5, as 1996.
amended by Session Laws 1991, c. 397, s.

§ 163-278.56. Duties of the State Board.

The State Board shall establish rules for the administration and enforcement of this Article. (1987 (Reg. Sess., 1988), c. 1063, s. 1; 1991, c. 397, s. 1.)

Editor's Note. — Session Laws 1987 1, makes this Article effective January 1, (Reg. Sess., 1988), c. 1063, s. 5, as 1996.
amended by Session Laws 1991, c. 397, s.

§ 163-278.57. Definitions.

The terms "candidate," "expend," "individual," "person," and "treasurer" as used in this Article shall be as defined in G.S. 163-278.6. (1987 (Reg. Sess., 1988), c. 1063, s. 1; 1991, c. 397, s. 1.)

Editor's Note. — Session Laws 1987 1, makes this Article effective January 1, (Reg. Sess., 1988), c. 1063, s. 5, as 1996.
amended by Session Laws 1991, c. 397, s.

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 or in G.S. 130A-50(b1). (1971, c. 835, s. 1; 1973, c. 1115; 1987, c. 22, s. 2.)

Local Modification. — Rockingham: 1993, c. 15, s. 2; city of Albemarle: 1987 (Reg. Sess., 1988), c. 881, s. 3; (As to Article 23) town of Walkertown: 1983 (Reg. Sess., 1984), c. 936; (As to Article 23) Charlotte-Mecklenburg Board of Ed-

ucation: 1993, c. 167, s. 1.

Editor's Note. — Section 130-126, referred to in this section, was repealed by Session Laws 1983, c. 891, s. 1. As to sanitary districts, see now § 130A-47 et seq.

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 June 1 in each year preceding each regular municipal primary or election, and their terms of office shall be for two years beginning June 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 before the filing period opens for elections in that municipality, 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 chief judges 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 director 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; 1983, c. 644, s. 3; 1985, c. 599, s. 4; c. 768, s. 27; 1993 (Reg. Sess., 1994), c. 762, s. 59; 1995, c. 243, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions

of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "chief judges" for "registrars" in the first sentence of subsection (c).

The 1995 amendment, effective January 1, 1996, in subsection (c) following "and duties of a" substituted "director of elections" for "supervisor of elections".

§ 163-281. Municipal precinct election officials.

(a) Chief Judges and Judges. — At the meeting required by G.S. 163-280(c), the municipal board of elections shall appoint one person to act as chief judge 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 chief judge, 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 chief judge and judges, in which event the persons appointed by the county board of elections as precinct chief judge 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 chief judge 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. Chief judges and judges shall be appointed for terms of two years. Except as modified by this Article, municipal precinct chief judge and judges shall meet all of the qualifications, perform all the duties, and have all of the powers imposed and conferred on county precinct chief judge and judges by G.S. 163-41(a), 163-47, and 163-48. Municipal precinct chief judge 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 chief judge 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. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice.

(b) Assistants at Polls. — Municipal boards of elections shall have the same authority to appoint assistants to aid the chief judge 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 chief judge, 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 chief judge, judge, assistant, ballot counter, or observer or other officers of elections shall serve; and, after notice and hearing, may remove any chief judge, 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; 1989, c. 93, s. 8; 1993 (Reg. Sess., 1994), c. 762, s. 60.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 61, effective January 1, 1995, provides: "Any person who on December 31, 1994, was a registrar under G.S. 163-41 shall be a chief judge under G.S. 163-41."

Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecu-

tions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "Chief judges" for "Registrars" in the subsection (a) catch line and in the fifth sentence of subsection (a), and substituted "chief judge" for "registrar" throughout subsections (a), (b), (g), and (h).

CASE NOTES

Registrars (now chief judges) are not required to be freeholders. Town of Hendersonville v. Jordan, 160 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.

Notwithstanding the previous paragraph, any unaffiliated voter who is authorized under G.S. 163-116 may also vote in the primary if the voter is otherwise eligible to vote in that primary except for subdivisions (2) and (3) of the previous paragraph.

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 the last day for making application to register under G.S. 163-82.6(c) prior to the primary. In addition, persons who will become qualified by age to register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections. (1971, c. 835, s. 1; 1983, c. 331, s. 5; 1987, c. 408, s. 5; c. 457, s. 2; 1991 (Reg. Sess., 1992), c. 1032, s. 8; 1993 (Reg. Sess., 1994), c. 762, s. 62.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1991 (Reg. Sess., 1992),

c. 762, s. 62, made amendments to this section effective with respect to elections occurring on or after July 1, 1993.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "G.S. 163-116" for "G.S. 163-74(a1)" in the second paragraph and "G.S. 163-82.6(c)" for "G.S. 163-67" in the third paragraph.

§ 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 elections 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 incorpo-

rated village to exercise the options under this Article subsequent to the deadline stated in this section.

- (3) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 63, effective January 1, 1995. (1971, c. 835, s. 1; 1973, c. 171; 1993 (Reg. Sess., 1994), c. 762, s. 63.)

Local Modification. — Edgecombe, Nash, Wilson: 1985 (Reg. Sess., 1986), c. 988.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to

those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, repealed subdivision (3), relating to the appointment and duties of a city registrar.

§ 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, 7A, 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; 1993 (Reg. Sess., 1994), c. 762, s. 64.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applica-

ble to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "7A" for "7" in the list of Articles in the first sentence of subsection (a).

§ 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 45 days prior to 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; 1993 (Reg. Sess., 1994), c. 762, s. 65.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "45 days prior to" for "20 days prior to the date on which the registration books or records close for" in the first sentence of the second paragraph.

§ 163-288. Registration for city elections; county and municipal boards of elections.

Regardless of whether the municipal election is conducted by the county board of elections or by a municipal board of elections, 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. (1971, c. 835, s. 1; 1973, c. 793, s. 87; 1981, c. 33, s. 5; 1991 (Reg. Sess., 1992), c. 1032, s. 7; 1993 (Reg. Sess., 1994), c. 762, s. 66.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1991 (Reg. Sess., 1992) made amendments to this section effective with respect to elections occurring on or after July 1, 1993.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, rewrote this section.

§ 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.)

§ 163-288.1A. Activating voters when charter revised.

Whenever a city has not held the most recent two elections required by its charter or this Chapter, and the General Assembly amends the charter of that city and provides that the county board of elections shall conduct the elections of that city, voters shall be activated for the elections of that city in accordance with G.S. 163-288.1 or G.S. 163-288.2. In such a case, the county shall prepare the map required by G.S. 163-288.1(a). (1985, c. 350.)

§ 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-fifth day 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. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice.

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-fifth day 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. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice.

(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; 1989, c. 93, s. 9; 1991 (Reg. Sess., 1992), c. 1032, s. 9; 1993 (Reg. Sess., 1994), c. 762, s. 67.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1991 (Reg. Sess., 1992) made amendments to this section effective with respect to elections occurring on or after July 1, 1993.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "twenty-fifth day" for "last day for making application to register under G.S. 163-67" in the second sentence of METHOD A and the second sentence of METHOD B, both 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 primary and election shall be as provided in G.S. 163-279.
- (2) A candidate seeking party nomination for municipal or district office shall file his notice of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the first Friday in August preceding the election, except:

- a. In 1991 a candidate seeking party nomination for municipal or district office in any city which elects members of its governing board on a district basis, or requires that candidates reside in a district in order to run, shall file his notice of candidacy with the board of elections no earlier than 12:00 noon on the fourth Monday in July and no later than 12:00 noon on the second Friday in August preceding the election; and
- b. In 1992 if the election is held then under G.S. 160A-23.1, a candidate seeking party nomination for municipal or district office shall file his notice of candidacy with the board of elections at the same time as notices of candidacy for county officers are required to be filed under G.S. 163-106.

No person may file a notice of candidacy for more than one municipal office at the same election. If a person has filed a notice of candidacy for one office with the county board of elections under this section, then a notice of candidacy may not later be filed for any other municipal office for that election unless the notice of candidacy for the first office is withdrawn first.

- (3) The filing fee for municipal and district primaries shall be fixed by the governing board not later than the day before candidates are permitted to begin filing notices of candidacy. 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; 1983, c. 330, s. 2; 1985, c. 599, ss. 2, 3; 1989 (Reg. Sess., 1990), c. 1012, s. 3.)

Local Modification. — City of Mecklenburg Board of Education: 1993, Albemarle: 1987 (Reg. Sess., 1988), c. c. 167, s. 1; Vance County Board of Education: 1987 (Reg. Sess., 1988), c. 974, ss. 881, s. 4; (as to Art. 24) town of Walkertown: 1983 (Reg. Sess., 1984), c. 3, 4. 936; (As to Article 24) Charlotte-

§ 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.)

CASE NOTES

Cited in *NAACP v. City of Statesville*,
606 F. Supp. 569 (W.D.N.C. 1985).

§ 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.)

Local Modification. — Jackson: County Board of Education: 1987, c. 322; 1991, c. 170, s. 1; Madison: 1991, c. 249, s. 4 (contingent on referendum); city of Reidsville: 1993, c. 306, s. 2; McDowell County Board of Education: 1985, c. 135.

CASE NOTES

Cited in NAACP v. City of Statesville,
606 F. Supp. 569 (W.D.N.C. 1985).

§ 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. In both the primary and election, a voter should not mark more names for any office than there are positions to be filled by election, as provided in G.S. 163-135(e) and G.S. 163-151(2). 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; 1991, c. 341, 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) A vacancy that occurs in a municipal or special district elective office shall be filled by the governing body as provided in G.S. 160A-63. In the case of a special district, the words "city council" as used in G.S. 160A-63, shall mean the governing body of the special district. (1971, c. 835, s. 1; 1985, c. 619.)

§ 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:

"Date

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 the director of elections of that county, 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." A candidate may also, in lieu of his legal first name and legal middle initial or middle name (if any) sign his nickname, provided that he appends to the notice of candidacy an affidavit that he has been commonly known by that nickname for at least five years prior to the date of making the affidavit, and notwithstanding the previous sentence, if the candidate has used his nickname in lieu of first and middle names as permitted by this sentence, unless another candidate for the same office who files a notice of candidacy has the same last name, the nickname shall be printed on the ballot immediately before the candidate's surname but shall not be enclosed by parentheses. If another candidate for the same office who filed a notice of candidacy has the same last name, then the candidate's name shall be printed on the ballot in accordance with the next sentence of this subsection. The candidate shall also include with the affidavit the way his name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

(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 seeking municipal office shall file their notices of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the first Friday in August preceding the election, except:

- (1) In 1991 candidates seeking municipal office in any city which elects members of its governing board on a district basis, or requires that candidates reside in a district in order to run, shall file their notices of candidacy with the board of elections no earlier than 12:00 noon on the fourth Monday in July and no later than 12:00 noon on the second Friday in August preceding the election; and
- (2) In 1992 if the election is held then under G.S. 160A-23.1, candidates seeking municipal office shall file their notices of candidacy with the board of elections at the same time as notices of candidacy for county officers are required to be filed under G.S. 163-106.

Notices of candidacy which are 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 the day before candidates are permitted to begin filing notices of candidacy. 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.

(f) No person may file a notice of candidacy for more than one municipal office at the same election. If a person has filed a notice of candidacy for one office with the board of elections under this section, then a notice of candidacy may not later be filed for any other municipal office for the election unless the notice of candidacy for the first office is withdrawn first. (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; 1983, c. 330, s. 3; c. 644, ss. 1, 2; 1985, c. 472, s. 5; c. 558, s. 3; c. 599, s. 1; 1989 (Reg. Sess., 1990), c. 1012, s. 4; 1995, c. 243, s. 1.)

Local Modification. — Polk: 1983, c. 744, s. 1.1; town of Calabash: 1989, c. 593, s. 6; Grandfather village: 1987, c. 419, s. 4.

Effect of Amendments. — The 1995

amendment, effective January 1, 1996, substituted "director of elections" for "supervisor of elections" in the first sentence following the form.

CASE NOTES

Cited in *Farnsworth v. Jones*, 114 N.C. App. 182, 441 S.E.2d 597 (1994).

§ 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, 7A, 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; 1993 (Reg. Sess., 1994), c. 762, s. 68.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for

the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "7A" for "7" in the list of articles in the first sentence.

§ 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 four percent (4%) 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. Provided that in the case where a qualified voter seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate for election from an election

district within the municipality, the petition shall be signed by four percent (4%) of the voters qualified to vote for that office. (1971, c. 835, s. 1; 1979, c. 23, ss. 2, 4, 5; c. 534, ss. 3, 4; 1989, c. 402; 1991, c. 297, s. 2.)

Editor's Note. — Session Laws 1991 amend this section effective with re- spect to elections held on or after July 1, 1991.

§ 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. In addition, absentee voting shall be allowed in any referendum on incorporation of a municipality.

(b) The provisions of Articles 20 and 21 of this Chapter shall apply to absentee voting in municipal elections, special district elections, and other elections for an area less than an entire county other than elections for the General Assembly, except that the earliest date by which absentee ballots shall be required to be available for absentee voting in such elections shall be 30 days prior to the 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. In elections on incorporation of a municipality not held at the same time as another election in the same area, the county board of elections shall adopt a special schedule of meetings of the county board of elections to approve absentee ballot applications so as to reduce the cost of the process, and to further implement the last paragraph of G.S. 163-230(2)a. If no application has been received since the last meeting, no meeting shall be held of the county board of elections under such schedule unless the meeting is scheduled for another purpose. If another election is being held in the same area on the same day, or elsewhere in the county, the cost of per diem for meetings of the county board of elections to approve absentee ballots shall not be considered a cost of the election to be billed to the municipality being created. (1971, c. 835, s. 1; 1975, c. 370, s. 1; c. 836; 1977, c. 475, s. 1; 1983, c. 324, s. 6; 1991 (Reg. Sess., 1992), c. 933, s. 1.)

Local Modification. — City of Cherryville: 1983 (Reg. Sess., 1984), c. 935; town of Hazelwood: 1987, c. 338, s. 8; town of Mooresville: 1987, c. 359; town of Old Fort: 1993, c. 35, s. 1 (effective July 1, 1993 with respect to all elections

held on or after July 1, 1993); town of Waynesville: 1987, c. 338, s. 8.

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992) made amendments to this section effective with respect to elections held on or after January 1, 1993.

§ 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.)



Related Laws

Chapter 18B.

Regulation of Alcoholic Beverages.

Article 6.	Sec.
Elections.	18B-603. Effect of alcoholic beverage elections on issuance of permits.
Sec.	18B-604. Timing and effect of subsequent elections.
18B-600. Places eligible to hold alcoholic beverage elections.	18B-605. Local act elections.
18B-601. Election procedure.	
18B-602. Form of ballots.	

ARTICLE 6.

Elections.

§ 18B-600. Places eligible to hold alcoholic beverage elections.

(a) Kinds of Elections. — The following kinds of alcoholic beverage elections shall be permitted:

- (1) Malt beverage;
- (2) Unfortified wine;
- (3) ABC store; and
- (4) Mixed beverage.

(b) County Elections. — Any county may hold a malt beverage, unfortified wine, or ABC store election. A county may hold a mixed beverage election only if the county already operates at least one county ABC store or a county election on ABC stores is to be held at the same time as the mixed beverage election.

(c) City Malt Beverage and Unfortified Wine Elections. — A city may hold a malt beverage or unfortified wine election only if the county in which the city is located has already held such an election, the vote in the last county election was against the sale of that kind of alcoholic beverage, and:

- (1) The city has a population of 500 or more; or
- (2) The city operates an ABC store.

(d) City ABC Store Elections. — A city may hold an ABC store election only if:

- (1) The city has at least 500 registered voters; and
- (2) The county in which the city is located does not operate ABC stores.

(e) City Mixed Beverage Elections. — A city may hold a mixed beverage election only if:

- (1) The city has at least 500 registered voters; and
- (2) Either:
 - a. The city already operates a city ABC store; or
 - b. A city ABC store election is to be held at the same time as the mixed beverage election; or
 - c. The city does not operate a city ABC store but:
 1. The county operates an ABC store;
 2. The county has already held a mixed beverage election; and

3. The vote in the last county election was against the sale of mixed beverages.

(e1) Small City Mixed Beverage Elections. — A city may also hold a mixed beverage election if the city has at least 300 registered voters and is located in a county with at least one other city that has approved the sale of mixed beverages. Provided, that if a city that qualifies for an election under this subsection approves the sale of mixed beverages, mixed beverages permittees in the smaller city may purchase liquor from the ABC store designated by any local ABC board in any other city that has approved the sale of mixed beverages.

This subsection shall not apply to Alamance, Avery, Burke, Caldwell, Carteret, Cleveland, Henderson, Onslow, Polk, Robeson, Rowan, Rutherford, and Wilkes Counties.

(e2) Ski Resorts ABC Elections. — Notwithstanding any other provisions of this section, any city that provides governmental services to as many as 1,000 snow skiers weekly during the normal ski season from December 1 through March 15, may hold an election authorized by subdivision (a)(1), (2), or (4) of this section. If the sale of mixed beverages is approved, purchase-transportation permits shall be issued and the sales of liquor shall be made by any local board designated by the State ABC Commission.

(e3) Small Town Mixed Beverage Elections. — A town may hold a mixed beverage election if the town has at least 200 registered voters and is located in a county bordering the Neuse River and Pamlico Sound that has not approved the sale of mixed beverages and that county has only one city that has approved the sale of mixed beverages. Provided, that if a town that qualifies for an election under this subsection approves the sale of mixed beverages, mixed beverages permittees in the town may purchase liquor from the ABC store designated by any local ABC board in any other city that has approved the sale of mixed beverages.

(e4) Multicounty/City ABC Elections. — If a city is located in two or more counties, the following provisions shall apply:

- (1) The city may hold a malt beverage or unfortified wine election if any county in which a portion of the city is located has already held such an election, the vote in the last election of the particular type was against the sale of that type of alcoholic beverage, and the city has a population of 500 or more.
- (2) The city may hold a mixed beverage election if the city has at least 500 registered voters and a county in which a portion of the city is located operates ABC stores.
- (3) If an election is held by a city under this subsection, all of the city voters may vote in the election. If the vote is for approval, alcoholic beverages may be sold on the basis of that approval and under the provisions of this Chapter. If the sale of mixed beverages is approved, the mixed beverage permittees shall purchase their liquor from one or more ABC stores located within the city that have been designated by the local boards for those purchases. The remaining gross receipts shall be distributed in accordance with existing law applicable to those ABC stores, except that after the applicable distributions have been made pursuant to G.S. 18B-805(b), (c), and (d), the local share of the mixed beverages surcharge and the guest room cabinet surcharge

required by G.S. 18B-804(b)(8) and (9) shall be distributed one-half to the general fund of the city where the mixed beverage permittees are located and one-half to the local ABC boards from whose stores liquor is purchased.

(e5) Small Resort Town ABC Elections. — A town may hold a mixed beverage election if it:

- (1) Was incorporated after 1990 and prior to the effective date of this subsection;
- (2) Has at least 100 residents;
- (3) Is located in a county that borders another state and that has two other municipalities which have ABC stores; and
- (4) At the time of the election, has corporate boundaries that border or include land in three counties.

Provided, that if a town that qualifies for an election under this subsection approves the sale of mixed beverages, mixed beverages permittees in the town may purchase liquor from the ABC store designated by any local ABC board in any other city that has approved the sale of mixed beverages.

(f) Township Elections. — In a county where ABC stores have heretofore been established by petition pursuant to law, an election may be called in any township on any of the propositions listed in G.S. 18B-602. The election shall be held by the county board of elections upon request of the county board of commissioners or upon petition of twenty-five percent (25%) of the registered voters of the township. The election shall be conducted and the results determined in the same manner as county elections held under this Article. For purposes of this Article, townships holding any election under this subsection shall be treated on the same basis as counties, and municipalities located within those townships shall be treated on the same basis as cities.

In order for an establishment to qualify for a permit under this subsection, the establishment's gross receipts from food and nonalcoholic beverages shall be greater than its gross receipts from alcoholic beverages.

(g) Beautification District Elections. — In a county where ABC stores have been approved by an election and a beautification district has been created after May, 1984, and prior to June 30, 1990, an election authorized by subsection (a) of this section may be called in the beautification district. The election shall be called in accordance with G.S. 18B-601(b), conducted, and the results determined in the same manner as county elections held under this Article. For purposes of this Article, beautification districts holding any election shall be treated on the same basis as counties, and municipalities located within those beautification districts shall be treated on the same basis as cities. (1937, c. 49, ss. 25, 26; c. 431; 1947, c. 1084, ss. 1, 2, 4; 1951, c. 999, ss. 1, 2; 1957, c. 816; 1963, c. 265, ss. 1-3; 1965, c. 506; 1969, c. 647, s. 1; 1971, c. 872, s. 1; 1973, cc. 32, 33; 1977, c. 149, s. 1; c. 182, s. 2; 1977, 2nd Sess., c. 1138, s. 15; 1979, c. 140, ss. 2, 3; c. 609, s. 1; c. 683, s. 13; 1979, 2nd Sess., c. 1174; 1981, c. 412, s. 2; c. 747, s. 49; 1983, c. 113, s. 1; 1983, c. 457, s. 2; 1985 (Reg. Sess., 1986), c. 919, s. 1; 1987, c. 766; 1989, c. 77; c. 400, s. 6; 1991 (Reg. Sess., 1992), c. 976, s. 1; 1993, c. 193, s. 1; 1995, c. 148, s. 1.)

Local Modification. — (As to Article 6) Avery and Watauga: 1985, c. 390; (as to Article 6) town of Beech Mountain: 1983, c. 285; 1985, c. 390; town of Seven

Devils: 1985, c. 671, s. 1; town of Seven Springs: 1981 (Reg. Sess., 1982), c. 1142.

Editor's Note. — Session Laws 1995, c. 243, provides: "Wherever the term

'supervisor' appears in the General Statutes of North Carolina or in any local act in reference to the county supervisor of elections as provided in G.S. 163-35, the term is changed to read 'director'."

Session Laws 1981, c. 412, which repealed Chapter 18A and enacted this Chapter in lieu thereof, provided in s. 9, that all local, public-local, and private acts in conflict with this Article would be

repealed except as provided in § 18B-604(b) and (c) and in § 18B-605.

Effect of Amendments. — The 1995 amendment, effective June 1, 1995, added subsection (e5).

Legal Periodicals. — For article, "A History of Liquor-by-the-Drink Legislation in North Carolina," see 1 Campbell L. Rev. 61 (1979).

CASE NOTES

Provisions under Former Chapter 18 Construed. — See *State v. Cochran*, 230 N.C. 523, 53 S.E.2d 663 (1949); *Weaver v. Morgan*, 232 N.C. 642, 61 S.E.2d 916 (1950); *Ferguson v. Riddle*,

233 N.C. 54, 62 S.E.2d 525 (1950); *Tucker v. State Bd. of Alcoholic Control*, 240 N.C. 177, 81 S.E.2d 399 (1954); *Green v. Briggs*, 243 N.C. 745, 92 S.E.2d 149 (1956).

§ 18B-601. Election procedure.

(a) Generally. — Except as otherwise provided in this section, an alcoholic beverage election shall be conducted in the same manner and under the same rules as a referendum under Chapter 163.

(b) How County Election Called. — A county alcoholic beverage election shall be conducted by the county board of elections. When a county is eligible to hold an election under G.S. 18B-600, the county board of elections shall hold the election upon receiving either:

- (1) A written request for an election from the governing body of the county; or
- (2) A petition requesting an election signed by at least thirty-five percent (35%) of the voters registered in the county at the time the petition was initiated.

(c) How City Election Called. — A city alcoholic beverage election shall be conducted by the county board of elections or, in the case of a city authorized under Chapter 163 to conduct its own elections, by the city board of elections. When a city is eligible to hold an election under G.S. 18B-600, the board of elections shall hold the election upon receiving either:

- (1) A written request for an election from the city governing body; or
- (2) A petition requesting an election signed by at least thirty-five percent (35%) of the voters registered in the city at the time the petition was initiated.

(d) Form of Request. — A request or petition for a malt beverage election shall state which of the four propositions in G.S. 18B-602(a) are to be voted upon. A request or petition for an unfortified wine election shall state which of the three propositions in G.S. 18B-602(d) are to be voted upon. More than one kind of alcoholic beverage election may be included in a single request or petition.

(e) Petitions. — A petition for an election shall be on a form provided by the appropriate local board of elections and shall contain the signature, name, address and precinct of each voter who signs. A petition shall be considered initiated at the time the form is delivered by the board of elections to the person who requests it. Within 72 hours after the petition is initiated, the board of elections shall certify the number of registered voters in the city or county at

the time it was initiated. The petition shall be returned to the board of elections within 90 days of the time it is initiated. Failure to return the petition within that time shall render it void. The board of elections shall determine the sufficiency of the petition within 30 days after it is returned.

(f) Election Date. — The board of elections shall set the date for the alcoholic beverage election, which may not be sooner than 60 days nor later than 120 days from the date the request was received from the governing body or the petition was verified by the board. No alcoholic beverage election may be held on the Tuesday next after the first Monday in November of an even-numbered year.

(g) Registration. — No separate registration shall be required to vote in an alcoholic beverage election. Registration shall be closed for an alcoholic beverage election in the same manner and under the same schedule as for any other election.

(h) Notice. — The board of elections shall give notice of an alcoholic beverage election and notice of the close of registration in the same manner and under the same schedule as for any other election.

(i) Observers. — The proponents and-opponents for an alcoholic beverage election, as determined by the local board of elections, shall have the right to appoint two observers to attend each voting place. The persons authorized to appoint observers shall, three days before the election, submit in writing to the chief judge of each precinct a signed list of the observers appointed for that precinct. The persons appointed as observers shall be registered voters of the precinct for which appointed. The chief judge and judges for the precinct may for good cause reject any appointee and require that another be appointed. Observers shall do no electioneering at the voting place nor in any manner impede the voting process, interfere or communicate with or observe any voter in casting his ballot. Observers shall be permitted in the voting place to make such observation and to take such notes as they may desire. (1937, c. 49, ss. 25, 26; c. 431; 1947, c. 1084, ss. 1, 2, 4; 1951, c. 999, ss. 1, 2; 1957, c. 816; 1963, c. 265, ss. 1-3; 1965, c. 506; 1969, c. 647, s. 1; 1971, c. 872, s. 1; 1973, cc. 32, 33; 1977, c. 149, s. 1; c. 182, s. 2; 1977, 2nd Sess., c. 1138, s. 15; 1979, c. 140, ss. 2, 3; c. 609, s. 1; c. 683, s. 13; 1979, 2nd Sess., c. 1174; 1981, c. 412, s. 2; 1985, c. 705, ss. 1, 2.1; 1987, c. 14; 1993 (Reg. Sess., 1994), c. 762, s. 8.)

Local Modification. — Town of Chadbourn: 1989 (Reg. Sess., 1990), c. 896, s. 5.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for

the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "observers" for "watchers" throughout subsection (i), and substituted "chief judge" for "registrar" in the second and fourth sentences of that subsection.

§ 18B-602. Form of ballots.

(a) Malt Beverage Elections. — Any one or more of the propositions listed below may be placed on the ballot for a malt beverage election. Each voter may vote on each proposition on the ballot. The

propositions to be used shall be chosen by the governing body or petitioner requesting the election. The propositions shall read as follows:

- (1) To permit the "on-premises" and "off-premises" sale of malt beverages.
 - FOR
 - AGAINST
- (2) To permit the "on-premises" sale only of malt beverages.
 - FOR
 - AGAINST
- (3) To permit the "off-premises" sale only of malt beverages.
 - FOR
 - AGAINST
- (4) To permit the "on-premises" sale of malt beverages by Class A hotels, motels, and restaurants only; and to permit "off-premises" sales by other permittees.
 - FOR
 - AGAINST

(b) Determining Results of Malt Beverage Election. — The kind of malt beverage sales described in each proposition that receives a majority of votes "FOR" shall be allowed. If propositions (2) and (4) are both on the ballot and (2) receives a majority of votes "FOR," then sales shall be permitted according to that proposition regardless of the vote on (4). If one of the propositions receiving a majority of votes "FOR" is proposition (1), then the kind of sales described in that proposition shall be allowed regardless of the vote on any other proposition at that election.

(c) Subsequent Malt Beverage Elections. — A subsequent election in which a majority votes "AGAINST" malt beverage proposition (1) shall not affect the legality of sales that have previously been approved under proposition (2), (3), or (4). A subsequent election in which a majority votes "AGAINST" malt beverage proposition (2) or (3) shall not affect the legality of sales that have previously been approved under proposition (4).

(d) Unfortified Wine Elections. — Any one or more of the propositions listed below may be placed on the ballot for an unfortified wine election. Each voter may vote on each proposition on the ballot. The propositions to be used shall be chosen by the governing body or petitioner requesting the election. The propositions shall read as follows:

- (1) To permit the "on-premises" and "off-premises" sale of unfortified wine.
 - FOR
 - AGAINST
- (2) To permit the "on-premises" sale only of unfortified wine.
 - FOR
 - AGAINST
- (3) To permit the "off-premises" sale only of unfortified wine.
 - FOR
 - AGAINST

(e) Determining Results of Unfortified Wine Election. — The kind of unfortified wine sales described in each proposition that receives a majority of votes "FOR" shall be allowed. If one of the propositions receiving a majority of votes "FOR" is proposition (1), then the kind of sales described in that proposition shall be allowed, regardless of the vote on any other proposition at that election.

(f) Subsequent Unfortified Wine Election. — A subsequent election in which a majority votes "AGAINST" unfortified wine proposition (1) shall not affect the legality of sales previously approved under proposition (2) or (3).

(g) ABC Store Elections. — The ballot for an ABC store election shall state the proposition as follows:

To permit the operation of ABC stores.

- FOR
- AGAINST

(h) Mixed Beverage Elections. — The ballot for a mixed beverage election shall state the proposition as follows:

To permit the sale of mixed beverages in hotels, restaurants, private clubs, community theatres, and convention centers.

- FOR
- AGAINST

(1947, c. 1084, ss. 1, 2, 4; 1951, c. 999, ss. 1, 2; 1957, c. 816; 1963, c. 265, ss. 1-3; 1965, c. 506; 1969, c. 647, s. 1; 1971, c. 872, s. 1; 1973, c. 33; 1977, c. 149, s. 1; c. 182, s. 2; 1979, c. 140, s. 3; c. 683, s. 13; 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, s. 9; 1983, c. 583, s. 6.)

§ 18B-603. Effect of alcoholic beverage elections on issuance of permits.

(a) Malt Beverage Elections. — If a malt beverage election is held under G.S. 18B-602(a) and the sale of malt beverages is approved, the Commission may issue permits to qualified persons and establishments in the jurisdiction that held the election as follows:

- (1) If on-premises sales are approved, the Commission may issue on-premises malt beverage permits.
- (2) If off-premises sales are approved, the Commission may issue off-premises malt beverage permits.
- (3) If both on-premises and off-premises sales are approved, the Commission may issue both on-premises and off-premises malt beverage permits.
- (4) If the kinds of sales described in G.S. 18B-602(a)(4) are approved, the Commission may issue on-premises malt beverage permits to restaurants and hotels only and off-premises malt beverage permits to other permittees.

(b) Unfortified Wine Elections. — If an unfortified wine election is held under G.S. 18B-602(d) and the sale of unfortified wine is approved, the Commission may issue permits to qualified persons and establishments in the jurisdiction that held the election as follows:

- (1) If on-premises sales are approved, the Commission may issue on-premises unfortified wine permits.
- (2) If off-premises sales are approved, the Commission may issue off-premises unfortified wine permits.
- (3) If both on-premises and off-premises sales are approved, the Commission may issue both on-premises and off-premises unfortified wine permits.

(c) ABC Store Elections. — If an ABC store election is held under G.S. 18B-602(g) and the establishment of ABC stores is approved, each of the following shall be authorized in the jurisdiction that held the election:

- (1) The jurisdiction that held the election may establish and operate ABC stores in the manner described in Articles 7 and 8.

- (2) The Commission may issue on-premises and off-premises fortified wine and unfortified wine permits to qualified persons and establishments in that jurisdiction, regardless of any unfortified wine election or any local act, except that neither on-premises nor off-premises unfortified wine permits may be issued in a jurisdiction if:
 - a. The jurisdiction approved ABC stores before January 1, 1982;
 - b. The jurisdiction held an unfortified wine election before January 1, 1982; and
 - c. In that unfortified wine election, the jurisdiction did not approve either on-premises or off-premises sales of unfortified wine.
- (3) The Commission may issue brown-bagging permits to restaurants, hotels, and community theatres in the county in which the election was held, whether the election was held by the county or by a city or other jurisdiction within the county. Brown-bagging permits may not be issued, however, for restaurants, hotels, or community theatres in any jurisdiction in which the sale of mixed beverages has been approved.
 - (d) Mixed Beverage Elections. — If a mixed beverage election is held under G.S. 18B-602(h) and the sale of mixed beverages is approved, the Commission may issue permits to qualified persons and establishments in the jurisdiction that held the election as follows:
 - (1) The Commission may issue mixed beverage permits.
 - (2) The Commission may issue on-premises malt beverage, unfortified wine, and fortified wine permits for establishments with mixed beverage permits, regardless of any other election or any local act concerning sales of those kinds of alcoholic beverages.
 - (3) The Commission may issue off-premises malt beverage permits to any establishment that meets the requirements under G.S. 18B-1001(2) in any township which has voted to permit the sale of mixed beverages, regardless of any other local act concerning sales of those kinds of alcoholic beverages. The Commission may also issue off-premises unfortified wine permits to any establishment that meets the requirements under G.S. 18B-1001(4) in any township which has voted to permit the sale of mixed beverages, regardless of any other local act concerning sales of those kinds of alcoholic beverages.
 - (4) The Commission may issue brown-bagging permits for private clubs and congressionally chartered veterans organizations but may no longer issue and may not renew brown-bagging permits for restaurants, hotels, and community theatres. A restaurant, hotel, or community theatre may not be issued a mixed beverage permit under subdivision (1) until it surrenders its brown-bagging permit.
 - (5) The Commission may continue to issue culinary permits for establishments that do not have mixed beverage permits. An establishment may not be issued a mixed beverage permit under subdivision (1) until it surrenders its culinary permit.

In any county in which the sale of mixed beverages has been approved in elections in at least three cities that, combined, contain

more than two-thirds the total county population as of the most recent federal census, the county board of commissioners may by resolution approve the sale of mixed beverages throughout the county, and the Commission may issue permits as if mixed beverages had been approved in a county election.

If a county or city holds a mixed beverage election and an ABC store election at the same time and the voters do not approve the establishment of an ABC store, the Commission may not issue mixed beverages permits in that county or city.

(e) **Mixed Beverages at Airports.** — When the sale of mixed beverages has been approved in a city election, the Commission may also issue permits under subsection (d) for qualified establishments outside the city but within the same county, if:

- (1) The establishment is on the property of an airport;
- (2) The airport is operated by the city or by an airport authority in which the city participates; and
- (3) The airport services planes which board at least 150,000 passengers annually.

(f) **Permits Not Dependent on Elections.** — The Commission may issue the following kinds of permits without approval at an election:

- (1) Special occasion permits;
- (2) Limited special occasion permits;
- (3) Brown-bagging permits for private clubs and congressionally chartered veterans organizations;
- (4) Culinary permits, except as restricted by subdivision (d)(5);
- (5) Special one-time permits issued under G.S. 18B-1002;
- (6) All permits listed in G.S. 18B-1100;
- (7) On-premises malt beverage permits and on-premises unfortified wine permits for a tourism ABC establishment.

(f1) Reserved for future codification purposes.

(f2) **Permits for Special ABC Areas.** — The Commission may issue the permits provided for in G.S. 18B-1001(1), G.S. 18B-1001(2), G.S. 18B-1001(3), G.S. 18B-1001(4), G.S. 18B-1001(5), G.S. 18B-1001(6), and G.S. 18B-1001(10) to qualified persons and establishments located within a Special ABC area as defined in G.S. 18B-101, provided that: (i) if such area is a municipal corporation, the area shall conduct an election authorized by subdivision (a)(4) of G.S. 18B-600, which election may be held regardless of the number of registered voters located within the municipal corporation; or (ii) if such area is unincorporated but has within such area a private association or club, the board of such private association or club shall call and conduct a special meeting at which meeting a majority of private association members, club members, lot and home owners, votes and approves the sale of mixed beverages, and the board certifies the results of such meeting to the Alcoholic Beverage Control Commission. The mixed beverages purchase-transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the same county as the Special ABC area.

(g) **Miscellaneous.** — The definitions in G.S. 18B-1000 shall apply to this section.

(h) **Permits Based on Existing Permits.** — In any county in which the sale of malt beverage on and off premises, the sale of unfortified wine on and off premises, the sale of mixed beverages, and the operation of an ABC system has been allowed in at least six cities in the county, or in any county adjacent to that county in which an ABC

system has been allowed and which borders on the Atlantic Ocean, the Commission may issue permits to sports clubs as defined in G.S. 18B-1000(8) throughout the county. The Commission may issue the following permits:

- (1) On and Off Premises Malt Beverage;
- (2) On and Off Premises Unfortified Wine;
- (3) On and Off Premises Fortified Wine; or
- (4) Mixed Beverages.

The Commission may also issue on-premises malt beverage, unfortified wine, fortified wine and mixed beverages permits to a sports club located in a county adjacent to any county that has approved the sale of mixed beverages pursuant to the last paragraph of G.S. 18B-603(d), if the county in which the sports club is located borders another state and has at least one city that has approved the sale of mixed beverages. Sports clubs holding mixed beverages permits shall purchase their spirituous liquor at the nearest ABC system store that is located in the county.

The Commission may further issue on-premises malt beverage and on-premises unfortified wine permits to a sports club located in a county bordering on another state that is adjacent to any county in which permits were issued pursuant to this subsection prior to August 1, 1993. The sports clubs must be located in the unincorporated areas of a county, in which the sale of malt beverages and unfortified wine is not permitted, and where there are six or more municipalities in that county where the sale of malt beverages and unfortified wine is permitted. (1947, c. 1084, s. 3; 1969, c. 647, s. 2; 1971, c. 872, s. 1; 1981, c. 412, s. 2; c. 589; 1981 (Reg. Sess., 1982), c. 1240; 1983, c. 113, s. 2; 1985, c. 689, s. 7; 1987, c. 136, ss. 5, 6; c. 307, s. 2; c. 443, s. 2; 1989, c. 629, s. 2; 1991 (Reg. Sess., 1992), c. 920, ss. 11, 13; 1993, c. 415, ss. 7-9; 1995, c. 466, s. 5.)

Local Modification. — Village of Bald Head Island: 1985, c. 156.

Editor's Note. — Session Laws 1987, c. 443, which added subsection (f2), provides in s. 3 that the act shall not include Robeson, Cleveland, Rutherford and Polk Counties.

Session Laws 1989, c. 629, which amended subsection (f2), provided in s. 3: "This act shall not affect or impair the rights of permit holders located within unincorporated areas who have heretofore qualified for permits allowing the

sale of mixed beverages."

Session Laws 1989, c. 629, which amended subsection (f2) provided in s. 4: "This act shall not include Columbus, Caswell, Person, Granville, Vance, Warren, Halifax, Robeson, Cleveland, Rutherford, Macon, Polk, Davidson, and Davie Counties."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, added the last paragraph of subsection (d).

§ 18B-604. Timing and effect of subsequent elections.

(a) **Time Limits.** — No county alcoholic beverage election may be held within three years of the certification of the results of a previous election on the same kind of alcoholic beverages in that county. No city alcoholic beverage election may be held within three years of the certification of the results of a previous election on the same kind of alcoholic beverage in that city. Otherwise, alcoholic beverage elections may be held at any time, subject to the applicable provisions of this Chapter and Chapter 163.

(b) **Effect of Favorable County Vote on City.** — If a majority of voters vote in favor of certain alcoholic beverage sales in a county election, sale of that kind of alcoholic beverage shall be lawful throughout the county, regardless of the vote in any city at that or any previous or subsequent election, and regardless of any local act making sales unlawful in that city, unless the local act was ratified before the effective date of Article II, Section 24(1)(j) of the Constitution of North Carolina. A county malt beverage or unfortified [wine] election in favor of a particular ballot proposition which is more restrictive than the form of sale already allowed in a city within that county shall not affect the legality of those previously authorized sales in the city.

(c) **Effect of Negative County Vote on City.** — If a majority of voters vote against certain alcoholic beverage sales in a county election, sale of that kind of alcoholic beverage shall be unlawful throughout the county, except that sale of that alcoholic beverage shall remain lawful in any city in which sale is lawful because of a city election or a local act.

(d) **Effect of City Election on County.** — A city alcoholic beverage election shall not affect the lawfulness of sale in any part of the county outside that city.

(e) **ABC Store Required for Mixed Beverages.** — The sale of mixed beverages may not continue in a city or county at any time after the ABC stores which are requisite to mixed beverage sales have closed.

(f) **When Sales Stop.** — When the sale of any alcoholic beverage that was previously lawful becomes unlawful because of an election, the sale of that alcoholic beverage shall cease 90 days after certification of the results of the election. (1937, c. 49, ss. 25, 26; c. 431; 1947, c. 1084, ss. 1, 2, 4; 1951, c. 999, ss. 1, 2; 1957, c. 816; 1963, c. 265, ss. 1-3; 1965, c. 506; 1969, c. 647, s. 1; 1971, c. 872, s. 1; 1973, cc. 32, 33; 1977, c. 149, s. 1; c. 182, s. 2; 1977, 2nd Sess., c. 1138, s. 15; 1979, c. 140, ss. 2, 3; c. 609, s. 1; c. 683, s. 13; 1979, 2nd Sess., c. 1174; 1981, c. 412, s. 2; 1993, c. 415, s. 29.)

Editor's Note. — Session Laws 1981, c. 412, which repealed former Chapter 18A and enacted this Chapter in lieu thereof, provided in s. 9 that all local, public-local, and private acts in conflict

with Article 6 of Chapter 18B would be repealed except as provided in subsections (b) and (c) of this section and in § 18B-605.

§ 18B-605. Local act elections.

If a jurisdiction has lawfully voted in favor of ABC stores or in favor of the sale of some kind of alcoholic beverage, and the jurisdiction would not be eligible to hold another election under the conditions set by G.S. 18B-600, then that jurisdiction may continue to hold elections as though qualified under G.S. 18B-600. Except for the authority to hold the election, however, the procedures of this Chapter shall apply to any subsequent election. (1981, c. 412, s. 2; 1983, c. 457, s. 4.)

Editor's Note. — Session Laws 1981, c. 412, which repealed former Chapter 18A and enacted this Chapter in lieu thereof, provided in s. 9, that all local,

public-local, and private acts in conflict with Article 6 of Chapter 18B would be repealed except as provided in § 18B-604(b) and (c) and in this section.

Chapter 69.
Fire Protection.

Article 3A.

Rural Fire Protection Districts.

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| <p>Sec.
69-25.1. Election to be held upon petition of voters.</p> <p>69-25.2. Duties of county board of commissioners regarding conduct of elections; cost of holding.</p> <p>69-25.3. Ballots.</p> <p>69-25.4. Tax to be levied and used for furnishing fire protection.</p> <p>69-25.5. Methods of providing fire protection.</p> <p>69-25.6. Municipal corporations empowered to make contracts.</p> <p>69-25.7. Administration of special fund; fire protection district commission.</p> <p>69-25.8. Authority, rights, privileges and immunities of counties, etc., performing services under Article.</p> <p>69-25.9. Procedure when area lies in more than one county.</p> | <p>Sec.
69-25.10. Means of abolishing tax district.</p> <p>69-25.11. Changes in area of district.</p> <p>69-25.12. Privileges and taxes where territory added to district.</p> <p>69-25.13. Privileges and taxes where territory removed from district.</p> <p>69-25.14. Contract with city or town to which all or part of district annexed concerning property of district and furnishing of fire protection.</p> <p>69-25.15. When district or portion thereof annexed by municipality furnishing fire protection.</p> <p>69-25.16. Exclusion from rural fire protection districts.</p> <p>69-25.17. Validation of fire protection funds appropriated in providing rescue and ambulance services.</p> |
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ARTICLE 3A.

Rural Fire Protection Districts.

§ 69-25.1. Election to be held upon petition of voters.

Upon the petition of thirty-five percent (35%) of the resident freeholders living in an area lying outside the corporate limits of any city or town, which area is described in the petition and designated as "....."

(Here insert name)

Fire District," the board of county commissioners of the county shall call an election in said district for the purpose of submitting to the qualified voters therein the question of levying and collecting a special tax on all taxable property in said district, of not exceeding fifteen cents (15¢) on the one hundred dollars (\$100.00) valuation of property, for the purpose of providing fire protection in said district. If the voters reject the special tax under the first paragraph of this section, then no new election may be held under the first paragraph of this section within two years on the question of levying and collecting a special tax under the first paragraph of this section in that district, or in any proposed district which includes a majority of the land within the district in which the tax was rejected.

Upon the petition of thirty-five percent (35%) of the resident freeholders living in an area which has previously been established as a fire protection district and in which there has been authorized

by a vote of the people a special tax not exceeding ten cents (10¢) on the one hundred dollars (\$100.00) valuation of property within the area, the board of county commissioners shall call an election in said area for the purpose of submitting to the qualified voters therein the question of increasing the allowable special tax for fire protection within said district from ten cents (10¢) on the one hundred dollars (\$100.00) valuation to fifteen cents (15¢) on the one hundred dollars (\$100.00) valuation on all taxable property within such district. Elections on the question of increasing the allowable tax rate for fire protection shall not be held within the same district at intervals less than two years. (1951, c. 820, s. 1; 1953, c. 453, s. 1; 1959, c. 805, ss. 1, 2; 1983, c. 388, ss. 1, 1.1.)

Local Modification. — (As to Article 3A) Alexander: 1993, c. 237, s. 1; Caldwell, Chatham: 1985, c. 502; 1985 (Reg. Sess., 1986), c. 940; 1987, c. 235; Cleveland: 1987 (Reg. Sess., 1988), c. 960; Guilford: 1973, c. 263; Harnett: 1989 (Reg. Sess., 1990), c. 932; Lee: 1985, c. 502; 1985 (Reg. Sess., 1986), c. 940; 1987, c. 235; Randolph: 1989 (Reg. Sess., 1990), c. 993; Robeson: 1987, c. 560; Scotland: 1969, c. 855 (garnishment and attachment and lien for collection of delinquent fire protection service charges); Wake: 1955, c. 169, ss. 1-3; 1987 (Reg. Sess., 1988), c. 959; Wayne: 1985, c. 502; 1985 (Reg. Sess., 1986), c. 940; 1987, c. 235; town of Richfield: 1989 (Reg. Sess., 1990), c. 943, s. 1; Ellenboro Fire Protection District in Rutherford County: 1985, c. 254, ss. 1, 3.2.

Editor's Note. — Session Laws 1951, c. 820, which enacted this section, in s. 9, repealed all laws and clauses of laws, except public-local and private laws, in conflict with its provisions.

Session Laws 1983, c. 388, which substituted "thirty-five percent (35%)" for "fifteen percent (15%)" in the first and second paragraphs and added the last sentence of the first paragraph, provided, in s. 2, that the act is effective with respect to all petitions submitted under this section on and after 30 days after ratification of the act, but provides that the act shall not affect any petitions submitted before that date. The act was ratified by May 26, 1983.

CASE NOTES

Cited in *Tilghman v. West of New Bern Volunteer Fire Dep't*, 32 N.C. App. 767, 233 S.E.2d 598 (1977).

OPINIONS OF ATTORNEY GENERAL

When Election Required. — Board of county commissioners is not required to call election for levy of fire district tax where amount of tax is less than 15 cents on the one hundred dollars valuation of

property. See opinion of Attorney General to Mr. Harley B. Gaston, Jr., Gaston County Attorney, 40 N.C.A.G. 639 (1969).

§ 69-25.2. Duties of county board of commissioners regarding conduct of elections; cost of holding.

The board of county commissioners, after consulting with the county board of elections, shall set a date for the election by resolution adopted. The county board of elections shall hold and conduct the election in the district. The county board of elections shall advertise and conduct said election, in accordance with the provisions of this Article and with the procedures prescribed in

Chapter 163 governing the conduct of special and general elections. No new registration of voters shall be required, but the deadline by which unregistered voters must register shall be contained in the legal advertisement to be published by the county board of elections. The cost of holding the election to establish a district shall be paid by the county, provided that if the district is established, then the county shall be reimbursed the cost of the election from the taxes levied within the district, but the cost of an election to increase the allowable tax under G.S. 69-25.1 or to abolish a fire district under G.S. 69-25.10 shall be paid from the funds of the district. (1951, c. 820, s. 2; 1975, c. 706; 1981, c. 786, s. 2.)

§ 69-25.3. Ballots.

At said election those voters who are in favor of levying a tax in said district for fire protection therein shall vote a ballot on which shall be written or printed, "In favor of tax for fire protection in

(Here insert name)

Fire Protection District." Those who are against levying said tax shall vote a ballot on which shall be written or printed the words, "Against tax for fire protection in

(Here insert name)

Protection District."

Whenever an election is called pursuant to this Article on the question of increasing the tax limit for fire protection in any area, those voters in favor of such increase therein shall vote a ballot on which shall be printed, "In favor of tax increase for fire protection in Fire Protection District." Those who are against increasing the tax limit for fire protection therein shall vote a ballot on which shall be printed, "Against tax increase for fire protection in Fire Protection District." The failure of the election on the question of an increase in the tax for fire protection shall not be deemed to be the abolishment of the special tax for fire protection already in effect in said district. (1951, c. 820, s. 3; 1959, c. 805, s. 3.)

§ 69-25.4. Tax to be levied and used for furnishing fire protection.

If a majority of the qualified voters voting at said election vote in favor of levying and collecting a tax in said district, then the board of county commissioners is authorized and directed to levy and collect a tax in said district in such amount as it may deem necessary, not exceeding ten cents (10¢) on the one hundred dollars (\$100.00) valuation of property in said district from year to year, and shall keep the same as a separate and special fund, to be used only for furnishing fire protection within said district, as provided in G.S. 69-25.5.

Provided, that if a majority of the qualified voters voting at such elections vote in favor of levying and collecting a tax in such district, or vote in favor of increasing the tax limit in said district, then the board of county commissioners is authorized and directed to levy and collect a tax in such districts in such amount as it may deem necessary, not exceeding fifteen cents (15¢) on the one hundred dollars (\$100.00) valuation of property in said district from year to year.

For purposes of this Article, the term "fire protection" and the levy of a tax for that purpose may include the levy, appropriation, and expenditure of funds for furnishing emergency medical, rescue and ambulance services to protect persons within the district from injury or death; and the levy, appropriation, and expenditure of the tax to provide such services are proper, authorized and lawful. In providing these services the fire district shall be subject to G.S. 153A-250. (1951, c. 820, s. 4; 1959, c. 805, s. 4; 1981, c. 217.)

Local Modification. — Wake: 1955, c. 169, ss. 4-5.

§ 69-25.5. Methods of providing fire protection.

Upon the levy of such tax, the board of county commissioners shall, to the extent of the taxes collected hereunder, provide fire protection for the district —

- (1) By contracting with any incorporated city or town, with any incorporated nonprofit volunteer or community fire department, or with the Department of Environment, Health, and Natural Resources to furnish fire protection, or
- (2) By furnishing fire protection itself if the county maintains an organized fire department, or
- (3) By establishing a fire department within the district, or
- (4) By utilizing any two or more of the above listed methods of furnishing fire protection. (1951, c. 820, s. 5; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 218(11).)

Local Modification. — Bladen: 1977, c. 800.

CASE NOTES

Contracting with Incorporated Nonprofit Volunteer Fire Department. — This section specifically allows county commissioners to contract with an incorporated nonprofit volunteer fire department to provide fire protection. *Knotville Volunteer Fire Dept., Inc. v. Wilkes County*, 85 N.C. App. 598, 355 S.E.2d 139, cert. denied and appeal dismissed, 320 N.C. 632, 360 S.E.2d 88, 89 (1987).

Liability of Nonprofit Fire Company in a Nonfire Related Rescue Attempt. — A nonprofit fire company

employed by the county was liable for plaintiff's injuries in a nonfire related rescue attempt only to the extent of their insurance coverage, since they had governmental immunity up to their insurance coverages and were engaged in duties other than the suppression of a reported fire. *Geiger v. Guilford College Community Volunteer Firemen's Ass'n*, 668 F. Supp. 492 (M.D.N.C. 1987).

Cited in *Tilghman v. West of New Bern Volunteer Fire Dept.*, 32 N.C. App. 767, 233 S.E.2d 598 (1977).

OPINIONS OF ATTORNEY GENERAL

Rural Fire District May Contract with Town Fire Department. — Rural fire department outside corporate limits of a town, once a fire district has been created, may contract with town fire de-

partment for fire protection. See opinion of Attorney General to Mr. James R. Sugg, Craven County Attorney, 40 N.C.A.G. 639 (1969).

§ 69-25.6. Municipal corporations empowered to make contracts.

Municipal corporations are hereby empowered to make contracts to carry out the purposes of this Article. (1951, c. 820, s. 6.)

§ 69-25.7. Administration of special fund; fire protection district commission.

The special fund provided by the tax herein authorized shall be administered to provide fire protection as provided in G.S. 69-25.5 by the board of county commissioners or the joint boards of county commissioners, if the area lies in more than one county, or by a fire protection district commission of three qualified voters of the area, to be known as

(Here insert name)

Fire Protection District Commission, said board to be appointed by the board of county commissioners or the joint boards of county commissioners, if the area lies in more than one county, for a term of two years, said commission to serve at the discretion of and under the supervision of the board of county commissioners or boards of county commissioners if the area lies in more than one county. (1951, c. 820, s. 7; 1953, c. 453, s. 2.)

Local Modification. — Ellenboro
Fire Protection District in Rutherford
County: 1985, c. 254, s. 2.

§ 69-25.8. Authority, rights, privileges and immunities of counties, etc., performing services under Article.

Any county, municipal corporation or fire protection district performing any of the services authorized by this Article shall be subject to the same authority and immunities as a county would enjoy in the operation of a county fire department within the county, or a municipal corporation would enjoy in the operation of a fire department within its corporate limits.

No liability shall be incurred by any municipal corporation on account of the absence from the city or town of any or all of its fire-fighting equipment or of members of its fire department by reason of performing services authorized by this Article.

Members of any county, municipal or fire protection district fire department shall have all of the immunities, privileges and rights, including coverage by workers' compensation insurance, when performing any of the functions authorized by this Article, as members of a county fire department would have in performing their duties in and for a county, or as members of a municipal fire department would have in performing their duties for and within the corporate limits of the municipal corporation. (1951, c. 820, s. 8; 1979, c. 714, s. 2.)

Cross References. — As to firemen
as traffic officers, see § 20-114.1.

CASE NOTES

Immunity of Fire Departments. — This section ensures that all fire departments engaged in activities authorized by this chapter receive equivalent statutory and sovereign immunity. *Geiger v. Guilford College Community Volunteer Firemen's Ass'n*, 668 F. Supp. 492 (M.D.N.C. 1987).

Liability of Nonprofit Fire Company in a Nonfire Related Rescue Attempt. — A nonprofit fire company

employed by the county was liable for plaintiff's injuries in a nonfire related rescue attempt only to the extent of their insurance coverage, since they had governmental immunity up to their insurance coverages and were engaged in duties other than the suppression of a reported fire. *Geiger v. Guilford College Community Volunteer Firemen's Ass'n*, 668 F. Supp. 492 (M.D.N.C. 1987).

§ 69-25.9. Procedure when area lies in more than one county.

In the event that an area petitioning for a tax election under this Article lies in more than one county said petition shall be submitted to the board of county commissioners of all the counties in which said area lies and election shall be called which shall be conducted jointly by the county board of elections and the cost of same shall be shared equally by all counties.

Upon passage, the tax herein provided shall be levied and collected by each county on all of the taxable property in its portion of the fire protection district; the tax collected shall be paid into a special fund and used for the purpose of providing fire protection for the district. (1953, c. 453, s. 3; 1985, c. 563, s. 5.)

Local Modification. — Davidson and Forsyth: 1979, c. 290.

§ 69-25.10. Means of abolishing tax district.

Upon a petition of fifteen percent (15%) of the resident freeholders of any special fire protection district or area, at intervals of not less than two years, the board of county commissioners or the joint boards of county commissioners, if the area lies in more than one county, shall call an election to abolish the special tax for fire protection for the area, the election to be called and conducted as provided in G.S. 69-25.2; if a majority of the registered voters vote to abolish said tax, the commissioners shall cease levy and collecting same and any unused funds of the district shall be turned over to and used by the county commissioners of the county collecting same as a part of its general fund, and any property or properties of the district or the proceeds thereof shall be distributed, used or disposed of equitably by the board of county commissioners or the boards of county commissioners. (1953, c. 453, s. 4.)

Local Modification. — Wake: 1955, District in Rutherford County: 1985, c. 169, s. 6; Ellenboro Fire Protection 254, s. 3.1.

§ 69-25.11. Changes in area of district.

After a fire protection district has been established under the provisions of this Article and fire protection commissioners have been appointed, changes in the area may be made as follows:

- (1) The area of any fire protection district may be increased by including within the boundaries of the district any adjoining territory upon the application of the owner, or a two-thirds majority of the owners, of the territory to be included, the unanimous recommendation in writing of the fire protection commissioners of said district, the approval of a majority of the members of the board of directors of the corporation furnishing fire protection to the district, and the approval of the board or boards of county commissioners in the county or counties in which said fire protection district is located. However, before said fire protection district change is approved by the county commissioners, notice shall be given once a week for two successive calendar weeks in a newspaper having general circulation in said district, and notice shall be posted at the courthouse door in each county affected, and at three public places in the area to be included, said notices inviting interested citizens to appear at a designated meeting of said county commissioners, said notice to be published the first time and posted not less than fifteen days prior to the date fixed for hearing before the county commissioners.
- (2) The area of any fire protection district may be decreased by removing therefrom any territory, upon the application of the owner or owners of the territory to be removed, the unanimous recommendation in writing of the fire protection commissioners of said district, the approval of a majority of the members of the board of directors of the corporation furnishing fire protection to the district, and the approval of the board or boards of county commissioners of the county or counties in which the district is located.
- (3) In the case of adjoining fire districts having in effect the same rate of tax for fire protection, the board of county commissioners, upon petition of the fire protection commissioners and the boards of directors of the corporations furnishing fire protection in the districts affected, shall have the authority to relocate the boundary lines between such fire districts in accordance with the petition or in such other manner as to the board may seem proper. Upon receipt of such petition, the board of county commissioners shall set a date and time for a public hearing on the petition, and notice of such hearing shall be published in some newspaper having general circulation within the districts to be affected once a week for two weeks preceding the time of the hearing. Such hearings may be adjourned from time to time and no further notice is required of such adjourned hearings. In the event any boundaries of fire districts are altered or relocated under this section, the same shall take effect at the beginning of the next succeeding fiscal year after such action is taken.
- (4) In the case of adjoining fire districts having in effect a different rate of tax for fire protection, the board of county commissioners, upon petition of two thirds of the owners of the territory involved and after receiving a favorable recommendation of the fire protection commissioners and the boards of directors of the corporations furnishing fire protection in the districts affected, may transfer such territory

from one district to another and therefore relocate the boundary lines between such fire districts in accordance with the petition or in such other manner as the board may deem proper. Upon receipt of such petition, the board of county commissioners shall set a date and time for a public hearing on the petition, and notice of such hearing shall be published in some newspaper having general circulation within the districts to be affected once a week for two weeks preceding the time of the hearing. Such hearings may be adjourned from time to time and no further notice is required of such adjourned hearings. In the event any boundaries of fire districts are relocated under this section, the same shall take effect at the beginning of the next succeeding fiscal year after such action is taken.

- (5) The area of any fire protection district may be increased by including within the boundaries of the district any adjoining territory lying within the corporate limits of the city if the territory is not already included within a fire protection district, provided both the city governing body and the county commissioners of the county or counties in which the fire protection district is located all agree by resolution to such inclusion. (1955, c. 1270; 1959, c. 805, s. 5; 1965, cc. 625, 1101; 1987, c. 711, s. 2.)

Local Modification. — Bladen: 1985, (1): 1957, c. 302; 1965, c. 447; Wake: c. 256; Durham, as to subdivision (2): 1985, c. 256. 1967, c. 791; Orange, as to subdivision

CASE NOTES

Exclusive Means of Altering Established Boundaries. — After a district has been created, the only ways to alter the established boundaries are listed in this section. Knotville Volunteer

Fire Dep't, Inc. v. Wilkes County, 85 N.C. App. 598, 355 S.E.2d 139, cert. denied and appeal dismissed, 320 N.C. 632, 360 S.E.2d 88, 89 (1987).

OPINIONS OF ATTORNEY GENERAL

Property completely separated from the existing fire district is not "adjoining territory" within the meaning of the statute. See opinion of Attorney General to Mr. Paul S. Messick, Jr., Chatham County Attorney, 50 N.C.A.G. 74 (1981).

Meaning of "Owner" and "Majority of Owners". — The legislative intent was to include nonresident property

owners, and the word "owner" should be construed to mean "resident and nonresident owners" of the territory to be included. "Majority of the owners" refers to persons and entities owning real estate in the territory. See opinion of Attorney General to Mr. Paul S. Messick, Jr., Chatham County Attorney, 50 N.C.A.G. 74 (1981).

§ 69-25.12. Privileges and taxes where territory added to district.

In case any territory is added to any fire protection district, from and after such addition, the taxpayers and other residents of said added territory shall have the same rights and privileges and the taxpayers shall pay taxes at the same rates as if said territory had

originally been included in the said fire protection district. (1955, c. 1270.)

§ 69-25.13. Privileges and taxes where territory removed from district.

In case any territory is removed from any fire protection district from and after said removal, the taxpayers and other residents of said removed territory shall cease to be entitled to the rights and privileges vested in them by their inclusion in said fire protection district, and the taxpayers shall no longer be required to pay taxes upon their property within said district. (1955, c. 1270.)

§ 69-25.14. Contract with city or town to which all or part of district annexed concerning property of district and furnishing of fire protection.

Whenever all or any part of the area included within the territorial limits of a fire protection district is annexed to or becomes a part of a city or town, the governing body of such district may contract with the governing body of such city or town to give, grant or convey to such city or town, with or without consideration, in such manner and on such terms and conditions as the governing body of such district shall deem to be in the best interests of the inhabitants of the district, all or any part of its property, including, but without limitation, any fire-fighting equipment or facilities, and may provide in such contract for the furnishing of fire protection by the city or town or by the district. (1957, c. 526.)

Local Modification. — Ellenboro
Fire Protection District in Rutherford
County: 1985, c. 254, s. 3.

§ 69-25.15. When district or portion thereof annexed by municipality furnishing fire protection.

(a) When the whole or any portion of a fire protection district has been annexed by a municipality furnishing fire protection to its citizens, then such fire protection district or the portion thereof so annexed shall immediately thereupon cease to be a fire protection district or a portion of a fire protection district; and such district or portion thereof so annexed shall no longer be subject to G.S. 69-25.4 authorizing the board of county commissioners to levy and collect a tax in such district for the purpose of furnishing fire protection therein.

(b) Nothing herein shall be deemed to prevent the board of county commissioners from levying and collecting taxes for fire protection in the remaining portion of a fire protection district not annexed by a municipality, as aforesaid.

(c) When all or part of a fire protection district is annexed, and the effective date of the annexation is a date other than a date in the month of June, the amount of the fire protection district tax levied on property in the district for the fiscal year in which municipal taxes are prorated under G.S. 160A-58.10 shall be multiplied by the

following fraction: the denominator shall be 12 and the numerator shall be the number of full calendar months remaining in the fiscal year following the day on which the annexation becomes effective. For each owner, the product of the multiplication is the prorated fire protection payment. The finance officer of the city shall obtain from the assessor or tax collector of the county where the annexed territory was located a list of the owners of property on which fire protection district taxes were levied in the territory being annexed, and the city shall, no later than 90 days after the effective date of the annexation, pay the amount of the prorated fire protection district payment to the owners of that property. Such payments shall come from any funds not otherwise restricted by law.

(d) Whenever a city is required to make fire protection district tax payments by subsection (c) of this section, and the city has paid or has contracted to pay to a rural fire department funds under G.S. 160A-37.1 or G.S. 160A-49.1, the county shall pay to the city from funds of the rural fire protection district an amount equal to the amount paid by the city (or to be paid by the city) to a rural fire department under G.S. 160A-37.1 or G.S. 160A-49.1 on account of annexation of territory in the rural fire protection district for the number of months in that fiscal year used in calculating the numerator under subsection (c) of this section; provided that the required payments by the county to the city shall not exceed the total of fire protection district payments made to taxpayers in the district on account of that annexation. (1957, c. 1219; 1985, c. 707, ss. 1, 2; 1987, c. 45, s. 1.)

Local Modification. — Town of Harrisburg: 1983 (Reg. Sess., 1984), c. 937; town of Indian Beach: 1985, c. 299, s. 2; town of Richfield: 1989 (Reg. Sess., 1990), c. 943, s. 2; Ellenboro Fire Protection District in Rutherford County: 1985, c. 254, s. 3.

Editor's Note. — Session Laws 1985, c. 707, s. 3 provided:

"This act applies as to annexations with an effective date on or after July 1, 1985, except as to the Cities of Fayetteville, Hope Mills, and Greensboro, it applies as to annexations with an

effective date on or after July 1, 1984; provided, with respect to such annexations occurring prior to July 1, 1985, the payment required under subsection (c) shall be made no later than 90 days after ratification of this act. As to any city named in this section, if the ninetieth day after the effective date of the annexation has passed on the date of ratification of this act, the payment required by G.S. 69-25.15(c) shall be made no later than 90 days after the date of ratification of this act." The act was ratified July 11, 1985.

§ 69-25.16. Exclusion from rural fire protection districts.

There shall be excluded from any rural fire protection district, and the provisions of this Article shall not apply to, an electric generating plant, together with associated land and facilities, which provides electricity to the public; provided that this section shall not apply to any rural fire protection district in existence on May 1, 1971. (1971, c. 297.)

§ 69-25.17. Validation of fire protection funds appropriated in providing rescue and ambulance services.

All prior appropriations and expenditures by any county board of commissioners of funds derived from taxes levied in rural fire protection districts, but used to provide rescue and ambulance services within said districts, are hereby approved, confirmed, validated, and declared to be proper, authorized, and legal. (1977, c. 131, s. 1.)

CASE NOTES

This section and § 58-82-5(c) recognize that fire departments provide rescue and ambulance services. *Geiger v. Guilford College Community Volunteer Firemen's Ass'n*, 668 F. Supp. 492 (M.D.N.C. 1987).

Liability of Nonprofit Fire Company in Nonfire Related Rescue Attempt. — A nonprofit fire company employed by the county was liable for plaintiff's injuries in a nonfire related rescue attempt only to the extent of their insurance coverage, since they had governmental immunity up to their insurance coverages and were engaged in du-

ties other than the suppression of a reported fire. *Geiger v. Guilford College Community Volunteer Firemen's Ass'n*, 668 F. Supp. 492 (M.D.N.C. 1987).

Nonprofit Fire Department Entitled to Same Immunity Afforded Other Fire Departments. — Nonprofit corporation employed by a county as a fire department engaged in statutorily authorized services is entitled to receive the same immunity normally afforded to other fire departments in North Carolina. *Geiger v. Guilford College Community Volunteer Firemen's Ass'n*, 668 F. Supp. 492 (M.D.N.C. 1987).

**Chapter 105.
Taxation.**

**SUBCHAPTER VIII. LOCAL
GOVERNMENT SALES
AND USE TAX.**

Article 40.

**Supplemental Local Government
Sales and Use Taxes.**

Article 39.

**Local Government Sales and Use
Tax.**

Sec.

Sec.

105-465. County election as to adoption of local sales and use tax.

105-466. Levy of tax.

105-480. Short title.

105-481. Purpose and intent.

105-482. Limitations.

105-483. Levy and collection of additional taxes.

105-484. Form of ballot.

**SUBCHAPTER VIII. LOCAL GOVERNMENT SALES
AND USE TAX.**

ARTICLE 39.

Local Government Sales and Use Tax.

§ 105-465. County election as to adoption of local sales and use tax.

The board of elections of any county, upon the written request of the board of county commissioners thereof, or upon receipt of a petition signed by qualified voters of the county equal in number to at least fifteen percent (15%) of the total number of votes cast in the county, at the last preceding election for the office of Governor, shall call a special election for the purpose of submitting to the voters of the county the question of whether a one percent (1%) sales and use tax as hereinafter provided will be levied.

The special election shall be held under the same rules and regulations applicable to the election of members of the General Assembly. No new registration of voters shall be required. All qualified voters in the county who are properly registered not later than 21 days (excluding Saturdays and Sundays) prior to the election shall be entitled to vote at said election. The county board of elections shall give at least 20 days' public notice prior to the closing of the registration books for the special election.

The county board of election shall prepare ballots for the special election which shall contain the words, "FOR the one percent (1%) local sales and use tax only on those items presently covered by the four percent (4%) sales and use tax," and the words, "AGAINST the one percent (1%) local sales and use tax only on those items presently covered by the four percent (4%) sales and use tax," with appropriate squares so that each voter may designate his vote by his cross (X) mark.

The county board of elections shall fix the date of the special election; provided, however, that the special election shall not be held on the date of any biennial election for county officers, nor within 60 days thereof, nor within one year from the date of the last

preceding special election under this section. (1971, c. 77, s. 2; 1981, c. 560, s. 2; 1991, c. 689, s. 315.)

§ 105-466. Levy of tax.

(a) In the event a majority of those voting in a special election held pursuant to G.S. 105-465 shall approve the levy of the local sales and use tax, the board of county commissioners may, by resolution, proceed to levy the tax.

(b) In addition, the board of county commissioners may, in the event no election has been held within five years under the provisions of G.S. 105-465 in which the tax has been defeated, after not less than 10 days' public notice and after a public hearing held pursuant thereto, by resolution, impose and levy the local sales and use tax to the same extent and with the same effect as if the levy of the tax had been approved in an election held pursuant to G.S. 105-465.

(b1) If the board of commissioners of a county has imposed the local sales and use tax authorized by this Article and any or all of the taxes authorized by Articles 40 and 42 of this Chapter, with or without a special election, and the county subsequently becomes part of a consolidated city-county, the taxes shall continue in effect unless and until repealed by the governing board of the consolidated city-county.

(c) Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the board of county commissioners in the resolution levying the tax, which shall in no case be earlier than the first day of the second succeeding calendar month after the date of the adoption of the resolution.

(d) Upon adoption of a resolution levying the tax, the board of county commissioners shall immediately deliver a certified copy of the resolution to the Secretary, accompanied by a certified statement from the county board of elections, if applicable, setting forth the results of any special election approving the tax in the county. Upon receipt of these documents, the Secretary shall collect and administer the tax as provided in this Article. (1971, c. 77, s. 2; 1973, c. 302; c. 476, s. 193; 1977, c. 372, s. 1; 1993, c. 485, s. 22; 1995, c. 461, s. 16.)

Local Modification. — Burke: 1977, c. 372, s. 2. amendment, effective July 23, 1993, re-wrote subsection (d).

Editor's Note. — Session Laws 1995, c. 461, s. 20, is a severability clause. The 1995 amendment, effective July 19, 1995, added subsection (b1).

Effect of Amendments. — The 1993

ARTICLE 40.

Supplemental Local Government Sales and Use Taxes.

§ 105-480. Short title.

This Article shall be known as the Supplemental Local Government Sales and Use Tax Act. (1983, c. 908, s. 1.)

Editor's Note. — For the provisions and 13, see the Editor's Note under of Session Laws 1987, c. 832, ss. 9 to 11 § 105-463.

Session Laws 1987 (Reg. Sess., 1988), c. 1096, s. 5 provides: "The General Assembly finds that legislation is pending in Congress that would authorize the states to require out-of-state retailers who make mail order sales to residents of the state to collect state and local sales and use taxes. This legislation would only apply, however, if the combined state and local tax rate is imposed at the same rate in all geographic areas of the state. It is the intent of the General Assembly to take advantage of this federal legislation. Therefore, if this federal legislation is enacted, effective on the date this federal legislation is enacted, notwithstanding the provisions of G.S. 105-473, 105-483, 105-490 [repealed], and 105-498 and Chapter 1096 of the 1967 Session Laws, no county may repeal any local sales and use tax enacted pursuant to Article 39, 40, 41, or 42 of Chapter 105 of the General Statutes or Chapter 1096 of the 1967 Session Laws that is in effect on the effective date of

the federal legislation."

Session Laws 1991, c. 689, s. 320(b) provides: "Approval under the Supplemental Local Government Sales and Use Tax Act, Article 40 of Chapter 105 of the General Statutes, on one-half percent ($\frac{1}{2}$ %) local sales and use taxes in addition to the one percent (1%) local sales and use taxes and three percent (3%) State sales and use taxes constitutes approval of one-half percent ($\frac{1}{2}$ %) local sales and use taxes in addition to the one percent (1%) local sales and use taxes and the four percent (4%) States sales and use taxes."

Section 352 of Session Laws 1991, c. 689 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1991-93 biennium, the textual provisions of Titles I, II and III of this act shall apply only to funds appropriated for and activities, occurring during the 1991-93 biennium."

§ 105-481. Purpose and intent.

It is the purpose of this Article to afford the counties and cities of this State an opportunity to obtain an added source of revenue with which to meet their growing financial needs, and to reduce their reliance on other revenues, such as the property tax, by providing all counties of the State that are subject to this Article with authority to levy one-half percent ($\frac{1}{2}$ %) sales and use taxes. (1983, c. 908, s. 1.)

CASE NOTES

Cited in *Finlator v. Powers*, 902 F.2d 1158 (4th Cir. 1990).

§ 105-482. Limitations.

This Article applies only to counties that levy one percent (1%) sales and use taxes under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws. (1983, c. 908, s. 1; 1993, c. 485, s. 25.)

Editor's Note. — For the provisions of Session Laws 1987, c. 832, ss. 9 to 11 and 13, see the Editor's Note under § 105-463.

Effect of Amendments. — The 1993

amendment, effective July 23, 1993, substituted "Laws" for "Laws and do not levy one half percent ($\frac{1}{2}$ %) local sales and use taxes under Article 41 of this Chapter".

§ 105-483. Levy and collection of additional taxes.

Any county subject to this Article may levy one-half percent ($\frac{1}{2}$ %) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law. Except as provided in this Article, the adoption, levy, collection, distribution, administra-

tion, and repeal of these additional taxes shall be in accordance with Article 39 of this Chapter. In applying the provisions of Article 39 of this Chapter to this Article, references to "this Article" mean Article 40 of this Chapter. The exemption for building materials in G.S. 105-468.1 does not apply to taxes levied under this Article. (1983, c. 908, s. 1; 1993, c. 485, s. 26.)

Editor's Note. — For the provisions of Session Laws 1987, c. 832, ss. 9 to 11 and 13, see the Editor's Note under § 105-463.

Session Laws 1987 (Reg. Sess., 1988), c. 1096, s. 5 provides: "The General Assembly finds that legislation is pending in Congress that would authorize the states to require out-of-state retailers who make mail order sales to residents of the state to collect state and local sales and use taxes. This legislation would only apply, however, if the combined state and local tax rate is imposed at the same rate in all geographic areas of the state. It is the intent of the General Assembly to take advantage of this federal legislation. Therefore, if this federal legislation is enacted, effective on the

date this federal legislation is enacted, notwithstanding the provisions of G.S. 105-473, 105-483, 105-490 [repealed] and 105-498 and Chapter 1096 of the 1967 Session Laws, no county may repeal any local sales and use tax enacted pursuant to Article 39, 40, 41, or 42 of Chapter 105 of the General Statutes or Chapter 1096 of the 1967 Session Laws that is in effect on the effective date of the federal legislation."

Effect of Amendments. — The 1993 amendment, effective July 23, 1993, substituted "this Chapter" for "Chapter 105" in the third sentence, and deleted the former fourth sentence, which read "All taxes levied pursuant to this Article shall be collected by the Secretary and may not be collected by a taxing county".

§ 105-484. Form of ballot.

(a) The form of the question to be presented on a ballot for a special election concerning the additional taxes authorized by this Article shall be: "FOR additional one-half percent (½%) local sales and use taxes" or "AGAINST additional one-half percent (½%) local sales and use taxes."

(b) The form of the question to be presented on a ballot for a special election concerning the repeal of any additional taxes levied pursuant to this Article shall be: "FOR repeal of the additional one-half percent (½%) local sales and use taxes" or "AGAINST repeal of the additional one-half percent (½%) local sales and use taxes." (1983, c. 908, s. 1.)

1975, shall continue until members are elected and qualified as provided in this section unless modified by local legislation.

(b) No person residing in a local school administrative unit shall be eligible for election to the board of education of that local school administrative unit unless such person resides within the boundary lines of that local school administrative unit. (1955, c. 1372, art. 5, s. 1; 1967, c. 972, s. 1; 1969, c. 1301, s. 2; 1975, c. 855, ss. 1-3; 1981, c. 423, s. 1.)

Cross References. — As to method of constituting and continuing boards of education, and the manner of selection of board members in the context of a merger of school administrative units, see § 115C-67.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 654, s. 13, repealed the local modification by Session Laws 1989, c. 819.

CASE NOTES

Unconstitutional Merger of School Systems Could Not Be Ratified by Legislature. — The General Assembly could not ratify the merger of a city and county school system held unconstitutional by previous uncontested ruling of the trial court, and the General Assembly cannot, by enacting legislation, make constitutional that which a court has ruled unconstitutional. *Cannon v. North Carolina State Bd. of Educ.*, 117 N.C. App. 399, 451 S.E.2d 302 (1994).

Statute Authorizing City Residents to Vote for County School Board Members. — For a case dealing with the constitutionality of local statutes authorizing certain city residents to vote for some members of county school boards, see *Locklear v. North Carolina State Bd. of Elections*, 514 F.2d 1152 (4th

Cir. 1975), decided under former Chapter 115.

Court Did Not Err in Dismissing Claims Against Superintendent. — Trial court did not err in dismissing plaintiffs' claims against superintendent; although plaintiffs alleged superintendent's representations to both defendant boards "were grossly overstated" and "without foundation in fact," plaintiffs did not allege superintendent was in a decision-making position as to acquisition of the Square D facility. As a matter of law, a superintendent does not vote on appropriations. *Moore v. Wykle*, 107 N.C. App. 120, 419 S.E.2d 164, cert. denied, 332 N.C. 666, 424 S.E.2d 405 (1992).

Cited in *Abell v. Nash County Bd. of Educ.*, 71 N.C. App. 48, 321 S.E.2d 502 (1984).

OPINIONS OF ATTORNEY GENERAL

Former §§ 115-18 and 115-19 Inapplicable to New Hanover County. — See opinion of Attorney General to Mr. William L. Hill, II, Attorney, New Hanover County Board of Education, 40 N.C.A.G. 230 (1969).

Statutory Provisions as to Elec-

tion of Board Members Superseded by Merger Agreement. — See opinion of Attorney General to Mr. E.P. Dameron, Attorney for the McDowell County Board of Education, 40 N.C.A.G. 225 (1970), rendered under former Chapter 115.

§ 115C-36. Designation of board.

All powers and duties conferred and imposed by law respecting public schools, which are not expressly conferred and imposed upon some other official, are conferred and imposed upon local boards of education. Said boards of education shall have general control and supervision of all matters pertaining to the public schools in their respective administrative units and they shall enforce the school law in their respective units. (1955, c. 1372, art. 5, s. 18; 1957, c. 262; 1963, c. 425; 1965, c. 1185, s. 1; 1969, c. 517, s. 2; 1981, c. 423, s. 1.)

Cross References. — As to powers and duties of board generally, see § 115C-47.

CASE NOTES

For case discussing power of board of education to acquire land for school purposes under former Chapter 115, see Painter v. Wake County Bd. of Educ., 288 N.C. 165, 217 S.E.2d 650 (1975). Cited in Crump v. Board of Educ., 93 N.C. 168, 378 S.E.2d 32 (1989).

§ 115C-37. Election of board members.

(a) **Method of Election.** — The county boards of education shall be elected on a nonpartisan basis at the time of the primary election in 1970 and biennially thereafter. The names of the candidates shall be printed on the ballots without reference to any party affiliation and any qualified voter residing in the county shall be entitled to vote such ballots. Except as otherwise provided herein, the election shall be conducted according to the provisions of Chapter 163 of the General Statutes then governing primary elections.

The terms of office of the members shall be staggered so as nearly equal to one half as possible shall expire every two years.

(b) **County Board of Elections to Provide for Elections.** — The county board of elections under the direction of the State Board of Elections, shall make all necessary provisions for elections of county boards of education as are herein provided for. The county board of elections of each county shall file with the State Board of Elections a statement specifying the size and method of election of members of its county board of education.

(c) **City Board of Education.** — The board of education for any city administrative unit shall be appointed or elected as now provided by law. If no provision is now made by the law for the filling of vacancies in the membership of any city board of education, such vacancy may be filled by the governing body of the city or town embraced by said administrative unit. In the event that any such vacancy is not filled in this manner within 30 days, the State Board of Education may fill such vacancy.

(d) **Members to Qualify.** — Each county board of education shall hold a meeting in December following the election. At that meeting, newly elected members of the board of education shall qualify by taking the oath of office prescribed in Article VI, Sec. 7 of the Constitution.

This subsection shall not have the effect of repealing any local or special acts relating to boards of education of any particular counties whose membership to said boards is chosen by a vote of the people.

(e) **Vacancies in Nominations for Membership on County Boards.** — If any candidate nominated on a partisan basis shall die, resign, or for any reason become ineligible or disqualified between the date of his nomination and the time for the election, such vacancy caused thereby may be filled by the actions of the county executive committee of the political party of such candidate.

(f) **Vacancies in Office.** — All vacancies in the membership of the boards of education whose members are elected pursuant to the provisions of subsection (a) of this section by death, resignation, or other causes shall be filled by appointment by the remaining

members of the board, of a person to serve until the next election of members of such board, at which time the remaining unexpired term of the office in which the vacancy occurs shall be filled by election.

(g) Eligibility for Board Membership; Holding Other Offices. — Any person possessing the qualifications for election to public office set forth in Article VI, Sec. 6 of the Constitution of North Carolina shall be eligible to serve as a member of a local board of education: Provided, however, that any person elected or appointed to a local board of education, and also employed by that board of education, shall resign his employment before taking office as a member of that board of education.

Membership on a board of education is hereby declared to be an office that, with the exceptions provided above, may be held concurrently with any appointive office, pursuant to Article VI, Sec. 9 of the Constitution, but any person holding an elective office shall not be eligible to serve as a member of a local board of education.

(h) Death or Disqualification of Candidate in Nonpartisan Election. — If a candidate dies or becomes disqualified after the filing period has closed and before the election, and the ballots have not been printed, the county board of elections shall immediately reopen the filing period for five days so that additional candidates may file for election. If the ballots have been printed at the time the board of elections receives notice of the death or disqualification, the board shall reopen the filing period for three days if the board determines it will have time to reprint the ballots before the election.

In the event the board of elections determines that there is not time enough to reopen the filing period for three days and to reprint the ballots, then the ballots shall not be reprinted and the name of the deceased or disqualified candidate shall remain on the ballot. Votes cast for such candidate shall not be considered and the candidates receiving the highest number of votes equal to the number of positions to be filled shall be elected.

(i) The local board of education shall revise electoral district boundaries from time to time as provided by this subsection. If district boundaries are set by local act or court order and the act or order does not provide a method for revising them, the local board of education shall revise them only for the purpose of (i) accounting for territory annexed to or excluded from the school administrative unit, and (ii) correcting population imbalances among the districts shown by a new federal census or caused by exclusions or annexations. After the General Assembly has ratified an act establishing district boundaries, the local board of education shall not revise them again until a new federal census of population is taken or territory is annexed to or excluded from the school administrative unit, whichever event first occurs. After the local board of education has revised district boundaries in conformity with this act, the local board of education shall not revise them again until a new federal census of population is taken or territory is annexed to or excluded from the school administrative unit, whichever event occurs first, except that the board may make an earlier revision of district boundaries it has drawn if it must do so to comply with a court order or to gain approval of a district-revision plan by the U.S. Justice Department under Section 5 of the Voting Rights Act. In establishing district boundaries, the local board of education shall use data derived from the most recent federal census. (1955, c. 1372, art. 5,

ss. 2-8; 1967, c. 972, ss. 2-6; 1969, c. 1301, s. 2; 1971, c. 704, s. 6; 1973, c. 1446, s. 1; 1977, c. 662; 1981, c. 423, s. 1; 1985, c. 404; c. 405, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 975, s. 10; 1991, c. 400, s. 1.)

Local Modification. — Davidson: 1995, c. 300, s. 1; Northampton: 1993, c. 110, s. 1; Orange: 1981, c. 911; Pender: 1989 (Reg. Sess., 1990), c. 1008, s. 1, (effective January 1, 1992); Alexander County Board of Education: 1991, c. 253; 1991, c. 695, s. 1; Ashe County Board of Education: 1995, c. 128, s. 1; Carteret County Board of Education: 1991 (Reg. Sess., 1992), c. 774; Caswell County Board of Education: 1987 (Reg. Sess., 1988), c. 1016, s. 15; Chatham County Board of Education: 1995, c. 80, s. 3(f); Clay County Board of Education: 1991, c. 254, s. 1 (contingent on referendum); Halifax County Board of Education: 1991, c. 97; Jackson County Board of Education: 1991, c. 170, s. 1; Madison County Board of Education: 1991, c. 249, s. 4 (contingent on referendum); McDowell County Board of Education: 1987, c. 322; 1995, c. 107, s. 1; Martin County Board of Education: 1995, c. 77, s. 1; Pamlico County Board of Education:

1987 (Reg. Sess., 1988), c. 939, s. 11; Perquimans County Board of Education: 1993 (Reg. Sess., 1994), c. 626, s. 1; Rockingham County Board of Education: 1989, c. 685, s. 1; Stokes County Board of Education: 1995, c. 66, s. 1; Surry County Board of Education: 1991, c. 308.

Cross References. — As to method of constituting and continuing boards of education, and the manner of selection of board members in the context of a merger of school administrative units, see § 115C-67.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 975, which deleted "or appointed to a district committee by that board of education" following "and also employed by that board of education" in the proviso in the first paragraph of subsection (g), provided in s. 25 that the provisions of the act would not be construed to abolish or in any manner affect any supplemental tax or any local taxing district.

CASE NOTES

Editor's Note. — *The cases below were decided under corresponding provisions of former Chapter 115 and earlier statutes.*

Effect of Failure to Qualify on Day Prescribed. — A county board of education is a body politic and corporate, and is authorized to prosecute and defend suits in its own name, and to discharge certain duties imposed by statute, and where the members of a board appointed by the General Assembly failed to take the oath of office on the date prescribed by statute, but took oath on the next succeeding day, their failure to qualify on the day prescribed did not impair the existence of the corporate body, and where they had discharged the statutory duties imposed upon them, and no vacancy had been declared by the State Board of Education, and no proceedings in the nature of quo warranto had been instituted to determine their right to office, the acts of the appointees as members of the board could not be annulled by a proceeding to restrain the board from purchasing a school site in dis-

charge of its statutory duties. *Crabtree v. Board of Educ.*, 199 N.C. 645, 155 S.E. 550 (1930).

Purpose of Former Statute as to Filling Vacancies. — See *Edwards v. Yancey County Bd. of Educ.*, 235 N.C. 345, 70 S.E.2d 170 (1952).

Unexpired Term Divided into Two Parts. — See *State ex rel. Atkins v. Fortner*, 236 N.C. 264, 72 S.E.2d 594 (1952), decided under former § 115-24.

A member of the county board of education holds a public office under the State and was thus subject to the prohibition against double office holding contained in former N.C. Const., Art. XIV, § 7 (see now N.C. Const., Art. VI, § 9). *Edwards v. Yancey County Bd. of Educ.*, 235 N.C. 345, 70 S.E.2d 170 (1952).

Under former N.C. Const., Art. XIV, § 7 (see now N.C. Const., Art. VI, § 9) one person could not hold the office of county commissioner and also be a member of the county board of education. *State ex rel. Barnhill v. Thompson*, 122 N.C. 493, 29 S.E. 720 (1898).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. — The opinions below were rendered under corresponding provisions of former Chapter 115.

Former §§ 115-18 and 115-19 Not Applicable to New Hanover County. — See opinion of Attorney General to Mr. William L. Hill, II, Attorney, New Hanover County Board of Education, 40 N.C.A.G. 230 (1969).

Former Statute Superseded by Special Act for Designated Boards of Education. — See opinion of Attorney General to Mr. John G. Mills, Jr., Attorney for Wake County Board of Education, 40 N.C.A.G. 226 (1970).

"Single-Shot" Voting Regulations Not Applicable to County Boards of Education. — See opinion of Attorney General to Mr. Thomas H. Morris, Chairman, Lenoir County Board of Elections,

40 N.C.A.G. 293 (1970).

Nonpartisan Election Requires Plurality of Votes Only. — See opinion of Attorney General to Mr. R. V. Biberstein, Jr., Pender County Board of Education Attorney, 40 N.C.A.G. 238 (1970).

As to filling vacancies on board whose members are elected on a nonpartisan basis, see opinion of Attorney General to Mr. Jesse C. Carson, Jr., Superintendent, County Schools, 40 N.C.A.G. 235 (1970).

As to former statute relating to eligibility applicable to technical institute personnel, see opinion of Attorney General to Mr. Holland McSwain, President, Tri-County Technical Institute, 40 N.C.A.G. 279 (1970).

§ 115C-37.1. Vacancies in offices of county boards elected on partisan basis in certain counties.

(a) All vacancies in the membership of county boards of education which are elected by public or local act on a partisan basis shall be filled by appointment of the person, board, or commission specified in the act, except that if the act specifies that appointment shall be made by a party executive committee, then the appointment shall be made instead by the remaining members of the board.

(b) If the vacating member was elected as the nominee of a political party, then the person, board, or commission required to fill the vacancy shall consult with the county executive committee of that party and appoint the person recommended by that party executive committee, if the party executive committee makes a recommendation within 30 days of the occurrence of the vacancy.

(c) Whenever only the qualified voters of less than the entire county were eligible to vote for the member whose seat is vacant (either because the county administrative unit was less than countywide or only residents of certain areas of the administrative unit could vote in the general election for a district seat), the appointing authority must accept the recommendation only if the county executive committee restricted voting to committee members who represent precincts all or part of which were within the territory of the vacating school board member.

(d) This section shall apply only in the following counties: Alamance, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Cherokee, Clay, Cleveland, Davidson, Davie, Forsyth, Graham, Guilford, Haywood, Henderson, Jackson, Madison, McDowell, Mecklenburg, Moore, New Hanover, Polk, Randolph, Rockingham, Rutherford, Stanly, Stokes, Transylvania, Vance, Wake, Washington, and Yancey. (1981, c. 763, ss. 4, 14; c. 830; 1983, c. 493, s. 1; 1987 (Reg. Sess., 1988), c. 974, s. 5; 1989, c. 497, s. 3.)

SUBCHAPTER VIII. LOCAL TAX ELECTIONS.

ARTICLE 36.

Voted Tax Supplements for School Purposes.

§ 115C-500. Superintendents must furnish boundaries of special taxing districts.

It shall be the duty of superintendents to furnish tax listers at tax listing time the boundaries of each taxing district as provided in G.S. 115C-276(m). (1981, c. 423, s. 1.)

Local Modification. — (As to Article 36) Transylvania: 1983, c. 363.

§ 115C-501. Purposes for which elections may be called.

(a) **To Vote a Supplemental Tax.** — Elections may be called by the local tax-levying authority to ascertain the will of the voters as to whether there shall be levied and collected a special tax in the several local school administrative units, districts, and other school areas, including districts formed from contiguous counties, to supplement the funds from State and county allotments and thereby operate schools of a higher standard by supplementing any item of expenditure in the school budget. When supplementary funds are authorized by the carrying of such an election, such funds may be used to employ additional teachers other than those allotted by the State, to teach any grades or subjects or for kindergarten instruction, to establish and maintain approved summer schools, to make the contribution to the Teachers' and State Employees' Retirement System of North Carolina for such teachers, or for any object of expenditure: Provided, that elections may be called to ascertain the will of the voters of an entire county, as to whether there shall be levied and collected a special tax on all the taxable property within the county for the purposes enumerated in this subsection. In such event, the supplemental tax shall be apportioned among the local school administrative units in the county pursuant to G.S. 115C-430.

(b) **To Increase a Supplemental Tax Rate.** — Elections may be called in any school area which has previously voted a supplemental tax of less than the maximum for the purpose of increasing the rate of tax previously voted but not to exceed the maximum.

(c) **To Enlarge City Administrative Units.** — Elections may be called in any districts, or other school areas, of a county administrative unit to ascertain the will of the voters in such districts or other school areas, as to whether an adjoining city administrative unit shall be enlarged by consolidating such districts, or other school areas, with such city administrative unit, and whether after such enlargement of the city administrative unit there shall be levied in such other districts, or other school area or areas, so consolidated with the city administrative unit the same school taxes as shall be levied in the other portion of the city administrative unit.

(d) **To Supplement and Equalize Educational Advantages.** — Elections may be called in any area of a county administrative unit

which is enclosed in one common boundary line to ascertain the will of the voters as to whether there shall be levied and collected a special tax to supplement and equalize the standards on which the schools in such areas are operated, and at the same time repeal any special taxes heretofore voted by any parts of such area.

(e) **To Abolish a Special School Tax.** — Elections may be called in any local school administrative unit, district or other school area which has previously voted a supplemental tax, to ascertain the will of the people as to whether such tax shall be abolished.

(f) **To Vote School Bonds.** — Boards of county commissioners are authorized as provided by law to call elections to ascertain the will of the voters as to whether bonds for school purposes may be issued.

(g) **To Provide a Supplemental Tax on a Countywide Basis after Petition for Consolidation of City or County Administrative Units.** — Elections may be called for an entire county on the question of a special tax to supplement the funds from State and county allotments and thereby operate schools of a higher standard by supplementing any item of expenditure in the school budget, where the boards of education of all the city administrative units in said county have petitioned the county board of education for a consolidation with the county administrative unit pursuant to the provisions of the first paragraph of G.S. 115C-70(a) and prior to the approval of said petitions by the county and State boards of education. In which event, and provided the petitions so specify, if said election for a countywide supplemental tax fails to carry, said petitions may be withdrawn and any existing supplemental tax theretofore voted in any of the city administrative units involved or in the county administrative unit shall not be affected. If the vote for the countywide supplemental tax carries, said tax shall not be levied unless and until the consolidation of the units involved shall be completed according to the requirements of the first paragraph of G.S. 115C-70(a).

(h) **To Annex or Consolidate Areas or Districts from Contiguous Counties and to Provide a Supplemental School Tax in Such Annexed Areas or Consolidated Districts.** — An election may be called in any districts or other school areas, from contiguous counties, as to whether the districts in one county shall be enlarged by annexing or consolidating therewith any adjoining districts, or other school area or areas from an adjoining county, and if a special or supplemental school tax is levied and collected in the districts of the county to which the territory is to be annexed or consolidated, whether upon such annexation or consolidation there shall be levied and collected in the territory to be annexed or consolidated the same special or supplemental tax for schools as is levied and collected in the districts in the other county. If such election carries, the said special or supplemental tax shall be collected pursuant to G.S. 115C-511 and remitted to the local school administrative unit on whose behalf such special and supplemental tax is already levied: Provided, that notwithstanding the provisions of G.S. 115C-508, if the notice of election clearly so states, and the election shall be held prior to August 1, the annexation or consolidation shall be effective and the tax so authorized shall be levied and collected beginning with the fiscal year commencing July 1 next preceding such elections.

(i) **To Vote School Bonds and Taxes in Certain Merged School Administrative Units.** — Elections for the purpose of authorizing

the levy of certain taxes and the issuance of bonds shall be called by a merged school administrative unit described in G.S. 115C-513 with the consent of the boards of county commissioners of both counties in which the merged unit is located. The election shall be conducted and the results canvassed by the boards of elections of both counties. The boards of elections shall certify the results of the election to the board of education of the merged school administrative unit. The board of education shall certify and declare the result of the election, which shall be determined on an aggregate basis from the results certified by the boards of elections. The board of education shall publish a statement of the result once as provided in the Local Government Bond Act, Article 4 of Chapter 159 of the General Statutes. (1955, c. 1372, art. 14, s. 1; 1957, c. 1066; c. 1271, s. 1; 1959, c. 573, s. 9; 1961, c. 894, s. 2; c. 1019, s. 1; 1975, c. 437, ss. 2-4; 1981, c. 423, s. 1; 1991, c. 325, s. 2.)

Editor's Note. — Section 115C-70, referred to in this section, was repealed by Session Laws 1985 (Reg. Sess., 1986), c. 975, s. 24.

Session Laws 1991, c. 325, which added subsection (i), in s. 9 provides:

"Interpretation of Act.

"(a) Additional method. The foregoing sections of of this act shall be deemed to provide an additional and alternative method for the doing of things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

"(b) Statutory references. References in this act to specific sections or Chapters of the General Statutes are intended

to be references to such sections as they may be amended from time to time by the General Assembly.

"(c) Liberal construction. This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect these purposes.

"(d) Inconsistent provisions. Insofar as the provisions of this act are inconsistent with the provisions of any general laws, this act shall be controlling.

"(e) Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

CASE NOTES

Editor's Note. — *Most of the cases below were decided under corresponding provisions of former Chapter 115 and earlier statutes.*

Intent of Former Article. — The clear intent of Article 14 of former Chapter 115, similar to this Article, was to provide a method by which the county commissioners could be compelled to call an election to obtain a tax levy or for other purposes. *Harris v. Board of Comm'rs*, 1 N.C. App. 258, 161 S.E.2d 213, aff'd, 274 N.C. 343, 163 S.E.2d 387 (1968).

Additional Tax to Supplement Teachers' Salaries. — In levying an additional tax for the purpose of supplementing teachers' salaries pursuant to former § 115-80(a), the board of county commissioners acted as an agency of the State under a delegation of authority from the General Assembly to carry out

the duty imposed upon it by the state Constitution, to maintain a system of public schools. *Harris v. Board of Comm'rs*, 1 N.C. App. 258, 161 S.E.2d 213, aff'd, 274 N.C. 343, 163 S.E.2d 387 (1968).

Additional Decisions under Former Statutes. — As to local tax elections for schools, see *Gill v. Board of Comm'rs*, 160 N.C. 176, 76 S.E. 203 (1912); *Chitty v. Parker*, 172 N.C. 126, 90 S.E. 17 (1916); *Sparkman v. Board of Comm'rs*, 187 N.C. 241, 121 S.E. 531 (1924); *Evans v. Mecklenburg County*, 205 N.C. 560, 172 S.E. 323 (1934); *Forester v. Town of North Wilkesboro*, 206 N.C. 347, 174 S.E. 112 (1934); *Freeman v. City of Charlotte*, 206 N.C. 913, 174 S.E. 453 (1934); *Onslow County Bd. of Educ. v. Onslow County Bd. of Comm'rs*, 240 N.C. 118, 81 S.E.2d 256 (1954).

As to elections on the question of en-

larging local tax districts, see *Perry v. Board of Comm'rs*, 183 N.C. 387, 112 S.E. 6 (1922); *Hicks v. Board of Educ.*, 183 N.C. 394, 112 S.E. 1 (1922); *Barnes v. Board of Comm'rs*, 184 N.C. 325, 114 S.E. 398 (1922); *Board of Educ. v. Bray Bros. Co.*, 184 N.C. 484, 115 S.E. 47 (1922); *Vann v. Board of Comm'rs*, 185 N.C. 168, 116 S.E. 421 (1923); *Plott v. Board of Comm'rs*, 187 N.C. 125, 121 S.E. 190 (1924); *Blue v. Board of Trustees*, 187 N.C. 431, 122 S.E. 19 (1924); *Jones v. Board of Educ.*, 187 N.C. 557, 122 S.E. 290 (1924); *Carr v. Little*, 188 N.C. 100, 123 S.E. 625 (1924).
 Applied in *Floyd v. Lumberton City Bd. of Educ.*, 71 N.C. App. 670, 324 S.E.2d 18 (1984).

§ 115C-502. Maximum rate and frequency of elections.

(a) A tax for supplementing the public school budget shall not exceed fifty cents (50¢) on the one-hundred-dollar (\$100.00) value of property subject to taxation by the local school administrative unit: Provided, that in any local school administrative unit, district, or other school area having a total population of not less than 100,000 said local annual tax that may be levied shall not exceed sixty cents (60¢) on one-hundred-dollars (\$100.00) valuation of said property.

(b) If a majority of those who vote in any election called pursuant to the provisions of this Article do not vote in favor of the purpose for which such election is called, another election for the same purpose shall not be called for and held in the same local school administrative unit, district, or area until the lapse of six months after the prior election. However, the foregoing time limitation shall not apply to any election held in a local school administrative unit, district, or other school area which is larger or smaller than the local school administrative unit, district, or area in which the prior election was held, or to any election held for a different purpose than the prior election. (1955, c. 1231; c. 1372, art. 14, s. 2; 1957, c. 1271, s. 2; 1959, c. 573, s. 10; 1975, c. 437, s. 5; 1981, c. 423, s. 1.)

§ 115C-503. Who may petition for election.

Local boards of education may petition the board of county commissioners for an election in their respective local school administrative units or for any school areas therein.

A majority of the qualified voters who have resided for the preceding 12 months in an area which is adjacent to a city administrative unit may petition the county board of education for an election on the question of annexing such area to the city administrative unit. For any of the other purposes enumerated in G.S. 115C-501, twenty-five percent (25%) of the qualified voters who reside in a local school administrative unit may petition the local board of education for an election. (1955, c. 1372, art. 14, s. 3; 1961, c. 1019, s. 2; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, s. 7.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 975, which substituted the present second paragraph for the former second and third paragraphs,

provided in s. 25 that the provisions of the act should not be construed to abolish or in any manner affect any supplemental tax or any local taxing district.

§ 115C-504. Necessary information in petitions.

The petition for an election shall contain such of the following information as may be pertinent to the proposed election:

- (1) Purpose for calling the proposed election.
- (2) A legally sufficient description of the area, by metes and bounds or otherwise, in which the election is requested.
- (3) The maximum rate of tax which is proposed to be levied. This subdivision shall not apply to a petition for an election to enlarge a city administrative unit.
- (4) If the petition is for an election to enlarge a city administrative unit, it shall state therein that, if a majority of those who shall vote in the area proposed to be consolidated with the city administrative unit shall vote in favor of such enlargement, such area shall be consolidated with the city administrative unit, effective July 1 next following such election, and that there shall thereafter be levied in such area so consolidated with the city administrative unit the same school taxes as shall be levied in the other portions of the city administrative unit, including any tax to provide for the payment of school bonds theretofore issued by or for such city administrative unit or for all or some part of the school area annexed to such city administrative unit, unless payment of such bonds has otherwise been provided for.
- (5) If the petition for an election is to supplement and equalize educational advantages, and if any school districts in the area in which it is proposed to vote such a tax have heretofore voted a supplementary tax, the petition and the notice of election shall state that in the event such election is carried, it will repeal all local taxes heretofore voted in any district except those in effect for debt service in any district, unless such debt service obligation is assumed by the county or otherwise provided for. (1955, c. 1372, art. 14, s. 4; 1957, c. 1271, ss. 3-5; 1981, c. 423, s. 1.)

§ 115C-505. Boards of education must consider petitions.

The board of education to whom the petition requesting an election is addressed shall receive the petition and give it due consideration. If, in the discretion of the board or education, the petition for an election shall be approved, it shall be endorsed by the chairman and the secretary of the board and a record of the endorsement shall be made in the minutes of the board. Petitions for an election to enlarge a city administrative unit shall be subject to the approval and endorsement of both county and city boards of education which are therein affected.

Local boards of education shall have no discretion in granting an election to abolish a special school tax in any local school administrative unit, or district, or other school area, which has previously voted a supplemental tax, whenever a majority of the qualified voters residing in said local school administrative unit, district or school area shall petition for an election. When such a petition, showing the proper number of names of qualified voters, is presented to a board of education, it is hereby made mandatory that such petition shall be granted and the election held. If at the election a majority of those in the district who have voted thereon have voted "against local tax," the tax shall be deemed revoked and shall not be levied: Provided, that in Alexander, Anson, Beaufort, Buncombe,

Carteret, Catawba, Chatham, Chowan, Cleveland, Craven, Currituck, Davidson, Duplin, Franklin, Gates, Greene, Henderson, Hoke, Hyde, Iredell, Jackson, Johnston, Lenoir, Martin, Mecklenburg, Moore, Nash, Onslow, Pamlico, Pitt, Randolph, Richmond, Robeson, Rockingham, Transylvania, Vance, Wake, Warren and Wilkes Counties, petition of twenty-five percent (25%) of the number of voters in the election creating said special tax district, said petition to be signed by qualified voters residing in such special tax district, shall be sufficient.

The provisions of this section as to abolishing local tax districts shall not be applied when such local tax district is in debt in any sum whatever, or has obligated or committed its resources in any contractual manner: Provided, that no election for revoking a local tax in any local tax district shall be ordered and held in the district within less than one year from the date of the election at which the tax was voted and the district established, nor at any time within less than one year after the date of the last election on the question of revoking the tax in the district; and no petition seeking to revoke a school tax shall be approved by a board of education more often than once a year. (1955, c. 1372, art. 14, s. 5; 1957, c. 1100; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, s. 24.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 975, which deleted a former last paragraph, provided in s. 25 that the provisions of the act should not

be construed to abolish or in any manner affect any supplemental tax or any local taxing district.

CASE NOTES

Time for Holding Subsequent Election Revoking Local Tax. — The period in which no election may be had should be computed from the last valid

election on the subject. *Weesner v. Davidson County*, 182 N.C. 604, 109 S.E. 863 (1921), decided under former corresponding provisions.

§ 115C-506. Action of board of county commissioners or governing body of municipality.

Petitions requesting special school elections and bearing the approval of the board of education of the local school administrative unit shall be presented to the board of county commissioners, and it shall be the duty of said board of county commissioners to call an election and fix the date for the same: Provided, that the board of education requesting the election may, for any reason deemed sufficient by said board which shall be specified and recorded in the minutes of the board, withdraw the petition by the twenty-fifth day before the election, and if the petition be so withdrawn, the election shall not be held unless by some other provision of law the holding of such election is mandatory. In the case of a city administrative unit in any incorporated city or town and formed from portions of contiguous counties, said petition shall be presented to the governing body of the city or town situated within, coterminous with, or embracing such city administrative unit, and the election shall be ordered by said governing body, and said governing body shall perform all the duties pertaining to said election performed by the board of county commissioners in elections held under this Article. (1955, c. 1372, art. 14, s. 6; 1959, c. 72; 1981, c. 423, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 9.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applica-

ble to those prosecutions or sentences." **Effect of Amendments.** — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "by the twenty-fifth day before the election" for "before the close of the registration books" in the proviso in the first sentence.

CASE NOTES

Duty of County Commissioners Ministerial. — The county commissioners have no discretion to order or not order an election. After the board of education has approved the petition, the duty of the commissioners is ministerial

only and may be enforced by mandamus. *Board of Educ. v. Board of County Comm'rs*, 189 N.C. 650, 127 S.E. 692 (1925), decided under former corresponding provisions.

§ 115C-507. Rules governing elections.

All elections under this Chapter shall be held and conducted by the appropriate county or municipal board of elections.

If the purpose of the election is to enlarge a city administrative unit, the notice of election shall include the following: a statement of the purpose of the election; a legal description of the area within which the election is to be held; and a statement that if a majority of those who shall vote in the area proposed to be consolidated with the city administrative unit shall vote in favor of such enlargement such area shall be consolidated with the city administrative unit, effective July 1 next following such election, and there shall thereafter be levied in such area so consolidated with the city administrative unit the same school taxes as shall be levied in the other portions of the city administrative unit, including any tax levy to provide for the payment of school bonds theretofore issued by or for such city administrative unit or for all or some part of the school area annexed to such city administrative unit, unless payment of such bonds has otherwise been provided for.

The notice of the election shall be given as provided in G.S. 163-33(8) and in addition include a legal description of the area within which the election is to be held, and, if any additional tax is proposed to be levied, the maximum rate of tax to be levied which shall not exceed the maximum prescribed by this Article, and the purpose of the tax.

No new registration of voters is required, but the board of elections, in its discretion, may use either Method A or Method B set forth in G.S. 163-288.2 in activating the voters in the territory.

The ballot in such election shall contain the words "FOR local tax and AGAINST local tax" except when the election is held under subsection (c) of G.S. 115C-501, in which case the ballots shall contain the words "FOR enlargement of the City Administrative Unit and school tax of the same rate," and "AGAINST enlargement of the City Administrative Unit and school tax of the same rate."

The elections shall be held in accordance with the applicable provisions of Chapter 163 and the expense of the election shall be paid by the board of education of the administrative unit in which

the election is held, provided that when territory is proposed to be added to a city administrative unit, that unit shall bear the expense.

No election held under this Article shall be open to question except in an action or proceeding commenced within 30 days after the board of elections has certified the results. (1955, c. 1372, art. 14, s. 7; 1957, c. 1271, ss. 6, 7; 1981, c. 423, s. 1.)

CASE NOTES

As to giving notice of election under former corresponding provisions, see 479, 78 S.E. 301 (1913); *Miller v. Duke School Dist.*, 184 N.C. 197, 113 S.E. 786 (1922), decided under former corresponding provisions.
Younts v. Commissioners of Union County, 151 N.C. 582, 66 S.E. 575 (1909);
Gregg v. Board of Comm'rs, 162 N.C.

§ 115C-508. Effective date; levy of taxes.

(a) If, in any election authorized by this Article, a majority of the voters voting in such election vote in favor of the enlargement of a city administrative unit, such enlargement shall become effective July 1 next following such election; and thereafter there shall be levied and collected in the area consolidated with the city administrative unit the same school taxes as shall be levied in the other portions of the city administrative unit.

(b) If, in any election authorized by this Article, a majority of the voters voting in such election vote in favor of a supplemental tax, or in favor of the increase of a supplemental tax, or in favor of a tax to supplement and equalize educational advantages, the tax so authorized shall be levied and collected beginning with the fiscal year commencing July 1 next following such election. (1957, c. 1271, s. 8; 1981, c. 423, s. 1.)

§ 115C-509. Conveyance of school property upon enlargement of city administrative unit.

Before any election is called to enlarge a city administrative unit, if any school property is located in the area proposed to be consolidated with the city administrative unit, the board of education of such city administrative unit and the board of education of the county administrative unit concerned shall agree with each other as to the school property to be conveyed and transferred to the board of education of the city administrative unit if a majority of the voters voting in the election vote in favor of such enlargement. And, if such enlargement is authorized by such election, the board of education of the county administrative unit shall, within 10 days after July 1 next following such election, convey and transfer to the board of education of the city administrative unit the property so agreed to be conveyed and transferred. (1957, c. 1271, s. 8; 1981, c. 423, s. 1.)

§ 115C-510. Elections in districts created from portions of contiguous counties.

Districts already created and those that may be created from portions of two or more contiguous counties may hold elections under this Article to be incorporated or to vote a special local tax therein for the purposes enumerated in G.S. 115C-501.

Elections for either purpose must be initiated by petitions from the portion of each county included in the district, or the proposed district. In districts already created or proposed to be created, the petition must be signed by fifteen percent (15%) of the registered voters who reside in the area. When the petitions shall have been approved by each of the boards of education of such contiguous counties, they shall then be presented by each of said boards of education to their respective boards of county commissioners.

The boards of commissioners of each of the contiguous counties, in compliance with the provisions of this Article relating to the conduct of local tax elections, then shall call upon the county board of elections to hold an election in that portion of the proposed district lying in its county. Election returns shall be made from each portion of the proposed district to the board of commissioners ordering the election in that portion, and the returns shall be canvassed and recorded as required in this Article for local tax districts.

If a majority of the voters who vote thereon in each of the counties shall vote in favor of the tax, or for incorporation, the election shall be determined to have carried in the whole district, and shall be so recorded in the records of the board of county commissioners in each county in which the district is located.

If the proposition submitted to the voters in the election is a question of incorporating the district, the ballots for this election shall have printed thereon the words "For Incorporation" and "Against Incorporation." If the election for incorporation is carried, the district is thereby incorporated and shall possess all the authority of incorporated districts.

In case the election carried in each portion of the proposed district, the several county boards of education concerned shall each pass a formal order consolidating the territory into one joint local tax district, which shall be and become a body corporate by the name and style of "..... Joint Local Tax School District of Counties." The county board of education having the largest school census and the largest area in the part of the joint local tax district lying in its county shall determine the location of the schoolhouse; but if the largest census and largest area do not both lie in the same county, then the county boards shall jointly select the site for the building; and in case of a disagreement they shall submit the question to a board of arbitration consisting of three members, one member to be named by each board of education if three counties are concerned, or if there are but two counties, then each board shall choose one member and the two so named shall select the third member. The decision of this board of arbitration shall be binding on all county boards of education concerned.

The building of all schoolhouses in such joint local tax districts shall be effected by the county board of education of the county in which the building is to be located under authority of law governing the erection of school buildings by county boards of education. It shall be lawful for the boards of education in the other county or counties to contribute to the cost of the building in proportion to the number of children shown by the official census to be resident within that part of the joint district lying within each county respectively. If the building is to be erected from moneys borrowed from the State Literary Fund or from county taxation, then each county board of education shall contribute to its construction in the proportion set

out above and pay over its contribution to the treasurer of the county board having control of the erection of the building: Provided, it shall be lawful for the county board that controls the erection of the building to borrow from the State and lend to the district the full amount of the cost of the building in cases where the entire amount, or part of the amount, is to be repaid by the district from district funds.

All district funds of a joint local tax district shall be kept distinct from all other funds, placed to the credit of the district, and expended as other local tax or district bond funds are lawfully disbursed.

The county board of education and county superintendent of schools of the county in which the schoolhouse is located shall have as full and ample control over the joint school and the district as it has in the case of other local tax districts, subject only to the limitations of this section.

All districts formed from portions of contiguous counties before the ratification of this Article are hereby authorized and empowered to exercise all the powers and privileges conferred by this Article. (1955, c. 1372, art. 14, s. 8; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, ss. 8, 24.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 975, which substituted the present second sentence of the second paragraph for former second and third sentences and deleted the former seventh, eighth, and next-to-last para-

graphs of this section, relating to school committees, provided in s. 25 that the provisions of the act should not be construed to abolish or in any manner affect any supplemental tax or any local taxing district.

Chapter 130A.

Public Health.

Article 2.

Local Administration.

Part 2. Sanitary Districts.

Sec.

- 130A-47. Creation by Commission.
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- 130A-80. Merger of district with contiguous city or town; election.
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- 130A-80.2. Merger of district with non-coterminous city or town it is contained wholly within; election.
- 130A-80.3. Merger of district with contiguous metropolitan water district.
- 130A-81. Incorporation of municipality and simultaneous dissolution of sanitary district, with transfer of assets and liabilities from the district to the municipality.
- 130A-82. Dissolution of sanitary districts; referendum.
- 130A-83. Merger of two contiguous sanitary districts.

ARTICLE 2.

Local Administration.

Part 2. Sanitary Districts.

§ 130A-47. Creation by Commission.

For the purpose of preserving and promoting the public health and welfare, the Commission may create sanitary districts without regard for county, township or municipal lines. However, no municipal corporation or any part of the territory in a municipal corporation shall be included in a sanitary district except at the request of the governing board of the municipal corporation. If the municipal corporation has not levied any tax nor performed any official act nor held any elections within a period of four years preceding the date of the petition for the sanitary district, a request of the governing board shall not be required. (1927, c. 100, s. 1; 1955, c. 1307; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

Local Modification to Former Similar Provisions. — Caswell: 1939, c. 3, ss. 1, 2; 1941, c. 89; 1943, c. 287; Moore: 1939, c. 3, s. 3.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 20.12 provides: "The Department of Transportation shall pay the nonbetterment cost for the relocation of water and sewer lines:

- "(1) that are located within the existing State highway right-of-way;
- "(2) that are necessary to be relocated for State highway improvement projects let after July 1, 1993; and
- "(3) that are owned by a sanitary

district organized pursuant to Part 2 of Article 2 of Chapter 130A of the General Statutes."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

CASE NOTES

As to validity of former statutory provisions regarding sanitary districts, see *Drysdale v. Prudden*, 195 N.C. 722, 143 S.E. 530 (1928).

When Sanitary District May Occupy Same Territory as City. — A sanitary district may with, but only with, the consent of a municipality, occupy the same territory as the city. *State ex rel. East Lenoir San. Dist. v. City of Lenoir*, 249 N.C. 96, 105 S.E.2d 411 (1958), decided under former statutory provisions.

Infringement of Franchise. — The

holder of a nonexclusive franchise has no monopoly, and cannot complain of competition from a publicly created utility system. Phrased another way, the creation by a state of a competing public utility does not amount to a "taking" compensable under U.S. Const., Amend. XIV. Hence, a water company had no cause of action for damages against the State, the Utilities Commission, or a sanitary district for infringement of its franchise. *Durham v. North Carolina*, 395 F.2d 58 (4th Cir. 1968), decided under former statutory provisions.

§ 130A-48. Procedure for incorporating district.

A sanitary district shall be incorporated as follows. Either fifty-one percent (51%) or more of the resident freeholders within a proposed sanitary district or fifty-one percent (51%) or more of the freeholders within a proposed sanitary district, whether or not the freeholders are residents of the proposed sanitary district, may petition the county board of commissioners of the county in which all or the largest portion of the land of the proposed district is located. This petition shall set forth the boundaries of the proposed sanitary district and the objectives of the proposed district. For the purposes of this Part, the term "freeholder" shall mean a person holding a deed to a tract of land within the district or proposed district, and also shall mean a person who has entered into a contract to purchase a tract of land within the district or proposed district, is making payments pursuant to a contract and will receive a deed upon completion of the contractual payments. The contracting purchaser, rather than the contracting seller, shall be deemed to be the freeholder. Upon receipt of the petition, the county board of commissioners, through its chairperson, shall notify the Department and the chairperson of the county board of commissioners of any other county or counties in which any portion of the proposed district lies of the receipt of the petition. The chairperson shall request that the Department hold a joint public hearing with the

county commissioners of all the counties in which a portion of the district lies concerning the creation of the proposed sanitary district. The Secretary and the chairperson of the county board of commissioners shall name a time and place within the proposed district to hold the public hearing. The chairperson of the county board of commissioners shall give prior notice of the hearing by posting a notice at the courthouse door of the county and also by publication at least once a week for four successive weeks in a newspaper published in the county. In the event the hearing is to be before a joint meeting of the county boards of commissioners of more than one county, or in the event the land to be affected lies in more than one county, publication and notice shall be made in each of the affected counties. In the event that all matters pertaining to the creation of this sanitary district cannot be concluded at the hearing, the hearing may be continued at a time and place within the proposed district named by the Department. (1927, c. 100, ss. 2-4; 1951, c. 178, s. 1; 1957, c. 1357, s. 1; 1959, c. 1189, s. 1; 1965, c. 135; 1967, c. 24, s. 21; 1973, c. 476, s. 128; 1975, c. 536; 1983, c. 891, s. 2.)

Local Modification to Former
§ 130-124. — Guilford: 1973, c. 263.

CASE NOTES

Withdrawal of Names from Petition. — Signers of a petition for the creation of a sanitary district are entitled as a matter of right to withdraw their names from the petition at any time before action is taken on the petition by the county commissioners on the question of approval, and when their withdrawal reduces the number of signers to less than 51% of the resident freeholders within the proposed district the board of county commissioners is

without jurisdiction and its approval of the petition may be enjoined. *Idol v. Hanes*, 219 N.C. 723, 14 S.E.2d 801 (1941); *Deal v. Enon San. Dist.*, 245 N.C. 74, 95 S.E.2d 362 (1956), decided under former statutory provisions.

Right To Be Heard. — The required public hearing contemplates that every interested person has a right to be heard. *Deal v. Enon San. Dist.*, 245 N.C. 74, 95 S.E.2d 362 (1956), decided under former statutory provisions.

§ 130A-49. Declaration that district exists; status of industrial villages within boundaries of district.

(a) If, after the required public hearing, the Commission and the county commissioners determine that a district shall be created for the purposes stated in the petition, the Commission shall adopt a resolution defining the boundaries of the district and declaring the territory within the boundaries to be a sanitary district. The Commission may make minor deviation in defining the boundaries from those prescribed in the petition when it determines the change to be in the interest of the public health.

(b) The owner or controller of an industrial plant may make application requesting that the plant or the plant and its contiguous village be included within or excluded from the sanitary district. The application shall be filed with the Commission on or before the date of the public hearing. If an application is properly filed, the Commission shall include or exclude the industrial plant and contiguous village in accordance with the application.

(c) Each district when created shall be identified by a name or number assigned by the Commission. (1927, c. 100, s. 5; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

CASE NOTES

The validity of former statutory provisions relating to sanitary districts were not affected by the provision that certain industrial enterprises and villages situate therein could be excluded upon application of the owners. *Drysdale v. Prudden*, 195 N.C. 722, 143 S.E. 530 (1928).

No sanitary district exists unless

legally created and established. *Deal v. Enon San. Dist.*, 245 N.C. 74, 95 S.E.2d 362 (1956), decided under former statutory provisions.

As to establishing of territory different from that described in petition, see *Deal v. Enon San. Dist.*, 245 N.C. 74, 95 S.E.2d 362 (1956), decided under former statutory provisions.

§ 130A-50. Election and terms of office of sanitary district boards.

(a) The Department shall send a copy of the resolution creating the sanitary district to the county board or boards of county commissioners of the county or counties in which all or part of the district is located. The board or boards of commissioners shall hold a meeting or joint meeting for the purpose of electing the members of the sanitary district board.

(b) The sanitary district board shall be composed of either three or five members as the county commissioners in their discretion shall determine. The members first appointed shall serve as the governing body of the sanitary district until the next regular election for municipal and special district officers as provided in G.S. 163-279, which occurs more than 90 days after their appointment. At that election, their successors shall be elected. The terms of the members shall be for two years or four years and may be staggered as determined by the county board of commissioners so that some members are elected at each biennial election. The members of the sanitary district board shall be residents of the district. The county board of commissioners shall notify the county board of elections of any decision made under this subsection.

If the sanitary district board consists of three members, the county commissioners may at any time increase the sanitary district board to five members. The increase shall become effective with respect to any election where the filing period for candidacy opens at least 30 days after approval of the expansion to five members. The effective date of the expansion is the organizational meeting of the sanitary district board after the election.

The county commissioners may provide for staggering terms of an existing sanitary district board whose members serve two-year terms by providing for some of the members to be elected at the next election to be for four-year terms. The change shall become effective with respect to any election where the filing period for candidacy opens at least 30 days after approval of the staggering of terms.

The county commissioners may provide for changing a sanitary district board from two-year terms to unstaggered four-year terms. This may be done either by providing that at the next election, all members shall be elected for four-year terms, or by extending the terms of existing members from two years to four years. The change shall become effective with respect to any election where the filing

period for candidacy opens at least 30 days after approval of the change of length of terms.

(b1) If a sanitary district:

1. Does not share territory with any city as defined by G.S. 160A-1(2), and
2. The sanitary district is in more than one county, the boards of county commissioners in all counties with territory in the sanitary district may set the sanitary district elections to be held on the same date as general elections in even-numbered years under G.S. 163-1 and may extend the terms of any sanitary district board members who are in office at the ratification of this act until the next even-year general election can be held and successors qualified.

(b2) If a sanitary district:

- (1) Is located entirely within a county which has no incorporated city as defined by G.S. 160A-1(2) located within that county; and
- (2) Has a sanitary district board whose members serve four-year terms which are not staggered and which next expire in 1991,

the board of commissioners of that county may, by resolution adopted prior to December 31, 1989, set the sanitary district election to be held on the same date as general elections in even-numbered years under G.S. 163-1. Such resolution shall extend the terms of office of the then serving members of the sanitary district board by one year, so that they will expire on the first Monday in December following the 1992 general election. Other than as provided by this subsection, sanitary district elections shall continue to be conducted in accordance with this Article and Chapter 163 of the General Statutes.

(c) The election shall be nonpartisan and decided by simple plurality as provided in G.S. 163-292 and shall be held and conducted by the county board of elections in accordance with the applicable provisions of Articles 23 and 24 of Chapter 163 of the General Statutes. If the district is in more than one county, then the county board of elections of the county including the largest part of the district shall conduct the election for the entire district with the assistance and full cooperation of the boards of elections in the other counties.

(d) The board of elections shall certify the results of the election to the clerk of superior court. The clerk of superior court shall take and file the oaths of office of the board members elected.

(e) The elected members of the board shall take the oath of office on the first Monday in December following their election and shall serve for the term elected and until their successors are elected and qualified. (1927, c. 100, s. 6; 1943, c. 602; 1953, c. 798; 1955, c. 1073; 1957, c. 1357, s. 1; 1963, c. 644; 1973, c. 476, s. 128; 1981, c. 186, s. 1; 1983, c. 891, s. 2; 1987, c. 22, s. 1; 1989, c. 310; 1993 (Reg. Sess., 1994), c. 736, s. 1.1.)

Local Modification to Former § 130-126. — Alamance: 1955, c. 588; West Smithfield Sanitary District Board: 1973, c. 367.

Editor's Note. — The bracketed word "be" in subdivision (b1) has been inserted

to reflect the language apparently intended.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 12, 1994, added the last three paragraphs of subsection (b).

§ 130A-51. City governing body acting as sanitary district board.

(a) (Effective until January 1, 1997, upon approval of constitutional amendments) When the General Assembly incorporates a city or town that includes within its territory fifty percent (50%) or more of the territory of a sanitary district, the governing body of the city or town shall become ex officio the governing board of the sanitary district if the General Assembly provides for this action in the incorporation act and if the existing sanitary district board adopts a final resolution pursuant to this section. The resolution may be adopted at any time within the period beginning on the day of ratification of the incorporation act and ending 270 days after the effective date.

(a) (Effective January 1, 1997, upon approval of constitutional amendments) When the General Assembly incorporates a city or town that includes within its territory fifty percent (50%) or more of the territory of a sanitary district, the governing body of the city or town shall become ex officio the governing board of the sanitary district if the General Assembly provides for this action in the incorporation act and if the existing sanitary district board adopts a final resolution pursuant to this section. The resolution may be adopted at any time within the period beginning on the day the incorporation act becomes law and ending 270 days after that date.

(b) To begin the process leading to the city or town board becoming ex officio the sanitary district board, the board of the sanitary district shall first adopt a preliminary resolution finding that the interests of the citizens of the sanitary district and of the city or town will be best served if both units of local government are governed by a single governing body. This resolution shall also set the time and place for a public hearing on the preliminary resolution.

(c) Upon adoption of this preliminary resolution, the chairperson of the sanitary district board shall publish a notice of the public hearing once at least 10 days before the hearing in a newspaper of general circulation within the sanitary district. This notice shall set forth the time and place of the hearing and shall briefly describe its purpose. At the hearing, the board shall hear any citizen of the sanitary district or of the city or town who wishes to speak to the subject of the preliminary resolution.

(d) Within 30 days after the day of the public hearing, the sanitary district board may adopt a final resolution finding that the interests of the citizens of the sanitary district and of the city or town will be best served if both units are governed by a single board. This resolution shall set the date on which the terms of office of the members of the sanitary district board end and that board is dissolved and service by the ex officio board begins. This date may be the effective date of the incorporation of the city or town or any date within one year after the effective date. At that time, the sanitary district board is dissolved and the mayor and members of the governing body of the city or town become ex officio the board of the sanitary district. The mayor shall act ex officio as chairperson of the sanitary district board.

(e) The chairperson of the sanitary district board that adopts a final resolution shall within 10 days after the day the resolution is

adopted, send a copy of the resolution to the mayor and each member of the city or town governing board and to the Department. (1981, c. 201; 1983, c. 891, s. 2; 1995, c. 20, s. 15.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective until January 1, 1997, upon approval of constitutional amendments. The second version of subsection (a) set out above is effective January 1, 1997, upon approval of constitutional amendments.

Editor's Note. — Session Laws 1995, c. 20, s. 17 provides that sections 1 through 16 of this act shall become effective only if the constitutional amendments proposed by Session Laws 1995, c. 5, ss. 1-2 are approved as provided by Session Laws 1995, c. 5, ss. 3-4, and if so

approved, sections 1 through 16 shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.

Effect of Amendments. — The 1995 amendment, effective on or after January 1, 1997 if constitutional amendments proposed by 1995, c. 5, ss. 1-2 are approved, in the last sentence of subsection (a) deleted "of ratification of" preceding "the incorporation", inserted "becomes law" preceding "and ending" and substituted "that date" for "the effective date".

§ 130A-52. Special election if election not held in November of 1981.

(a) If in a sanitary district, an election of board members was required to be held in November of 1981 under G.S. 130A-50 but was not held, the board of commissioners of the county or counties in which the district is located may by resolution order a special election of all the board members to be held at the same time as the General Election in November of 1982.

(b) The election shall be held under the procedures of Articles 23 and 24 of Chapter 163 of the General Statutes and in accordance with G.S. 130A-50, except that filing shall open at noon on Monday, August 9, 1982, and close at noon on Monday, August 23, 1982.

(c) In the election held under this section, all of the members of the board shall be elected. If the board of commissioners has provided for two- or four-year terms, the members elected in 1982 shall serve until the 1983 or 1985 election, respectively, and then their successors shall be elected for the two- or four-year terms provided by the county board or boards of commissioners.

(d) Any resolution adopted under subsection (a) of this section shall be filed with the Department. (1981 (Reg. Sess., 1982), c. 1271, s. 1; 1983, c. 891, s. 2.)

§ 130A-52.1. Action if 1983 election not held.

If any sanitary district held an election in 1982 under G.S. 130A-52, but failed to hold the 1983 election, then the persons elected in 1982 shall hold office until the terms that were to begin in 1983 have expired. (1983 (Reg. Sess., 1984), c. 1021, s. 1.)

§ 130A-53. Actions validated.

Any action of a sanitary district taken prior to July 1, 1984, shall not be invalidated by failure to hold an election for members of the board. (1981 (Reg. Sess., 1982), c. 1271, s. 1; 1983, c. 891, s. 2; 1983 (Reg. Sess., 1984), c. 1021, s. 2.)

§ 130A-54. Vacancy appointments to district boards.

Any vacancy in a sanitary district board shall be filled by the county commissioners until the next election for sanitary district board members. If the district is located in more than one county, the vacancy shall be filled by the county commissioners of the county from which the vacancy occurred. (1935, c. 357, s. 2; 1957, c. 1357, s. 1; 1981, c. 186, s. 2; 1983, c. 891, s. 2.)

§ 130A-68. Returns of elections.

In all elections provided for in this Part, the board of elections shall file copies of the returns with the county boards of commissioners, sanitary district board and clerk of superior court in which the district is located. (1927, c. 100, s. 23; 1957, c. 1357, s. 1; 1981, c. 186, s. 4; 1983, c. 891, s. 2.)

§ 130A-69. Procedure for extension of district.

(a) If after a sanitary district has been created or the provisions of this Part have been made applicable to a sanitary district, a petition signed by not less than fifteen percent (15%) of the resident freeholders within any territory contiguous to and adjoining the sanitary district may be presented to the sanitary district board requesting annexation of territory described in the petition. The sanitary district board shall send a copy of the petition to the board of commissioners of the county or counties in which the district is located and to the Department. The sanitary district board shall request that the Department hold a joint public hearing with the sanitary district board on the question of annexation. The Secretary and the chairperson of the sanitary district board shall name a time and place for the public hearing. The chairperson of the sanitary district board shall publish a notice of public hearing once in a newspaper or newspapers published or circulating in the sanitary district and the territory proposed to be annexed. The notice shall be published not less than 15 days prior to the hearing. If after the hearing, the Commission approves the annexation of the territory described in the petition, the Department shall advise the board or boards of commissioners of the approval. The board or boards of commissioners shall order and provide for the holding of a special election upon the question of annexation within the territory proposed to be annexed.

(b) If at or prior to the public hearing, a petition is filed with the sanitary district board signed by not less than fifteen percent (15%) of the freeholders residing in the sanitary district requesting an election be held on the annexation question, the sanitary district board shall send a copy of the petition to the board or boards of commissioners who shall order and provide for the submission of the question to the voters within the sanitary district. This election may be held on the same day as the election in the territory proposed to be annexed, and both elections and registrations may be held pursuant to a single notice. A majority of the votes cast is necessary for a territory to be annexed to a sanitary district.

(c) The election shall be held by the county board or boards of elections as soon as possible after the board or boards of commis-

sioners orders the election. The cost of the election shall be paid by the sanitary district. Registration in the area proposed for annexation shall be under the same procedure as G.S. 163-288.2.

(d) Notice of the election shall be given as required by G.S. 163-33(8) and shall include a statement that the boundary lines of the territory to be annexed and the boundary lines of the sanitary district have been prepared by the district board and may be examined. The notice shall also state that if a majority of the those voting in the election favor annexation, then the territory annexed shall be subject to all debts of the sanitary district.

(e) The ballot shall be substantially as follows:

- FOR annexation to the Sanitary District
- AGAINST annexation to the Sanitary District."

The board or boards of elections shall certify the results of the election to the sanitary district board and the board or boards of commissioners of the county or counties in which the district is located.

(f) Notwithstanding any other provisions of this section, if a petition for extension of the boundaries of a sanitary district is signed by not less than fifty-one percent (51%) of the resident freeholders within the territory proposed to be annexed, it shall not be necessary to hold an election provided for by this section on the question of the extension of the boundaries of the sanitary district.

(g) Notwithstanding any other provisions of this section, if a petition for extension of the boundaries of a sanitary district is signed by the owners of all the real property within the territory proposed to be annexed, it shall not be necessary to hold any election or any hearings provided for by this section on the question of the extension of the boundaries of the sanitary district.

(h) 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 on any ground unless the action or proceeding is commenced within 30 days after the certification of the results by the board or boards of elections.

(i) When additional territory has been annexed to a sanitary district and the proposition of issuing bonds of the sanitary district after the annexation has been approved by the voters at an election held within one year subsequent to annexation, fifty-one percent (51%) or more of the resident freeholders within the annexed territory may petition the sanitary district board for the removal and exclusion of the territory from the sanitary district. No petition may be filed after bonds of the sanitary district have been approved in an election held at any time after annexation. If the sanitary district board approves the petition, it shall send a copy to the Department requesting that the petition be granted and shall send additional copies to the county board or boards of commissioners. A public hearing shall be conducted under the same procedure provided for the annexation of additional territory. If the Commission deems it advisable to comply with the request of the petition, the Commission shall adopt a resolution to that effect and shall redefine the boundaries of the sanitary district. (1927, c. 100, s. 24; 1943, c. 543; 1947, c. 463, s. 1; 1951, c. 897, s. 1; 1957, c. 1357, s. 1; 1959, c. 1189, s. 2; 1961, c. 732; 1973, c. 476, s. 128; 1981, c. 186, s. 5; 1983, c. 891, s. 2.)

§ 130A-70. District and municipality extending boundaries and corporate limits simultaneously.

(a) When the boundaries of a sanitary district lie entirely within or are coterminous with the corporate limits of a city or town and the sanitary district provides the only public water supply and sewage disposal system for the city or town, the boundaries of the sanitary district and the corporate limits of the city or town may be extended simultaneously as provided in this section.

(b) Twenty-five percent (25%) or more of the resident freeholders within the territory proposed to be annexed to the sanitary district and to the city or town may petition the sanitary district board and the governing board of the city or town setting forth the boundaries of the area proposed to be annexed and the objects annexation is proposed to accomplish. The petition may also include any area already within the corporate limits of the city or town but not already within the boundaries of the sanitary district. Upon receipt of the petition, the sanitary district board and the governing board of the city or town shall meet jointly and shall hold a public hearing prior to approval of the petition. Notice of the hearing shall be made by posting a notice at the courthouse door of the county or counties and by publishing a notice at least once a week for four consecutive weeks in a newspaper with a circulation in the county or counties. If at or after the public hearing the sanitary district board and the governing board of the city or town, acting jointly, shall each approve the petition, the petition shall be submitted to the Commission for approval. If the Commission approves the petition, the question shall be submitted to a vote of all voters in the area or areas proposed to be annexed voting as a whole. The election shall be held on a date approved by the sanitary district board and by the governing board of the city or town.

(c) The words "For Extension" and "Against Extension" shall be printed on the ballots for the election. A majority of all the votes cast is necessary for a district and municipality to extend boundaries and corporate limits simultaneously.

(d) After declaration of the extension, the territory and its citizens and property shall be subject to all debts, ordinances and rules in force in the sanitary district and in the city or town, and shall be entitled to the same privileges and benefits as other parts of the sanitary district and the city or town. The newly annexed territory shall be subject to the sanitary district and the city or town taxes levied for the fiscal year following the date of annexation.

(e) The costs of holding and conducting the election for annexation pursuant to this section, shall be shared equally by the sanitary district and by the city or town.

(f) The sanitary district board and the governing board of the city or town acting jointly, may order the board or boards of elections of the county or counties in which the sanitary district and the city or town are located, to call, hold, conduct and certify the result of the election, according to the provisions of Chapter 163 of the General Statutes.

(g) When the boundaries of a sanitary district and the corporate limits of a city or town are extended as provided in this section, and the proposition of issuing bonds of the sanitary district as enlarged has not been approved by the voters at an election held within one

year subsequent to the extension, the annexed territory may be removed and excluded from the sanitary district in the manner provided in G.S. 130A-69. If the petition includes areas within the present corporate limits of the city or town but not within the present boundaries of the sanitary district, these areas shall not be removed or excluded from the city or town under the provisions of this section.

(h) The powers granted by this section shall be supplemental and additional to powers conferred by any other law and shall not be regarded as in derogation to any powers now existing. (1953, c. 977; 1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1981, c. 186, s. 6; 1983, c. 891, s. 2.)

§ 130A-71. Procedure for withdrawing from district.

Fifty-one percent (51%) or more of the resident freeholders of a portion of a sanitary district which has no outstanding indebtedness, with the approval of the sanitary district board, may petition the county board of commissioners of the county in which a major portion of the petitioners reside, that the identified portion of the district be removed and excluded from the district. If the county board of commissioners approves the petition, an election shall be held in the entire district on the question of exclusion. A majority of all the votes cast is necessary for a district to be removed and excluded from a sanitary district. The county board of commissioners shall notify the Commission who shall remove and exclude the portion of the district, and redefine the limits accordingly. (1957, c. 1357, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

§ 130A-72. Dissolution of certain sanitary districts.

Fifty-one percent (51%) or more of the resident freeholders of a sanitary district which has no outstanding indebtedness may petition the board of commissioners of the county in which all or the greater portion of the resident freeholders of the district are located to dissolve the district. Upon receipt of the petition, the county board of commissioners shall notify the Department and the chairperson of the county board of commissioners of any other county or counties in which any portion of the district lies, of the receipt of the petition, and shall request that the Department hold a joint public hearing with the county commissioners concerning the dissolution of the district. The Secretary and the chairperson of the county board of commissioners shall name a time and place within the district for the public hearing. The county board of commissioners shall give prior notice of the hearing by posting a notice at the courthouse door of the county or counties and by publication in a newspaper or newspapers with circulation in the county or counties at least once a week for four consecutive weeks. If all matters pertaining to the dissolution of the sanitary district cannot be concluded at the hearing, the hearing may be continued to a time and place determined by the Department. If after the hearing, the Commission and the county board or boards of commissioners deem it advisable to comply with the request of the petition, the Commission shall adopt a resolution to dissolve the sanitary district. The sanitary district

board of the dissolved district is authorized to convey all assets, including cash, to any county, municipality, or other governmental unit, or to any public utility company operating or to be operated under the authority of a certificate of public convenience and necessity granted by the North Carolina Utilities Commission in return for the assumption of the obligation to provide water and sewage services to the area served by the district at the time of dissolution. (1943, c. 620; 1951, c. 178, s. 2; 1957, c. 1357, s. 1; 1967, c. 4, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

§ 130A-73. Dissolution of sanitary districts having no outstanding indebtedness and located wholly within or coterminous with corporate limits of city or town.

When the boundaries of a sanitary district which has no outstanding indebtedness are entirely located within or coterminous with the corporate limits of a city or town, fifty-one percent (51%) or more of the resident freeholders within the district may petition the board of commissioners within the county in which all or the greater portion of the resident freeholders of the district are located to dissolve the district. Upon receipt of the petition, the board of commissioners shall notify the Department, the chairperson of the board of commissioners of any other county or counties in which any portion of the district lies and the governing body of the city or town within which the district lies of the receipt of the petition, and shall request that the Department hold a joint public hearing with the board or boards of commissioners and the governing body of the city or town. The Secretary, the chairperson of the board of commissioners of the county in which all or the greater portion of the resident freeholders are located and the presiding officer of the governing body of the city or town shall name a time and place within the boundaries of the district and the city or town for the public hearing. The county board of commissioners shall give notice of the hearing by posting prior notice at the courthouse door of the county or counties and also by publication in a newspaper or newspapers circulating in the district at least once a week for four consecutive weeks. If all matters pertaining to the dissolution of the sanitary district cannot be concluded at the hearing, the hearing may be continued to a time and place determined by the Department. If, after the hearing, the Commission, the county board or boards of commissioners and the governing body of the city or town shall deem it advisable to comply with the request of the petition, the Commission shall adopt a resolution dissolving the district. All taxes levied by the sanitary district which were levied prior to but which are collected after the dissolution shall vest in the city or town. All property held, owned, controlled or used by the sanitary district upon the dissolution or which may later be vested in the sanitary district, and all judgments, liens, rights and causes of actions in favor of the sanitary district shall vest in the city or town. At the dissolution, taxes owed to the sanitary district shall be collected by the city or town. (1963, c. 512, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2.)

§ 130A-80. Merger of district with contiguous city or town; election.

A sanitary district may merge with a contiguous city or town in the following manner:

- (1) The sanitary district board and the governing board of the city or town may resolve that it is advisable to call an election within both the sanitary district and the city or town to determine if the sanitary district and the city or town should merge;
- (2) If the sanitary district board and the governing board of the city or town resolve that it is advisable to call for an election, both boards shall adopt a resolution requesting the board of commissioners in the county or counties in which the district and the town or city or any portion is located to hold an election on a date named by the sanitary district board and the governing board of the city or town after consultation with the appropriate board or boards of elections. The election shall be held within the sanitary district and the city or town on the question of merger;
- (3) The county board or boards of commissioners shall request the appropriate board or boards of elections to hold and conduct the election. All voters of the city or town and the sanitary district shall be eligible to vote if the election is called in both areas as authorized in subsection (1);
- (4) Notice of the election shall be given as required in G.S. 163-33(8). The board or boards of elections may use either method of registration set out in G.S. 163-288.2;
- (5) If an election is called as provided in subsection (2), the board or boards of elections shall provide ballots for the election in substantially the following form:
 FOR merger of the Town of and the Sanitary District, if a majority of the registered voters of both the Sanitary District and the Town vote in favor of merger, the combined territories to be known as the Town of and to assume all of the obligations of the Sanitary District and to receive from the Sanitary District all the property rights of the District; from and after merger residents of the District would enjoy all of the benefits of the municipality and would assume their proportionate share of the obligations of the Town as merged.
 AGAINST merger.”
- (6) A majority of all the votes cast by voters of the sanitary district and a majority of all the votes cast by voters of the city or town is necessary for the merger of a sanitary district with the city or town. The merger shall be effective on July 1 following the election. If a majority of the votes cast in either the sanitary district or the city or town vote against the merger, any election on similar propositions of merger may not occur until one year from the date of the last election.
- (7) Upon the merger of a sanitary district and a city or town pursuant to this section, the city or town shall assume all obligations of the sanitary district and the sanitary district shall convey all property rights to the city or town. The vote

for merger shall include a vote for the city or town to assume the obligations of the district. The sanitary district shall cease to exist as a political subdivision from and after the effective date of the merger. After the merger, the residents of the sanitary district enjoy all of the benefits of the municipality and shall assume their share of the obligations of the city or town. All taxes levied and collected by the city or town from and after the effective date of the merger shall be levied and collected uniformly in all the territory included in the enlarged municipality; and

- (8) If merger is approved, the governing board of the city or town shall determine the proportion of the district's indebtedness, if any, which was incurred for the construction of water systems and the proportion which was incurred for construction of sewage disposal systems. The governing board shall send a certified copy of the determination to the local government commission in order that the Commission and the governing body of the merged municipality can determine the net debt of the merged municipality as required by G.S. 159-55. (1961, c. 866; 1981, c. 186, s. 7; 1983, c. 891, s. 2; 1987, c. 314, s. 1.)

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How Results of Election Determined. — In an election held pursuant to former § 130-156.2 for the merger of a municipality and a sanitary district, the results of the election would be determined by a majority of the registered

voters of both the sanitary district and the municipality involved who actually voted in the election. See opinion of the Attorney General to Mr. Archie L. Smith, Asheboro City Attorney, 40 N.C.A.G. 641 (1969).

§ 130A-80.1. Merger of district with coterminous city or town; election.

A sanitary district may merge with a coterminous city or town in the following manner:

- (1) The sanitary district board and the governing board of the city or town may resolve that it is advisable to call an election within the area of the sanitary district and the city or town to determine if the sanitary district and the city or town should merge;
- (2) If the sanitary district board and the governing board of the city or town resolve that it is advisable to call for an election, both boards shall adopt a resolution requesting the board of commissioners in the county or counties in which the district and the town or city or any portion is located to hold an election on a date named by the sanitary district board and the governing board of the city or town after consultation with the appropriate board or boards of elections. The election shall be held within the sanitary district and the city or town on the question of merger;
- (3) The county board or boards of commissioners shall request the appropriate board or boards of elections to hold and conduct the election. All voters of the city or town and the sanitary district shall be eligible to vote;
- (4) Notice of the election shall be given as required in G.S. 163-33(8);

- (5) The board or boards of elections shall provide ballots for the election in substantially the following form:
 FOR merger of the Town of and the Sanitary District, if a majority of the registered voters vote in favor of merger, the area to be known as the Town of and to assume all of the obligations of the Sanitary District and to receive from the Sanitary District all the property rights of the District.
 AGAINST merger.”
- (6) A majority of all the votes cast is necessary for the merger of a sanitary district with the city or town. The merger shall be effective on July 1 following the election. If a majority of the votes cast is not in favor of the merger, an election on merger may not occur until one year from the date of the last election.
- (7) Upon the merger of a sanitary district and a city or town pursuant to this section, the city or town shall assume all obligations of the sanitary district and the sanitary district shall convey all property rights to the city or town. The vote for merger shall include a vote for the city or town to assume the obligations of the district. The sanitary district shall cease to exist as a political subdivision from and after the effective date of the merger; and
- (8) If merger is approved, the governing board of the city or town shall determine the proportion of the district's indebtedness, if any, which was incurred for the construction of water systems and the proportion which was incurred for construction of sewage disposal systems. The governing board shall send a certified copy of the determination to the Local Government Commission in order that the Commission and the governing body of the merged municipality can determine the net debt of the merged municipality as required by G.S. 159-55. (1989, c. 194, s. 1.)

§ 130A-80.2. Merger of district with noncoterminous city or town it is contained wholly within; election.

A sanitary district may merge with a city or town which it is contained wholly within, but where the sanitary district and the city or town do not have coterminous boundaries, in the following manner:

- (1) The sanitary district board and the governing board of the city or town may resolve that it is advisable to call an election within both the sanitary district and the city or town to determine if the sanitary district and the city or town should merge;
- (2) If the sanitary district board and the governing board of the city or town resolve that it is advisable to call for an election, both boards shall adopt a resolution requesting the board of commissioners in the county or counties in which the district and the town or city or any portion is located to hold an election on a date named by the sanitary district board and the governing board of the city or town after consultation with the appropriate board or boards of

elections. The election shall be held within the sanitary district and the city or town on the question of merger;

- (3) The county board or boards of commissioners shall request the appropriate board or boards of elections to hold and conduct the election. All voters of the city or town and the sanitary district shall be eligible to vote if the election is called in both areas as authorized in subdivision (1);
- (4) Notice of the election shall be given as required in G.S. 163-33(8). The board or boards of elections may use either method of registration set out in G.S. 163-288.2;
- (5) If an election is called as provided in subsection (2), the board or boards of elections shall provide ballots for the election in substantially the following form:

FOR merger of the Town of and the Sanitary District, if a majority of the registered voters of both the Sanitary District and the Town vote in favor of merger, the combined territories to be known as the Town of and to assume all of the obligations of the Sanitary District and to receive from the Sanitary District all the property rights of the District; from and after merger residents of the District would enjoy all of the benefits of the municipality and would assume their proportionate share of the obligations of the Town as merged.
 AGAINST merger."
- (6) A majority of all the votes cast by voters of the sanitary district and a majority of all the votes cast by voters of the city or town is necessary for the merger of a sanitary district with the city or town. The merger shall be effective on July 1 following the election. If a majority of the votes cast in either the sanitary district or the city or town vote against the merger, any election on similar propositions of merger may not occur until one year from the date of the last election.
- (7) Upon the merger of a sanitary district and a city or town pursuant to this section, the city or town shall assume all obligations of the sanitary district and the sanitary district shall convey all property rights to the city or town. The vote for merger shall include a vote for the city or town to assume the obligations of the district. The sanitary district shall cease to exist as a political subdivision from and after the effective date of the merger. After the merger, the residents of the sanitary district enjoy all of the benefits of the municipality and shall assume their share of the obligations of the city or town. All taxes levied and collected by the city or town from and after the effective date of the merger shall be levied and collected uniformly in all the territory included in the enlarged municipality; and
- (8) If merger is approved, the governing board of the city or town shall determine the proportion of the district's indebtedness, if any, which was incurred for the construction of water systems and the proportion which was incurred for construction of sewage disposal systems. The governing board shall send a certified copy of the determination to the Local Government Commission in order that the Commission and the governing body of the merged municipality can determine the net debt of the merged municipality as required by G.S. 159-55. (1989, c. 194, s. 2.)

Editor's Note. — Session Laws 1989, c. 194, s. 4 provided that if a sanitary district and a city or town were merged in any election conducted prior to January 1, 1989, under § 130A-80, and the

merger did not qualify under that section, but would have been permissible under this section, that that merger would be in all respects validated and confirmed.

§ 130A-80.3. Merger of district with contiguous metropolitan water district.

(a) A sanitary district may merge with a contiguous, but not coterminous, metropolitan water district organized under Article 4 of Chapter 162A of the General Statutes in the following manner, but only if the metropolitan water district has no outstanding indebtedness:

- (1) The sanitary district board and the district board of the metropolitan water district shall resolve that it is advisable for the sanitary district and the metropolitan water district should merge;
- (2) If the sanitary district board and the district board of the metropolitan water district resolve that it is advisable to merge, they shall call a public hearing on the merger. Each of such boards shall hold a public hearing on the question of merger, and advertisement of the public hearing shall be published at least 10 days before the public hearing;
- (3) After the public hearing, if the sanitary district board and the district board of the metropolitan water district by resolution approve the merger, the merger shall be effective on July 1 following the adoption of the resolution;
- (4) Upon the merger of a sanitary district and a metropolitan water district pursuant to this section, the sanitary district shall assume all obligations of the metropolitan water district, and the metropolitan water district shall convey all property rights to the sanitary district. The metropolitan water district shall cease to exist as a political subdivision from and after the effective date of the merger. After the merger, the residents of the metropolitan water district enjoy all of the benefits of the sanitary district and shall assume their share of the obligations of the sanitary district. All taxes levied and collected by the sanitary district from and after the effective date of the merger shall be levied and collected uniformly in all the territory included in the enlarged sanitary district; and
- (5) Certified copies of the merger resolutions shall be filed with the Commission for Health Services.

(b) At the same time as approving the resolution of merger, the district board of the metropolitan water district shall designate by resolution two of its members to serve on an expanded sanitary district board from and after the date of the merger.

(c) If the sanitary district board serves staggered four-year terms, the resolution shall designate one of those two persons to serve until the organizational meeting after the next election of a sanitary district board, and the other to serve until the organizational meeting after the second succeeding election of a sanitary district board. Successors shall be elected by the qualified voters of the sanitary district for four-year terms.

(d) If the sanitary district board serves nonstaggered four-year terms, or serves two-year terms, the two persons shall serve until

the organizational meeting after the next election of a sanitary district board. Successors shall be elected by the qualified voters of the sanitary district for terms of the same length as other sanitary district board members.

(e) When a sanitary district and metropolitan water district are merged under this section, the sanitary district board may change the name of the sanitary district. Notice of such name change shall be filed with the Commission for Health Services. (1989, c. 194, s. 3.)

§ 130A-81. Incorporation of municipality and simultaneous dissolution of sanitary district, with transfer of assets and liabilities from the district to the municipality.

The General Assembly may incorporate a municipality, which includes within its boundaries or is coterminous with a sanitary district and provide for the simultaneous dissolution of the sanitary district and the transfer of the district's assets and liabilities to the municipality, in the following manner:

- (1) The incorporation act shall define the boundaries of the proposed municipality; shall set the date for and provide for a referendum on the incorporation of the proposed municipality and dissolution of the sanitary district; shall provide for registration of voters in the area of the proposed municipality in accordance with G.S. 163-288.2; shall set a proposed effective date for the incorporation of the municipality and the dissolution of the sanitary district; shall establish the form of government for the proposed municipality and the composition of its governing board, and provide for transitional arrangements for the sanitary district to the municipality; and may include any other matter appropriate to a municipal charter.
- (1a) As an alternate to subdivision (1) of this section, the incorporation act shall define the boundaries of the proposed municipality; shall provide that the incorporation is not subject to referendum; shall set a proposed effective date for the incorporation of the municipality and the dissolution of the sanitary district; shall establish the form of government for the proposed municipality and the composition of its governing board, and provide for transitional arrangements for the sanitary district to the municipality, and may include any other matter appropriate to a municipal charter. If this subdivision is followed instead of subdivision (1), then the municipality shall be incorporated and the sanitary district simultaneously dissolved at 12 noon on the date set for incorporation in the incorporation act, and the provisions of paragraphs a through g of subdivision (5) of this section shall apply.
- (2) The referendum shall be conducted by the board of elections of the county in which the proposed municipality is located. If the proposed municipality is located in more than one county, the board of elections of the county which has the greatest number of residents of the proposed municipality shall conduct the referendum. The board of election shall

conduct the referendum in accordance with this section and the provisions of the incorporation act.

- (3) The form of the ballot for a referendum under this section shall be substantially as follows:
- FOR incorporation of the Town (City) of and the simultaneous dissolution of the Sanitary District, with transfer of the District's assets and liabilities to the Town (City), and assumption of the District's indebtedness by the Town (City).
- AGAINST incorporation of the Town (City) of and the simultaneous dissolution of the Sanitary District, with transfer of the District's assets and liabilities, to the Town (City), and assumption of the District's indebtedness by the Town (City)."
- (4) If a majority of those voting in the referendum vote in favor of incorporating the proposed municipality and dissolving the sanitary district, the board of elections shall notify the Department and the Local Government Commission of the date on which the municipality will be incorporated and the sanitary district dissolved and shall state that all assets and liabilities of the sanitary district will be transferred to the municipality and that the municipality will assume the district's indebtedness.
- (5) If a majority of those voting in the referendum vote in favor of incorporating the proposed municipality and dissolving the sanitary district, the municipality shall be incorporated and the sanitary district shall be simultaneously dissolved at 12 noon on the date set for incorporation in the incorporation act. At that time:
- a. The sanitary district shall cease to exist as a body politic and corporate;
 - b. All property, real, personal and mixed, belonging to the sanitary district vests in and is the property of the municipality;
 - c. All judgments, liens, rights and courses of action in favor of the sanitary district vest in favor of the municipality;
 - d. All rentals, taxes, assessments and other funds, charges or fees owed to the sanitary district are owed to and may be collected by the municipality;
 - e. Any action, suit, or proceeding pending against, or instituted by the sanitary district shall not be abated by its dissolution, but shall be continued and completed in the same manner as if dissolution had not occurred. The municipality shall be a party to these actions, suits and proceedings in the place of the sanitary district and shall pay any judgment rendered against the sanitary district in any of these actions or proceedings. No new process need be served in any of the actions, suits or proceedings;
 - f. All obligations of the sanitary district, including outstanding indebtedness, are assumed by the municipality, and all the obligations and outstanding indebtedness are constituted obligations and indebtedness of the municipality. The full faith and credit of the municipality is deemed to be pledged for the payment of the principal of and interest on all general obligation

bonds and bond anticipation notes of the sanitary district, and all the taxable property within the municipality shall remain subject to taxation for these payments; and

- g. All rules of the sanitary district shall continue in effect until repealed or amended by the governing body of the municipality.
- (6) The transition between the sanitary district and the municipality shall be provided for in the incorporation act of the municipality. (1971, c. 737, 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1985, c. 375.)

§ 130A-82. Dissolution of sanitary districts; referendum.

(a) A county board of commissioners in counties having a population in excess of 275,000 may dissolve a sanitary district by holding a referendum on the questions of dissolution and assumption by the county of any outstanding indebtedness of the district. The county board of commissioners may dissolve a sanitary district which has no outstanding indebtedness when the members of the district shall vote in favor of dissolution.

(b) Before the dissolution of any district shall be approved, a plan for continued operation and provision of all services and functions being performed or rendered by the district shall be adopted and approved by the board of county commissioners.

(c) No plan shall be adopted unless at the time of its adoption any water system or sanitary sewer system being operated by the district is in compliance with all local, State and federal rules and regulations, and if the system is to be serviced by a municipality, the municipality shall first approve the plan.

(d) When all actions relating to dissolution of the sanitary district have been completed, the chairperson of the county board of commissioners shall notify the Department. (1973, c. 476, s. 128; c. 951; 1983, c. 891, s. 2.)

§ 130A-83. Merger of two contiguous sanitary districts.

Two contiguous sanitary districts may merge in the following manner:

- (1) The sanitary district board of each sanitary district must first adopt a common proposed plan of merger. The plan shall contain the name of the new or successor sanitary district, designate the members of the merging boards who shall serve as the interim sanitary district board for the new or successor district until the next election required by G.S. 130A-50(b) and 163-279, and any other matters necessary to complete the merger.
- (2) The merger may become effective only if approved by the voters of the two sanitary districts. In order to call an election, both boards shall adopt a resolution calling upon the board of county commissioners in the county or counties in which the districts are located to call for an election on a date named by the sanitary district boards after consultation with the appropriate boards of election. The board or

- boards of commissioners shall hold an election on the proposed merger of the sanitary districts.
- (3) The county board or boards of commissioners shall request the appropriate board of elections to hold and conduct the elections. All voters of the two sanitary districts shall be eligible to vote.
 - (4) Notice of the elections shall be given as required in G.S. 163-33(8). The board of elections may use the method of registration set out in G.S. 163-288.2.
 - (5) If an election is called as provided in subsection (2), the board or boards of elections shall provide ballots for the election in substantially the following form:
 - FOR the merger of the Sanitary District and the Sanitary District into a single district to be known as the Sanitary District, in which all the property, assets, liabilities, obligations, and indebtedness of the two districts become the property, assets, liabilities, obligations, and indebtedness of the Sanitary District.
 - AGAINST the merger of the Sanitary District and the Sanitary District into a single district to be known as the Sanitary District, in which all the property, assets, liabilities, obligations, and indebtedness of the two districts become the property, assets, liabilities, obligations, and indebtedness of the Sanitary District."
 - (6) If a majority of all the votes cast in each sanitary district vote in favor of the merger, the two sanitary districts shall be merged on July 1 following the election. Should the majority of the votes cast in either sanitary district be against the proposition, the sanitary districts shall not be merged. If a majority of the votes cast in either sanitary district are against the merger, any election on similar propositions of merger may not occur until one year from the date of the last election.
 - (7) Upon the merger of two sanitary districts pursuant to this section and the creation of a new district, the merger becomes effective at 12 noon on the following July 1. At that time:
 - a. The two sanitary districts shall cease to exist as bodies politic and corporate, and the new sanitary district exists as a body politic and corporate.
 - b. All property, real, personal and mixed, belonging to the sanitary districts vests in and is the property of the new sanitary district.
 - c. All judgments, liens, rights of liens and causes of action in favor of either sanitary district vest in the new sanitary district.
 - d. All rentals, taxes, assessments and other funds, charges or fees owed to either of the sanitary districts are owed to and may be collected by the new sanitary district.
 - e. Any action, suit, or proceeding pending against, or having been instituted by, either of the sanitary districts shall not be abated by its dissolution, but shall be continued and completed in the same manner as if dissolution had not occurred. The new sanitary district

- shall be a party to all these actions, suits and proceedings in the place of the dissolved sanitary district and shall pay any judgment rendered against either of the sanitary districts in any of these actions or proceedings. No new process need be served in any of the actions, suits or proceedings.
- f. All obligations of either of the sanitary districts, including any outstanding indebtedness, are assumed by the new sanitary district and all the obligations and outstanding indebtedness are constituted obligations and indebtedness of the new sanitary district. The full faith and credit of the new sanitary district is deemed to be pledged for the punctual payment of the principal of and interest on all general obligation bonds and bond anticipation notes of either of the sanitary districts, and all the taxable property within the new sanitary district shall remain subject to taxation for these payments.
 - g. All rules of either of the sanitary districts shall continue in effect until repealed or amended by the governing body of the new sanitary district.
- (8) Upon the merger of two sanitary districts pursuant to this section when one district is to be dissolved and the other district is to be a successor covering the territory of both, the merger becomes effective at 12 noon on the following July 1. At that time:
- a. One sanitary district shall cease to exist as a body politic and corporate, and the successor sanitary district continues to exist as a body politic and corporate.
 - b. All property, real, personal and mixed, belonging to the sanitary districts vests in, and is the property of the successor sanitary district.
 - c. All judgments, liens, rights of liens and causes of action in favor of either sanitary district vest in the successor sanitary district.
 - d. All rentals, taxes, assessments and other funds, charges or fees owed either of the sanitary districts are owed to and may be collected by the successor sanitary district.
 - e. Any action, suit, or proceeding pending against, or instituted by either of the sanitary districts shall not be abated by its dissolution, but shall be continued and completed in the same manner as if dissolution had not occurred. The successor sanitary district shall be a party to all these actions, suits and proceedings in the place of the dissolved sanitary district and shall pay any judgment rendered against the sanitary district in any of these actions or proceedings. No new process need be served in any of the actions, suits or proceedings.
 - f. All obligations of either of the sanitary districts, including any outstanding indebtedness, are assumed by the successor sanitary district and all the obligations and outstanding indebtedness are constituted obligations and indebtedness of the successor sanitary district. The full faith and credit of the successor sanitary district is deemed to be pledged for the punctual

payment of the principal of and interest on all general obligation bonds and bond anticipation notes of either of the sanitary districts, and all the taxable property within the successor sanitary district shall be and remain subject to taxation for these payments.

- g. All rules of either of the sanitary districts shall continue in effect until repealed or amended by the governing body of the successor sanitary district. (1981, c. 951; 1983, c. 891, s. 2; 1987, c. 314, s. 2.)

Chapter 139.

Soil and Water Conservation Districts.

Article 1.	Sec.	
General Provisions.		elective members; certain duties.
Sec.	139-7.	District board of supervisors — appointive members; organization of board; certain powers and duties.
139-5.		Creation of soil and water conservation districts.
139-6.		District board of supervisors —

ARTICLE 1.

General Provisions.

§ 139-5. Creation of soil and water conservation districts.

(a) Any 25 occupiers of land lying within the limits of the territory proposed to be organized into a district may file a petition with the Soil and Water Conservation Commission asking that a soil and water conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

- (1) The proposed name of said district.
- (2) That there is need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the territory described in the petition.
- (3) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate.
- (4) A request that the Soil and Water Conservation Commission duly define the boundaries for such districts; that a referendum be held within the territory so defined on the question of the creation of a soil and water conservation district in such territory; and that the Commission determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the Soil and Water Conservation Commission may consolidate all or any such petitions.

Town or village lots or government-owned or controlled lands may be included within the boundaries of any district. As used in this subsection: The term "government-owned or controlled land" includes land owned or controlled by any governmental agency or subdivision, federal, State or local; and the term "town and village lots" means parcels or tracts on which no agricultural operations are conducted, or (being less than three acres in extent) whose production of agricultural products for home use or for sale during the immediately preceding calendar year was of less than two hundred and fifty dollars (\$250.00) in value. This section applies to existing soil and water conservation districts as well as districts that may hereafter be formed. Insofar as it applies to existing districts it is intended to be declaratory of the present boundaries of such districts as defined by other charters.

(b) Within 30 days after such a petition has been filed with the Soil and Water Conservation Commission, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such districts, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this Chapter, and upon all questions relevant to such inquiries. All occupiers of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for the inclusion of the district, and such further hearing held. After such hearing, if the Commission shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety and welfare, for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determination and in defining such boundaries, the Commission shall give due weight and consideration to the topography or the area considered and of the state and composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil and water conservation districts already organized or proposed for organization under the provisions of this Chapter, and such other physical, geographical and economic factors as are relevant, having due regard to the legislative determination set forth in G.S. 139-2. The territory to be included within such boundaries need not be contiguous. If the Commission shall determine after such hearing after due consideration of the said relevant facts, that there is no need for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determinations made thereon.

(c) After the Commission has made and recorded a determination that there is need, in the interest of the public health, safety and welfare for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil and water conservation districts in this Chapter is administratively practicable and feasible. To assist the Commission in the determination of such administrative practicability and feasibility, it shall be the duty of the Commission, within

a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum within the proposed district upon the proposition of the creation of the district, and to cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a soil and water conservation district of the lands below described and lying in the county(ies) of,, and" and "Against creation of a soil and water conservation district of the lands below described and lying in the county(ies) of,, and" shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the Commission. All occupiers of land lying within the boundaries of the territory, as determined by the Soil and Water Conservation Commission, shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote.

(d) The Department of Environment, Health, and Natural Resources shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informality in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

(e) The Department of Environment, Health, and Natural Resources shall publish the results of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the Commission shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the Commission shall determine that the operation of such district is administratively practicable and feasible, it shall record such in the manner hereinafter provided. In making such determination the Commission shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determination set forth in G.S. 139-2: Provided, however, that the Commission shall not have authority to determine that the operations of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district.

(f) If the Commission shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two temporary supervisors to act as the governing body of the district, who shall serve until supervisors are elected or appointed and qualify as provided in G.S. 139-6 and 139-7. Such district shall be a governmental subdivision of this State and a public body corporate and politic, upon the taking of the following proceedings:

The two appointed temporary supervisors shall present to the Secretary of State an application signed by them which shall set forth (and such application need contain no detail other than the mere recitals):

- (1) That a petition for the creation of the district was filed with the Soil and Water Conservation Commission pursuant to the provisions of this Chapter and that the proceedings specified in this Chapter were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and public body, corporate and politic under this Chapter; and that the Commission has appointed them as supervisors;
- (2) The name and official residence of each of the temporary supervisors, together with a certified copy of the appointment evidencing their right to office;
- (3) The name which is proposed for the district; and
- (4) The location of the principal office of the supervisors of the district.

The application shall be subscribed and sworn to by each of the said temporary supervisors before an officer authorized by the laws of this State to take and certify oaths, who shall certify upon the application that he personally knows the temporary supervisors and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the Soil and Water Conservation Commission, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid, that the Commission did duly determine that there is need, in the interest of the public health, safety and welfare, for a soil and water conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district, and that the result of such referendum showed a majority of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the Commission did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the Commission.

The Secretary of State shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other soil and water conservation district of this State or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the Secretary of State shall find that the name proposed for the district is identical with that of any other soil and water conservation district of this State, or

so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the Soil and Water Conservation Commission, which shall thereupon submit to the Secretary of State a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the Secretary of State shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed and recorded, as herein provided, the district shall constitute a governmental subdivision of this State and a public body corporate and politic. The Secretary of State shall make and issue to the said supervisors a certificate, under the seal of the State, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the Soil and Water Conservation Commission as aforesaid, but in no event shall they include any area included within the boundaries of another soil and water conservation district organized under the provisions of this Chapter.

(g) After six months shall have expired from the date of entry of a determination by the Soil and Water Conservation Commission that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid, and action taken thereon in accordance with the provisions of this Chapter.

(h) Petitions for including additional territory within an existing district may be filed with the Soil and Water Conservation Commission, and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for such inclusions. The Commission shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this Chapter for petitions to organize a district. Where the total number of land occupiers in the area proposed for inclusion shall be less than 25, the petition may be filed when signed by two thirds of the occupiers of such area, and in such case no referendum need be held. In referenda petitions for such inclusion, all occupiers of land lying within the proposed additional area shall be eligible to vote.

(i) In any suit, action or proceeding involving the validity or enforcement of, or relating to any contract, proceeding or action of the district, the district shall be deemed to have been established in accordance with the provisions of this Chapter 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 in evidence in any such suit, action, or proceeding and shall be proof of the filing and contents thereof. (1937, c. 393, s. 5; 1947, c. 131, s. 4; 1959, c. 781, s. 6; 1965, c. 582, s. 3; 1973, c. 1262, s. 38; 1977, c. 771, s. 4; 1989, c. 727, s. 218(91).)

§ 139-6. District board of supervisors — elective members; certain duties.

After the issuance of the certificate of organization of the soil and water conservation district by the Secretary of State, an election shall be held in each county of the district to elect the members of the soil and water conservation district board of supervisors as herein provided.

The district board of supervisors shall consist of three elective members to be elected in each county of the district, and that number of appointive members as provided in G.S. 139-7. Upon the creation of a district, the first election of the members shall be held at the next succeeding election for county officers.

All elections for members of the district board of supervisors shall be held at the same time as the regular election for county officers beginning in November 1974. The election shall be nonpartisan and no primary election shall be held. The election shall be held and conducted by the county board of elections.

Candidates shall file their notice of candidacy on forms prescribed by the county board of elections. The notice of candidacy must be filed no later than 12:00 noon on the first Friday in July preceding the election. The candidate shall pay a filing fee of five dollars (\$5.00) at the time he files the notice of candidacy.

Beginning with the election to be held in November 1974, the two candidates receiving the highest number of votes shall be elected for a term of four years, and the candidate receiving the next highest number of votes shall be elected for a term of two years; thereafter, as their terms expire, their successors shall be elected for terms of four years. If the position of district supervisor is not filled by failure to elect, then the office shall be deemed vacant upon the expiration of the term of the incumbent, and the office shall be filled as provided in G.S. 139-7.

The persons elected in 1974 and thereafter shall take office on the first Monday in December following their election.

The terms of the present members of the soil and water conservation districts, both elective and appointive members, are hereby extended to or terminated on the first Monday in December 1974.

All qualified voters of the district shall be eligible to vote in the election. Except as provided in this Chapter, the election shall be held in accordance with the applicable provisions of Articles 23 and 24 of Chapter 163 of the General Statutes.

The district board of supervisors, after the appointment of the appointive members has been made, shall select from its members a chairman, a vice-chairman and a secretary. It shall be the duty of the district board of supervisors to perform those powers, duties, and authority conferred upon supervisors under this Chapter; to develop annual county and district goals and plans for soil conservation work therein; to request agencies, whose duties are such as to render assistance in soil and water conservation, to set forth in writing what assistance they may have available in the county and district. (1937, c. 393, s. 6; 1947, c. 131, s. 5; 1949, c. 268, s. 1; 1957, c. 1374, s. 2; 1963, c. 815; 1973, c. 502, s. 1; 1975, c. 798, s. 4; 1979, c. 519, s. 1; 1981, c. 560, s. 3.)

§ 139-7. District board of supervisors — appointive members; organization of board; certain powers and duties.

The governing body of a soil and water conservation district shall consist of the three elective supervisors from the county or counties in the district, together with the appointive members appointed by the Soil and Water Conservation Commission pursuant to this section, and shall be known as the district board of supervisors. When a district is composed of less than four counties, the board of

supervisors of each county shall on or before October 31, 1978, and on or before October 31 as the terms of the appointive supervisors expire, recommend in writing two persons from the district to the Commission to be appointed to serve with the elective supervisors. If the names are not submitted to the Commission as required, the office shall be deemed vacant on the date the term is set to expire and the Commission shall appoint two persons of the district to the district board of supervisors to serve with the elected supervisors. The Commission shall make its appointments prior to or at the November meeting of the Commission. Appointive supervisors shall take office on the first Monday in December following their appointment. Such appointive supervisors shall serve for a term of four years, and thereafter, as their terms expire, their successors shall serve for a term of four years. The terms of office of all appointive supervisors who have heretofore been lawfully appointed for terms the final year of which presently extends beyond the first Monday in December are hereby terminated on the first Monday in December of the final year of appointment. Vacancies for any reason in the appointive supervisors shall be filled for the unexpired term by the appointment of a person by the Commission from the district in which the vacancy occurs. Vacancies for any reason in the elected supervisors shall be filled for the unexpired term by appointment by the Commission of a person from the county in the district in which the vacancy occurs.

In those districts composed of four or more counties, the Commission may, but is not required to, appoint two persons from the district without recommendation from the board of supervisors, to serve as district supervisors along with the elected members of the board of supervisors. Such appointments shall be made at the same time other appointments are made under this section, and the persons appointed shall serve for a term of four years.

The supervisors shall designate a chairman and may, from time to time, change such designation. A simple majority of the board shall constitute a quorum for the purpose of transacting the business of the board, and approval by a majority of those present shall be adequate for a determination of any matter before the board, provided at least a quorum is present. Supervisors of soil and water conservation districts shall be compensated for their services at the per diem rate and allowed travel, subsistence and other expenses, as provided for State boards, commissions and committees generally, under the provisions of G.S. 138-5; provided, that when per diem compensation and travel, subsistence, or other expense is claimed by any supervisor for services performed outside the district for which such supervisor ordinarily may be appointed or elected to serve, the same may not be paid unless prior written approval is obtained from the Department of Environment, Health, and Natural Resources.

The supervisors may employ a secretary, technical experts, whose qualifications shall be approved by the Department, and such other employees as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the Attorney General of the State for such legal services as they may require. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the Soil and Water Conservation Commission, upon

request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this Chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. In any given year, if the supervisors provide for an internal audit, and the supervisor serving as chairman certifies, under oath, that this internal audit is a true and accurate reflection of the accounts of receipts and disbursements, then the supervisors shall not be required, notwithstanding the provisions of G.S. 159-34, to provide for an audit of the accounts of receipts and disbursements by a certified public accountant or by an accountant certified by the Local Government Commission. Any supervisor may be removed by the Soil and Water Conservation Commission upon notice and hearing, for neglect of duty, incompetence or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

All district supervisors whose terms of office expire prior to the first Monday in January, 1948, shall hold over and remain in office until supervisors are elected or appointed and qualify as provided in this Chapter, as amended. The terms of office of all district supervisors, who have heretofore been elected or appointed for terms extending beyond the first Monday in January, 1948, are hereby terminated on the first Monday in January, 1948. (1937, c. 393, s. 7; 1943, c. 481; 1947, c. 31, ss. 6, 7; 1957, c. 1374, s. 3; 1963, c. 563; 1973, c. 502, s. 2; c. 1262, s. 38; 1977, c. 387; c. 771, s. 4; 1979, c. 519, s. 2; 1981, c. 330; 1989, c. 66, s. 1; c. 727, s. 218(92); 1991, c. 689, s. 166.)

Chapter 153A.
Counties.

Article 3.
Boundaries.

- Sec.
153A-20. Map of electoral districts.
153A-21. [Repealed.]
153A-22. Redefining electoral district boundaries.
153A-23, 153A-24. [Reserved.]

Article 4.
Form of Government.

- Part 1. General Provisions.**
153A-25. Qualifications for appointive office.
153A-26. Oath of office.
153A-27. Vacancies on the board of commissioners.
153A-27.1. Vacancies on board of commissioners in certain counties.

Part 4. Modification in the Structure of the Board of Commissioners.

- Sec.
153A-58. Optional structures.
153A-59. Implementation when board has members serving a combination of four- and two-year terms.
153A-60. Initiation of alterations by resolution.
153A-61. Submission of proposition to voters; form of ballot.
153A-62. Effective date of any alteration.
153A-63. Filing copy of resolution.
153A-64. Filing results of election.

Article 7.
Taxation.

- 153A-149. Property taxes; authorized purposes; rate limitation.

ARTICLE 3.

Boundaries.

§ 153A-20. Map of electoral districts.

If a county is divided into electoral districts for the purpose of nominating or electing persons to the board of commissioners, the current boundaries of the electoral districts shall at all times be drawn on a map, or set out in a written description, or shown by a combination of these techniques. This current delineation shall be available for public inspection in the office of the clerk. (1973, c. 822, s. 1.)

§ 153A-21: Repealed by Session Laws 1973, c. 884.

Editor's Note. — Session Laws 1975, c. 389, applicable only to Robeson County, reenacted this section.

§ 153A-22. Redefining electoral district boundaries.

(a) If a county is divided into electoral districts for the purpose of nominating or electing persons to the board of commissioners, the board of commissioners may find as a fact whether there is substantial inequality of population among the districts.

(b) If the board finds that there is substantial inequality of population among the districts, it may by resolution redefine the electoral districts.

(c) Redefined electoral districts shall be so drawn that the quotients obtained by dividing the population of each district by the number of commissioners apportioned to the district are as nearly equal as practicable, and each district shall be composed of territory within a continuous boundary.

(d) No change in the boundaries of an electoral district may affect the unexpired term of office of a commissioner residing in the district and serving on the board on the effective date of the resolution. If the terms of office of members of the board do not all expire at the same time, the resolution shall state which seats are to be filled at the initial election held under the resolution.

(e) A resolution adopted pursuant to this section shall be the basis of electing persons to the board of commissioners at the first general election for members of the board of commissioners occurring after the resolution's effective date, and thereafter. A resolution becomes effective upon its adoption, unless it is adopted during the period beginning 150 days before the day of a primary and ending on the day of the next succeeding general election for membership on the board of commissioners, in which case it becomes effective on the first day after the end of the period.

(f) Not later than 10 days after the day on which a resolution becomes effective, the clerk shall file in the Secretary of State's office, in the office of the register of deeds of the county, and with the chairman of the county board of elections, a certified copy of the resolution.

(g) This section shall not apply to counties where under G.S. 153A-58(3)d. or under public or local act, districts are for residence purposes only, and the qualified voters of the entire county nominate all candidates for and elect all members of the board. (1981, c. 795.)

Local Modification. — Dare: 1991, Ex. Sess., c. 2, ss. 4-5.1 (As to applicability and contingency provisions, see 1991 Session Laws, Ex. Sess., c. 2, s. 7).

Editor's Note. — Session Laws 1993, c. 521, s. 2 provides: "Section 1 of this act

supersedes any previous action under G.S. 153A-22." Section 1 provides: "Chapter 136, Session Laws of 1991, [relating to expanding and redistricting the Guilford County Board of Commissioners] is reenacted."

§§ 153A-23, 153A-24: Reserved for future codification purposes.

ARTICLE 4.

Form of Government.

Part 1. General Provisions.

§ 153A-25. Qualifications for appointive office.

The board of commissioners may fix qualifications for any appointive office, including a requirement that a person serving in such an office reside within the county. The board may not waive qualifications fixed by law for an appointive office but may fix additional qualifications for that office. (1973, c. 822, s. 1.)

§ 153A-26. Oath of office.

Each person elected by the people or appointed to a county office shall, before entering upon the duties of the office, take and subscribe the oath of office prescribed in Article VI, Sec. 7 of the Constitution. The oath of office shall be administered by some person authorized by law to administer oaths and shall be filed with the clerk.

On the first Monday in December following each general election at which county officers are elected, the persons who have been elected to county office in that election shall assemble at the regular meeting place of the board of commissioners. At that time each such officer shall take and subscribe the oath of office. An officer not present at this time may take and subscribe the oath at a later time. (1868, c. 20, s. 8; 1874-5, c. 237, s. 3; Code, ss. 707, 708; 1895, c. 135, ss. 3, 4; Rev., ss. 1316, 1318; C.S., ss. 1295, 1297; 1965, c. 26; 1973, c. 822, s. 1.)

CASE NOTES

Applied in *Ratcliff v. County of Buncombe*, 663 F. Supp. 1003 (W.D.N.C. 1987).

§ 153A-27. Vacancies on the board of commissioners.

If a vacancy occurs on the board of commissioners, the remaining members of the board shall appoint a qualified person to fill the vacancy. If the number of vacancies on the board is such that a quorum of the board cannot be obtained, the chairman of the board shall appoint enough members to make up a quorum, and the board shall then proceed to fill the remaining vacancies. If the number of vacancies on the board is such that a quorum of the board cannot be obtained and the office of chairman is vacant, the clerk of superior court of the county shall fill the vacancies upon the request of any remaining member of the board or upon the petition of any five registered voters of the county. If for any other reason the remaining members of the board do not fill a vacancy within 60 days after the day the vacancy occurs, the clerk shall immediately report the vacancy to the clerk of superior court of the county. The clerk of superior court shall, within 10 days after the day the vacancy is reported to him, fill the vacancy.

If the member being replaced was serving a two-year term, or if the member was serving a four-year term and the vacancy occurs later than 60 days before the general election held after the first two years of the term, the appointment to fill the vacancy is for the remainder of the unexpired term. Otherwise, the term of the person appointed to fill the vacancy extends to the first Monday in December next following the first general election held more than 60 days after the day the vacancy occurs; at that general election, a person shall be elected to the seat vacated, either to the remainder of the unexpired term or, if the term has expired, to a full term.

To be eligible for appointment to fill a vacancy, a person must (i) be a member of the same political party as the member being replaced, if that member was elected as the nominee of a political party, and

(ii) be a resident of the same district as the member being replaced, if the county is divided into electoral districts. The board of commissioners or the clerk of superior court, as the case may be, shall consult the county executive committee of the appropriate political party before filling a vacancy, but neither the board nor the clerk of the superior court is bound by the committee's recommendation. (Code, s. 719; 1895, c. 135, s. 7; Rev., s. 1314; 1909, c. 490, s. 1; C.S., s. 1294; 1959, c. 1325; 1965, cc. 239, 382; 1967, cc. 7, 424, 439, 1022; 1969, cc. 82, 222; 1971, c. 743, s. 1; 1973, c. 822, s. 1; 1985, c. 563, ss. 7.3, 7.4.)

Cross References. — As to counties not subject to this section, see § 153A-27.1.

CASE NOTES

Authority to Accept Resignation. — Under former statute which authorized the clerk of the superior court to fill vacancies on boards of commissioners in all cases, it was held that a tender of resignation by a county commissioner to the clerk of the superior court was a

tender to the proper authority. While the mere filing of the resignation did not vacate the office, its acceptance by the clerk was final, and after its acceptance the commissioner had no power to withdraw it. *Rockingham County v. Luten Bridge Co.*, 35 F.2d 301 (4th Cir. 1929).

§ 153A-27.1. Vacancies on board of commissioners in certain counties.

(a) If a vacancy occurs on the board of commissioners, the remaining members of the board shall appoint a qualified person to fill the vacancy. If the number of vacancies on the board is such that a quorum of the board cannot be obtained, the chairman of the board shall appoint enough members to make up a quorum, and the board shall then proceed to fill the remaining vacancies. If the number of vacancies on the board is such that a quorum of the board cannot be obtained and the office of chairman is vacant, the clerk of superior court of the county shall fill the vacancies upon the request of any remaining member of the board or upon the petition of any registered voters of the county.

(b) If the member being replaced was serving a two-year term, or if the member was serving a four-year term and the vacancy occurs later than 60 days before the general election held after the first two years of the term, the appointment to fill the vacancy is for the remainder of the unexpired term. Otherwise, the term of the person appointed to fill the vacancy extends to the first Monday in December next following the first general election held more than 60 days after the day the vacancy occurs; at that general election, a person shall be elected to the seat vacated for the remainder of the unexpired term.

(c) To be eligible for appointment to fill a vacancy, a person must (i) be a member of the same political party as the member being replaced, if that member was elected as the nominee of a political party, and (ii) be a resident of the same district as the member being replaced, if the county is divided into electoral districts.

(d) If the member who vacated the seat was elected as a nominee of a political party, the board of commissioners, the chairman of the board, or the clerk of superior court, as the case may be, shall

consult the county executive committee of the appropriate political party before filling the vacancy, and shall appoint the person recommended by the county executive committee of the political party of which the commissioner being replaced was a member, if the party makes a recommendation within 30 days of the occurrence of the vacancy.

(e) Whenever because of G.S. 153A-58(3)b. or because of any local act, only the qualified voters of an area which is less than the entire county were eligible to vote in the general election for the member whose seat is vacant, the appointing authority must accept the recommendation only if the county executive committee restricted voting to committee members who represent precincts all or part of which were within the territorial area of the district of the county commissioner.

(f) The provisions of any local act which provides that a county executive committee of a political party shall fill any vacancy on a board of county commissioners are repealed.

(g) Counties subject to this section are not subject to G.S. 153A-27.

(h) This section shall apply only in the following counties: Alamance, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Cherokee, Clay, Cleveland, Dare, Davidson, Davie, Forsyth, Graham, Guilford, Haywood, Henderson, Hyde, Jackson, Lincoln, Macon, Madison, McDowell, Mecklenburg, Moore, Pender, Polk, Randolph, Rockingham, Rutherford, Sampson, Stanly, Stokes, Transylvania, Wake, and Yancey. (1981, c. 763, ss. 6, 14; c. 830; 1983, c. 418; 1985, c. 563, s. 7.2; 1987, c. 196, s. 1; 1989, c. 296; c. 497, s. 2; 1991, c. 395, s. 1; c. 558, s. 1.)

Part 4. Modification in the Structure of the Board of Commissioners.

§ 153A-58. Optional structures.

A county may alter the structure of its board of commissioners by adopting one or any combination of the options prescribed by this section.

- (1) Number of members of the board of commissioners: The board may consist of any number of members not less than three, except as limited by subdivision (2)d of this section.
- (2) Terms of office of members of the board of commissioners:
 - a. Members shall be elected for two-year terms of office.
 - b. Members shall be elected for four-year terms of office.
 - c. Members shall be elected for overlapping four-year terms of office.
 - d. The board shall consist of an odd number of members, who are elected for a combination of four- and two-year terms of office, so that a majority of members is elected each two years. This option may be used only if all members of the board are nominated and elected by the voters of the entire county, and only if the chairman of the board is elected by and from the members of the board.
- (3) Mode of election of the board of commissioners:

- a. The qualified voters of the entire county shall nominate all candidates for and elect all members of the board. For options b, c, and d, the county shall be divided into electoral districts, and board members shall be apportioned to the districts so that the quotients obtained by dividing the population of each district by the number of commissioners apportioned to the district are as nearly equal as practicable.
- b. The qualified voters of each district shall nominate candidates and elect members who reside in the district for seats apportioned to that district; and the qualified voters of the entire county shall nominate candidates and elect members apportioned to the county at large, if any.
- c. The qualified voters of each district shall nominate candidates who reside in the district for seats apportioned to that district, and the qualified voters of the entire county shall nominate candidates for seats apportioned to the county at large, if any; and the qualified voters of the entire county shall elect all the members of the board.
- d. Members shall reside in and represent the districts according to the apportionment plan adopted, but the qualified voters of the entire county shall nominate all candidates for and elect all members of the board.

If any of options b, c, or d is adopted, the board shall divide the county into the requisite number of electoral districts according to the apportionment plan adopted, and shall cause a delineation of the districts so laid out to be drawn up and filed as required by G.S. 153A-20. No more than half the board may be apportioned to the county at large.

- (4) Selection of chairman of the board of commissioners:
 - a. The board shall elect a chairman from among its membership to serve a one-year term, as provided by G.S. 153A-39.
 - b. The chairmanship shall be a separate office. The qualified voters of the entire county nominate candidates for and elect the chairman for a two- or four-year term. (1927, c. 91, s. 3; 1969, c. 717, s. 1; 1973, c. 822, s. 1.)

Local Modification. — (As to Part 4 of Article 4) Bladen: 1987, c. 646; Lee (as to Part 4 and § 153A-58): 1989, c. 195, ss. 4, 5 (effective June 1, 1989, but only applicable to resolutions approved on or before Aug. 1, 1990), as amended by 1989, c. 770, s. 43. Lee (as to Part 4 and § 153A-58): 1989, c. 195, ss. 4, 5 (effec-

tive June 1, 1989, but only applicable to resolutions approved on or before Aug. 1, 1990), as amended by 1989, c. 770, s. 43. (As to Part 4 of Article 4) Dare: 1991, Ex. Sess., c. 2, s. 4 (As to applicability and contingency provisions, see 1991 Session Laws, Ex. Sess., c. 2, s. 7).

CASE NOTES

Cited in *Ratcliff v. County of Buncombe*, 759 F.2d 1183 (4th Cir. 1985);

Ratcliff v. County of Buncombe, 663 F. Supp. 1003 (W.D.N.C. 1987).

§ 153A-59. Implementation when board has members serving a combination of four- and two-year terms.

If the structure of the board of commissioners is altered to establish a board with an odd number of members serving a combination of four- and two-year terms of office, the new structure shall be implemented as follows:

At the first election all members of the board shall be elected. A simple majority of those elected shall be elected for two-year terms, and the remaining members shall be elected for four-year terms. The candidate or candidates receiving the highest number of votes shall be elected for the four-year terms.

At each subsequent general election, a simple majority of the board shall be elected. That candidate who is elected with the least number of votes shall be elected for a two-year term, and the other member or members elected shall be elected for four-year terms. (1927, c. 91, s. 3; 1969, c. 717, s. 1; 1973, c. 822, s. 1.)

§ 153A-60. Initiation of alterations by resolution.

The board of commissioners shall initiate any alteration in the structure of the board by adopting a resolution. The resolution shall:

- (1) Briefly but completely describe the proposed alterations;
- (2) Prescribe the manner of transition from the existing structure to the altered structure;
- (3) Define the electoral districts, if any, and apportion the members among the districts;
- (4) Call a special referendum on the question of adoption of the alterations. The referendum shall be held and conducted by the county board of elections. The referendum may be held at the same time as any other state, county or municipal primary, election, special election or referendum, or on any date set by the board of county commissioners, provided, that such referendum shall not be held within the period of time beginning 60 days before and ending 60 days after any other primary, election, special election or referendum held in the county.

Upon its adoption, the resolution shall be published in full. (1927, c. 91, s. 4; 1969, c. 717, s. 1; 1973, c. 822, s. 1; 1977, c. 382.)

Local Modification. — Lee: 1989, c. 195, s. 1 (effective June 1, 1989, but only applicable to resolutions approved on or before Aug. 1, 1990); Wayne: 1987, c. 119 (only applicable to resolutions approved on or before Nov. 30, 1988). Lee: 1989, c. 195, s. 1 (effective June 1, 1989, but only applicable to resolutions approved on or

before August 1, 1990). Dare: 1991, Ex. Sess., c. 2, s. 1 (As to applicability and contingency provisions, see 1991 Session Laws, Ex. Sess., c. 2, s. 7).

Legal Periodicals. — For survey of 1977 administrative law affecting state government, see 56 N.C.L. Rev. 867 (1978).

CASE NOTES

Cited in *Pittman v. Wilson County*, 839 F.2d 225 (4th Cir. 1988).

§ 153A-61. Submission of proposition to voters; form of ballot.

A proposition to approve an alteration shall be printed on the ballot in substantially the following form:

“Shall the structure of the board of commissioners be altered? (Describe the effect of the alteration.)

YES

NO”

The ballot shall be separate from other ballots used at the election.

If a majority of the votes cast on the proposition are in the affirmative, the plan contained in the resolution shall be put into effect as provided in this Part. If a majority of the votes cast are in the negative, the resolution and the plan contained therein are void. (1927, c. 91, s. 4; 1969, c. 717, s. 1; 1973, c. 822, s. 1.)

Local Modification. — Lee: 1989, c. 195, s. 2 (effective June 1, 1989, but only applicable to resolutions approved on or before Aug. 1, 1990); Wayne: 1987, c. 119 (only applicable to resolutions approved on or before Nov. 30, 1988). Lee: 1989, c. 195, s. 2 (effective June 1, 1989, but only applicable to resolutions approved on or before August 1, 1990). Dare: 1991, Ex. Sess., c. 2, s. 2 (As to applicability and contingency provisions, see 1991 Session Laws, Ex. Sess., c. 2, s. 7).

§ 153A-62. Effective date of any alteration.

Any approved alteration shall be the basis for nominating and electing the members of the board of commissioners at the first succeeding primary and general election for county offices held after approval of the alteration; and the alteration takes effect on the first Monday in December following that general election. (1927, c. 91, s. 4; 1969, c. 717, s. 1; 1973, c. 822, s. 1.)

§ 153A-63. Filing copy of resolution.

A copy of a resolution approved pursuant to this Part shall be filed and indexed in the ordinance book required by G.S. 153A-48. (1927, c. 91, s. 4; 1969, c. 717, s. 1; 1973, c. 822, s. 1.)

§ 153A-64. Filing results of election.

If the proposition is approved under G.S. 153A-61, a certified true copy of the resolution and a copy of the abstract of the election shall be filed with the Secretary of State, and with the Legislative Library. (1985 (Reg. Sess., 1986), c. 935, s. 1; 1989, c. 191, s. 1.)

Local Modification. — Lee: 1989, c. 195, s. 3 (effective June 1, 1989, but only applicable to resolutions approved on or before Aug. 1, 1990); Wayne: 1987, c. 119 (only applicable to resolutions approved on or before Nov. 30, 1988). Lee: 1989, c. 195, s. 3 (effective June 1, 1989, but only applicable to resolutions approved on or before August 1, 1990). Dare: 1991, Ex. Sess., c. 2, s. 3 (As to applicability and contingency provisions, see 1991 Session Laws, Ex. Sess., c. 2, s. 7).
Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 935, s. 4 made this section applicable with respect to resolutions approved, and amendments and ordinances adopted, on or after Sept. 1, 1986.

ARTICLE 7.

*Taxation.***§ 153A-149. Property taxes; authorized purposes; rate limitation.**

(a) Pursuant to Article V, Sec. 2(5) of the Constitution of North Carolina, the General Assembly confers upon each county in this State the power to levy, within the limitations set out in this section, taxes on property having a situs within the county under the rules and according to the procedures prescribed in the Machinery Act (Chapter 105, Subchapter II).

(b) Each county may levy property taxes without restriction as to rate or amount for the following purposes:

- (1) Courts. — To provide adequate facilities for and the county's share of the cost of operating the General Court of Justice in the county.
- (2) Debt Service. — To pay the principal of and interest on all general obligation bonds and notes of the county.
- (3) Deficits. — To supply an unforeseen deficiency in the revenue (other than revenues of public enterprises), when revenues actually collected or received fall below revenue estimates made in good faith and in accordance with the Local Government Budget and Fiscal Control Act.
- (4) Elections. — To provide for all federal, State, district and county elections.
- (5) Jails. — To provide for the operation of a jail and other local confinement facilities.
- (6) Joint Undertakings. — To cooperate with any other county, city, or political subdivision in providing any of the functions, services, or activities listed in this subsection.
- (7) Schools. — To provide for the county's share of the cost of kindergarten, elementary, secondary, and post-secondary public education.
- (8) Social Services. — To provide for public assistance required by Chapters 108A and 111 of the General Statutes.

(c) Each county may levy property taxes for one or more of the purposes listed in this subsection up to a combined rate of one dollar and fifty cents (\$1.50) on the one hundred dollars (\$100.00) appraised value of property subject to taxation. Authorized purposes subject to the rate limitation are:

- (1) To provide for the general administration of the county through the board of county commissioners, the office of the county manager, the office of the county budget officer, the office of the county finance officer, the office of the county assessor, the office of the county tax collector, the county purchasing agent, and the county attorney, and for all other general administrative costs not allocated to a particular board, commission, office, agency, or activity of the county.
- (2) Agricultural Extension. — To provide for the county's share of the cost of maintaining and administering programs and services offered to agriculture by or through the Agricultural Extension Service or other agencies.
- (3) Air Pollution. — To maintain and administer air pollution control programs.

- (4) **Airports.** — To establish and maintain airports and related aeronautical facilities.
- (5) **Ambulance Service.** — To provide ambulance services, rescue squads, and other emergency medical services.
- (6) **Animal Protection and Control.** — To provide animal protection and control programs.
- (6a) **Arts Programs and Museums.** — To provide for arts programs and museums as authorized in G.S. 160A-488.
- (6b) **Auditoriums, coliseums, and convention and civic centers.** — To provide public auditoriums, coliseums, and convention and civic centers.
- (7) **Beach Erosion and Natural Disasters.** — To provide for shoreline protection, beach erosion control, and flood and hurricane protection.
- (8) **Cemeteries.** — To provide for cemeteries.
- (9) **Civil Preparedness.** — To provide for civil preparedness programs.
- (10) **Debts and Judgments.** — To pay and discharge any valid debt of the county or any judgment lodged against it, other than debts and judgments evidenced by or based on bonds and notes.
- (10a) **Defense of Employees and Officers.** — To provide for the defense of, and payment of civil judgments against, employees and officers or former employees and officers, as authorized by this Chapter.
- (10b) **Economic Development.** — To provide for economic development as authorized by G.S. 158-12.
- (11) **Fire Protection.** — To provide fire protection services and fire prevention programs.
- (12) **Forest Protection.** — To provide forest management and protection programs.
- (13) **Health.** — To provide for the county's share of maintaining and administering services offered by or through the county or district health department.
- (14) **Historic Preservation.** — To undertake historic preservation programs and projects.
- (15) **Hospitals.** — To establish, support and maintain public hospitals and clinics, and other related health programs and facilities, or to aid any private, nonprofit hospital, clinic, related facility, or other health program or facility.
- (15a) **Housing Rehabilitation.** — To provide for housing rehabilitation programs authorized by G.S. 153A-376, including personnel costs related to the planning and administration of these programs. This subdivision applies only to counties with a population of 400,000 or more, according to the most recent decennial federal census.
- (16) **Human Relations.** — To undertake human relations programs.
- (16a) **Industrial Development.** — To provide for industrial development as authorized by G.S. 158-7.1.
- (17) **Joint Undertakings.** — To cooperate with any other county, city, or political subdivision in providing any of the functions, services, or activities listed in this subsection.
- (18) **Law Enforcement.** — To provide for the operation of the office of the sheriff of the county and for any other county law-enforcement agency not under the sheriff's jurisdiction.

- (19) Libraries. — To establish and maintain public libraries.
- (20) Mapping. — To provide for mapping the lands of the county.
- (21) Medical Examiner. — To provide for the county medical examiner or coroner.
- (22) Mental Health. — To provide for the county's share of the cost of maintaining and administering services offered by or through the area mental health, developmental disabilities, and substance abuse authority.
- (23) Open Space. — To acquire open space land and easements in accordance with Article 19, Part 4, Chapter 160A of the General Statutes.
- (24) Parking. — To provide off-street lots and garages for the parking and storage of motor vehicles.
- (25) Parks and Recreation. — To establish, support and maintain public parks and programs of supervised recreation.
- (26) Planning. — To provide for a program of planning and regulation of development in accordance with Article 18 of this Chapter and Article 19, Parts 3A and 6, of Chapter 160A of the General Statutes.
- (26a) Ports and Harbors. — To participate in programs with the North Carolina Ports Authority and provide for harbor masters.
- (27) Public Transportation. — To provide public transportation by rail, motor vehicle, or another means of conveyance other than a ferry, including any facility or equipment needed to provide the public transportation. This subdivision does not authorize a county to provide public roads in the county in violation of G.S. 136-51.
- (27a) Railway Corridor Preservation. — To acquire property for railroad corridor preservation as authorized by G.S. 160A-498.
- (28) Register of Deeds. — To provide for the operation of the office of the register of deeds of the county.
- (28a) Roads. — To provide for the maintenance of county roads as authorized by G.S. 153A-301(d).
- (29) Sewage. — To provide sewage collection and treatment services as defined in G.S. 153A-274(2).
- (30) Social Services. — To provide for the public welfare through the maintenance and administration of public assistance programs not required by Chapters 108A and 111 of the General Statutes, and by establishing and maintaining a county home.
- (31) Solid Waste. — To provide solid waste collection and disposal services, and to acquire and operate landfills.
- (31a) Stormwater. — To provide structural and natural stormwater and drainage systems of all types.
- (32) Surveyor. — To provide for a county surveyor.
- (33) Veterans' Service Officer. — To provide for the county's share of the cost of services offered by or through the county veterans' service officer.
- (34) Water. — To provide water supply and distribution systems.
- (35) Watershed Improvement. — To undertake watershed improvement projects.
- (36) Water Resources. — To participate in federal water resources development projects.

(37) Armories. — To supplement available State or federal funds to be used for the construction (including the acquisition of land), enlargement or repair of armory facilities for the North Carolina national guard.

(d) With an approving vote of the people, any county may levy property taxes for any purpose for which the county is authorized by law to appropriate money. Any property tax levy approved by a vote of the people shall not be counted for purposes of the rate limitation imposed in subsection (c).

The county commissioners may call a referendum on approval of a property tax levy. The referendum may be held at the same time as any other referendum or election, but may not be otherwise held within the period of time beginning 30 days before and ending 10 days after any other referendum or election to be held in the county and already validly called or scheduled by law at the time the tax referendum is called. The referendum shall be conducted by the county board of elections. The clerk to the board of commissioners shall publish a notice of the referendum at least twice. The first publication shall be not less than 14 days and the second publication not less than seven days before the last day on which voters may register for the referendum. The notice shall state the date of the referendum, the purpose for which it is being held, and a statement as to the last day for registration for the referendum under the election laws then in effect.

The proposition submitted to the voters shall be substantially in one of the following forms:

- (1) Shall County be authorized to levy annually a property tax at a rate not in excess of cents on the one hundred dollars (\$100.00) value of property subject to taxation for the purpose of
- (2) Shall County be authorized to levy annually a property tax at a rate not in excess of that which will produce \$..... for the purpose of
- (3) Shall County be authorized to levy annually a property tax without restriction as to rate or amount for the purpose of

If a majority of those participating in the referendum approve the proposition, the board of commissioners may proceed to levy annually a property tax within the limitations (if any) described in the proposition.

The board of elections shall canvass the referendum and certify the results to the board of commissioners. The board of commissioners shall then certify and declare the result of the referendum and shall publish a statement of the result once, with the following statement appended: "Any action or proceeding challenging the regularity or validity of this tax referendum must be begun within 30 days after (date of publication)." The statement of results shall be filed in the clerk's office and inserted in the minutes of the board.

Any action or proceeding in any court challenging the regularity or validity of a tax referendum must be begun within 30 days after the publication of the results of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed herein.

Except for supplemental school taxes and except for tax referendums on functions not included in subsection (c) of this section, any referendum held before July 1, 1973, on the levy of property taxes is not valid for the purposes of this subsection. Counties in which such referendums have been held may support programs formerly supported by voted property taxes within the general rate limitation set out in subsection (c) at any appropriate level and are not subject to the former voted rate limitation.

(e) With an approving vote of the people, any county may increase the property tax rate limitation imposed in subsection (c) and may call a referendum for that purpose. The referendum may be held at the same time as any other referendum or election, but may not be otherwise held within the period of time beginning 30 days before and ending 30 days after any other referendum or election. The referendum shall be conducted by the county board of elections.

The proposition submitted to the voters shall be substantially in the following form: "Shall the property tax rate limitation applicable to County be increased from on the one hundred dollars (\$100.00) value of property subject to taxation to on the one hundred dollars (\$100.00) value of property subject to taxation?"

If a majority of those participating in the referendum approve the proposition, the rate limitation imposed in subsection (c) shall be increased for the county.

(f) With respect to any of the categories listed in subsections (b) and (c) of this section, the county may provide the necessary personnel, land, buildings, equipment, supplies, and financial support from property tax revenues for the program, function, or service.

(g) This section does not authorize any county to undertake any program, function, joint undertaking, or service not otherwise authorized by law. It is intended only to authorize the levy of property taxes within the limitations set out herein to finance programs, functions, or services authorized by other portions of the General Statutes or by local acts. (1973, c. 803, s. 1; c. 822, s. 2; c. 963; c. 1446, s. 25; 1975, c. 734, s. 17; 1977, c. 148, s. 5; c. 834, s. 3; 1979, c. 619, s. 4; 1981, c. 66, s. 2; c. 562, s. 11; c. 692, s. 1; 1983, c. 511, ss. 1, 2; 1985, c. 589, s. 57; 1987, c. 45, s. 2; c. 697, s. 2; 1989, c. 600, s. 5; c. 625, s. 25; c. 643, s. 1; 1989 (Reg. Sess., 1990), c. 1005, ss. 3-5; 1991 (Reg. Sess., 1992), c. 764, s. 1; c. 896, s. 1; 1993, c. 378, s. 2.)

Local Modification. — Gaston: 1987 (Reg. Sess., 1988), c. 897, s. 6(c); Mecklenburg: 1987 (Reg. Sess., 1988), c. 897, s. 6(c).

Editor's Note. — The above section was enacted as § 153-65 by Session Laws 1973, c. 803, s. 1. As directed by Session Laws 1973, c. 822, s. 2, it has been substituted for § 153A-149, as enacted by Session Laws 1973, c. 822, s. 1. Subdivision (c)(27a) was originally

codified as subdivision (c)(38); it was recodified to facilitate alphabetization.

Part 3A of Article 19 of Chapter 160A, referred to in subdivision (c)(26) of this section, was repealed by Session Laws 1989, c. 706. See now Part 3C.

Legal Periodicals. — For survey of 1980 constitutional law, see 59 N.C.L. Rev. 1116 (1981).

For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

CASE NOTES

Editor's Note. — Most of the cases cited below were decided under corre-

sponding sections of former law. Where a statute authorizing the

levy of a tax beyond the constitutional limit for a special purpose is *intra vires*, the taxes collected beyond the requirements of the special purpose may be turned into the general fund and used for general purposes; but where the act authorizes the levy partly for a "special purpose" and partly for general purposes it is *ultra vires*, and no part of the levy can be collected. *Williams v. Commissioners of Craven County*, 119 N.C. 520, 26 S.E. 150 (1896).

Levy to Fund Medically Unnecessary Abortions Is Ultra Vires and Void. — Section 153A-255 does not give counties the underlying authority to levy taxes pursuant to subdivision (c)(30) of this section to fund medically unnecessary abortions, since the authority conferred upon counties to provide social services pursuant to § 153A-255 is limited to providing the poor with the basic necessities of life, and a medically unnecessary abortion is not a basic necessity of life; therefore, a county exceeds its statutorily conferred power in levying a tax to fund medically unnecessary abortions, and the tax levy is *ultra vires* and void. *Stam v. State*, 302 N.C. 357, 275 S.E.2d 439 (1981).

Appropriation for Dyslexia School Unauthorized. — An appropriation by the Gaston County Board of Commissioners to the Dyslexia School of North Carolina was not authorized by either subdivision (c)(30) of this section or § 153A-255. *Hughey v. Cloninger*, 297 N.C. 86, 253 S.E.2d 898 (1979).

General taxes for county purposes are leviable only once a year. *Bradshaw v. Board of Comm'rs*, 92 N.C. 278 (1885).

Tax Rate Variable. — There is no constitutional requirement that the tax rate for county purposes shall be the same everywhere. It varies in the different counties, and may vary in different townships, parts of townships, districts, towns, and cities in the same county. *Jones v. Commissioners of Stokes County*, 143 N.C. 59, 55 S.E. 427 (1906).

Assessment of Property Subject to Taxation. — All of the property, including solvent credits, in the State, shall be assessed and taxed at its value in money. *Caldwell Land & Lumber Co. v. Smith*, 146 N.C. 199, 59 S.E. 653 (1907).

The legislature has the power to provide for the listing, assessment, and taxing of personal property omitted to be listed by the owner as the law requires. And there is no reason why it may not be taxed for five or more

preceding years if it has escaped taxation so long. *Kyle v. Mayor & Comm'rs*, 75 N.C. 445 (1876); *North Carolina R.R. v. Commissioners of Alamance*, 82 N.C. 260 (1880); *City of Wilmington v. Cronly*, 122 N.C. 388, 30 S.E. 9 (1898); *Caldwell Land & Lumber Co. v. Smith*, 146 N.C. 199, 59 S.E. 653 (1907).

An assessment for the building of a stock law fence is not a tax which requires a referendum vote by the people. *Tripp v. Commissioners of Pitt County*, 158 N.C. 180, 73 S.E. 896 (1912).

Land of Schools and Railroads Held Exempt from Special Tax. — An act which provided for the construction of a fence to enclose the whole of several districts and that the commissioners should levy a special tax on all the real estate in the district which was taxable by the State and county did not embrace the real estate of schools and railroads, which was not taxable for general purposes. *Bradshaw v. Board of Comm'rs*, 92 N.C. 278 (1885).

Application of Tax Raised for One Purpose to Another Purpose. —

There is no statute nor any rule of law or of public policy which prevents county commissioners from applying a tax raised professedly for one purpose to any other legitimate purpose. There may, perhaps, be an exception where a tax is levied by a special authority from the legislature, or upon the vote of the people, which would not otherwise be lawful. *Long v. Commissioners of Richmond County*, 76 N.C. 273 (1877).

Funds Impressed with a Trust. — Where taxes are levied and collected to pay coupons on bonds issued by a county, the funds so collected are impressed with a trust for the benefit of the owners of the coupons. *Board of Comm'rs v. Tblman*, 145 F. 753 (4th Cir. 1906).

Tax Necessary to Maintain Schools for Required Term. — When it becomes necessary, the county commissioners are required to levy a tax sufficient to maintain the county schools for the required term each year. Former constitutional limitation did not apply to defeat such a levy. *Collie v. Commissioners of Franklin County*, 145 N.C. 170, 59 S.E. 44 (1907), expressly overruling *Barksdale v. Commissioners of Sampson County*, 93 N.C. 472 (1885), and *Board of Educ. v. Board of Comm'rs*, 111 N.C. 578, 16 S.E. 621 (1892); *Southern Ry. v. Cherokee County*, 177 N.C. 86, 97 S.E. 758 (1919).

Tax to Erect and Maintain Court-house. — Power of limited taxation for

the purpose of erecting and maintaining a county courthouse and its exercise is no invasion of the Bill of Rights. *Lockhart v. Harrington*, 8 N.C. 408 (1821).

Taxpayers cannot enjoin the levy of taxes necessary to pay the principal and interest on bonds issued for repairs to the courthouse. *Harrell v. Board of Comm'rs*, 206 N.C. 225, 173 S.E. 614 (1934).

Tax Levied According to Procedures in Machinery Act. — The legislature authorized defendant and other counties to levy property taxes, including taxes on plaintiff's system property, according to the procedures in the Machinery Act (Chapter 105, Subchapter II). *North Carolina E. Mun. Power v. Wake County*, 100 N.C. App. 693, 398 S.E.2d 486 (1990), cert. denied, 329 N.C. 270,

407 S.E.2d 838 (1991).

Resolution Correcting Record as to Purpose of Levy. — Resolutions of the board of county commissioners correcting records as to the purpose of tax levies will, in the absence of evidence to the contrary, be presumed bona fide. *Atlantic Coast Line R.R. v. Duplin County*, 226 N.C. 719, 40 S.E.2d 371 (1946).

Counties and County Commissioners Do Not Have Sovereign Immunity. — These powers and the many others enumerated in this Chapter show that a county and the county commissioners are not part of the State of North Carolina and they do not enjoy its sovereign immunity. *Meares v. Brunswick County*, 615 F. Supp. 14 (E.D.N.C. 1985).

Applied in *Gray v. Laws*, 51 F.3d 426 (4th Cir. 1995).

OPINIONS OF ATTORNEY GENERAL

Local School Administrative Unit May Levy Taxes at Local Level. — The legislature may by statute, consistently with the Constitution, provide that a local school administrative unit may levy taxes at the local level but such taxing authority must be conferred ei-

ther by a general law, applicable statewide, or by local act subject to a vote of those persons affected. See opinion of Attorney General to Mr. John B. Dunn, Superintendent, Edenton-Chowan Schools, 60 N.C.A.G. 17 (1990).

Chapter 158.
Local Development.

Article 3.	Sec.
Tax Elections for Industrial Development Purposes.	
Sec.	158-18. Form of ballot; when ballots supplied; designation of ballot box.
158-16. Board of commissioners may call tax election; rate and purposes of tax.	158-19. Counting of ballots; canvassing, certifying and announcing results of elections.
158-17. Registration of voters; election under supervision of county board of elections.	158-24. Counties to which Article applies.

ARTICLE 3.

Tax Elections for Industrial Development Purposes.

§ 158-16. Board of commissioners may call tax election; rate and purposes of tax.

The board of county commissioners in any county is authorized and empowered to call a special election to determine whether it be the will of the qualified voters of said county that they levy and cause to be collected annually, at the same time and in the same manner as the general county taxes are levied and collected, a special tax at a rate not to exceed five cents (5¢) on each one hundred dollars (\$100.00) valuation of property in said county, to be known as an "industrial development tax," the funds therefrom, if the levy be authorized by the voters of said county, to be used for the purpose of attracting new and diversified industries to said county, and for the encouragement of new business and industrial ventures by local as well as foreign capital, and for the purpose of aiding and encouraging the location of manufacturing enterprises, making industrial surveys and locating industrial plants in said county, and for the purpose of encouraging agricultural development in said county. (1959, c. 212, s. 1.)

Local Modification. — Mitchell: 1963, c. 157.

§ 158-17. Registration of voters; election under supervision of county board of elections.

There shall be no new registration of voters for such an election. Registration shall be open for registration of new voters in said county and registration of any and all legal residents of said county, who are or could legally be enfranchised as qualified voters for regular general elections, shall be carried out in accordance with the general election laws of the State of North Carolina as provided for local elections. Notice of such registration of new voters shall be published in a newspaper circulated in said county, once, not less than 55 days before and not more than 65 days before the election, stating the hours and days for registration. The special election, if

called, shall be under the control and supervision of the county board of elections. (1959, c. 212, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 11.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 762, which amended this section, in s. 73 provides, in part: "Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to all primaries and elections occurring on or after that date, substituted "Registration" for "The registration books" in the second sentence, and substituted "55 days before and not more than 65 days before the election" for "30 days before and not more than 40 days before, the close of the registration books" in the third sentence.

§ 158-18. Form of ballot; when ballots supplied; designation of ballot box.

The form of the question shall be substantially the words "For Industrial Development Tax," and "Against Industrial Development Tax," which alternates shall appear separated from each other on one ballot containing opposite, and to the left of each alternate, squares of appropriate size in one of which squares the voters may make a mark "X" to designate the voter's choice for or against such tax. Such ballot shall be printed on white paper and each polling place shall be supplied with a sufficient number of ballots not later than the day before the election. At such special election the election board shall cause to be placed at each voting precinct in said county a ballot box marked "Industrial Development Tax Election." (1959, c. 212, s. 1.)

§ 158-19. Counting of ballots; canvassing, certifying and announcing results of elections.

The duly appointed judges and other election officials who are named and fixed by the county board of elections shall count the ballots so cast in such election and the results of the election shall be officially canvassed, certified and announced by the proper officials of the board of elections, according to the manner of canvassing, certifying and announcing the elections held under the general election laws of the State. Except as herein otherwise provided, the registration and election herein provided for shall be conducted in accordance with the general election laws of the State as provided for local elections. (1959, c. 212, s. 1.)

§ 158-24. Counties to which Article applies.

The provisions of this Article shall apply only to the following counties: Alexander, Burke, Caswell, Chowan, Edgecombe, Franklin, Harnett, Haywood, Hertford, Mitchell, Northampton, Onslow, Pasquotank, Perquimans, Person, Polk, Rockingham, Rutherford, Tyrrell, Vance and Warren. (1959, c. 212, s. 2; 1961, cc. 208, 228, 339, 560, 683, 701, 1011, 1058; 1963, c. 157, s. 2; cc. 443, 504, 506, 613, 1101; 1965, cc. 189, 523, 622.)

Chapter 159.

Local Government Finance.

SUBCHAPTER IV. LONG-TERM FINANCING.

Article 4.

Local Government Bond Act.

Part 1. Operation of Article.

Sec.

159-48. For what purposes bonds may be issued.

159-49. When a vote of the people is required.

Part 2. Procedure for Issuing Bonds.

159-54. The bond order.

159-55. Sworn statement of debt; debt limitation.

159-56. Publication of bond order as introduced.

Sec.

159-56.1. Certain proceedings ratified notwithstanding provisions of § 159-56.

159-57. Hearing; passage of bond order.

159-58. Publication of bond order as adopted.

159-59. Limitation of action to set aside order.

159-60. Petition for referendum on bond issue.

159-61. Bond referenda; majority required; notice of referendum; form of ballot; canvass.

159-62. Limitation on actions contesting validity of bond referenda.

159-63. Repeal of bond orders.

SUBCHAPTER IV. LONG-TERM FINANCING.

ARTICLE 4.

Local Government Bond Act.

Part 1. Operation of Article.

§ 159-48. For what purposes bonds may be issued.

(a) Each unit of local government is authorized to borrow money and issue its bonds under this Article in evidence thereof for any one or more of the following purposes:

- (1) To suppress riots, insurrections, or any extraordinary breach of law and order.
- (2) To supply an unforeseen deficiency in the revenue when taxes actually received or collected during the fiscal year fall below collection estimates made in the annual budget ordinance within the limits prescribed in G.S. 159-13.
- (3) To meet emergencies threatening the public health or safety, as conclusively determined in writing by the Governor.
- (4) To refund outstanding revenue bonds or revenue bond anticipation notes.
- (5) To refund outstanding general obligation bonds or general obligation bond anticipation notes.
- (6) To fund judgments for specified sums of money entered against the unit by a court of competent jurisdiction.
- (7) To fund valid, existing obligations of the unit not incurred by the borrowing of money.

(b) Each county and city is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the following:

- (1) Providing airport facilities, including without limitation related land, landing fields, runways, clear zones, lighting, navigational and signal systems, hangars, terminals, offices, shops, and parking facilities.
- (2) Providing armories for the North Carolina national guard.
- (3) Providing auditoriums, coliseums, arenas, stadiums, civic centers, convention centers, and facilities for exhibitions, athletic and cultural events, shows, and public gatherings.
- (4) Providing beach improvements, including without limitation jetties, seawalls, groins, moles, sand dunes, vegetation, additional sand, pumps and related equipment, and drainage channels, for the control of beach erosion and the improvement of beaches.
- (5) Providing cemeteries.
- (6) Providing facilities for fire fighting and prevention, including without limitation headquarters buildings, station buildings, training facilities, hydrants, alarm systems, and communications systems.
- (7) Providing hospital facilities, including without limitation general, tuberculosis, mental, chronic disease, and other types of hospitals and related facilities such as laboratories, outpatient departments, nurses' homes and training facilities, and central service facilities operated in connection with hospitals; facilities for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices; facilities specially designed for the diagnosis, treatment, education, training, or custodial care of the mentally retarded, including facilities for training specialists and sheltered workshops for the mentally retarded; nursing homes; and in connection with the foregoing, laundries, nurses', doctors', or interns' residences, administrative buildings, research facilities, maintenance, storage, and utility facilities, auditoriums, dining halls, food service and preparation facilities, fire prevention facilities, mental and physical health care facilities, dental care facilities, nursing schools, mental teaching facilities, offices, parking facilities, and other supporting service structures.
- (8) Providing land for corporate purposes.
- (9) Providing facilities for law enforcement, including without limitation headquarters buildings, station buildings, jails and other confinement facilities, training facilities, alarm systems, and communications systems.
- (10) Providing library facilities, including without limitation fixed and mobile libraries.
- (11) Providing art galleries, museums, and art centers, and providing for historic properties.
- (12) Providing parking facilities, including on- and off-street parking, and in connection therewith any area or place for the parking and storing of automobiles and other vehicles open to public use, with or without charge, including without limitation meters, buildings, garages, driveways, and approaches.
- (13) Providing parks and recreation facilities, including without limitation land, athletic fields, parks, playgrounds, recreation centers, shelters, stadiums, arenas, permanent

and temporary stands, golf courses, swimming pools, wading pools, marinas, and lighting.

- (14) Providing public building, including without limitation buildings housing courtrooms, other court facilities, and council rooms, office buildings, public markets, public comfort stations, warehouses, and yards.
- (15) Providing public vehicles, including without limitation those for law enforcement, fire fighting and prevention, sanitation, street paving and maintenance, safety and public health, and other corporate purposes.
- (16) Providing for redevelopment through the acquisition of land and the improvement thereof for assisting local redevelopment commissions.
- (17) Providing sanitary sewer systems, including without limitation community sewerage facilities for the collection, treatment, and disposal of sewage or septic tank systems and other on-site collection and disposal facilities or systems.
- (18) Providing solid waste disposal systems, including without limitation land for sanitary landfills, incinerators, and other structures and buildings.
- (19) Providing storm sewers and flood control facilities, including without limitation levees, dikes, diversionary channels, drains, catch basins, and other facilities for storm water drainage.
- (20) Providing voting machines.
- (21) Providing water systems, including without limitation facilities for the supply, storage, treatment, and distribution of water.
- (22) Providing for any other purpose for which it is authorized, by general laws uniformly applicable throughout the State, to raise or appropriate money, except for current expenses.
- (23) Providing public transportation facilities, including without limitation equipment for public transportation, buses, surface and below-ground railways, ferries, and garage facilities.
- (24) Providing industrial parks, land suitable for industrial or commercial purposes, shell buildings, in order to provide employment opportunities for citizens of the county or city.
- (25) Providing property to preserve a railroad corridor.

(c) Each county is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of, in the case of subdivisions (1) to (4), inclusive, paying any capital costs of any one or more of the purposes mentioned therein and, in the case of subdivision (5), to finance the cost thereof:

- (1) Providing community college facilities, including without limitation buildings, plants, and other facilities, physical and vocational educational buildings and facilities, including in connection therewith classrooms, laboratories, libraries, auditoriums, administrative offices, student unions, dormitories, gymnasiums, athletic fields, cafeterias, utility plants, and garages.
- (2) Providing courthouses, including without limitation offices, meeting rooms, court facilities and rooms, and detention facilities.
- (3) Providing county homes for the indigent and infirm.

- (4) Providing school facilities, including without limitation schoolhouses, buildings, plants and other facilities, physical and vocational educational buildings and facilities, including in connection therewith classrooms, laboratories, libraries, auditoriums, administrative offices, gymnasiums, athletic fields, lunchrooms, utility plants, garages, and school buses and other necessary vehicles.
 - (4a) Providing improvements to subdivision and residential streets pursuant to G.S. 153A-205.
 - (5) Providing for the octennial revaluation of real property for taxation.
- (d) Each city is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the following:
- (1) Repealed by Session Laws 1977, c. 402, s. 2.
 - (2) Providing cable television systems.
 - (3) Providing electric systems, including without limitation facilities for the generation, transmission, and distribution of electric light and power.
 - (4) Providing gas systems, including without limitation facilities for the production, storage, transmission and distribution of gas, where systems shall also include the purchase and/or lease of natural gas fields and natural gas reserves and the purchase of natural gas supplies, and where any parts of such systems may be located either within the State or without.
 - (5) Providing streets and sidewalks, including without limitation bridges, viaducts, causeways, overpasses, underpasses, and alleys; paving, grading, resurfacing, and widening streets; sidewalks, curbs and gutters, culverts, and drains; traffic controls, signals, and markers; lighting; and grade crossings and the elimination thereof and grade separations.
 - (6) Improving existing systems or facilities for the transmission or distribution of telephone services.
 - (7) Providing housing projects for the benefit of persons of low income, or moderate income, or low and moderate income, including without limitation (i) construction or acquisition of projects to be owned by a city, redevelopment commission or housing authority, and (ii) loans, grants, interest supplements and other programs of financial assistance to persons of low income, or moderate income, or low and moderate income, and developers of housing for persons of low income, or moderate income, or low and moderate income. A housing project may provide housing for persons of other than low or moderate income, as long as at least twenty percent (20%) of the units in the project are set aside for housing for the exclusive use of persons of low income. No rent subsidy may be paid from bond proceeds.
- (e) Each sanitary district, mosquito control district, hospital district, merged school administrative unit described in G.S. 115C-513; metropolitan sewerage district, metropolitan water district, county water and sewer district, regional public transportation authority and special airport district is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the

purposes for which it is authorized, by general laws uniformly applicable throughout the State, to raise or appropriate money, except for current expenses.

(f) For any of the purposes authorized by subsections (b), (c), (d), or (e) of this section, a unit may do any of the following that it considers necessary or convenient:

- (1) Acquire, construct, erect, provide, develop, install, furnish, and equip; and
- (2) Reconstruct, remodel, alter, renovate, replace, refurbish, and reequip; and
- (3) Enlarge, expand, and extend; and
- (4) Demolish, relocate, improve, grade, drain, landscape, pave, widen, and resurface.

(g) Bonds for two or more unrelated purposes, not of the same general class or character, shall not be authorized by the same bond order. However, bonds for any of the purposes listed in any subdivision of any subsection of this section shall be deemed to be for one purpose and may be authorized by the same bond order. In addition, nothing herein may be deemed to prohibit the combining of purposes from any of such paragraphs and the authorization of bonds therefor by the same bond order to the extent that the purposes are not unrelated.

(h) As used in this section, "capital costs" include, without limitation, the following:

- (1) The costs of doing any or all of the things mentioned in subsection (f) of this section; and
- (2) The costs of all property, both real and personal and both improved and unimproved, plants, works, appurtenances, structures, facilities, furnishings, machinery, equipment, vehicles, easements, water rights, franchises, and licenses used or useful in connection with the purpose authorized; and
- (3) The costs of demolishing or moving structures from land acquired and acquiring any lands to which such structures are to be moved; and
- (4) Financing charges, including estimated interest during construction and for six months thereafter; and
- (5) The costs of plans, specifications, studies and reports, surveys, and estimates of costs and revenues; and
- (6) The costs of bond printing and insurance; and
- (7) Administrative and legal expenses; and
- (8) Any other services, costs, and expenses necessary or incidental to the purpose authorized.

(i) This section does not authorize any unit to undertake any program, function, joint undertaking, or service not otherwise authorized by law. It is intended only to authorize the borrowing of money and the issuance of bonds within the limitations set out herein to finance programs, functions, joint undertakings, or services authorized by other portions of the General Statutes or by city charters. (1917, c. 138, s. 16; 1919, c. 178, s. 3(16); C.S., s. 2937; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 8; 1929, c. 171, s. 1; 1931, c. 60, ss. 48, 54; 1933, c. 259, ss. 1, 2; 1935, c. 302, ss. 1, 2; 1939, c. 231, ss. 1, 2(c); 1943, c. 13; 1945, c. 403; 1947, cc. 520, 931; 1949, c. 354; c. 766, s. 3; c. 1270; 1953, c. 1065, s. 1; 1957, c. 266, s. 1; c. 856, s. 1; c. 1098, s. 16; 1959, c. 525; c. 1250, s. 2; 1961, c. 293; c. 1001, s. 2; 1965, c. 307, s. 2; 1967, c. 987, s. 2; c. 1001, s. 1; 1971,

c. 780, s. 1; 1973, c. 494, s. 4; c. 1037; 1975, c. 549, s. 1; c. 821, s. 1; 1977, c. 402, ss. 1, 2; c. 811; 1979, c. 619, s. 3; c. 624, s. 1; c. 727, s. 3; 1985, c. 639, s. 2; 1987, c. 464, s. 7; c. 564, s. 10; 1989, c. 600, s. 7; c. 740, s. 4; 1991, c. 325, s. 5.)

Cross References. — As to property taxes to provide for drainage projects or programs, see § 160A-209.

Editor's Note. — Session Laws 1979, c. 624, which amended subsection (e) to include reference to county water and sewer districts, provided in ss. 6 and 7:

"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]."

Session Laws 1987, c. 577, s. 1 amended Session Laws 1985, c. 639, s. 4, as amended by Session Laws 1985 (Reg. Sess., 1986), cc. 846, 848, 849, 858, 874, 911, 916 and 921 and Session Laws 1987, c. 203, which formerly made subdivision (b)(24) of this section applicable only to certain counties, municipalities and towns, to read solely: "This act shall become effective January 1, 1986." Thus subdivision (b)(24) now has statewide application.

Session Laws 1991, c. 325, s. 9 interpreted the 1991 amendment to this section, which inserted "merged school administrative unit described in G.S. 115C-513" in subsection (e), by providing:

"Interpretation of Act."

"(a) Additional method. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of things autho-

rized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

"(b) Statutory references. References in this act to specific sections or Chapters of the General Statutes are intended to be references to such sections as they may be amended from time to time by the General Assembly.

"(c) Liberal construction. This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect these purposes.

"(d) Inconsistent provisions. Insofar as the provisions of this act are inconsistent with the provisions of any general laws, this act shall be controlling.

"(e) Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

An amendment to this section, which would have added a new subdivision (b)(26) regarding undertaking public activities in or for the benefit of a development financing district, by Session Laws 1993, c. 497, s. 3, was made effective upon certification of approval of an amendment to Article V of the Constitution of North Carolina relating to the authority of any county, city or town to borrow money, without the need of voter approval, and issue financing bonds to be used to finance public activities associated with private economic development projects. This amendment was submitted to the people on November 2, 1993 and was defeated. The amendment to this section, therefore, never took effect.

CASE NOTES

Editor's Note. — The cases cited below were decided under former statutory provisions similar to this section.

Constitutionality of Former § 153-77. — Former § 153-77, specifying the purposes for which county bonds could be issued, was constitutional. *Evans v.*

Mecklenburg County, 205 N.C. 560, 172 S.E. 323 (1934).

Construction of County Water and Sewer Systems. — The General Assembly may grant to a county the authority to issue bonds for the construction of water and sewer systems when "ap-

proved by a majority of those who shall vote thereon in any election held for such purpose," as required by N.C. Const., Art. V, § 4(2). *Ramsey v. Board of Comm'rs*, 246 N.C. 647, 100 S.E.2d 55 (1957).

Erection and Maintenance of Municipal Public Hospital. — The authority to issue valid bonds for the erection and maintenance of a public hospital with the approval of its voters was conferred on a municipality by former §§ 160-230 and 160-378, and where other relevant statutes had been duly followed, the bonds so issued were a valid obligation of the town issuing them, and their issuance would not be enjoined by the courts. *Burleson v. Board of Aldermen*, 200 N.C. 30, 156 S.E. 241 (1930).

Erection of Schoolhouses and Purchase of Land for School Purposes by Counties. — The counties of the State are authorized to issue bonds and notes for the erection of schoolhouses and for the purchase of land necessary for school purposes, and to levy taxes for the payment of principal and interest on the same, not as municipal corporations, organized primarily for purposes of local

government, but as administrative agencies of the State, employed by the General Assembly to discharge the duty imposed upon it by the Constitution to provide a state system of public schools. *Frazier v. Board of Comm'rs*, 194 N.C. 49, 138 S.E. 433 (1927); *Bridges v. City of Charlotte*, 221 N.C. 472, 20 S.E.2d 825 (1942).

Indebtedness for teachers' salaries was held to come within the purview of an earlier statute authorizing issuance of bonds for the funding or refunding of valid indebtedness. *Hampton v. Board of Educ.*, 195 N.C. 213, 141 S.E. 744 (1928).

Validity of Refunding Bonds. — Where a county under power conferred by special statute has borrowed money from time to time for the maintenance and equipment of its public schools, its bonds to refund the indebtedness so incurred are valid if issued in conformity with the provisions of the applicable statute. *Hartsfield v. Craven County*, 194 N.C. 358, 139 S.E. 698 (1927).

Cited in *South Shell Inv. v. Town of Wrightsville Beach*, 703 F. Supp. 1192 (E.D.N.C. 1988).

§ 159-49. When a vote of the people is required.

Bonds may be issued under this Article only if approved by a vote of the qualified voters of the issuing unit as provided in this Article, except that voter approval shall not be required for:

- (1) Bonds issued for any purpose authorized by G.S. 159-48(a)(1), (2), (3), or (5).
- (2) Bonds issued by a county, county water and sewer district created under Article 6 of Chapter 162A of the General Statutes, metropolitan water district created under Article 4 of Chapter 162A of the General Statutes, or city for any purpose authorized by G.S. 159-48(a)(4), (6), or (7) or G.S. 159-48(b), (c), (d), or (e) (except purposes authorized by G.S. 159-48(b)(3), (11), (16), (22), or (23) or by G.S. 159-48(d)(2)) in an aggregate principal sum not exceeding two thirds of the amount by which the outstanding indebtedness of the issuing county, county water and sewer district, metropolitan water district, or city has been reduced during the next preceding fiscal year.

Pursuant to Article V, Sec. 4(2) of the Constitution, the General Assembly hereby declares that the purposes authorized by G.S. 159-48(a)(4), (6), and (7) and by G.S. 159-48(b), (c), (d), and (e) (except purposes authorized by G.S. 159-48(b)(3), (11), (16), (22), or (23) or by G.S. 159-48(d)(2)) are purposes for which bonds may be issued without a vote of the people, to the extent of two thirds of the amount by which the outstanding indebtedness of the issuing county, county water and sewer district, metropolitan water district, or city was reduced in the last preceding fiscal year. (1971, c. 780, s. 1; 1973, c. 494, s. 5; 1977, c. 402, s. 3; 1989, c. 470.)

Cross References. — As to when an election is or is not required under the “necessary expense limitation” of N.C. Const., Art. V, § 4(2), see note to N.C. Const., Art. V, § 4.

Part 2. Procedure for Issuing Bonds.

§ 159-54. The bond order.

After or at the same time the application is filed and accepted for submission to the Commission, a bond order shall be introduced before the governing board of the issuing unit. The bond order shall state:

- (1) Briefly and generally and without specification of location or material of construction, the purpose for which the bonds are to be issued, but not more than one purpose may be stated. For funding or refunding bonds a brief description of the debt, judgment, or obligation to be funded or refunded shall be sufficient.
- (2) The maximum aggregate principal amount of the bonds.
- (3) That taxes will be levied in an amount sufficient to pay the principal and interest of the bonds.
- (4) The extent, if any, to which utility or enterprise revenues are, or may be, pledged to payment of interest on and principal of the bonds pursuant to G.S. 159-47.
- (5) That a sworn statement of debt has been filed with the clerk and is open to public inspection.
- (6) If the bonds are to be approved by the voters, that the bond order will take effect when approved by the voters.
- (7) If the bonds are issued pursuant to G.S. 159-48(a)(1), (2), (3), or (5), that the bond order will take effect upon its adoption. If the bonds are to be issued pursuant to G.S. 159-48(a)(4), (6), or (7) or G.S. 159-48(b), (c), or (d) and are not to be submitted to the voters, that the bond order will take effect 30 days after its publication following adoption, unless it is petitioned to a vote of the people as provided in G.S. 159-60, and that in that event the order will take effect when approved by the voters.

When the bond order is introduced, the board shall fix the time and place for a public hearing thereon. (1917, c. 138, s. 17; 1919, c. 178, s. 3(17); c. 285, s. 2; C.S., s. 2938; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 9; 1931, c. 60, ss. 49, 55; 1933, c. 259, ss. 1, 2; 1935, c. 302, ss. 1, 2; 1949, c. 497, ss. 1, 3; 1957, c. 856, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 6.)

CASE NOTES

Editor's Note. — Many of the cases cited below were decided under former statutory provisions similar to this section.

Applicability. — A fair reading of the language of this section and § 159-54 indicates that this Act applies to general obligation bonds which pledge the faith and credit of the county. *McNeill v. Harnett County*, 327 N.C. 552, 398 S.E.2d 475 (1990).

The bond order is the crucial foundation document which supports and explains the proposal to be submitted, and material representations set out in the bond order ordinarily become essential elements of the proposition submitted to the voters. *Rider v. Lenoir County*, 236 N.C. 620, 73 S.E.2d 913 (1952).

The courts are without authority to supply a deficiency in the bond

order. *Hall v. Commissioners of Duplin*, 195 N.C. 367, 142 S.E. 315 (1928).

Stipulation in Bond Order as Limitation on Subsequent Official Acts. — Where bond order contains a stipulation definitely fixing the maximum amount of county funds to be expended on a proposed project, such stipulation, treated as a compact, becomes a limitation upon subsequent official acts based on a favorable vote and may not be materially varied. *Rider v. Lenoir County*, 236 N.C. 620, 73 S.E.2d 913 (1952).

Provision Becoming Part of Bonds. — A provision set out in former § 159-46 and incorporated in an ordinance authorizing the issuance of bonds entered into and became an integral part of the bonds when issued, with contractual force and effect, which could not be impaired by subsequent legislation. *Nash v. Board of Comm'rs*, 211 N.C. 301, 190 S.E. 475 (1937).

Ordinance authorizing a bond sale and calling a special election must state the purpose in only brief and general terms. *Sykes v. Belk*, 278 N.C. 106, 179 S.E.2d 439 (1971).

Use of Proceeds of Bonds Limited by Bond Order. — Where a bond order approved by the voters of a county authorized the issuance of bonds in an aggregate amount to finance a new building or buildings to be used as a public hospital and the acquisition of a suitable site therefor, the use of the proceeds of the bonds was limited by the bond order, and the county could not use the surplus left after completing the project contemplated in the bond order toward the construction of a clinic in another municipality of the county. *Lewis v. Beaufort County*, 249 N.C. 628, 107 S.E.2d 77 (1959).

No Substantial Deviation from Purpose Found. — Where the manifest purpose for which a civic center bond issue was proposed was to revitalize the downtown area, with the civic center becoming the catalyst for other projects, and the site finally chosen by the city council remained in the downtown area, although at a distance of approximately four blocks from the site noted in speeches by public officials before the election, there was not a substantial deviation from the purpose for which the bonds were proposed. *Sykes v. Belk*, 278 N.C. 106, 179 S.E.2d 439 (1971).

Misrepresentations made as to the site of the civic center for construction of which a bond issue to be paid by taxes

was proposed did not vitiate the question as submitted to the voters in the bond issue election. *Sykes v. Belk*, 278 N.C. 106, 179 S.E.2d 439 (1971).

Use of Funds for Hospital "Buildings". — Where the resolution of the county commissioners in submitting to a vote the question of issuing bonds for a public hospital used the word "buildings," and it was later found that a surplus would remain after the erection and equipment of the main hospital building, such surplus could be used for the purpose of erecting on the hospital grounds a home for nurses, technicians and others engaged in essential employment incidental to the proper operation of the hospital. *Worley v. Johnston County*, 231 N.C. 592, 58 S.E.2d 99 (1950).

Intent to Use Funds for Construction of Water and Sewer Lines in Annexed Areas. — Where there was no irregularity in the authorization of municipal bonds for its water and sewer systems, and in the city's notice of intent to annex certain areas it was stated that the city intended to use certain of the proceeds of the bonds for the construction of water and sewer lines in areas intended to be annexed, the fact that neither the bond ordinance nor the ballots used in the election at which the issuance of the bonds was approved disclosed such intent did not affect the validity of the bonds. *Upchurch v. City of Raleigh*, 252 N.C. 676, 114 S.E.2d 772 (1960).

A bond order may contain several sections and authorize the issue of bonds for different purposes. *Atkins v. McAden*, 229 N.C. 752, 51 S.E.2d 484 (1949).

Bond order need not set out in detail estimates of cost and descriptions of the particular projects for which the funds are proposed to be used, and their inclusion does not limit the allocation of the proceeds of the bonds, provided the use of the funds falls within the general purpose designated. *Atkins v. McAden*, 229 N.C. 752, 51 S.E.2d 484 (1949).

Nor Specify That Public Funds Will Supplement Bond Moneys. — Where public funds are to supplement bond moneys, it is not required that the bond order specify, or the voters be advised, that the proceeds of the proposed bond issue are to be used with, or in addition to, a sum of money on hand or otherwise available for the proposed improvement. *Rider v. Lenoir County*, 236

N.C. 620, 73 S.E.2d 913 (1952).

But Where Order Stipulates Total Sum to Be Expended, Appropriation of Additional Sum Is Unauthorized.

— While a county may ordinarily expend unallocated nontax moneys for the public purpose of a county hospital even in those instances in which a bond order for the hospital does not specify that the proceeds of the bonds are to be used together with such unallocated nontax moneys, where the bond order specifically specified that the total maximum amount to be expended by the county for the hospital was not to exceed \$465,000, the allocation of an additional supplemental appropriation of over \$138,000 out of nontax moneys on hand was a material variance from the compact as set forth in the bond order, and the county could be restrained in a proper suit from issuing the bonds and disbursing county funds in accordance with hospital plans predicated upon such increased appropriation. *Rider v. Lenoir County*, 236 N.C. 620, 73 S.E.2d 913 (1952).

Amount and Manner of Assessment Against Each Abutting Owner Need Not Be Set Forth. — It is not required that a bond ordinance of a municipality set forth in express terms the

proportion of the cost of the proposed improvements which has been, or is to be, assessed against the property of each owner abutting upon the streets to be improved, or the terms and method of making the payment, if the procedure follow the direction of the statutes relating to the subject. *Leak v. Town of Wadesboro*, 186 N.C. 683, 121 S.E. 12 (1923).

A tax must be levied only if revenue from other sources is inadequate to repay the principal and interest on the bonds outstanding. *McNeill v. Harnett County*, 327 N.C. 552, 398 S.E.2d 475 (1990).

Repayment of Bonds by Charging Reasonable Fees. — Where the ballot that the voters considered indicated that the voters were asked only to authorize a tax rather than to approve an order imposing a tax, the County Commissioners were not compelled to impose a tax and were free, under these facts, to charge reasonable fees and charges to repay the bonds in lieu of the levy of a tax. *McNeill v. Harnett County*, 327 N.C. 552, 398 S.E.2d 475 (1990).

Cited in *Citizens Ass'n for Reasonable Growth v. City of Washington*, 45 N.C. App. 7, 262 S.E.2d 343 (1980).

§ 159-55. Sworn statement of debt; debt limitation.

(a) After the bond order has been introduced and before the public hearing thereon, the finance officer (or some other officer designated by the governing board for this purpose) shall file with the clerk a statement showing the following:

- (1) The gross debt of the unit, excluding therefrom debt incurred or to be incurred in anticipation of the collection of taxes or other revenues or in anticipation of the sale of bonds other than funding and refunding bonds. The gross debt (after exclusions) is the sum of (i) outstanding debt evidenced by bonds, (ii) bonds authorized by orders introduced but not yet adopted, (iii) unissued bonds authorized by adopted orders, and (iv) outstanding debt not evidenced by bonds. However, for purposes of the sworn statement of debt and the debt limitation, revenue bonds shall not be considered debt and such bonds shall not be included in gross debt nor deducted from gross debt.
- (2) The deductions to be made from gross debt in computing net debt. The following deductions are allowed:
 - a. Funding and refunding bonds authorized by orders introduced but not yet adopted.
 - b. Funding and refunding bonds authorized but not yet issued.
 - c. The amount of money held in sinking funds or otherwise for the payment of any part of the principal of gross

debt other than debt incurred for water, gas, electric light or power purposes, or sanitary sewer purposes (to the extent that the bonds are deductible under subsection (b) of this section), or two or more of these purposes.

- d. The amount of bonded debt included in gross debt and incurred, or to be incurred, for water, gas, or electric light or power purposes, or any two or more of these purposes.
 - e. The amount of bonded debt included in the gross debt and incurred, or to be incurred, for sanitary sewer system purposes to the extent that the debt is made deductible by subsection (b) of this section.
 - f. The amount of uncollected special assessments theretofore levied for local improvements for which any part of the gross debt (that is not otherwise deducted) was or is to be incurred, to the extent that the assessments will be applied, when collected, to the payment of any part of the gross debt.
 - g. The amount, as estimated by the governing board of the issuing unit or an officer designated by the board for this purpose, of special assessments to be levied for local improvements for which any part of the gross debt (that is not otherwise deducted) was or is to be incurred, to the extent that the special assessments, when collected, will be applied to the payment of any part of the gross debt.
- (3) The net debt of the issuing unit, being the difference between the gross debt and deductions.
 - (4) The assessed value of property subject to taxation by the issuing unit, as revealed by the tax records and certified to the issuing unit by the assessor.
 - (5) The percentage that the net debt bears to the assessed value of property subject to taxation by the issuing unit.
- (b) Debt incurred or to be incurred for sanitary sewer system purposes is deductible from gross debt when the combined revenues of the water system and the sanitary sewer system (whether or not the water and sewer system are operated separately or as a consolidated system) were sufficient to pay all operating, capital outlay, and debt service expenditures attributable to both systems in each of the three complete fiscal years immediately preceding the date on which the sworn statement of debt is filed. For the purposes of this subsection, the "revenues" of a water system and a sanitary sewer system include:
- (1) Rates, fees, rentals, charges, and other receipts and income derived from or in connection with the system.
 - (2) Fees, rents, or other charges collected from other offices, agencies, institutions, and departments of the issuing unit at rates not in excess of those charged to other consumers, customers, or users.
 - (3) Appropriations from the fund balance of the prior fiscal year from the fund or funds established to account for the revenues and expenditures of the water system or sewer system pursuant to G.S. 159-13(a) of the Local Government Budget and Fiscal Control Act.

Before the sworn statement of debt is filed, the secretary shall determine to what extent debt incurred or to be incurred for

sanitary sewer system purposes qualifies for deduction from gross debt pursuant to this subsection, and shall give his certificate to that effect. The secretary's certificate shall be filed with and deemed a part of the sworn statement of debt. The secretary's certificate shall be conclusive in the absence of fraud.

(c) No bond order shall be adopted unless it appears from the sworn statement of debt filed in connection therewith that the net debt of the unit does not exceed eight percent (8%) of the assessed value of property subject to taxation by the issuing unit. This limitation shall not apply to:

- (1) Funding and refunding bonds.
- (2) Bonds issued for water, gas, or electric power purposes, or two or more of these purposes.
- (3) Bonds issued for sanitary sewer system purposes when the bonds are deductible pursuant to subsection (b) of this section.
- (4) Bonds issued for sanitary sewers, sewage disposal, or sewage purification plants when the construction of these facilities has been ordered by the Environmental Management Commission, which Commission is hereby authorized to make such an order, or by a court of competent jurisdiction.
- (5) Bonds or notes issued for erosion control purposes.
- (6) Bonds or notes issued for the purpose of erecting jetties or other protective works to prevent encroachment by the ocean, sounds, or other bodies of water. (1917, c. 138, s. 19; 1919, c. 178, s. 3(19); c. 285, s. 4; C.S., s. 2943; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, ss. 13, 14; c. 102, s. 1; 1931, c. 60, s. 51; 1933, c. 259, s. 1; c. 321; Ex. Sess. 1938, c. 3; 1955, c. 1045; 1959, c. 779, s. 10; 1967, c. 892, s. 4; 1969, c. 1092; 1971, c. 780, s. 1; 1973, c. 494, s. 7; c. 1262, s. 231; 1991, c. 11, ss. 2, 3; 1991 (Reg. Sess., 1992), c. 1007, s. 41.)

Editor's Note. — An amendment to subsection (a) of this section by Session Laws 1993, c. 497, s. 4, was made effective upon certification of approval of an amendment to Article V of the Constitution of North Carolina relating to the authority of any county, city or town to borrow money, without the need of voter approval, and issue financing bonds to be used to finance public activities associated with private economic development projects. This amendment was submitted to the people on November 2, 1993 and was defeated. The amendment to subsection (a) of this section, therefore, never took effect.

An earlier amendment to this section in Session Laws 1981 (Reg. Sess., 1982), c. 1276, s. 2, was made effective on certification of approval of a state constitutional amendment authorizing the enactment of laws dealing with transactions of the type contemplated by the act. Such an amendment was proposed by Session Laws 1981 (Reg. Sess., 1982), c. 1247, was submitted to the people on Nov. 2, 1982, and was defeated. The amendment to this section, therefore, did not go into effect.

CASE NOTES

Editor's Note. — Most of the cases cited below were decided under former statutory provisions similar to this section.

Action Attacking Bond Order on

Ground of Failure to File Statement. — Where taxpayers instituted an action attacking a bond order passed by the board of county commissioners for failure of the commissioners to comply with

the statute requiring the filing of a true statement of the county debt, the attack upon the order was upon statutory as distinguished from constitutional grounds, and an action instituted more than 30 days after the first publication of the order could not be maintained. *Garrell v. Columbus County*, 215 N.C. 589, 2 S.E.2d 701 (1939).

Bonds issued by a municipality for water and sewer systems do not come within the inhibition against incurring debt in excess of 8% of the assessed valuation (now 8% of the appraised value). *Lamb v. Randleman*, 206 N.C. 837, 175 S.E. 293 (1934).

Bonds Including Amount of Special Assessments. — Where a town has issued bonds for general street improvements under legislative authority, and includes the amount required for local improvements by assessment of owners of lands abutting a particular street improved, it may charge off from the proceeds of the sale of the bonds the estimated amount to be realized by the special assessments. *Brown v. Town of Hillsboro*, 185 N.C. 368, 117 S.E. 41 (1923).

Applied in *Wright v. County of Macon*, 64 N.C. App. 718, 308 S.E.2d 97 (1983).

§ 159-56. Publication of bond order as introduced.

After the introduction of the bond order, the clerk shall publish it once with the following statement appended:

“The foregoing order has been introduced and a sworn statement of debt has been filed under the Local Government Bond Act showing the appraised value of the [issuing unit] to be \$ and the net debt thereof, including the proposed bonds, to be \$ A tax will [may] be levied to pay the principal of and interest on the bonds if they are issued. Anyone who wishes to be heard on the questions of the validity of the bond order and the advisability of issuing the bonds may appear at a public hearing or an adjournment thereof to be held at

.....
Clerk”

(1927, c. 81, s. 16; 1971, c. 780, s. 1.)

CASE NOTES

Editor’s Note. — *The case cited below was decided under former statutory provisions similar to this section.*

The proper publication of the notices is mandatory, and cannot be dispensed with. *Frazier v. Board of Comm’rs*, 194 N.C. 49, 138 S.E. 433 (1927).

Sufficiency of Publication. — Former statute requiring notice to taxpayers, etc., of an opportunity to be heard before a county could issue bonds for various purposes was sufficiently complied with if several orders of the

county commissioners were published in the same advertisement and a date and place, fixed for passing upon the objections made, if any, was separately placed in the publication, distinctly referring to each of the separate purposes. *Frazier v. Board of Comm’rs*, 194 N.C. 49, 138 S.E. 433 (1927).

Publication of one statement in connection with three orders was sufficient as a compliance with former statute, a statement for each order not being necessary. *Frazier v. Board of Comm’rs*, 194 N.C. 49, 138 S.E. 433 (1927).

§ 159-56.1. Certain proceedings ratified notwithstanding provisions of § 159-56.

All proceedings heretofore taken by the governing boards of units of local government in connection with the authorization of bonds are hereby ratified, approved, confirmed and in all respects validated, notwithstanding the provisions of G.S. 159-56; provided that the issuance of said bonds, the indebtedness to be incurred by the

issuance thereof and the levy of a tax for the payment thereof shall have been approved at an election by a majority of the qualified voters of the unit voting thereon. (1973, c. 1172.)

§ 159-57. Hearing; passage of bond order.

On the date fixed for the public hearing, which shall be not earlier than six days after the date of publication of the bond order as introduced, the board shall hear anyone who may wish to be heard on the question of the validity of the order or the advisability of issuing the bonds. The hearing may be adjourned from time to time.

After the hearing, (and on the same day as the hearing, if the board so desires) the board may pass the order as introduced, or as amended. No amendment may increase the amount of bonds to be issued, nor substantially change the purpose of the issue. If the board wishes to increase the amount of bonds to be issued, or to substantially change the purpose of the issue, a new proceeding under this Article is required.

The provisions of any city charter, general law, or local act to the contrary notwithstanding, a bond order may be introduced at any regular or special meeting of the governing board and adopted at any such meeting by a simple majority of those present and voting, a quorum being present, and need not be published or subjected to any procedural requirements governing the adoption of ordinances or resolutions by the governing board other than the procedures set out in this Subchapter. Bond orders shall not be subject to the provisions of any city charter or local act concerning initiative and referendum. (1927, c. 81, s. 17; 1953, c. 1065, s. 1; 1971, c. 780, s. 1.)

CASE NOTES

Stated in *Wright v. County of Macon*, 64 N.C. App. 718, 308 S.E.2d 97 (1983).

§ 159-58. Publication of bond order as adopted.

After adoption, the clerk shall publish the bond order once, with the following statement appended:

“The foregoing order was adopted on the day of, 19...., and is hereby published this day of, 19.... Any action or proceeding questioning the validity of the order must be begun within 30 days after the date of publication of this notice.

.....
Clerk”

(1917, c. 138, s. 20; 1919, c. 49, s. 1; c. 178, s. 3(20); C.S., s. 2944; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 19; 1971, c. 780, s. 1.)

CASE NOTES

Cited in *Citizens Ass'n for Reasonable Growth v. City of Washington*, 45 N.C. App. 7, 262 S.E.2d 343 (1980).

§ 159-59. Limitation of action to set aside order.

Any action or proceeding in any court to set aside a bond order, or to obtain any other relief, upon the ground that the order is invalid, must be begun within 30 days after the date of publication of the bond order as adopted. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of the order shall be asserted, nor shall the validity of the order be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed in this section. (1917, c. 138, s. 20; 1919, c. 49, s. 1; c. 178, s. 3(20); C.S., s. 2945; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 20; 1971, c. 780, s. 1.)

CASE NOTES

Editor's Note. — Many of the cases cited below were decided under former statutory provisions similar to this section.

Right to Test Constitutionality of Bond Issue Not Affected. — Former § 153-90, similar to this section, did not prevent a suit to determine the constitutionality of the bond issue. *Sessions v. Columbus County*, 214 N.C. 634, 200 S.E. 418 (1939).

When the proposed bond issue contravened the Constitution, the requirement of former § 153-90, similar to this section, that actions to restrain issuance of bonds by counties must be instituted within 30 days of the first publication of notice of the adoption of the bond resolution did not apply. *Sessions v. Columbus County*, 214 N.C. 634, 200 S.E. 418 (1939).

Suit Alleging Violation of Statutory Restrictions on Amount of Bonds. — Where a board of county commissioners, under ordinance duly passed and hearing thereon had, was about to issue bonds for the necessary purpose of erecting a jail, etc., contrary to the restrictions of the former County Finance Act limiting the amount of bonds, a suit to restrain the issuance of the bonds was required to be commenced within 30 days after the publication of the required notice and order, and a suit instituted after the time prescribed could not be maintained. The question whether former statute, similar to this section,

was strictly one of limitation or a condition annexed to the cause of action was immaterial. *Kirby v. Board of Comm'rs*, 198 N.C. 440, 162 S.E. 165 (1930).

Suit Based on Failure to File True Statement of County Debt. — Where taxpayers instituted an action attacking a bond order passed by the board of county commissioners on the ground that the commissioners had failed to comply with former § 153-84, requiring the filing of a true statement of the county debt, the attack upon the order was held to be upon statutory as distinguished from constitutional grounds, and an action instituted more than 30 days after the first publication of the order could not be maintained. *Garrell v. Columbus County*, 215 N.C. 589, 2 S.E.2d 701 (1939).

Suit Based on Irregularities in Bond Order and Ballot. — Action to enjoin issuance of hospital bonds and to restrain disbursement of county funds therefor on the ground of irregularities in the bond order and form of ballot was held precluded by former statutes similar to this section and § 159-62 because not instituted until after 30 days subsequent to the statement of the result of election. *Rider v. Lenoir County*, 236 N.C. 620, 73 S.E.2d 913 (1952).

Applied in Citizens Ass'n for Reasonable Growth v. City of Washington, 45 N.C. App. 7, 262 S.E.2d 343 (1980).

Cited in *Wright v. County of Macon*, 64 N.C. App. 718, 308 S.E.2d 97 (1983).

§ 159-60. Petition for referendum on bond issue.

A petition demanding that a bond order be submitted to the voters may be filed with the clerk within 30 days after the date of publication of the bond order as introduced. The petition shall be in writing, and shall be signed by a number of voters of the issuing unit

equal to not less than ten percent (10%) of the total number of voters registered to vote in elections of the issuing unit according to the most recent figures certified by the State Board of Elections. The residence address of each signer shall be written after his signature. The petition need not contain the text of the order to which it refers, and need not be all on one sheet.

The clerk shall investigate the sufficiency of the petition and present it to the governing board, with a certificate stating the results of his investigation. The governing board, after hearing any taxpayer who may request to be heard, shall thereupon determine the sufficiency of the petition, and its determination shall be conclusive.

This section does not apply to bonds issued pursuant to G.S. 159-48(a)(1), (2), (3), or (5). (1917, c. 138, s. 21; 1919, c. 49, ss. 1, 2; c. 178, s. 3(21); C.S., s. 2947; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 20; c. 102, s. 2; 1971, c. 780, s. 1; 1973, c. 494, s. 8.)

CASE NOTES

Editor's Note. — *The cases cited below were decided under former statutory provisions similar to this section.*

Validity of Bond Order in Absence of Petition for Referendum. — Where no petition was filed within the time prescribed, praying that a bond order duly passed by the board of commissioners of a county be submitted to the voters of the county, in accordance with the provisions of the former County Finance Act, the bond order was valid and effective, without the approval of the voters of the county. *Hemric v. Board of Comm'rs*, 206 N.C. 845, 175 S.E. 168 (1934).

Approval of Voters Required Where Petition Filed. — Where a petition was filed in accordance with statutory provisions, praying that a bond order duly passed by the board of commissioners of a county, authorizing and directing the issuance of bonds of the county for the purpose of procuring money for the purchase, construction, improvement or equipment of school-

houses required for the maintenance of a school in each of the districts of the county as required by the Constitution of the State, be submitted to the voters of the county, such bond order was not valid or effective until the same had been approved by the voters of the county as provided. *Hemric v. Board of Comm'rs*, 206 N.C. 845, 175 S.E. 168 (1934).

Temporary Restraining Order Pending Determination of Sufficiency of Petition. — Where the taxpayers of a county filed suit under this section to restrain the issuance of bonds until authorized by the qualified voters of the county, and there was a controversy as to whether the signatures of the requisite 15% (now 10%) of qualified voters had been obtained to the petition, a temporary restraining order would be continued until the sufficiency of the petition could be determined. *Scruggs v. Rollins*, 207 N.C. 335, 177 S.E. 180 (1934).

§ 159-61. Bond referenda; majority required; notice of referendum; form of ballot; canvass.

(a) If a bond order is to take effect upon approval of the voters, the affirmative vote or a majority of those who vote thereon shall be required.

(b) The date of a bond referendum shall be fixed by the governing board, but shall not be more than one year after adoption of the bond order. The governing board may call a special referendum for the purpose of voting on a bond issue on any day, including the day of any regular or special election held for another purpose (unless the

law under which the bond referendum or other election is held specifically prohibits submission of other questions at the same time). A special bond referendum may not be held within 30 days before or 10 days after a statewide primary, election, or referendum, or within 30 days before or 10 days after any other primary, election, or referendum to be held in the same unit holding the bond referendum and already validly called or scheduled by law at the time the bond referendum is called. The clerk shall mail or deliver a certified copy of the resolution calling a special bond referendum to the board of elections that is to conduct it within three days after the resolution is adopted, but failure to observe this requirement shall not in any manner affect the validity of the referendum or bonds issued pursuant thereto. Bond referenda shall be conducted by the board of elections conducting regular elections of the county, city, or special district. In fixing the date of a bond referendum, the governing board shall consult the board of elections in order that the referendum shall not unduly interfere with other elections already scheduled or in process. Several bond orders or other matters may be voted upon at the same referendum.

(c) The clerk shall publish a notice of the referendum at least twice. The first publication shall be not less than 14 days and the second publication not less than seven days before the last day on which voters may register for the referendum. The notice shall state the date of the referendum, the maximum amount of the proposed bonds, the purpose of the bonds, a statement that taxes will or may be levied for the payment thereof, and a statement as to the last day for registration for the referendum under the election laws then in effect.

(d) The form of the question as stated on the ballot shall be in substantially the following words:

“Shall the order authorizing \$ bonds for (briefly stating the purpose) be approved?

- YES
- NO”

(e) The board of elections shall canvass the referendum and certify the results to the governing board. The governing board shall then certify and declare the result of the referendum and shall publish a statement of the result once, with the following statement appended:

“Any action or proceeding challenging the regularity or validity of this bond referendum must be begun within 30 days after

.....
(date of publication)

.....
(title of governing board)”

The statement of results shall be filed in the clerk’s office and inserted in the minutes of the board. (1917, c. 138, s. 22; 1919, c. 178, s. 3(22); c. 291; C.S., s. 2948; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, ss. 22, 23, 25-27, 29; 1949, c. 497, ss. 2, 4; 1953, c. 1065, ss. 1, 2; 1971, c. 780, s. 1; 1973, c. 494, s. 9.)

Editor’s Note. — As to the publication of first notice and the closing of registration books for local elections held under G. S. 163-287 or this section on June 10, 1982, see Session Laws 1982, 2nd Ex. Sess., c. 3, s. 19.2.

CASE NOTES

Editor's Note. — *Many of the cases cited below were decided under former statutory provisions similar to this section.*

Validity of Elections Favored. — It is the general rule that every reasonable presumption will be indulged in favor of the validity of elections, and the courts will uphold the validity of municipal bond elections unless clear grounds are shown for invalidating them. *Sykes v. Belk*, 278 N.C. 106, 179 S.E.2d 439 (1971).

The result of an election as determined by the proper election officials shall stand until it shall be regularly contested and reversed by a tribunal having jurisdiction for that purpose. The court will not permit itself to be substituted for the proper election officials in the first instance for the purpose of canvassing the returns from the officers holding the election and declaring the result thereof. *Garner v. Town of Newport*, 246 N.C. 449, 98 S.E.2d 505 (1957).

Ordinance authorizing a bond sale and calling a special election must state the purpose in only brief and general terms. *Sykes v. Belk*, 278 N.C. 106, 179 S.E.2d 439 (1971).

Necessity of Notice. — While, so far as the officers are concerned who are charged with the duty of giving notice, the requirement as to notice is imperative, yet it will be regarded, otherwise, as directory, if the result would not be changed by a departure from the provisions of the statute. The law looks more to the substance than to the form, and if it appears that a clear majority of the qualified voters have cast their votes in favor of the proposition submitted to them, and that there has been a fair and full opportunity for all to vote, and that there has been no fraud, and the election is in all respects free from taint of any sort, so that no well founded suspicion can be cast upon it, it would be idle to say that this free and untrammelled expression of the popular will should be disregarded and set aside. *Hill v. Skinner*, 169 N.C. 405, 86 S.E. 351 (1915); *Board of Comm'rs v. C.M. Malone & Co.*, 179 N.C. 604, 103 S.E. 134 (1920).

When Election Held. — The requirement of former § 160-387, that a special bond election should not be held within one month before or after a regular municipal election, was mandatory, and the

statutory period was to be computed by excluding the first and including the last day thereof as provided in § 1-593. *Adcock v. Town of Fuquay Springs*, 194 N.C. 423, 140 S.E. 24 (1927).

The statute permits the use of a broad and general ballot in bond elections. *Sykes v. Belk*, 278 N.C. 106, 179 S.E.2d 439 (1971).

As to directory nature of former statute with regard to the form and language of the ballot, see *Board of Comm'rs v. C.M. Malone & Co.*, 179 N.C. 604, 103 S.E. 134 (1920).

Submission of More Than One Question or Proposal at Same Election. — While former § 153-93 permitted the submission of more than one question or proposal in one and the same election, this contemplated questions authorized by law. *Parker v. Anson County*, 237 N.C. 78, 74 S.E.2d 338 (1953).

Ballot Held to Comply with Statute. — A ballot for a school bond election which stated the question submitted for approval or disapproval, followed by a brief statement of the purposes for which the proceeds of the proposed bonds were to be used and that a tax would be levied to pay the principal and interest on the bonds in event of approval, followed by the word "Yes" and the word "No" and a square opposite each, with instructions as to how the ballot should be marked, was held to comply with former § 153-96 and § 163-150, and the fact that the number of proposed projects necessarily resulted in a ballot somewhat longer than usual was not objectionable. *Parker v. Anson County*, 237 N.C. 78, 74 S.E.2d 338 (1953).

Misrepresentations made as to the site of a civic center, for whose construction a bond issue to be paid by taxes was proposed, did not vitiate the question as submitted to the voters in the bond issue election. *Sykes v. Belk*, 278 N.C. 106, 179 S.E.2d 439 (1971).

Publication of Returns. — It is not necessary to the validity of an election that the returns be published, if it appears that no prejudice was sustained because of such failure. *Board of Comm'rs v. C.M. Malone & Co.*, 179 N.C. 604, 103 S.E. 134 (1920).

Necessary Allegations in Suit to Restrain Issuance of Bonds for Irregularities in Election. — In an action to restrain the issuance of bonds on the ground of irregularities in the bond

election, a complaint which failed to allege that the officers appointed to hold the election had reported the results thereof to the governing body of the municipality and that the governing body had canvassed the returns and judicially determined the result, as required by

former § 160-387, was demurrable. *Garner v. Town of Newport*, 246 N.C. 449, 98 S.E.2d 505 (1957).

Cited in *Citizens Ass'n for Reasonable Growth v. City of Washington*, 45 N.C. App. 7, 262 S.E.2d 343 (1980).

§ 159-62. Limitation on actions contesting validity of bond referenda.

Any action or proceeding in any court to set aside a bond referendum, or to obtain any other relief, upon the ground that the referendum is invalid or was irregularly conducted, must be begun within 30 days after the publication of the statement of the results of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed in this section. (1917, c. 138, s. 22; 1919, c. 178, s. 3(22); c. 291; C.S., s. 2948; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1927, c. 81, s. 30; 1949, c. 497, s. 4; 1953, c. 1065, s. 2; 1971, c. 780, s. 1.)

Cross References. — As to suits to restrain issuance of bonds, see note to § 159-59.

Legal Periodicals. — For survey of 1980 law on civil procedure, see 59 N.C.L. Rev. 1053 (1981).

CASE NOTES

Untimely Claims Extinguished. — This section provides that any claim not prosecuted within 30 days of the date of publication is extinguished. It is different from most statutes of limitation, since ordinarily a statute of limitation does not extinguish a claim but merely serves as a bar to the prosecution of the claim. *Citizens Ass'n for Reasonable Growth v. City of Washington*, 45 N.C. App. 7, 262 S.E.2d 343, cert. denied, 300 N.C. 195, 269 S.E.2d 622 (1980).

Statute Runs from First Publication. — The statute of limitations of this section begins to run from the date of the first publication required by § 159-61, where the sufficiency of the first notice is not questioned. A city cannot start the statute running anew by publishing the notice a second time. *Citizens Ass'n for Reasonable Growth v. City of Washington*, 45 N.C. App. 7, 262 S.E.2d 343, cert. denied, 300 N.C. 195, 269 S.E.2d 622 (1980).

§ 159-63. Repeal of bond orders.

A bond order may be repealed at any time before bonds or bond anticipation notes are issued thereunder. No referendum is required on the repeal of any bond order, nor is a petition for any such referendum permitted. (1971, c. 780, s. 1.)

Chapter 160A.
Cities and Towns.

Article 5.

Form of Government.

Part 1. General Provisions.

Sec.

- 160A-59. Qualifications for elective office.
- 160A-60. Qualifications for appointive office.
- 160A-61. Oath of office.
- 160A-62. Officers to hold over until successors qualified.
- 160A-63. Vacancies.

Part 4. Modification of Form of Government.

- 160A-101. Optional forms.
- 160A-102. Amendment by ordinance.
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Sec.

- 160A-104. Initiative petitions for charter amendments.
- 160A-105. Submission of propositions to voters; form of ballot.
- 160A-106. Amendment of charter provisions dependent on form of government.
- 160A-107. Plan to continue for two years.
- 160A-108. Municipal officers to carry out plan.
- 160A-109. Effective date.
- 160A-110. Charters to remain in force.

Article 9.

Taxation.

- 160A-209. Property taxes.

ARTICLE 5.

Form of Government.

Part 1. General Provisions.

§ 160A-59. Qualifications for elective office.

All city officers elected by the people shall possess the qualifications set out in Article VI of the Constitution. In addition, when the city is divided into electoral districts for the purpose of electing members of the council, council members shall reside in the district they represent. When any elected city officer ceases to meet all of the qualifications for holding office pursuant to the Constitution, or when a council member ceases to reside in an electoral district that he was elected to represent, the office is ipso facto vacant. (1973, c. 609.)

§ 160A-60. Qualifications for appointive office.

Residence within a city shall not be a qualification for or prerequisite to appointment to any city office not filled by election of the people, unless the charter or an ordinance provides otherwise. City councils shall have authority to fix qualifications for appointive offices, but shall have no authority to waive qualifications for appointive offices fixed by charters or general laws. (1870-1, c. 24, s. 3; Code, s. 3796; Rev., s. 2941; C.S., s. 2646; 1951, c. 24; 1969, c. 134, s. 1; 1971, c. 698, s. 1.)

CASE NOTES

Editor's Note. — *The cases below were decided under former similar provisions.*

Former § 160-25 dealt merely with the qualification of the appointee and not with the character of the office. *State v. Hord*, 264 N.C. 149, 141 S.E.2d 241 (1965).

Vacating Office for Preexisting Impediment. — While there can be no serious doubt of the right of a corporate body to vacate the seat of a corporate officer for adequate causes arising subsequent to taking his seat, there has been no precedent for depriving a member of his place by the action of a municipal body of which he is a member for any preexisting impediment affecting his capacity to hold the office. *Ellison v. Aldermen of Raleigh*, 89 N.C. 125 (1883).

Right to Declaratory Judgment. — When the rights of parties were affected by provisions similar to this section and other statutes, to the end that they might be relieved "from uncertainty and insecurity" such parties were entitled to have the applicable statutes construed and their rights declared, and a real controversy existed between the parties. *Bland v. City of Wilmington*, 278 N.C. 657, 180 S.E.2d 813 (1971).

City Charter Prescribing Qualifications of Firemen Not Repealed by Former Provisions. — Former §§ 160-25 and 160-115.1 did not repeal the provisions of a city's charter prescribing the qualifications of its firemen. *Bland v. City of Wilmington*, 278 N.C. 657, 180 S.E.2d 813 (1971).

§ 160A-61. Oath of office.

Every person elected by the people or appointed to any city office shall, before entering upon the duties of the office, take and subscribe the oath of office prescribed in Article VI, § 7 of the Constitution. Oaths of office shall be administered by some person authorized by law to administer oaths, and shall be filed with the city clerk. (R.C., c. 111, s. 12; Code, s. 3799; Rev., s. 2920; C.S., s. 2628; 1971, c. 698, s. 1.)

§ 160A-62. Officers to hold over until successors qualified.

All city officers, whether elected or appointed, shall continue to hold office until their successors are chosen and qualified. This section shall not apply when an office or position has been abolished, when an appointed officer or employee has been discharged, or when an elected officer has been removed from office. (R.C., c. 111, s. 8; Code, s. 3792; Rev., s. 2943; C.S., s. 2648; 1971, c. 698, s. 1.)

CASE NOTES

Cited in *Pritchard v. Elizabeth City*, 318 N.C. App. 417, 344 S.E.2d 821 (1986).

§ 160A-63. Vacancies.

A vacancy that occurs in an elective office of a city shall be filled by appointment of the city council. If the term of the office expires immediately following the next regular city election, or if the next regular city election will be held within 90 days after the vacancy occurs, the person appointed to fill the vacancy shall serve the remainder of the unexpired term. Otherwise, a successor shall be elected at the next regularly scheduled city election that is held

more than 90 days after the vacancy occurs, and the person appointed to fill the vacancy shall serve only until the elected successor takes office. The elected successor shall then serve the remainder of the unexpired term. If the number of vacancies on the council is such that a quorum of the council cannot be obtained, the mayor shall appoint enough members to make up a quorum, and the council shall then proceed to fill the remaining vacancies. If the number of vacancies on the council is such that a quorum of the council cannot be obtained and the office of mayor is vacant, the Governor may fill the vacancies upon the request of any remaining member of the council, or upon the petition of any five registered voters of the city. Vacancies in appointive offices shall be filled by the same authority that makes the initial appointment. This section shall not apply to vacancies in cities that have not held a city election, levied any taxes, or engaged in any municipal functions for a period of five years or more.

In cities whose elections are conducted on a partisan basis, a person appointed to fill a vacancy in an elective office shall be a member of the same political party as the person whom he replaces if that person was elected as the nominee of a political party. (R.C., c. 111, ss. 9, 10; Code, ss. 3793, 3794; Rev., ss. 2921, 2931; C.S., ss. 2629, 2631; 1971, c. 698, s. 1; 1973, c. 426, s. 11; 1983, c. 827, s. 1.)

Local Modification. — Wilmington/New Hanover County Consolidated Government: 1987, c. 643; city of Elizabeth City: 1989, c. 295, s. 1; city of Lumberton: 1983 (Reg. Sess., 1984), c.

1009; city of Roanoke Rapids: 1995, c. 34, s. 1; town of Connelly: 1989, c. 528, s. 1; town of Franklinton: 1993, c. 160, s. 1; town of Tarboro: 1995, c. 73, s. 1.

OPINIONS OF ATTORNEY GENERAL

This Section Provides for Filling Vacancy Created by Official's Departure. — Upon arriving at a determination that an elected town official has removed his residence to another electoral jurisdiction, a town council, pursu-

ant to the provisions of this section, may fill the vacancy created by the official's departure. See opinion of Attorney General to Mr. John C. Wessell, III, Town Attorney, Surf City (Pender County), 58 N.C.A.G. 28 (1988).

Part 4. Modification of Form of Government.

§ 160A-101. Optional forms.

Any city may change its name or alter its form of government by adopting any one or combination of the options prescribed by this section:

- (1) **Name of the corporation:**
The name of the corporation may be changed to any name not deceptively similar to that of another city in this State.
- (2) **Style of the corporation:**
The city may be styled a city, town, or village.
- (3) **Style of the governing board:**
The governing board may be styled the board of commissioners, the board of aldermen, or the council.
- (4) **Terms of office of members of the council:**
Members of the council shall serve terms of office of either two or four years. All of the terms need not be of the

same length, and all of the terms need not expire in the same year.

(5) Number of members of the council:

The council shall consist of any number of members not less than three nor more than 12.

(6) Mode of election of the council:

a. All candidates shall be nominated and elected by all the qualified voters of the city.

b. The city shall be divided into single-member electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible, except for members apportioned to the city at large, if any; the qualified voters of each district shall nominate and elect candidates who reside in the district for seats apportioned to that district; and all the qualified voters of the city shall nominate and elect candidates apportioned to the city at large, if any.

c. The city shall be divided into single-member electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible, except for members apportioned to the city at large; and candidates shall reside in and represent the districts according to the apportionment plan adopted, but all candidates shall be nominated and elected by all the qualified voters of the city.

d. The city shall be divided into electoral districts equal in number to one half the number of council seats; the council seats shall be divided equally into "ward seats" and "at-large seats," one each of which shall be apportioned to each district, so that each council member represents the same number of persons as nearly as possible; the qualified voters of each district shall nominate and elect candidates to the "ward seats"; candidates for the "at-large seats" shall reside in and represent the districts according to the apportionment plan adopted, but all candidates for "at-large" seats shall be nominated and elected by all the qualified voters of the city.

e. The city shall be divided into single-member electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible, except for members apportioned to the city at large, if any; in a nonpartisan primary, the qualified voters of each district shall nominate two candidates who reside in the district, and the qualified voters of the entire city shall nominate two candidates for each seat apportioned to the city at large, if any; and all candidates shall be elected by all the qualified voters of the city.

If either of options b, c, d or e is adopted, the council shall divide the city into the requisite number of single-member electoral districts according to the apportionment plan adopted, and shall cause a map of the districts so laid out to be drawn up and filed as provided by G.S. 160A-22 and

160A-23. No more than one half of the council may be apportioned to the city at large. An initiative petition may specify the number of single-member electoral districts to be laid out, but the drawing of district boundaries and apportionment of members to the districts shall be done in all cases by the council.

(7) Elections:

- a. Partisan. — Municipal primaries and elections shall be conducted on a partisan basis as provided in G.S. 163-291.
- b. Nonpartisan Plurality. — Municipal elections shall be conducted as provided in G.S. 163-292.
- c. Nonpartisan Election and Runoff Election. — Municipal elections and runoff elections shall be conducted as provided in G.S. 163-293.
- d. Nonpartisan Primary and Election. — Municipal primaries and elections shall be conducted as provided in G.S. 163-294.

(8) Selection of mayor:

- a. The mayor shall be elected by all the qualified voters of the city for a term of not less than two years nor more than four years.
- b. The mayor shall be selected by the council from among its membership to serve at its pleasure.

Under option a, the mayor may be given the right to vote on all matters before the council, or he may be limited to voting only to break a tie. Under option b, the mayor has the right to vote on all matters before the council. In both cases the mayor has no right to break a tie vote in which he participated.

(9) Form of government:

- a. The city shall operate under the mayor-council form of government in accordance with Part 3 of Article 7 of this Chapter.
- b. The city shall operate under the council-manager form of government in accordance with Part 2 of Article 7 of this Chapter and any charter provisions not in conflict therewith. (1969, c. 629, s. 2; 1971, c. 698, s. 1; c. 1076, s. 1; 1973, c. 426, s. 19; c. 1001, ss. 1, 2; 1975, c. 19, s. 64; c. 664, s. 6.)

Local Modification. — (As to Part 4) Wilmington/New Hanover County Consolidated Government: 1987, c. 643; city of Bessemer City: 1991, c. 293; city of Lexington: 1987, c. 64, s. 1(2).

Editor's Note. — Session Laws 1975,

c. 664, which added references to option e in subdivision (6), provided in s. 6(c): "Nothing contained in this section shall be construed to alter any existing form of government of any municipality."

§ 160A-102. Amendment by ordinance.

By following the procedure set out in this section, the council may amend the city charter by ordinance to implement any of the optional forms set out in G.S. 160A-101. The council shall first adopt a resolution of intent to consider an ordinance amending the charter. The resolution of intent shall describe the proposed charter amendments briefly but completely and with reference to the pertinent provisions of G.S. 160A-101, but it need not contain the precise text

of the charter amendments necessary to implement the proposed changes. At the same time that a resolution of intent is adopted, the council shall also call a public hearing on the proposed charter amendments, the date of the hearing to be not more than 45 days after adoption of the resolution. A notice of the hearing shall be published at least once not less than 10 days prior to the date fixed for the public hearing, and shall contain a summary of the proposed amendments. Following the public hearing, but not earlier than the next regular meeting of the council and not later than 60 days from the date of the hearing, the council may adopt an ordinance amending the charter to implement the amendments proposed in the resolution of intent.

The council may, but shall not be required to unless a referendum petition is received pursuant to G.S. 160A-103, make any ordinance adopted pursuant to this section effective only if approved by a vote of the people, and may by resolution adopted at the same time call a special election for the purpose of submitting the ordinance to a vote. The date fixed for the special election shall be not more than 90 days after adoption of the ordinance.

Within 10 days after an ordinance is adopted under this section, the council shall publish a notice stating that an ordinance amending the charter has been adopted and summarizing its contents and effect. If the ordinance is made effective subject to a vote of the people, the council shall publish a notice of the election in accordance with G.S. 163-287, and need not publish a separate notice of adoption of the ordinance.

The council may not commence proceedings under this section between the time of the filing of a valid initiative petition pursuant to G.S. 160A-104 and the date of any election called pursuant to such petition. (1969, c. 629, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 20; 1979, 2nd Sess., c. 1247, s. 11.)

Local Modification. — City of Greenville: 1989, c. 359, s. 1.

§ 160A-103. Referendum on charter amendments by ordinance.

An ordinance adopted under G.S. 160A-102 that is not made effective upon approval by a vote of the people shall be subject to a referendum petition. Upon receipt of a referendum petition bearing the signatures and residence addresses of a number of qualified voters of the city equal to at least 10 percent of the whole number of voters who are registered to vote in city elections according to the most recent figures certified by the State Board of Elections or 5,000, whichever is less, the council shall submit an ordinance adopted under G.S. 160A-102 to a vote of the people. The date of the special election shall be fixed at not more than 120 nor fewer than 60 days after receipt of the petition. A referendum petition shall be addressed to the council and shall identify the ordinance to be submitted to a vote. A referendum petition must be filed with the city clerk not later than 30 days after publication of the notice of adoption of the ordinance. (1969, c. 629, s. 2; 1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, ss. 13, 15.)

Local Modification. — City of Wilson: 1989, c. 107, s. 1.

§ 160A-104. Initiative petitions for charter amendments.

The people may initiate a referendum on proposed charter amendments. An initiative petition shall bear the signatures and resident addresses of a number of qualified voters of the city equal to at least ten percent (10%) of the whole number of voters who are registered to vote in city elections according to the most recent figures certified by the State Board of Elections or 5,000, whichever is less. The petition shall set forth the proposed amendments by describing them briefly but completely and with reference to the pertinent provisions of G.S. 160A-101, but it need not contain the precise text of the charter amendments necessary to implement the proposed changes. The petition may not propose changes in the alternative, or more than one integrated set of charter amendments. Upon receipt of a valid initiative petition, the council shall call a special election on the question of adopting the charter amendments proposed therein, and shall give public notice thereof in accordance with G.S. 163-287. The date of the special election shall be fixed at not more than 120 nor fewer than 60 days after receipt of the petition. If a majority of the votes cast in the special election shall be in favor of the proposed changes, the council shall adopt an ordinance amending the charter to put them into effect. Such an ordinance shall not be subject to a referendum petition. No initiative petition may be filed (i) between the time the council initiates proceedings under G.S. 160A-102 by publishing a notice of hearing on proposed charter amendments and the time proceedings under that section have been carried to a conclusion either through adoption or rejection of a proposed ordinance or lapse of time, nor (ii) within one year and six months following the effective date of an ordinance amending the city charter pursuant to this Article, nor (iii) within one year and six months following the date of any election on charter amendments that were defeated by the voters.

The restrictions imposed by this section on filing initiative petitions shall apply only to petitions concerning the same subject matter. For example, pendency of council action on amendments concerning the method of electing the council shall not preclude an initiative petition on adoption of the council-manager form of government.

Nothing in this section shall be construed to prohibit the submission of more than one proposition for charter amendments on the same ballot so long as no proposition offers a different plan under the same option as another proposition on the same ballot. (1969, c. 629, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 21; 1979, 2nd Sess., c. 1247, ss. 12, 14.)

§ 160A-105. Submission of propositions to voters; form of ballot.

A proposition to approve an ordinance or petition shall be printed on the ballot in substantially the following form:

“Shall the ordinance (describe the effect of the ordinance) be approved?”

() YES
 () NO"

The ballot shall be separate from all other ballots used at the election.

If a majority of the votes cast on a proposition shall be in the affirmative, the plan contained therein shall be put into effect as provided in this Article. If a majority of the votes cast shall be against the proposition, the ordinance or petition proposing the amendments shall be void and of no effect. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

§ 160A-106. Amendment of charter provisions dependent on form of government.

The authority conferred by this Article to amend charter provisions within the options set out in G.S. 160A-101 also includes authority to amend other charter provisions dependent on the form of city government to conform them to the form of government amendments. By way of illustration and not limitation, if a charter providing for a five-member council is amended to increase the size of the council to seven members, a charter provision defining a quorum of the council as three members shall be amended to define a quorum as four members. (1971, c. 698, s. 1.)

§ 160A-107. Plan to continue for two years.

Charter amendments adopted as provided in this Article shall continue in force for at least two years after the beginning of the term of office of the officers elected thereunder. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

§ 160A-108. Municipal officers to carry out plan.

It shall be the duty of the mayor, the council, the city clerk, and other city officials in office, and all boards of election and election officials, when any plan of government is adopted as provided by this Article or is proposed for adoption, to comply with all requirements of this Article, to the end that all things may be done which are necessary for the nomination and election of the officers first to be elected under the new plan so adopted. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

§ 160A-109. Effective date.

The council may submit new charter amendments proposed under this Article at any regular or special municipal election, or at a special election called for that sole purpose. Any amendment affecting the election of city officers shall be finally adopted and approved at least 90 days before the first election for mayor or council members held thereunder. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

§ 160A-110. Charters to remain in force.

The charter of any city that adopts a new form of government as provided in this Article shall continue in full force and effect notwithstanding adoption of a new form of government, except to

the extent modified by an ordinance adopted under the authority conferred and pursuant to the procedures prescribed by this Article. (1969, c. 629, s. 2; 1971, c. 698, s. 1.)

ARTICLE 9.

Taxation.

§ 160A-209. Property taxes.

(a) Pursuant to Article V, Sec. 2(5) of the Constitution of North Carolina, the General Assembly confers upon each city in this State the power to levy, within the limitations set out in this section, taxes on property having a situs within the city under the rules and according to the procedures prescribed in the Machinery Act (Chapter 105, Subchapter II).

(b) Each city may levy property taxes without restriction as to rate or amount for the following purposes:

- (1) Debt Service. — To pay the principal of and interest on all general obligation bonds and notes of the city.
- (2) Deficits. — To supply an unforeseen deficiency in the revenue (other than revenues of any of the enterprises listed in G.S. 160A-311), when revenues actually collected or received fall below revenue estimates made in good faith in accordance with the Local Government Budget and Fiscal Control Act.
- (3) Civil Disorders. — To meet the cost of additional law-enforcement personnel and equipment that may be required to suppress riots or other civil disorders involving an extraordinary breach of law and order within the jurisdiction of the city.

(c) Each city may levy property taxes for one or more of the following purposes subject to the rate limitation set out in subsection (d):

- (1) Administration. — To provide for the general administration of the city through the city council, the office of the city manager, the office of the city budget officer, the office of the city finance officer, the office of the city tax collector, the city purchasing agent, the city attorney, and for all other general administrative costs not allocated to a particular board, commission, office, agency, or activity.
- (2) Air Pollution. — To maintain and administer air pollution control programs.
- (3) Airports. — To establish and maintain airports and related aeronautical facilities.
- (4) Ambulance Service. — To provide ambulance services, rescue squads, and other emergency medical services.
- (5) Animal Protection and Control. — To provide animal protection and control programs.
- (5a) Arts Programs and Museums. — To provide for arts programs and museums as authorized in G.S. 160A-488.
- (6) Auditoriums, Coliseums, and Convention Centers. — To provide public auditoriums, coliseums, and convention centers.
- (7) Beach Erosion and Natural Disasters. — To provide for shoreline protection, beach erosion control and flood and hurricane protection.

- (8) Cemeteries. — To provide for cemeteries.
- (9) Civil Defense. — To provide for civil defense programs.
- (9a) Community Development. — To provide for community development as authorized by G.S. 160A-456 and 160A-457.
- (10) Debts and Judgments. — To pay and discharge any valid debt of the city or any judgment lodged against it, other than debts or judgments evidenced by or based on bonds or notes.
- (10a) Defense of Employees and Officers. — To provide for the defense of, and payment of civil judgments against, employees and officers or former employees and officers, as authorized by this Chapter.
- (10b) Economic Development. — To provide for economic development as authorized by G.S. 158-12.
- (10c) Drainage. — To provide for drainage projects or programs in accordance with Chapter 156 of the General Statutes or in accordance with this Chapter.
- (11) Elections. — To provide for all city elections and referendums.
- (12) Electric Power. — To provide electric power generation, transmission, and distribution services.
- (13) Fire Protection. — To provide fire protection services and fire prevention programs.
- (14) Gas. — To provide natural gas transmission and distribution services.
- (15) Historic Preservation. — To undertake historic preservation programs and projects.
- (15a) Housing. — To undertake housing projects as defined in G.S. 157-3, and urban homesteading programs under G.S. 160A-457.2.
- (16) Human Relations. — To undertake human relations programs.
- (17) Hospitals. — To establish, support and maintain public hospitals and clinics, and other related health programs and facilities, and to aid any private, nonprofit hospital, clinic, related facility, or other health program or facility.
- (17a) Industrial Development. — To provide for industrial development as authorized by G.S. 158-7.1.
- (18) Jails. — To provide for the operation of a jail and other local confinement facilities.
- (19) Joint Undertakings. — To cooperate with any other county, city, or political subdivision of the State in providing any of the functions, services, or activities listed in this subsection.
- (20) Libraries. — To establish and maintain public libraries.
- (21) Mosquito Control.
- (22) Off-Street Parking. — To provide off-street lots and garages for the parking and storage of motor vehicles.
- (23) Open Space. — To acquire open space land and easements in accordance with Article 19, Part 4, of this Chapter.
- (24) Parks and Recreation. — To establish, support and maintain public parks and programs of supervised recreation.
- (25) Planning. — To provide for a program of planning and regulation of development in accordance with Article 19 of this Chapter.

- (26) Police. — To provide for law enforcement.
- (26a) Ports and Harbors. — To participate in programs with the North Carolina Ports Authority and to provide for harbor masters.
- (27) Public Transportation. — To provide public transportation by rail, motor vehicle, or another means of conveyance other than a ferry, including any facility or equipment needed to provide the public transportation.
- (27a) Railroad Corridor Preservation. — To acquire property for railroad corridor preservation.
- (27b) Senior Citizens Programs. — To undertake programs for the assistance and care of its senior citizens.
- (28) Sewage. — To provide sewage collection and treatment services as defined in G.S. 160A-311(3).
- (29) Solid Waste. — To provide solid waste collection and disposal services, and to acquire and operate landfills.
- (30) Streets. — To provide for the public streets, sidewalks, and bridges of the city.
- (31) Traffic Control and On-Street Parking. — To provide for the regulation of vehicular and pedestrian traffic within the city, and for the parking of motor vehicles on the public streets.
- (31a) Urban Redevelopment. — To provide for urban redevelopment.
- (32) Water. — To provide water supply and distribution services.
- (33) Water Resources. — To participate in federal water resources development projects.
- (34) Watershed Improvement. — To undertake watershed improvement projects.

(d) Property taxes may be levied for one or more of the purposes listed in subsection (c) up to a combined rate of one dollar and fifty cents (\$1.50) on the one hundred dollars' (\$100.00) appraised value of property subject to taxation.

(e) With an approving vote of the people, any city may levy property taxes for any purpose for which the city is authorized by its charter or general law to appropriate money. Any property tax levy approved by a vote of the people shall not be counted for purposes of the rate limitation imposed in subsection (d).

The city council may call a referendum on approval of a property tax levy. The referendum may be held at the same time as any other city referendum or city election, but may not be otherwise held (i) on the day of any federal, State, district, or county election already validly called or scheduled by law at the time the tax referendum is called, or (ii) within the period of time beginning 30 days before and ending 10 days after the day of any other city referendum or city election already validly called or scheduled by law at the time the tax referendum is called. The referendum shall be conducted by the same board of elections that conducts regular city elections. A notice of referendum shall be published in accordance with G.S. 163-287. The notice shall state the date of the referendum, the purpose for which it is being held, and a statement as to the last day for registration for the referendum under the election laws then in effect.

The proposition submitted to the voters shall be substantially in one of the following forms:

- (1) Shall the City/Town of be authorized to levy annually a property tax at a rate not in excess of cents on the one hundred dollars (\$100.00) value of property subject to taxation for the purpose of?
- (2) Shall the City/Town of be authorized to levy annually a property tax at a rate not in excess of that which will produce \$ for the purpose of?
- (3) Shall the City/Town of be authorized to levy annually a property tax without restriction as to rate or amount for the purpose of?

If a majority of those participating in the referendum approve the proposition, the city council may proceed to levy annually a property tax within the limitations (if any) described in the proposition.

The board of elections shall canvass the referendum and certify the results to the city council. The council shall then certify and declare the result of the referendum and shall publish a statement of the result once, with the following statement appended: "Any action or proceeding challenging the regularity or validity of this tax referendum must be begun within 30 days after (date of publication)." The statement of results shall be filed in the clerk's office and inserted in the minutes of the council.

Any action or proceeding in any court challenging the regularity or validity of a tax referendum must be begun within 30 days after the publication of the results of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed herein.

Except for tax referendums on functions not included in subsection (c) of this section, any referendum held before July 1, 1973, on the levy of property taxes is not valid for the purposes of this subsection. Cities in which such referendums have been held may support programs formerly supported by voted property taxes within the general rate limitations set out in subsection (d) at any appropriate level and are not subject to the former voted rate limitation.

(f) With an approving vote of the people, any city may increase the property tax rate limitation imposed in subsection (c) and may call a referendum for that purpose. The referendum may be held at the same time as any other city referendum or election, but may not be otherwise held (i) on the day of any federal, State, district, or county election, or (ii) within the period of time beginning 30 days before and ending 30 days after the day of any other city referendum or city election. The election shall be conducted by the same board of elections that conducts regular city elections.

The proposition submitted to the voters shall be substantially in the following form: "Shall the property tax rate limitation applicable to the City/Town of be increased from on the one hundred dollars (\$100.00) value of property subject to taxation to on the one hundred dollars (\$100.00) value of property subject to taxation?"

If a majority of those participating in the referendum approve the proposition, the rate limitation imposed in subsection (c) shall be increased for the city.

(g) With respect to any of the categories listed in subsections (b) and (c) of this section, the city may provide the necessary personnel, land, buildings, equipment, supplies, and financial support from property tax revenues for the program, function, or service.

(h) This section does not authorize any city to undertake any program, function, joint undertaking, or service not otherwise authorized by law. It is intended only to authorize the levy of property taxes within the limitations set out herein to finance programs, functions, or services authorized by other portions of the General Statutes or by city charters. (1917, c. 138, s. 37; 1919, c. 178, s. 3(37); C.S., s. 2963; 1921, c. 8, s. 1; Ex. Sess. 1921, c. 106, s. 1; 1947, c. 506; 1959, c. 1250, s. 3; 1971, c. 698, s. 1; 1973, c. 426, s. 31; c. 803, s. 2; 1975, c. 664, s. 7; 1977, c. 187, s. 2; c. 834, s. 2; 1979, c. 619, s. 5; 1979, 2nd Sess., c. 1247, s. 21; 1981, c. 66, s. 1; 1983, c. 511, ss. 3, 4; c. 828; 1985, c. 665, ss. 4, 7; 1987, c. 464, s. 6; 1989, c. 600, s. 8; 1989 (Reg. Sess., 1990), c. 1005, ss. 6, 7; 1991 (Reg. Sess., 1992), c. 896, s. 2.)

Local Modification. — Town of Carrboro: 1987, c. 476, s. 1; town of Varnamtown: 1987 (Reg. Sess., 1988), c. 1003, s. 1; town of Walkertown: 1983 (Reg. Sess., 1984), c. 936; village of Clemmons: 1985, c. 437, s. 7.

Editor's Note. — Former subdivision (c)(27a) was renumbered as present (c)(27b) to facilitate alphabetization.

Legal Periodicals. — For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

CASE NOTES

The word "property" includes monies, credits, investments, and other choses in action. *Redmond v. Commissioners of Tarboro*, 106 N.C. 122, 10 S.E. 845 (1890), decided under former statutory provisions.

Cited in *Homebuilders Ass'n v. City of Charlotte*, 336 N.C. 37, 442 S.E.2d 45 (1994).

North Carolina Administrative Code

The rules contained in this publication are printed as supplied to Michie by the State Board of Elections.

Title 8

State Board of Elections

- Chapter 1 - Departmental Rules
 - Chapter 2 - Contest with respect to Elections
 - Chapter 3 - Charges Against County Election Officials
 - Chapter 4 - Voting Equipment
 - Chapter 5 - Modified Full Time Registration System
 - Chapter 6 - Partisan Elections (Repealed)
 - Chapter 7 - Filing of Notice of Candidacy for Office of Superior Court Judge (Expired)
 - Chapter 8 - Compliance with Federal P.L. 98-435: The Voting Accessibility for the Elderly and Handicapped Act.
 - Chapter 9 - Conduct of Vote Recounts by County Boards of Elections
-

North Carolina Administrative Code

Title 8

State Board of Elections

Chapter 1

Departmental Rules

- .0001. Agency Name: Address: and Hours
- .0002. Duties of Board (Repealed)
- .0003. Meetings of Board (Repealed)
- .0004. Procedures for Political Committees

Chapter 1

Departmental Rules

.0001. Agency Name: Address: and Hours

The Offices of the State Board of Elections are located at 5 West Hargett Street, Raleigh, North Carolina. Office Hours are 8:30 p.m. to 5:30 p.m., Monday through Friday.

History Note: Statutory Authority G.S. 163-22;
Eff. March 12, 1976

.0002. Duties of Board**.0003. Meetings of Board**

History Note: Statutory Authority G.S. 163-20; 163-22;
Eff. March 12, 1976;
Repealed June 1, 1988

.0004. Procedures for Political Committees

- a) Political treasurers appointed pursuant to G.S. 163-278.7(a) must be a resident of North Carolina.
- b) All bank accounts, safety deposit boxes, and other depositories utilized by political committees and listed on the statement of organization as required by G.S. 163-278.7(b)(7) must be maintained in North Carolina.
- c) As an alternative to (a) and (b) of this Rule, a political action committee may designate and appoint an assistant treasurer who is a resident of North Carolina and who shall be the person upon whom service and process may be served and who shall be responsible for the production in North Carolina of all financial records of the political committee.
- d) Whenever a political committee or referendum committee shall fail to file with the State Board of Elections any report required to be filed under the provisions of G.S. 163-278.9 or G.S. 163-278.9A, the Board, by certified mail, shall issue a *Notice of NonCompliance* to the political treasurer of said committee, and shall order that the report be filed immediately. In the event said committee does not file its report within 20 days of the issuance of the *Notice of NonCompliance*, the Board, by certified mail, shall issue *Notice of Termination of Active Status*, which shall render said committee ineligible to receive or make contributions until such time as it has filed the delinquent report and has satisfied any statutory penalty incurred as a result of noncompliance with the provisions of Article 22A of Chapter 163.

History Note: Statutory Authority G.S. 163-278.7; 163-278.8;
163-278.21; 163-278.22; 163-278.23; 163-278.27;
Eff. December 1, 1982;
Amended Eff. February 1, 1990

North Carolina Administrative Code**Title 8****State Board of Elections****Chapter 2****Election Protests**

- .0001. Complaints Concerning Conduct of Elections
- .0002. Preliminary Consideration of Complaint by County Board
- .0003. Scheduling and Notice of County Board Hearing
- .0004. Conduct of Hearing by County Board
- .0005. Decision by County Board

- .0006. Notice and Perfection of Appeal
- .0007. Consideration of Appeal by State Board
- .0008. State Board Authority over Election Protests
- .0009. No Frivolous Protests

Chapter 2

Election Protests

.0001. Complaints Concerning Conduct of Elections

- a) A complaint concerning the conduct of an election may be filed with the county board of elections by any registered voter who was eligible to vote in the election or by any person who was a candidate for nomination or election in the election.
- b) A complaint must be in writing and must contain the following:
 - (1) The name, address and telephone number of the person making the complaint, and any other information needed for the board to readily contact the person.
 - (2) The signature of the person making the complaint, acknowledged and certified by an officer authorized to administer oaths.
 - (3) A statement whether the person making the complaint is a registered voter of the jurisdiction or a candidate.
 - (4) The date, place and kind of election in question.
 - (5) A statement whether the complaint concerns the manner in which votes were counted or results tabulated at the precinct or whether it concerns some other kind of irregularity.
 - (6) Specific allegations of violations of the election law or other irregularities of misconduct sufficiently serious to cast doubt on the apparent results of the election.
 - (7) If known, the name, address and phone number of each person who was involved in such misconduct or was a witness to it.

The complaint also may include a request for a specific relief to be ordered.

- c) A complaint that includes allegations of misconduct by a named or readily identifiable election official shall be considered a complaint against that official under Chapter 3. The complaint against the election official may be considered by the county board at the same time as the other portions of the complaint, and may be the basis for action by the board against that official if he is given notice and an opportunity to respond in a manner equivalent to that provided in Chapter 3.
- d) A complaint must be filed at the county board of elections office or delivered to a member of the county board or the county supervisor of elections.
- e) A complaint must be filed within the following time:
 - (1) A complaint concerning the manner in which votes were counted or the results were tabulated at the precinct must be filed before the beginning of the meeting of the county board to canvass the results of the election. However, a complaint of this nature may be filed as late as 6:00 p.m. of the second day after the completion of the canvass and the declaration of the results, if the complaint states good cause for the delay.

- (2) Any other complaint must be filed by 6:00 p.m. of the second day after the county board has completed canvass and declared the results of the elections.
- f) The county board of elections may consider a complaint filed after the time stated in Paragraph (e) of this Rule, if the board finds and states good cause for the delay.

History Note: Statutory Authority G.S. 163-22; 163-22.1;
Eff. March 12, 1976;
Amended Eff. November 1, 1984

.0002. Preliminary Consideration of Complaint by County Board

- a) As soon as possible after receiving a complaint, the county board shall meet to determine whether the complaint:
- (1) Substantially complies with .0001; and
 - (2) Establishes probable cause to believe that a violation of election law or that irregularity or misconduct has occurred.
- b) If the board determines under Paragraph (a) of this Rule that the complaint either fails to substantially comply with Rule .0001 or fails to establish probable cause, the board shall dismiss the complaint. The dismissal shall be in writing and filed at the board office. Within 24 hours of dismissing the complaint the board shall mail notice of dismissal to the person who made the complaint, at the address stated in the complaint. The board may attempt to notify the person earlier by telephone or otherwise. At the same time the county board mails notice to the person who filed the complaint, it shall mail a copy of that notice and copy of the complaint to the State Board. The person who filed the complaint may file an amended complaint or may appeal the dismissal to the State Board in the manner provided in Rule .0006 of this Chapter.
- c) If the board determines under Paragraph (a) of this Rule that the complaint does substantially comply with Rule .0001 and does establish probable cause, the board shall schedule a hearing to consider the complaint.
- d) Any complaint that was filed before canvass and that concerns the manner in which votes were counted or the results tabulated in the precinct must be resolved before the completion of canvass. If necessary to provide adequate time to resolve such matters, the board may recess the meeting held to canvass results, but in no event shall such recesses delay the completion of the canvass for more than three days unless approved by the State Board. Resolution of the complaint shall not delay the canvass of the results of elections not affected by the complaint.
- e) An appeal of the county board's dismissal of a complaint concerning the manner in which votes were counted or the results tabulated in the precinct shall not delay the canvass and declaration of results.
- f) A complaint concerning any matter other than the manner in which votes were counted or results tabulated in the precinct may be considered before canvass but shall not affect the canvassing and declaration of results.
- g) The board may consolidate for hearing any complaints that relate to the same election.

History Note: Statutory Authority G.S. 163-22; 163-22.1;
Eff. March 12, 1976;
Amended Eff. November 1, 1984.

.0003. Scheduling and Notice of County Board Hearing

- a) The county board shall determine the time and location of the hearing. A hearing on a complaint concerning the manner in which votes were counted or the results tabulated in the precinct shall be scheduled at the time and place of canvass. The county board may recess the canvass to provide time to resolve the complaint, as stated in Rule .0002(d).
- b) The board shall give notice of the hearing to the person who filed the complaint, any candidate likely to be affected, any election official alleged to have acted improperly, and any other person likely to have a significant interest in the resolution of the complaint. Each person given notice of the hearing shall also be given a copy of the complaint or a summary of the allegations made in it.
- c) Notice shall be given in the following manner:
 - (1) If the complaint concerns the manner in which votes were counted or the results tabulated in the precinct, the person who files the complaint shall be told when he files the complaint that it will be heard at the time of the canvass. Others to whom notice is to be given shall be notified by telephone or in person as far in advance of the canvass as time permits.
 - (2) If the complaint concerns a matter other than the matter in which votes were counted or the results tabulated in the precinct, the board shall either mail notice at least four days before the scheduled time for the hearing or shall give notice by telephone or in person at least two days before the hearing.
- d) Failure to comply with the notice requirements stated in this Rule shall not delay the holding of a hearing nor invalidate the results if it appears reasonably likely that all interested persons were aware of the hearing and had an opportunity to participate.

History Note: Statutory Authority G.S. 163-22; 163-22.1;
Eff. March 12, 1976;
Amended Eff. November 1, 1984.

.0004. Conduct of Hearing by County Board

- a) The board may allow evidence to be presented at the hearing in the form of affidavits or it may examine witnesses. The chairman or any two members of the board may subpoena witnesses or documents. Each witness must be placed under oath before testifying.
- b) The board may receive evidence at the hearing from any person with information concerning the subject of the complaint. The person who made the complaint shall be permitted to present his allegations and introduce evidence at the hearing. Any other person to whom notice of hearing was given, if present, shall be permitted to present evidence. The board may permit evidence to be presented by a person to whom notice was not given, if the person apparently has a significant interest in the resolution of

the complaint that is not adequately represented by other participants.

- c) The hearing must be recorded by a reporter or by mechanical means, and the full record of the hearing must be preserved by the county board until directed otherwise by the State Board.

History Note: Statutory Authority G.S. 163-22; 163-22.1;
Eff. March 12, 1976;
Amended Eff. November 1, 1984.

.0005. Decision by County Board

- a) The county board may deliberate and make its decision on the complaint immediately following the hearing or it may adjourn to a later time for that purpose. At the conclusion of the hearing the board shall state when it intends to announce its decision and when a written decision will be filed and available for inspection at the board office. The board may choose not to announce its decision before the written decision.
- b) The Board shall make a written decision on each complaint which shall state separately each of the following:
- (1) Findings of Fact. The findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, it set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. Finding of fact are not mere summaries of testimony.
 - (2) Conclusions of law. The conclusion the board may state are:
 - i) The complaint should be dismissed because it does not substantially comply with Rule .0001.
 - ii) The complaint should be dismissed because there is not substantial evidence of a violation of the election law or other irregularity or misconduct.
 - iii) The complaint should be dismissed because there is not substantial evidence of the violation, irregularity or misconduct was sufficiently serious to cast doubt on the results of the election.
 - iv) There is substantial evidence to believe that a violation of the election law or other irregularity or misconduct did occur, and might have affected the outcome of the election, but the board is unable to finally determine the effect because the election was a multi-county election.
 - v) There is substantial evidence to believe that a violation of the election law or other irregularity or misconduct did occur and that it was sufficiently serious to cast doubt on the apparent results of the election.
 - (3) An Order. If the board makes conclusion (A), (B) or (C) under subparagraph (b) (2), the board shall order the complaint dismissed. If the board makes conclusion (b)(2)(D), the board shall order that the complaint and the board's decision be sent to the State Board for action by it. If the board makes conclusion (b)(2)(E), the board may order the following as appropriate:
 - i) That the vote total as stated in the precinct return or the result of the canvass be corrected and new results declared.

- ii) That votes be recounted.
 - iii) That the complaint and the board's decision be sent to the State Board for action by it.
 - iv) Any other action within the authority of the county board.
- c) If the county board is not what law is applicable to the findings of fact, the board may state and send its findings of fact to the State Board for it to determine the applicable law.
 - d) At the time that the written decision is filed at the county board office the board shall mail a copy of the decision to the person who made the complaint and shall mail to the State Board a copy of the written decision and a copy of the complaint.

History Note: Statutory Authority G.S. 163-22; 163-22.1;
Eff. March 12, 1976;
Amended Eff. November 1, 1984

.0006. Notice and Perfection of Appeal

- a) The county board's decision on a complaint may be appealed to the State Board by:
 - (1) The person who filed the complaint;
 - (2) A candidate or election official adversely affected by the county board's decision; or
 - (3) Any other person who participated in the hearing and has a significant interest adversely affected by the county board's decision.
- b) Written notice of the appeal must be given to the county board within 24 hours after the county files the written decision at its office.
- c) The appeal to the State Board must in writing and must include the following information:
 - (1) The name and address of the person appealing;
 - (2) The person's standing to appeal;
 - (3) The date, place and kind of election in question;
 - (4) The date of the county board hearing; and
 - (5) The reason for appealing the decision, including any arguments concerning the facts or law in support of the appeal.
- d) The written appeal must be delivered or deposited in the mail, addressed to the State Board, by:
 - (1) The end of the second day following the day on which the decision was filed by the county board in its office, if the decision concerns the first primary; or
 - (2) The end of the fifty day following the day on which the decision was filed in the board office, if the decision concerns an election other than a first primary.

History Note: Statutory Authority 163-22; 163-22-1;
Eff. March 12, 1976;
Amended Eff. November 1, 1984.

.0007. Consideration of Appeal by State Board

- a) In its consideration of an appeal from a decision of a county board on a complaint the State Board may:
 - (1) Decide the appeal on the basis of the record from the county board;
 - (2) Request the county board or any interested person to supplement the record from the county board, and then decide the appeal on the basis of that supplemented record;

- (3) Receive additional evidence and then decide the appeal on the basis of the record and that additional evidence;
 - (4) Hold its own hearing on the complaint and resolve the complaint on the basis of that hearing; or
 - (5) Remand the matter to the county board for further proceedings in compliance with an order of the State Board.
- b) The State Board shall give notice of its decision as required by G.S. 163-181 and may notify the county board and other interested persons in its discretion.

History Note: Statutory Authority 163-22; 163-22.1;
Eff. March 12, 1976;
Amended Eff. November 1, 1984.

.0008. State Board Authority Over Election Protests

In exercise of the authority state in G.S. 163-22 and 163-22.1 to supervise all elections in the state, the State Board may consider complaints that do not comply with these Regulations, may initiate and consider complaints on its own motion, may intervene and take jurisdictions over complaints pending before county board, and may take any other action necessary and without taint of fraud or corruption.

History Note: Statutory Authority 163-22; 163-22.1;
Eff. March 12, 1976;
Amended Eff. November 1, 1984.

.0009. No Frivolous Protests

Neither the county board of elections nor the State Board of Elections will investigate or conduct any hearing of charges or protests frivolous in nature, or which in the opinion of either board have been filed for the mere purpose of delay, or which have not been made in good faith.

When any charges are preferred either before the county board of elections or the State Board of Elections, with respect to the canvass or the vote in any primary or general election, pending the hearing an examination or inspection of the ballots and other official documents of the election officials shall be permitted under conditions as the board may prescribe in each particular case, great care being exercised in each instance to preserve all ballots and official records and papers.

History Note: Statutory Authority 163-22; 163-22.1;
Eff. March 12, 1976.

Complaint Concerning Conduct of Election

To be filed with
County Board of Elections

Name of person filing complaint _____

Address of person filing complaint _____

Telephone number of person filing complaint: _____

Is Complainant a registered voter? _____
a candidate? _____
If a candidate, for what office? _____

Please list date, place and kind of election. (e.g., May __, 19 __ Democratic primary for Wake County Sheriff; November __, 19 __ General Election for NC General Assembly House District __.)

Please list the candidates' names and votes each received in the aforementioned election.

Please list the number of persons being elected or nominated in the aforementioned election (e.g., 2 State House seats, 3 County Commission seats).

Does complaint concern manner in which votes were counted or tabulated? Yes No
other irregularity? Yes No

BDELEC: Complaint Form

What are the specific violations of election law or misconduct that cast doubt on election results?
 (Attach addition sheets if necessary)

Please list names, addresses and telephone numbers of people who were involved in misconduct or who witnessed it (Please indicate those individuals who witnessed the alleged misconduct by the letter "W")

What relief do you seek?

Verification

 Signature of Complainant

Complainant, _____ deposes and says that the facts set out in the above complaint are true of my own personal knowledge, except for those stated on information and as to those I believe them to be true.

 Notary Public

My commission expires _____

SEAL

This form must be notarized

**Notice of Appeal to State Board of Elections
From Decision of County Board**

Name, Address and Telephone number of person appealing

Date, place and kind of election

Date of county board hearing

Candidates' names and the number of votes received by each according to county board canvass in election being appealed

Reasons for appeal including arguments of fact and law (Attach additional sheets if necessary)

Please Note

- A Attach a copy of original complaint
- B Attach copy of county board decision if available
- C Mail notice of appeal to NC Board of Elections, Post Office 2169, Raleigh, NC 27602 by the end of the second day following county board decision if it concerns a first primary or end of fifth day following county board decision if concerns any other election.

North Carolina Administrative Code

Title 8

State Board of Elections

Chapter 3

Charges Against County Election Officials

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Chapter 3

Charges Against County Election Officials

Section .0100 — Members of County Board of Elections

.0101. Voter Complaints

Any elector desiring to prefer charges with the State Board of Elections against a member of any county board of elections may do so by filing with the board a statement, in writing, verified by the oath of the election, which statement must contain:

- (1) the name and post office address of the official against whom the charges are preferred;
- (2) a brief, intelligent statement of the facts constituting the official misconduct alleged, with a reference to the date and place of such misconduct;
- (3) the names and addresses, so far as may be known to the person filing the charges, of persons who have knowledge or information of the matters referred to in the charges as filed.

History Note: Statutory Authority G.S. 163-22;
Eff. March 12, 1976.

.0102. Charges

If the charges thus filed show prima facie a violation of the election law, a breach of official duty, a participation in intentional irregularities, incapacity or incompetency to discharge the duties of the office, the State Board of Elections will cause notice thereof to be given to the official against who the charges are preferred, by mail

or by such other methods as the board may adopt, of such charges and name a day and place for the hearing thereof.

History Note: Statutory Authority G.S. 163-22;
Eff. March 12, 1976.

.0103. Hearing

At such hearing the persons preferring such charges shall appear, and by affidavits, unless otherwise ordered or permitted by the board, present the evidence tending to support the charges. Such affidavits must be served on the official against whom such charges have been filed, by the person filing the charges, at least three day before the time set for the hearing thereof.

History Note: Statutory Authority G.S. 163-22;
Eff. March 12, 1976.

.0104. Rights

The official against whom charges are preferred shall have the right to be heard by affidavit, or otherwise as the board may direct, in denial, rebuttal, explanation, or extenuation of the charges.

History Note: Statutory Authority G.S. 163-22;
Eff. March 12, 1976.

.0105. Scope

The inquiry shall be confined to the charges as filed, but the board, as a matter of course, may of its own motion investigate any matter coming to its attention or notice as the result of hearing said charges.

History Note: Statutory Authority G.S. 163-22;
Eff. March 12, 1976.

.0106. Witnesses

Either party may make application to the chairman of the board for subpoenas for witnesses to be heard orally at such hearing; but such application, in addition to listing the names of the witnesses, shall contain a brief statement of what is expected to be proved by each witness and the reason for not obtaining the affidavit of such witness or witnesses. If, upon such application for subpoenas, a majority of the board is of the opinion that the oral evidence will be helpful to the board, subpoena will be issued for a personal appearance of the witnesses, and if required by the subpoena, the witness shall produce such books, papers, or records as may be called for in said subpoena.

History Note: Statutory Authority G.S. 163-22;
Eff. March 12, 1976.

§ .0200. Precinct Election Officials

.0201. Filing Charges: Adoption of Procedures

Any elector may file with the chairman of any county board of elections charges against any precinct election official, appointed pursuant to G.S. 163-41, and the county board of elections shall, in

the hearing of such charges, adopt the same procedure as is prescribed in Section .0100 of this Chapter for hearing of charges filed with the State Board of Elections against a member of the county board of elections.

History Note: Statutory Authority G.S. 163-22;
Eff. March 12, 1976.

.0202. Hearing Date and Disposition

Upon the filing of such charges with the county board of elections, the chairman of such board shall forthwith set the date for the hearing of such charges and immediately transmit to the State Board of Elections a copy of such charges, advising this board of the date set for the hearing, and at once, after the hearing, advise the state board of disposition made by the county board of the charges thus heard.

From the decision of the county board the petitioning elector, or responding official, may appeal to the State Board of Elections, where the matter may be heard "de novo", or, in the judgment of the board may be dismissed, remanded to the county or heard on petition and affidavit by the State Board of Elections.

History Note: Statutory Authority G.S. 163-22;
Eff. March 12, 1976.

§ .0300. Investigations and Reports of Criminal Violation

.0301. Summary Investigation

The State Board of Elections may, whenever the circumstances of any matter pending before it may indicate the necessity therefor, suspend these rules and proceed in a summary manner or make any inquiry or investigation which in its judgment may be necessary or desirable for the prompt and efficient enforcement of the laws pertaining to elections, and the proper performance of their duties by election officials.

History Note: Statutory Authority G.S. 163-22;
Eff. March 12, 1976.

.0302. Reports of Evidence of Criminal Violation

The State Board of Elections and every county board of elections, upon the completion of any hearing with respect to the violation of the election laws, shall report in writing to the appropriate prosecuting officer a résumé or summary of all evidence heard by such board which tends to show that any person or persons probably have been guilty of one or more violations of the election laws, the violation of which is made a crime by law. A record shall be kept by such board of all such reports to such prosecuting officers. Upon request by any prosecuting officer, the written evidence heard by either board shall be made available for his examination and official use.

History Note: Statutory Authority G.S. 163-22;
Eff. March 12, 1976.

North Carolina Administrative Code

Title 8

State Board of Elections

Chapter 4

Voting Equipment

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Chapter 4

Voting Equipment

Section .0100 — Use of Mechanical Voting Machines

.0101. Type of Voting Machines Allowed

Any voting machine adopted by a county board of elections for use in any county in North Carolina shall be constructed as to fulfill the following requirements:

- (1) It shall secure to the voter secrecy in the act of voting.
- (2) It shall enable each voter to vote a straight party ticket in a general election.
- (3) It shall provide facilities for voting for all candidates of as many legal political parties as may make nominations.
- (4) It shall, except in primary elections, permit the voter to vote for all the candidates of one party, or in part for the candidates of one or more other parties.
- (5) It shall permit the voter to vote for any many persons for an office as he is lawfully entitled to vote for, but no more.
- (6) It shall prevent the voter from voting for the same persons more than once for the same office.
- (7) It shall permit the voter to vote for or against any question he may have the right to vote on, but no other.

- (8) It shall permit each voter in a general election but not in a primary, to deposit, write in, or affix upon receptacles or devices provided for the purpose, ballots containing the names or persons for whom he desires to vote, whose names do not appear upon the machine.
- (9) It shall be equipped for use in primary elections so that the election officials can lock out all rows except those of the voter's political party by a single adjustment on the machine.
- (10) It shall correctly register or record, and accurately count all votes cast for any and all persons, and for or against any and all questions.
- (11) It shall be provided with a public counter which shall show at all times during an election how many persons have voted.
- (12) It shall contain proper places on the face of the machine in plain view of the voter when voting where the ballot labels shall be put, either in a perpendicular or horizontal position, so the voter will know exactly how he is voting.
- (13) It shall contain a locked, concealed counter which shall be concealed at all times during the time the polls are open but which can be opened after the close of the polls and show the total vote cast for each candidate and for each party and on each question or issue submitted.

The State Board of Elections, as of December 1975, has already four types of voting machines for use in this state which comply with requirements outlined in 0101 of this Section; namely, (a) AVM, (b) IES, (c) R. F. Shoup, (d) Video-Voter.

History Note: Statutory Authority G.S. 163-160; 163-161;
Eff. March 12, 1976.

.0102. Custody of Voting Machines

Voting machines, when not in use, shall be under the custody of the chairman of the county board of elections who shall be directly responsible to the county board of elections for the safekeeping, storage, maintenance and care of the machines. All voting machines shall be properly stored in a safe, dry building, securely locked so they cannot be tampered with when not in use on election day. The chairman of the county board of elections may appoint as many persons as the board approves, for maintenance, storage and care of the voting machines and for the proper preparation of the machines for a primary or election as well as for their delivery to the voting precincts preceding a primary or an election. These persons so appointed by the chairman as custodians shall be paid for their services such compensation as the county board of elections may authorize and as approved by the county commissioners. On election day when the machines are used for voting purposes, and until they are collected by the county board chairman, they shall be in the custody of the precinct registrar.

History Note: Statutory Authority G.S. 163-160;
Eff. March 12, 1976.

.0103. Instructing Precinct Officials on Use of Voting Machines

The chairman of the county board of elections in a county where voting machines are used in more than one voting precinct, shall

hold an instruction meeting before any primary or election for the purpose of instructing the precinct registrars and judges on the use of the machines so that they may be qualified to instruct the voters on how to vote on a voting machine. The precinct election officers shall be instructed on the use and operation of the machine according to factory instructions furnished with the machines when they are purchased or rented, and the chairman of the county board of elections shall not permit a voting machine to be used in any precinct in any election unless the chairman shall be satisfied that the registrar and judges of the precinct have learned the proper use and operation of the machines.

History Note: Statutory Authority G.S. 163-160;
Eff. March 12, 1976.

.0104. Ballot Labels for Use on Voting Machines

- a) In Primary Elections. All voting machine ballot labels for use in any county using voting machines in a primary shall be printed and furnished by the chairman of the county board of elections. The State Board of Elections shall transmit to the said county chairman a list of the names of all candidates of all political parties who have filed their notices or candidacy with the State Board of Elections and who are entitled to be voted for in the primary election, and the chairman shall print the names of such candidates on the special voting machine ballot labels, together with the names of all candidates who have filed with the county chairman for legislative, county, and township offices, arranged under the proper party name. The names of all of the candidates for each office for each political party shall be printed in alphabetical order under or to the right of the title of the office.
- b) In General Elections. All voting machine ballot labels for use in any county using voting machines in a general election shall be printed and furnished by the chairman of the county board of elections. The State Board of Elections shall transmit to the said county chairman a list of names of all party nominees for the various offices for which the State Board of Elections is required by law to canvass the vote and certify the nominees and who are entitled to be voted for in the general election, and the said county chairman shall print their names on the special voting machine ballot labels, together with the names of the nominees for the offices for which the county board of elections is required to canvass the votes and certify the nominees, under the proper party name.

History Note: Statutory Authority G.S. 163-160;
Eff. March 12, 1976.

.0105. Arrangement of Polling Place Where Voting Machines Used

At all elections where voting machines may be used, the arrangement of the polling place shall be the same as is now provided by law, except no voting booths or ballots boxes shall be used. The exterior of the voting machines and every part of the polling room shall be in plain view of the election officers. The machines shall be so placed that the ballot labels on the face of the machines can be plainly seen by the election officers and the party challengers and

observers when not in use by voters. The election officers shall not themselves be, or permit any other person to be, in any position that will permit one to see or ascertain how a voter votes, except when the voter requests assistance. It shall be the duty of the registrar to post on the wall inside of the polling room sample voting machine ballots so that voters may inspect them to see where the different "parties and candidates" and "questions" are located on the machine and thus be able to find them quickly when voting. It is well, where possible to do so, to have a model voting machine, furnished by the manufacturers of the voting machines, set up on the election officers table, where the voters will pass it on their way to the machine, and have one of the judges of election, or an assistant, instruct each voter as he passes by letting the voter operate the model himself. In this way he can become familiar with the manner of operating the voting machine before he enters it, and will not require assistance in operating it.

History Note: Statutory Authority G.S. 163-160;
Eff. March 12, 1976.

.0106. Delivery and Inspection of Voting Machines

It shall be the duty of the chairman of the county board of elections to have each voting machine delivered to the voting places and placed in the custody of the registrar within three days before the election with the ballot labels already in place on each machine. When the machines are delivered to the registrar the said chairman or his agent shall deliver to the registrar the keys for each machine in a "sealed envelope." The registrar and chairman shall then check to be sure the number stamped on the keys correspond to the number of the voting machines. They shall also check to see that the ballot labels are correctly in position and examine the counters to see if they have been turned to 000, and that the machines are in good working order.

History Note: Statutory Authority G.S. 163-160;
Eff. March 12, 1976.

.0107. Directions for Voting When Machines Are Used

Just preceding the time for the polls to open, the register and judges shall open the voting machines and examine the ballot labels and counters to see if it is set at 000, and shall allow any watchers or any electors to examine the same before the voting begins. If found to be correct and in proper form, the counter shall be locked and sealed and remain that way until the polls close.

Provided that any new type of voting machines which contain an added feature whereby before casting of the first vote the status of all the counters in the voting machine may be printed on a paper memorandum which may be withdrawn without opening the machine, and at the close of the election a similar printed record showing the tally on all the counters which may be withdrawn without opening the machine, the above provisions relating to the inspection of the counters on the back of the machine at the opening and closing of the polls shall not be required.

After a voter enters the voting room or enclosure where voting machines are used, he shall follow the same procedure preparatory

to voting as if paper ballots were used. The voter shall present himself to the registrar who will check the registration book to ascertain if the voter is properly registered. If found to be registered then the judge keeping the poll book will write his name in the poll book as having voted and the registrar shall also check his name on the registration book as having voted. It is a primary election and the voter has no party affiliation recorded against his name on the registration book and refuses to declare his party affiliation, or state that he is an independent voter, then the registrar shall inform him that he cannot vote in the primary as the law now so provides. If the voter does have a party affiliation recorded, then the registrar shall inform the election officer in charge of the voting machine the party affiliation of the voter as recorded, and the party ticket which he may lawfully vote — that is the same party as is recorded for him on the registration book. The voter shall, if properly registered, then go to the officer in charge of the voting machine and present himself for voting. The voter then shall be asked by the officer in charge if he knows how to operate the voting machine. If he says no, the officer, at the voter's request, may explain to the voter how to vote on the machine. If in a primary, the officer must actuate the primary knob or lever for the particular political party with which the voter is enrolled so that he cannot vote for candidates of any other party in the primary. After completing the voting the voter opens the curtains and leaves the voting enclosure.

A voter using a voting machine is entitled to request the same assistance in the actual voting on the machine as the law now allows him to have in marking a paper ballot.

History Note: Statutory Authority G.S. 163-160;
Eff. March 12, 1976.

.0108. Counting of Votes and Preparing Returns; Absentee Votes

- a) Immediately upon the close of the polls, the precinct election officers shall lock and seal the voting machine against further voting and open the counter compartment in the presence of the person who may be lawfully present at that time, giving full view of the counters. The presiding registrar, under the scrutiny of a judge of a different political party in a general election, or of any precinct official or any voters present in the primary election, shall then, in the order of the offices as their titles are arranged on the machine, read and announce in distinct tones the result as shown by the counter. He shall also, in the same manner, read and announce the vote on each constitutional amendment, proposition, or other question. As each vote is read and announced, it shall be recorded on two statements by the two judges, and when completed shall be compared with the numbers on the counters of the machine. If found to be correct, the results given by the reading and announcing of the vote, and before the doors of the counter compartment of the voting machine shall be closed, ample opportunity shall be given to any person or persons lawfully present to compare the results so announced with the counters of the machine and if any corrections are necessary they shall then and there be made by the precinct officials.
- b) Provided that any new type voting machines which contain an added feature whereby before the casting of the first vote the

status of all the counters in the voting machine may be printed on a paper memorandum which may be withdrawn without opening the machine, and at the close of the election a similar printed record showing the tally on all the counters which may be withdrawn without opening the machine, the above provisions relating to the inspection of the counters on the back of the machine at the opening and closing of the polls shall not be required.

- c) The election officers shall, as soon as the count is completed and fully ascertained, lock the counter compartment and it shall remain locked for a period of 30 days, except it be ordered opened by a court of competent jurisdiction, or by the State Board of Elections or county board of elections.
- d) All absentee ballots received at the precinct on primary or general election day from the chairman of the county board of elections shall be opened, checked and counted by the precinct officers in the same manner as is now provided by law where paper ballots are used. The absentee ballots shall be counted after the polls close and the votes added to the total vote as recorded by the voting machine counter. The precinct returns shall show the total votes received by each party or candidate including both those recorded on the voting machines and those of absentee voters.
- e) All of the absentee ballots and envelopes shall be returned by each registrar to the county canvass made by the county board of elections on the second day following the election.

History Note: Statutory Authority G.S. 163-160;
Eff. March 12, 1976.

.0109. Collection of Voting Machines and Keys After Election

The keys of the voting machines shall be enclosed in an envelope to be supplied by the board on which shall be written the number of each machine and the district and precinct where it has been used, which envelope shall be securely sealed and endorsed by the election officers, and shall be returned on canvass day to the board from whom the keys were received. The number on the seal and the number registered on the protective counter shall be written on the envelope containing the keys. All keys for voting machines shall be kept securely locked by the officials having them in charge. Only an authorized person shall have in his possession any key or keys of any voting machine, and all election officers or persons entrusted with such keys for election purposes, or in the preparation of the machine therefore, shall not retain them longer than necessary to use them for such legal purposes. The chairman of the county board of elections shall collect and store all machines as soon after the close of the election as possible, except where they will have to be used in a second primary, and the machines shall at all times be stored in a suitable place within the discretion of the chairman of the county board of elections, including the polling place itself, if suitable.

History Note: Statutory Authority G.S. 163-160;
Eff. March 12, 1976.

§ .0200. Use of Punch-Card Voting Equipment

.0201. Definitions

The following definitions apply to this Section:

- (1) "Automatic tabulating equipment" includes apparatus which automatically examines (or scans) and counts votes recorded on ballot cards, and tabulates the results.
- (2) "Ballot card" means the tabulating card on which votes may be recorded by punched holes or by marking pen, pencil or special marking device.
- (3) "Ballot labels" means the pages, cards or other material containing the names of offices and candidates and the statements of measures or issues to be voted on, which are placed on the voting device.
- (4) "Counting center" means the voting precinct in which votes are recorded by the voter.
- (5) "Electronic voting system" means a system in which votes are recorded and tabulated by automatic tabulating or counting equipment.
- (6) "Voting device" means an apparatus which the voter uses to record his votes on a tabulating card, which votes are subsequently counted by automatic tabulating equipment.

History Note: Statutory Authority G.S. 163-160;
Eff. March 12, 1976.

.0202. Authority to Purchase and Lease Equipment

- a) The governing body of any county or municipality, upon recommendation by the county board of elections, may acquire by purchase or lease or lease-purchase agreement or abandon any voting system covered by these rules, provided such equipment or system has been approved by the State Board of Elections and a letter of "certification of approval" is recorded in the office of the State Board of Elections. Any county or municipality adopting the use of any system or equipment approved by the State Board of Elections may use such system or equipment in all elections and in all or a part of the precincts within its boundaries, provided however no such equipment shall be used along with paper ballots in the same precinct unless specifically permitted by provision contained in Chapter 163 of the General Statutes of North Carolina.
- b) The provision of all state laws relating to elections shall apply to elections where systems and equipment covered by these rules, are used. The provisions of these rules shall, however, be controlling with respect to elections where vote recorders, tabulating devices, automatic and electronic counting equipment are used.
- c) Mandatory Precinct Ballot Counter. No county, municipality, county or municipal board, county or municipal board of elections shall permit the use of vote recorders, voting devices or electronic counting devices authorized by these rules, unless there is, in place in each precinct where such systems are used, an approved "precinct ballot counter" to be used to count the ballots cast in each such precinct.
- d) Ballots to Remain in Precinct Until Counted. No ballots, used in conjunction with devices and systems authorized by these rules

shall be removed, transported or transferred from the voting precinct in which such votes were cast until such ballots have been counted and the results recorded on the required precinct return forms and properly executed by the registrar and judges.

History Note: Statutory Authority G.S. 163-160; 163-161;
Eff. March 12, 1976

.0203. Vote Recorders; Tabulating, Counting Devices

Any electronic voting system, counting device, vote recorders or ballot system approved by these rules shall:

- (1) provide for voting in secrecy, except in the case of voters who have received assistance as provided by law;
- (2) permit each voter to vote any election for all persons and offices for whom and for which he is lawfully entitled to vote; to vote as many person for an office as he is entitled to vote for; to vote for or against any question upon which he is entitled to vote; and the automatic tabulating or counting equipment shall reject choices for the office or question recorded on his ballot card if the number of choices exceeds the number for which he is entitled to vote;
- (3) permit each voter, by one mark or punch, to vote for the candidates of that party for president and vice-president;
- (4) permit each voter to vote for candidates in the primary in which he is qualified to vote, and not to vote for candidates in the primary in which he is not entitled to vote;
- (5) prevent the voter from voting for the same person more than once for the same office;
- (6) be suitably designed for the purpose used, of durable construction, and may be safely, efficiently and accurately in the conduct of elections and counting ballots;
- (7) when properly operated, record correctly and count accurately every vote cast.

When such device has been approved, any improvement or change which does not impair its accuracy, efficiency, or ability to meet all requirements shall not require a re-examination or re-approval.

History Note: Statutory Authority G.S. 163-160;
Eff. March 12, 1976.

.0204. Ballot Labels; Identifications

- a) Arrangement. Ballot labels shall be printed in vertical columns or in a number of separate pages which are placed on the voting device or on the ballot.
- b) Type; Color. Ballot labels shall be printed in plain clear type in black ink, of such size and arrangement as to fit the construction of the voting device or size of the ballot; they shall be printed on clear white material or on material of different colors to identify different ballots or party of the ballot. Composition and color of ballot labels shall be subject to approval by the Executive Secretary-Director of the State Board of Elections.
- c) Titles of Office; Names of Candidates. The titles of offices and the names of candidates shall in all elections be arranged in vertical columns or in a series of separate pages. The office title shall be printed above or at the side of the names of candidates so as to

indicate the candidates for each office, the position for which each candidate is running, and the number to be elected. In all cases every ballot or ballot page shall conform to the requirements specified in G.S. 163-137(c).

- d) **Ballot Cards.** Ballot cards shall be of the size, design and stock suitable for processing by automatic data processing machines or automatic scanning counting devices that produce a printed type of the total votes cast for each candidate, office or issue. Each ballot card, used in conjunction with a vote recorder, shall have an attached serially numbered perforated stub which shall be removed by an election official before it is deposited in the ballot box. The name of the county, municipality or special district, the designation and date of the election, and in primary elections, the name of the political party shall be printed on the ballot card.
- e) **Sample Ballots.** Sample ballots, which shall be facsimile copies of the official ballot or ballot labels, shall be provided as required by law. At least three copies shall be posted in each polling place on election day and shall be on display in the office of the county or municipal board of elections for at least 20 days prior to the date of the primary or election.
- f) **Write-In Ballot.** In elections in which voters are authorized to vote for persons whose names do not appear on the ballot, a separate write-in ballot, which may be in the form of a paper ballot, card or envelope in which the voter places his ballot card after voting, shall be provided to permit voters to write in the title of the office and the name of the person or persons for whom he wishes to vote.

History Note: Statutory Authority G.S. 163-160;
Eff. March 12, 1976.

.0205. Preparation for Elections; Precinct Election Officers

Ballots and Supplies. Prior to any election at which equipment or devices authorized by these rules are used the county or municipal board of elections shall have the voting and counting devices prepared for the election and shall provide the precinct election officials with voting devices, ballots, ballot boxes, ballot labels, ballot cards, "write-in" ballots and all other records and supplies as required.

History Note: Statutory Authority G.S. 163-160;
Eff. March 12, 1976.

.0206. Procedure at the Polling Place

- a) **Instruction of Voters.** Each voter shall be instructed how to operate the voting device or how to mark the ballot before he enters the voting booth.
- b) **Spoiled Ballots.** Any voter who spoils his ballot card may return it to the registrar or one of the judges and secure another. The word "spoiled" or "void" shall be written across the face of the ballot and it shall be placed in a container designated to house "spoiled" or "void" ballots cards.
- c) **Depositing Ballot Card in the Ballot Box.** After the voter has marked his ballot card he shall return it to the designated election official who shall remove the stub (if a stub is required)

and deposit the ballot card in the ballot box. No ballot card from which the stub has been detached shall be excepted by the election designated to receive the ballot cards and such ballot cards shall be marked "spoiled" and placed with the spoiled ballot cards. Where ballot scanning counting devices are used the voter shall insert his ballot contained in the protective envelope provided and deposit the emptied ballot container envelope with the election official presiding over the ballot "scanner".

- d) Closing the Polls. As soon as the polls have been closed and the last qualified voter has voted, all unused ballot cards shall be counted, placed in a container and sealed for return to the appropriate board of elections. Before beginning the counting of the ballots, the registrar and both judges shall all witness a test on the precinct ballot counter by engaging the "print" button and securing a printed tape showing a "zero" balance for every candidate and issue. The registrar and both judges shall each sign the tape and shall retain it as a permanent record to be made a part of the precinct return form transmitted to the county board of elections. Following the "zero test" run, the registrar and both judges shall act as a counting team and shall proceed to process the ballot cards for counting by the precinct counter.
- e) Procedure During Ballot Count. All proceeding during the "zero test" and the actual processing of the ballot cards shall be under the direct supervision of the registrar and both judges and shall be conducted under the observation of the public, but no persons except those authorized for the purpose shall touch any ballot or ballot card or return. If any ballot card is damaged or defective so that it cannot properly be counted by the automatic precinct ballot counted, a true duplicate copy shall be made and substituted for the damaged ballot. All duplicate ballots shall be clearly labeled "duplicate", and shall bear a serial number which shall be recorded on the damaged or defective ballot.
- f) Official Returns. The official returns obtained from the precinct ballot counter after adding the "curbside ballots", if any, shall be entered upon the precinct return forms provided by the county board of elections and shall be signed by the registrar and judges as required by law.
- g) Disposition of Ballots After Counting. The precinct election officials shall place the ballot cards in the ballot card container, provided by the county board of elections, which shall then be locked or sealed and such seal signed by the registrar and judges and shall then be delivered to the custody of the county board of elections in accordance with the procedure adopted and specified by the county board of elections.

History Note: Statutory Authority G.S. 163-160;
Eff. March 12, 1976.

.0207. Collection of Voting Equipment After Election

The vote recorders, counting devices, ballot card containers, and all other election paraphernalia shall be secured and housed or delivered in accordance with the rules adopted by the county board of elections.

History Note: Statutory Authority G.S. 163-160;
Eff. March 12, 1976.

.0208. Manufacturers Required to Present Rules

All manufacturers of devices or equipment authorized for use in North Carolina by these rules shall, through their respective representatives or sales agents, provide a copy of these rules to any county or other governmental entity from which solicitation is made.

History Note: Statutory Authority G.S. 163-160;
Eff. March 12, 1976.

North Carolina Administrative Code**Title 8****State Board of Elections****Chapter 5****Modified Full Time Registration System**

- .0001. Plans of Registration
- .0002. Deadline for Adoption
- .0003. Exception: Modified Plans
- .0004. Adoption of "Plan A" or "Plan B" Required
- .0005. Adoption of Full-Time Registration Required
- .0006. "Plan A"
- .0007. "Plan B"
- .0008. "Plan C"
- .0009. "Plan D"
- .0010. Notification of Plan Adoption

Chapter 5**Modified Full Time Registration System****.0001. Plans of Registration**

The State Board of Elections, pursuant to the authority and direction in Chapter 750, Session Laws of 1969 (codified as G.S. 163-67) hereby adopts and prescribes the following plans of modified full-time registration procedures for counties which have less than 14,001 registered voters as reflected by the certified "Statistical Report" dated November 10, 1969.

History Note: Statutory Authority G.S. 163-67(a), (b);
Eff. March 12, 1976.

.0002. Deadline for Adoption

Prior to January 1, 1971, the county board of elections of each county having total registered voters in excess of 6,500 but less than 14,001, shall adopt, by resolution, either "Plan A" or "Plan B" as prescribed herein. Those counties having total registered voters less than 6,500 shall adopt either "Plan C" or "Plan D" as prescribed herein. Provided, however, that nothing herein shall prohibit counties having a total registration of less than 6,500 from adopting either "Plan A" or "Plan B".

History Note: Statutory Authority G.S. 163-67(a), (b);
Eff. March 12, 1976.

.0003. Exception: Modified Plans

Registration commissioners shall not be permitted in counties adopting a modified full-time registration system. However, the duty appointed executive secretary may, at the option of the county board of elections, be dispatched to localities within the county for the purpose of receiving applications to register to vote, provided, public notice is generally circulated in advance.

History Note: Statutory Authority G.S. 163-67(a), (b);
Eff. March 12, 1976.

.0004. Adoption of "Plan A" or "Plan B" Required

Any county qualified to operate under "Plan C" or "Plan D" shall, upon exceeding 6,500 registered voters, as reflected by any subsequent certified "Statistical Report", immediately, by resolution, move to adopt either "Plan A" or "Plan B". The State Board of Elections shall be immediately notified of such change, in writing.

History Note: Statutory Authority G.S. 163-67(a), (b);
Eff. March 12, 1976.

.0005. Adoption of Full-Time Registration Required

Any county qualified to operate under "Plan A" or "Plan B" shall, upon exceeding 14,000 registered voters, as reflected by any subsequent certified "Statistical Report", immediately move, by resolution, to adopt a full-time registration system of registration consistent with the operation of other county offices to the end that a daily operation is observed during hours which are considered regular business hours in the county. The State Board of Elections shall be immediately notified of such change, in writing.

History Note: Statutory Authority G.S. 163-67(a), (b);
Eff. March 12, 1976.

.0006. "Plan A"

The county board of elections may adopt "Plan A" provided the county board resolves to operate its office at the seat of government in a location agreed upon by the county board of elections and the board of county commissioners. Under this plan, the executive secretary, appointed by the county board of elections, shall be in attendance between the hours of 9:00 a.m. and 5:00 p.m. (or the same hours observed by other county offices) on Monday, Wednesday and Friday of each week. Legal holidays, observed by other county offices, and falling on one of the above prescribed days may be observed at the discretion of the county board of elections.

History Note: Statutory Authority G.S. 163-67(a), (b);
Eff. March 12, 1976.

.0007. "Plan B"

The county board of elections may adopt "Plan B" provided the county board resolves to operate its office at the seat of government

in a location agreed upon by the county board of elections and the board of county commissioners. Under this plan, the executive secretary, appointed by the county board of elections, shall be in attendance between the hours of 9:00 a.m. and 5:00 p.m. (or the same hours observed by other county offices) on Tuesday, Thursday and Saturday of each week. Legal holidays, observed by other county offices, and falling on one of the above prescribed days may be observed at the discretion of the county board of elections.

History Note: Statutory Authority G.S. 163-67(a), (b);
Eff. March 12, 1976

.0008. "Plan C"

The county board of elections may adopt "Plan C" provided the county board resolves to operate its office at the seat of government in a location agreed upon by the county board of elections and the board of county commissioners. Under this plan, the executive secretary, appointed by the county board of elections, shall be in attendance between the hours of 9:00 a.m. and 1:00 p.m. three days each week. Stipulated days must be Monday, Wednesday and Friday. Legal holidays, observed by other county offices, and falling on one of the above prescribed days may be observed at the discretion of the county board of elections. This plan shall not be used in counties in excess of 6,500 registered voters.

History Note: Statutory Authority G.S. 163-67(a), (b);
Eff. March 12, 1976.

.0009. "Plan D"

The county board of elections may adopt "Plan D" provided the county board resolves to operate its office at the seat of government in a location agreed upon by the county board of elections and the board of county commissioners. Under this plan, the executive secretary, appointed by the county board of elections, shall be in attendance between the hours of 9:00 a.m. and 1:00 p.m. three days each week. Stipulated days must be Tuesday, Thursday and Saturday. Legal holidays, observed by other county offices, and falling on one of the above prescribed days may be observed at the discretion of the county board of elections. This plan shall not be used in counties in excess of 6,500 registered voters.

History Note: Statutory Authority G.S. 163-67(a), (b);
Eff. March 12, 1976.

.0010. Notification of Plan Adoption

Each county authorized to adopt one of the modified plans outlined in .0006 to .0009 of this Chapter must, upon adoption by the respective county board of elections, notify the State Board of Elections by submitting, in writing, the plan adopted for use in said county. Such notification must be made to the State Board of Elections immediately after approval by the county board and must also be entered in the official minutes of the county board. Each county board shall install a telephone in its designated office and effect a listing in the directory so that the general public will be able to make telephone inquiries. Notification shall also be made to the chairman of each political party within the county and publication made by advertisement in a newspaper having general circulation

in the county and by any other means deemed helpful to the citizenry.

History Note: Statutory Authority G.S. 163-67(a), (b); Eff. March 12, 1976.

North Carolina Administrative Code

Title 8

State Board of Elections

Chapter 8

Compliance with Federal P.L. 98-435: The Voting Accessibility for the Elderly and Handicapped Act

- .0001. Handicapped Transfer
- .0002. Notarization Regarding Absentee Voting by Handicapped
- .0003. Curbside Voting Hours Extended
- .0004. Handicapped Transfer prior to Election Day

Chapter 8

Compliance with Federal P.L. 98-435: The Voting Accessibility for the Elderly and Handicapped Act

.0001. Handicapped Transfer

- a) Any person who is entitled to vote outside a voting enclosure as prescribed in G.S. 153-155 may, in lieu of doing so, request to be allowed to vote at the office of the appropriate county board of elections under the following procedure:
- (1) On the day of the primary election, the voter must go to the polling place for the precinct at which the voter is registered and announce at curbside his or her request to be transferred to an accessible polling place.
 - (2) Upon determining that the voter is registered in that precinct, the precinct registrar or judge shall issue to the voter a certificate of removal on the following form:

"Notice of Handicapped Transfer

On this day _____ who is registered in (Name/voter/address as appears/registration records) _____ precinct, appeared before the undersigned precinct official. This person has not voted this date in this precinct and hereby requests that he or she be permitted to vote after executing the required handicapped certificate. The polling place for _____ precinct has not been made accessible to the elderly and handicapped.

Registrar or Judge

Name and Number of Precinct

Signature of Voter

Take this certificate to the County Board of Elections.”

- (3) Upon issuance of the certificate to the voter, the precinct official shall mark the voter's registration record with an "HT" in the appropriate voting square to indicate that the voter has transferred.
- (4) The voter shall take the certificate of removal to the precinct transfer assistant at the county board of elections office. Upon determining that the voter is physically disabled and is qualified to vote in the elections, the precinct transfer assistant shall provide the voter with the proper ballots for the precinct.
- (5) After making the ballots in a booth or separate room or table provided for that purpose, the voter shall place the ballots in an envelope provided by the precinct transfer assistant. That envelope shall have printed or stamped on it the following:

Handicapped Transfer Ballot No. _____
Registered in _____ Precinct

- The precinct transfer assistant shall write the proper information in the blanks before giving the envelope to the voter.
- (6) The precinct transfer assistant shall enter in a book provided by the Board of Elections the name of each voter permitted to vote under this Rule, the number assigned to the voter's ballot and envelope, and the precinct in which the voter resides.
 - (7) Envelopes containing ballots voter under this Rule shall be retained to be opened and counted after the polls close on election day. Ballots shall be counted by board members or assistants appointed by the board. All envelopes shall be opened and all ballots deposited in the appropriate boxes before any ballots are counted, and the results of the counting shall be entered on duplicate transfer report forms signed by the officials responsible for the counting.
 - (8) A person voting under this Rule shall be entitled to the same assistance as provided in G.S. 163-152.
 - (9) The precinct officials and precinct transfer assistants may require a person to show identification, if needed, to establish that the person is entitled to vote.

History Note: Statutory Authority P.L. 98-435; S.L. (Extra Session 1986);
Eff. March 24, 1986.

.0002. Notarization Regarding Absentee Voting by Handicapped

- a) No notarization or medical certification shall be required with respect to an application for an absentee ballot itself when the reason for issuance of said ballot is sickness of physical disability occurring before 5:00 p.m. on the Tuesday prior to the date of election.
- b) Voters to whom absentee ballots are issued due to sickness or physical disability, as provided in a) of this Rule, shall be advised in writing that no notarization is required.

History Note: Statutory Authority P.L. 98-435; S.L. 1985, c. 4
(Extra Session 1986);
Eff. March 24, 1986.

.0003. Curbside Voting Hours Extended

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, shall be allowed, at all times during which the voting place is open, to vote in the vehicle conveying such person to the voting place or in the immediate proximity of the voting place under the procedures set forth in G.S. 163-155.

History Note: Statutory Authority P.L. 98-435; S.L. 1985, ch.4
(Extra Session 1986);
Eff. March 24, 1986.

.0004. Handicapped Transfer Prior to Election Day

- a) At any time during the period of absentee voting in any primary, general or special election, a handicapped or elderly voter registered in a precinct wherein there exists no polling place accessible to the elderly and handicapped may request in advance to be transferred from that precinct to the office of the county board of elections on election day under the following procedure:
- (1) An application to be transferred advance to the county board of elections for the purpose of voting on election day shall be made and signed only by the voter or the voter's near relative, as defined in G.S. 163-227(c)(4), 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.
 - (2) Upon receipt of a written request for transfer, the county board of elections, after determining the validity of such request, shall enter the voter's name and precinct into the book referred to in Rule .0001(a)(6) of this Chapter and shall place the designation "HT" beside the voter's name as it appears on registration records sent to that voter's precinct for use on election day.
 - (3) No voter who requested advance transfer shall be allowed to vote on election day at that voter's precinct if the designation "HT" appears on the records of that precinct, but shall be directed to the offices of the county board of elections.
 - (4) On election day, the precinct transfer assistant at the county board of elections, when the elderly or handicapped voter appears and indicated that advance request for transfer was made, shall verify such fact by reference to the book referred to in Rule .0001(a)(6) and, having determined that such request was made, shall provide the voter with the proper ballots and follow the procedures set forth in Rule .0001(a)(5)-(9).

History Note: Filed as a Temporary Rule Eff. April 18, 1988 for a period of 136 days to expire on August 31, 1988; Statutory Authority G.S. 163-69.2; ARRC Objection May 19, 1988; Eff. October 1, 1988.

North Carolina Administrative Code

Title 8

State Board of Elections

Chapter 9

Conduct of Vote Recounts by County Boards of Elections

- .0001. Recounts to Follow Customary Procedures
- .0002. Locations of Recounts
- .0003. Notice of Recount
- .0004. Officials Conducting Recount
- .0005. Challenge of Recount Procedures

Chapter 9

Conduct of Vote Recounts by County Boards of Elections

.0001. Recounts to Follow Customary Procedures

Except as provided to the contrary in this Chapter, a recount of votes and publication of results shall be undertaken in the same manner and under the same circumstances as provided by law for the original counting or votes.

History Note: Filed as a Temporary Rule Eff. April 18, 1988 for a period of 136 days to expire on August 31, 1988; Statutory Authority G.S. 163-179.1; 163-192.1; ARRC Objection May 19, 1988; Expired Eff. August 31, 1988; Eff. October 1, 1988.

.0002. Locations of Recounts

Upon receiving a demand for recount of votes, if the demanding candidate is entitled by law to a recount or if a county board of elections determines that a recount is otherwise in order, the board shall set a date, time, and place for such recount. The board shall determine that all votes cast shall be counted at a central location, that they shall be counted in the precincts in which they were cast, or that they shall be counted at a combination of these and other locations where vote tabulation normally occurs.

History Note: Filed as a Temporary Rule Eff. April 18, 1988 for a period of 136 days to expire on August 31, 1988; Statutory Authority G.S. 163-179.1; 163-192.1; ARRC Objection May 19, 1988; Expired Eff. August 31, 1988; Eff. October 1, 1988.

.0003. Notice of Recount

Upon determining the date, time and place of a recount of votes, a county board of elections shall give notice to any candidates whose votes will be recounted and to any other candidate or other person determined by the board to be sufficiently interested in the outcome of such recount. The county board shall give such notice in any form that is reasonably calculated to reach such persons and shall advise such persons of the date, time and place of the recount and of their right or the right of their designees to be present to witness the recount of votes.

History Note: Filed as a Temporary Rule Eff. April 18, 1988 for a period of 136 days to expire on August 31, 1988;
Statutory Authority G.S. 163-179.1; 163-192.1;
ARRC Objection May 19, 1988;
Expired Eff. August 31, 1988;
Eff. October 1, 1988.

.0004. Officials Conducting Recount

In recounting votes, a county board of elections may employ the services of any many election officials and ballot counters as it deems necessary. In no event, shall votes be recounted in the precincts in which they were cast unless the registrar and both judges of said precinct are present for the entire period during which votes are recounted and the results are recorded.

History Note: Filed as a Temporary Rule Eff. April 18, 1988 for a period of 136 days to expire on August 31, 1988;
Statutory Authority G.S. 163-179.1; 163-192.1;
ARRC Objection May 19, 1988;
Expired Eff. August 31, 1988;
Eff. October 1, 1988.

.0005. Challenge of Recount Procedures

In the event that any candidate for an office for which votes have been recounted challenges the results of such recount or the manner in which votes were recounted, the candidate shall, within 24 hours, file his protest with the county board of elections. Protests of recounts shall be in the same form as provided for other protests and shall be heard by the county board in the same manner as provided for other protests.

History Note: Filed as a Temporary Rule Eff. April 18, 1988 for a period of 136 days to expire on August 31, 1988;
Statutory Authority G.S. 163-179.1; 163-192.1;
ARRC Objection May 19, 1988;
Expired Eff. August 31, 1988;
Eff. October 1, 1988.

Constitution of North Carolina

Article VI.

Suffrage and Eligibility to Office.

Sec.

1. Who may vote.
2. Qualifications of voter.
3. Registration.
4. Qualification for registration.
5. Elections by people and General Assembly.
6. Eligibility to elective office.
7. Oath.
8. Disqualifications for office.
9. Dual office holding.
10. Continuation in office.

History. — Session Laws 1969, c. 1258, proposed a complete editorial revision of the Constitution of North Caro-

lina, to be submitted to the qualified voters of the State at the 1970 general election. The revised Constitution was adopted by vote of the people at the general election held Nov. 3, 1970, to take effect July 1, 1971. In addition to the new Constitution, six other constitutional amendments were submitted to the voters at the 1970 general election, to be voted on independently, and five of these were adopted. The effect of these amendments is indicated in notes under the sections affected.

Editor's Note. — Where appropriate, annotations construing various sections of the Constitution of 1868 have been placed under corresponding sections of the Constitution of 1970.

ARTICLE VI

SUFFRAGE AND ELIGIBILITY TO OFFICE

Section. 1. Who may vote.

Every person born in the United States and every person who has been naturalized, 18 years of age, and possessing the qualifications set out in this Article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided. (1971, c. 201, s. 1; c. 1141, s. 1.)

Cross References. — As to voter qualifications, see N.C. Const., Art. VI, § 2. For statutory provisions as to qualifications of voters, see § 163-54 et seq.

History. — The provisions of this section are similar to those of Art. VI, § 1, Const. 1868, as that article was rewritten in 1900 and as amended in 1946.

Effect of Amendments. — The amendment adopted by vote of the people at the general election held Nov. 7, 1972, substituted "18" for "21."

Session Laws 1971, c. 201, s. 4, as amended by Session Laws 1971, c. 1141, s. 1, provides that the amendment shall be effective Jan. 1, 1973.

CASE NOTES

As to history of this Article, see *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).

Eligibility of 18 Year Olds to

Vote. — Eighteen-year olds are now sui juris, and if they possess the qualifications prescribed by law for all voters, are eligible to vote. *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 187 S.E.2d 52 (1972).

Sec. 2. Qualifications of voter.

(1) *Residence period for State elections.* Any person who has resided in the State of North Carolina for one year and in the precinct, ward, or other election district for 30 days next preceding an election, and possesses the other qualifications set out in this Article, shall be entitled to vote at any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which that person has removed until 30 days after the removal.

(2) *Residence period for presidential elections.* The General Assembly may reduce the time of residence for persons voting in presidential elections. A person made eligible by reason of a reduction in time of residence shall possess the other qualifications set out in this Article, shall only be entitled to vote for President and Vice President of the United States or for electors for President and Vice President, and shall not thereby become eligible to hold office in this State.

(3) *Disqualification of felon.* No 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, shall be permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

History. — The provisions of this section are similar to those of Art. VI, § 2, Const. 1868, as added in 1900 and amended in 1920, 1954 and 1962.

Legal Periodicals. — For comment, "State Durational Residence Require-

ments 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

Editor's Note. — *Some of the cases cited below were decided under former Art. VI, § 2, Const. 1868, as amended.*

One-Year Residency Requirement Invalid As Applied to Local Elections. — The one-year durational residency requirement, as it relates to the right to vote in local elections, is unconstitutional and invalid, as violative of the equal protection clause of the U.S. Const., Amend. XIV. *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).

Denial of right to vote to convicted felon is not cruel and unusual punishment. *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).

U.S. Const., Amend. XIV, § 2, Expressly Allows Exclusion of Felons. — 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 U.S. Const., Amend. XIV, § 2, 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).

Provisions in State statutes and constitutions which deny convicted felons the right to vote and hold office do not violate the various rights guaranteed by the Constitution of the United States. *Wilson v. Goodwyn*, 522 F. Supp. 1214 (E.D.N.C. 1981).

"Residence" Defined. — Residence, as used in this section, is synonymous with domicile, denoting a permanent dwelling place to which the party, when absent, intends to return. *State ex rel. Hannon v. Grizzard*, 89 N.C. 115 (1883); *State ex rel. Owens v. Chaplin*, 228 N.C. 705, 47 S.E.2d 12, petition for rehearing denied, 229 N.C. 797, 48 S.E.2d 37

(1948); *Baker v. Varser*, 240 N.C. 260, 82 S.E.2d 90 (1954).

"Residence," within the purview of this provision, is synonymous with domicile, and as used in the North Carolina Constitution of 1970 continues to mean domicile. *Hall v. Wake County Bd. of Elections*, 280 N.C. 600, 187 S.E.2d 52 (1972).

Duration of Residence. — A person, in order to become a qualified elector in this State, must have come into the State a year before the election, or have been domiciled within it for 12 months after forming the purpose to remain, and the same intent must be concurrent with the actual occupation of a domicile in the county in order to entitle him to the rights of an elector within its limits. *People ex rel. Boyer v. Teague*, 106 N.C. 576, 11 S.E. 665 (1890).

Residence Must Be of Permanent Character. — In order to acquire a residence for the purpose of exercising the right to vote in a given locality, the "residence" must be of a permanent and not of a temporary character, corresponding with the word domicile. *State ex rel. Gower v. Carter*, 195 N.C. 697, 143 S.E. 513 (1928).

General Assembly Cannot Increase Length of Residence Requirement. — The General Assembly cannot in any way change the qualifications of voters in State, county, township, city or town elections; thus, an act which requires a longer residence in the county than this section requires is unconstitutional. *People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198 (1875).

Qualifications for Municipal Election. — The qualifications of voters in a municipal election are the same as in a general one. *State ex rel. Gower v. Carter*, 194 N.C. 293, 139 S.E. 604 (1927).

Cities and towns, like counties and townships, are parts and parcels of the State, organized for the convenience of local self-government; and the qualifications of voters are the same. *People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198 (1875).

Limitations on Voting Imposed by Municipality. — A provision in the charter of a municipality limiting the right of suffrage in municipal elections to owners of real property within the town is unconstitutional. *Smith v. Town of Carolina Beach*, 206 N.C. 834, 175 S.E. 313 (1934).

A provision in a town charter permitting nonresident freeholders to vote in

all municipal elections is void because in conflict with this section. However, an election held under this provision is not void if it is shown that no persons not qualified under the Constitution actually participated in the election. *Wrenn v. Town of Kure Beach*, 235 N.C. 292, 69 S.E.2d 492 (1952).

This constitutional provision applies primarily to an incoming person, who is not permitted to exercise political rights until after he has been in the State and the voting precinct for the prescribed periods. *State ex rel. Owens v. Chaplin*, 228 N.C. 705, 47 S.E.2d 12, petition for rehearing denied, 229 N.C. 797, 48 S.E.2d 37 (1948).

And Not to a Citizen of this State Who Is Temporarily Absent. — This constitutional provision is not designed to disfranchise a citizen of the State when he leaves his home and goes into another state or into another county of this State for temporary purposes with the intention of retaining his home and of returning to it when the objects which call him away are attained. *State ex rel. Owens v. Chaplin*, 228 N.C. 705, 47 S.E.2d 12, petition for rehearing denied, 229 N.C. 797, 48 S.E.2d 37 (1948).

Where a voter was in the service of the federal government at Washington, D.C., but continued to pay poll tax and vote in Halifax County, and spent a part of each year at his home in Halifax, his constitutional residence remained unchanged in Halifax. *Baker v. Varser*, 240 N.C. 260, 82 S.E.2d 90 (1954).

Protracted Residence Abroad. — A protracted residence abroad of one engaged in business and with no home in this State is not consistent with the idea of residence here. *State ex rel. Hannon v. Grizzard*, 89 N.C. 115 (1883).

Residence Near Precinct Line. — When a voter resides on or so near the precinct line, or where the line is so uncertain, that it is doubtful in which precinct the voter lives, and the voter, honestly and in good faith, bona fide registers and votes in the precinct he, in good faith, alleges and believes he lives in, and has good reason to believe he is correct, and registers and votes in no other precinct, such vote is legal. *People ex rel. Boyer v. Teague*, 106 N.C. 576, 11 S.E. 665 (1890).

Failure to Administer Oath to Electors. — The mere failure of the registrars (now chief judges) to administer the oath to the electors, and allowing them to vote where not challenged, will not affect the result of the election held

for the establishment of a special road district under valid legislative authority, when the electors so voting are qualified. *Woodall v. Western Wake Hwy. Comm'n*, 176 N.C. 377, 97 S.E. 226 (1918).

Vote by Convicted Criminal. — In a contested election case, conviction of an offense under a local law prescribing punishment in the State's prison renders void the vote of the one so convicted, whether the indictment charged or failed to charge that the alleged offense was "feloniously" committed. *State ex rel. Robertson v. Jackson*, 183 N.C. 695, 110 S.E. 593 (1922).

Vote of Escaped Prisoner. — If a person in jail for a misdemeanor (not infamous), and sentenced to imprison-

ment, escapes, and before he is recaptured his term or sentence expires, and he votes in his own precinct, in which he resided before he was sentenced, such vote is valid if the voter is otherwise qualified; but if the voter is a fugitive from justice, and is in hiding from one part of the county to another, and voted in the precinct he happened to be in, and not in the precinct of his residence when sentenced, such vote is illegal. *People ex rel. Boyer v. Teague*, 106 N.C. 576, 11 S.E. 665 (1890).

Stated in *United States v. McLean*, 904 F.2d 216 (4th Cir. 1990).

Cited in *Farnsworth v. Jones*, 114 N.C. App. 182, 441 S.E.2d 597 (1994).

OPINIONS OF ATTORNEY GENERAL

Nolo Contendere Plea Brings No Forfeiture of Rights. — At least under the wording of N.C. Const., Art. VI, § 2, a plea of nolo contendere or "no contest" to a felony charge would not result in the

forfeiture of any rights of citizenship, including the right to vote. See opinion of Attorney General to Ms. Bessie J. Cherry, Clerk of Court, Washington, North Carolina, 49 N.C.A.G. 134 (1980).

Sec. 3. Registration.

Every person offering to vote shall be at the time legally registered as a voter as herein prescribed and in the manner provided by law. The General Assembly shall enact general laws governing the registration of voters.

History. — The provisions of this section are similar to those of Art. VI, § 3,

Const. 1868, as the article was rewritten in 1900.

CASE NOTES

Editor's Note. — *The cases cited below were decided under former Art. VI, §§ 3 and 4, Const. 1868, as amended.*

Registration is essential to the exercise by a citizen, possessed of the other legal qualifications, of his right to vote, and when duly made, is prima facie evidence of the right. *State ex rel. Hampton v. Waldrop*, 104 N.C. 453, 10 S.E. 694 (1889).

And Entitles Elector to Vote. — The registration of an elector who is qualified to vote must be accepted as the act of a public officer, and entitles the elector to cast his vote. *State ex rel. DeBerry v. Nicholson*, 102 N.C. 465, 9 S.E. 545 (1889).

Literacy Requirement. — The provisions of a former § 163-28 which provided that a person presenting himself for registration had to, before he was

registered, prove to the satisfaction of the registrar (now chief judge) his ability to read and write any section of the Constitution, was held valid, since authority was granted to the legislature by this section to enact general legislation to carry out the provisions of this Article. *Allison v. Sharp*, 209 N.C. 477, 184 S.E. 27 (1936). See also, N.C. Const., Art. VI, § 4, and notes thereunder.

Where the registration book of an election precinct was lost, and could not be replaced, but the registrar (now chief judge) procured a new book, in which he entered the names of such persons as he knew had theretofore been registered, and also the names of those who applied for registration subsequently, and it appeared that at the election following, no one voted whose name did not appear on the registration

book, no one voted who was not entitled to vote, and no one who was entitled to vote was excluded, the election was valid. *State ex rel. Hampton v. Waldrop*, 104 N.C. 453, 10 S.E. 694 (1889).

An act authorizing a bond issue by

a county was not objectionable as violating this section upon the ground that it empowered the county commissioners to order a new registration. *Cox v. Commissioners of Pitt County*, 146 N.C. 584, 60 S.E. 516 (1908).

Sec. 4. Qualification for registration.

Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language.

History. — The provisions of this section are similar to those of the first sentence of Art. VI, § 4, Const. 1868, as added in 1900 and amended in 1920.

Defeated Amendment Proposal. — Session Laws 1969, c. 1004, s. 1, pro-

posed to strike from this Article all of § 4, and to renumber §§ 5 through 10 as §§ 4 through 9. The amendment failed of adoption at the general election held Nov. 3, 1970.

CASE NOTES

Editor's Note. — *The cases cited below were decided under former Art. VI, § 4, Const. 1868, as amended.*

The language of this section is mandatory. *Allison v. Sharp*, 209 N.C. 477, 184 S.E. 27 (1936).

Validity of Literacy Requirement. — Use of the 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 black citizens for whom a county has maintained separate and inferior schools. *Gaston County v. United States*, 395 U.S. 285, 89 S. Ct. 1720, 23 L. Ed. 2d 309 (1969).

The provision of a former § 163-28 which required 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 held authorized by this Article, 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 U.S. Const., Amends. XIV, XV, or XVII. *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).

Former § 163-28, requiring the registrar (now chief judge) to determine whether or not an individual was able to read and write any section of the Constitution in the English language, was a reasonable provision, as the registrar (now chief judge) was the logical person to carry out the provisions of the Constitution. *Allison v. Sharp*, 209 N.C. 477, 184 S.E. 27 (1936).

Sec. 5. Elections by people and General Assembly.

All elections by the people shall be by ballot, and all elections by the General Assembly shall be viva voce. A contested election for any office established by Article III of this Constitution shall be determined by joint ballot of both houses of the General Assembly in the manner prescribed by law.

History. — The provisions of the first sentence of this section are similar to those of Art. II, § 9, Const. 1868, and Art. VI, § 6, Const. 1868, as Art. VI was rewritten in 1900. The provisions of the

second sentence of this section are similar to those of the second sentence of Art. III, § 3, Const. 1868, as amended in 1926.

CASE NOTES

Editor's Note. — *The cases cited below were decided under former Art. II, § 9, and former Art. VI, § 6, Const. 1868, as rewritten in 1900.*

Secrecy of Ballot. — The provisions of this section imply that in elections by the people the ballot shall be a secret one. *Withers v. Board of County Comm'rs*, 196 N.C. 535, 146 S.E. 225 (1929).

It is not necessary to show undue influence or intimidation for the courts to declare an election void when the voters have been deprived of their right to a secret ballot. *Withers v. Board of County Comm'rs*, 196 N.C. 535, 146 S.E. 225 (1929).

A voter at an election does not waive his constitutional right to a secret ballot by not protesting, unless he has been made aware of his rights under the facts

and circumstances of the balloting. *Withers v. Board of County Comm'rs*, 196 N.C. 535, 146 S.E. 225 (1929).

How Elector May Deposit Ballot. — The provisions of this section give the elector the choice to deposit his own ballot secretly, or to declare his choice openly when depositing it, or to have the registrar (now chief judge) or one of the judges of election, deposit it for him. *Jenkins v. State Bd. of Elections*, 180 N.C. 169, 104 S.E. 346 (1920).

Presumption of Regularity of Legislative Election. — Where a certificate shows that there was a legislative election of an officer, nothing else appearing, the law presumes a quorum and that the election was regular. *State ex rel. Cherry v. Burns*, 124 N.C. 761, 33 S.E. 136 (1899).

Sec. 6. Eligibility to elective office.

Every qualified voter in North Carolina who is 21 years of age, except as in this Constitution disqualified, shall be eligible for election by the people to office. (1971, c. 201, s. 1; c. 1141, s. 1.)

History. — The provisions of this section are similar to those of the first clause of Art. VI, § 7, Const. 1868, as that article was rewritten in 1900.

Effect of Amendments. — The amendment adopted by vote of the people at the general election held Nov. 7, 1972, inserted "who is 21 years of age."

Session Laws 1971, c. 201, s. 4, as

amended by Session Laws 1971, c. 1141, s. 1, provides that the amendment shall be effective Jan. 1, 1973.

Legal Periodicals. — For note, "Baker v. Martin and the Constitutionality of Partisan Qualifications for Appointment to District Courts," see 70 N.C.L. Rev. 1916 (1992).

CASE NOTES

Legislature Cannot Increase Qualifications. — The legislature cannot add to the constitutional disqualifications to hold office by requiring candidates for the position of recorder in a municipal court to be licensed attorneys at law. *State ex rel. Spruill v. Bateman*, 162 N.C. 588, 77 S.E. 768 (1913), decided under former Art. VI, § 7, Const. 1868, as rewritten in 1900.

The words "by the people" make it clear the section refers to the process of election. *Baker v. Martin*, 330 N.C. 331, 410 S.E.2d 887 (1991).

Section Refers to Election to Office. — The history of this section supports the conclusion that it is meant to refer to an "election to office" situation rather than to appointment to an "elec-

tive office." *Baker v. Martin*, 330 N.C. 331, 410 S.E.2d 887 (1991).

Women as Public Officers. — A woman is qualified to act as a notary public since the adoption of U.S. Const., Amend. XIX, and also to pass upon the proper probate of a deed to lands and make a valid certificate for its registration, when thereto deputized by the clerk of the superior court. *Preston v. Roberts*, 183 N.C. 62, 110 S.E. 586 (1922), decided under former Art. VI, § 7, Const. 1868, as rewritten in 1900; for the former rule, see *State ex rel. Attorney-General v. Knight*, 169 N.C. 333, 85 S.E. 418 (1915).

Subsection (a) of this section imposes an unconstitutional additional qualification for election to office, contrary to the provisions of this

section. *Moore v. Knightdale Bd. of Elections*, 331 N.C. 1, 413 S.E.2d 541 (1992).

Preference May Be Given to Political Party of Vacating Judge. — Section 7A-142, which provides that candidates for a vacancy in the office of a

district judge shall be members of the same political party as the vacating judge, does not violate the Constitution of North Carolina. *Baker v. Martin*, 330 N.C. 331, 410 S.E.2d 887 (1991).

OPINIONS OF ATTORNEY GENERAL

Qualifications are for "elective office"; thus, a sheriff's deputy need not reside in the county in which he serves.

See opinion of Attorney General to Sheriff John H. Stockard, 41 N.C.A.G. 754 (1972).

Sec. 7. Oath.

Before entering upon the duties of an office, a person elected or appointed to the office shall take and subscribe the following oath:

"I,, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as, so help me God."

History. — The provisions of this section are similar to those of Art. VI, § 7,

Const. 1868, as that article was rewritten in 1900.

Sec. 8. Disqualifications for office.

The following persons shall be disqualified for office:

First, any person who shall deny the being of Almighty God.

Second, with respect to any office that is filled by election by the people, any person who is not qualified to vote in an election for that office.

Third, any person who has been adjudged guilty of treason or any other felony against this State or the United States, or any person who has been adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, or any person who has been adjudged guilty of corruption or malpractice in any office, or any person who has been removed by impeachment from any office, and who has not been restored to the rights of citizenship in the manner prescribed by law.

History. — The provisions of this section are similar to those of Art. VI, § 8, Const. 1868, as that article was rewritten in 1900.

"Something There Is That Doesn't Love a Wall: Reflections on the History of North Carolina's Religious Test for Public Office," see 64 N.C.L. Rev. 1071 (1986).

Legal Periodicals. — For essay,

CASE NOTES

"Adjudged" Defined. — The word "adjudged" means "to decide or rule upon as a judge or with judicial or quasi-judicial powers." In *re Peoples*, 296 N.C. 109, 250 S.E.2d 890 (1978), cert. denied, 442 U.S. 929, 99 S. Ct. 2859, 61 L. Ed. 2d 297 (1979).

"guilty" connotes evil, intentional wrongdoing and refers to conscious and culpable acts; it does not necessarily mean or require criminal conviction or the finding of a jury. In *re Peoples*, 296 N.C. 109, 250 S.E.2d 890 (1978), cert. denied, 442 U.S. 929, 99 S. Ct. 2859, 61 L. Ed. 2d 297 (1979).

"Guilty" Defined. — The word

The definitions of "adjudged" and "guilty" are broad enough to encompass an adjudication by the Supreme Court, pursuant to the provisions of § 7A-376, that a judge is guilty of willful misconduct in office. In re Peoples, 296 N.C. 109, 250 S.E.2d 890 (1978), cert. denied, 442 U.S. 929, 99 S. Ct. 2859, 61 L. Ed. 2d 297 (1979).

Criminal Conviction Unnecessary for Disqualification. — Substitution in this section of the term "adjudged guilty" for the term "convicted" permits the General Assembly to prescribe proceedings in addition to criminal trials in which an adjudication of guilt will result in disqualification from office. Pursuant to that authorization, the legislature enacted § 7A-376, barring a judge from future judicial office when he has been removed by this court for willful misconduct in office. In re Peoples, 296 N.C. 109, 250 S.E.2d 890 (1978), cert. denied, 442 U.S. 929, 99 S. Ct. 2859, 61 L. Ed. 2d 297 (1979).

Adjudication of "Willful Misconduct in Office" Equivalent to "Malpractice in Any Office" for Removal Purposes. — An adjudication of "willful misconduct in office" by the Supreme Court in a proceeding instituted by the Judicial Standards Commission in which the judge or justice involved has been accorded due process of law and his guilt established by "clear and convincing evidence" is equivalent to an adjudication of guilt of "malpractice in any office" as used in this section. Therefore, the legislature acted within its power when it made disqualification from judicial office a consequence of removal for willful misconduct under § 7A-376. In re Peoples, 296 N.C. 109, 250 S.E.2d 890 (1978), cert. denied, 442 U.S. 929, 99 S. Ct. 2859, 61 L. Ed. 2d 297 (1979).

Disqualification Not Part of Judgment. — Disqualification from office and

loss of the right of suffrage, imposed by this section upon persons convicted of infamous offenses, constitute no part of the judgment of the court, but are mere consequences of such judgment. State v. Jones, 82 N.C. 685 (1880), decided under former Art. VI, § 8, Const. 1868, as rewritten in 1900.

Additional Disqualifications. — The wording of this section does not necessarily imply that additional disqualifications cannot be added by the General Assembly for those persons not elected by the people. Instead this section merely enumerates three disqualifications, one of which applies only to offices filled by election by the people. Baker v. Martin, 330 N.C. 331, 410 S.E.2d 887 (1991).

Removal of Prosecuting Attorney. — A prosecuting attorney is removable from office as a matter of law or legal inference upon findings of his willful misconduct or maladministration in office, supported by evidence. State ex rel. Hyatt v. Hamme, 180 N.C. 684, 104 S.E. 174 (1920), decided under former Art. VI, § 8, Const. 1868, as rewritten in 1900.

Appeal from Judgment that Prosecuting Attorney Be Removed. — An appeal from judgment of superior court judge that a prosecuting attorney be removed for "willful misconduct or maladministration in office," etc., is upon questions of law and legal inference, if justified by the findings of fact supported by evidence. State ex rel. Hyatt v. Hamme, 180 N.C. 684, 104 S.E. 174 (1920), decided under former Art. VI, § 8, Const. 1868, as rewritten in 1900.

Stated in United States v. McLean, 904 F.2d 216 (4th Cir. 1990).

Cited in Brooks v. Edwards, 396 F. Supp. 662 (W.D.N.C. 1974); Broughton v. North Carolina, 717 F.2d 147 (4th Cir. 1983).

OPINIONS OF ATTORNEY GENERAL

Requirement That Applicant for Office Admit Existence of God Violates U.S. Const., Amend. I. — See opinion of Attorney General to Mr. Clyde Smith, Deputy Secretary of State, 41 N.C.A.G. 727 (1972).

Nolo Contendere Plea Brings No Forfeiture of Rights. — At least under

the wording of N.C. Const., Art. VI, § 2, a plea of nolo contendere or "no contest" to a felony charge would not result in the forfeiture of any rights of citizenship, including the right to vote. See opinion of Attorney General to Ms. Bessie J. Cherry, Clerk of Court, Washington, North Carolina, 49 N.C.A.G. 134 (1980).

Sec. 9. Dual office holding.

(1) *Prohibitions.* It is salutary that the responsibilities of self-government be widely shared among the citizens of the State and that the potential abuse of authority inherent in the holding of multiple offices by an individual be avoided. Therefore, no person who holds any office or place of trust or profit under the United States or any department thereof, or under any other state or government, shall be eligible to hold any office in this State that is filled by election by the people. No person shall hold concurrently any two offices in this State that are filled by election of the people. No person shall hold concurrently any two or more appointive offices or places of trust or profit, or any combination of elective and appointive offices or places of trust or profit, except as the General Assembly shall provide by general law.

(2) *Exceptions.* The provisions of this Section shall not prohibit any officer of the military forces of the State or of the United States not on active duty for an extensive period of time, any notary public, or any delegate to a Convention of the People from holding concurrently another office or place of trust or profit under this State or the United States or any department thereof.

Cross References. — As to action by Attorney General when a person unlawfully holds office, acts to forfeit his office, etc., see § 1-515.

History. — The provisions of this section are similar to those of Art. XIV, § 7, Const. 1868, as amended in 1872-1873, 1944 and 1962.

CASE NOTES

Editor's Note. — Most of the cases cited below were decided under former Art. XIV, § 7, Const. 1868, as amended.

Purpose. — The manifest intent of this section is to prevent double office holding, that is, that offices and places of public trust should not accumulate in any single person, and the superadded words of "places of trust or profit" were put in to avoid evasion in giving too technical a meaning to the preceding words. *Doyle v. Aldermen of Raleigh*, 89 N.C. 133 (1883), approved in *Groves v. Barden*, 169 N.C. 8, 84 S.E. 1042 (1915).

This section was never intended to discourage public officials from assuming military leadership in time of emergency. In *re Yelton*, 223 N.C. 845, 28 S.E.2d 567 (1944).

One Person May Not Hold Two Offices. — Under this section, which is intended and designed to prevent or inhibit double office holding, except in certain instances, it is not permissible for one person to hold two offices at the same time. In *re Yelton*, 223 N.C. 845, 28 S.E.2d 567 (1944); In *re Advisory Opinion*, 226 N.C. 772, 39 S.E.2d 217 (1946).

Definition of Public Office. — An "office" is a public station or employment conferred by appointment of govern-

ment; and the term embraces the idea of tenure, duration, emolument, and duties. In *re Advisory Opinion*, 226 N.C. 772, 39 S.E.2d 217 (1946).

Effect of Local Law. — Chapter 129 of the 1983 N.C. Laws, insofar as it provides for dual office holding in a local law, is unconstitutional. *Ratcliff v. County of Buncombe*, 663 F. Supp. 1003 (W.D.N.C. 1987).

Where the office which a judge proposed to accept carried with it some of the attributes of sovereignty, and perforce invested him with governmental authority, he would be holding an office or place of trust or profit under the United States, or a department thereof, within the meaning of this section. In *re Advisory Opinion*, 226 N.C. 772, 39 S.E.2d 217 (1946).

Acceptance of Second Office Vacates First Office. — Where one holding an "office or place of profit" accepts another such office or position in contravention of this section, the first is vacated eo instanti, and any further acts done by him in connection with the first office are without color, and cannot be de facto. *Whitehead v. Pittman*, 165 N.C. 89, 80 S.E. 976 (1914).

The acceptance of a second office which

is forbidden or incompatible with the office already held operates ipso facto to vacate the first. In re Yelton, 223 N.C. 845, 28 S.E.2d 567 (1944); In re Advisory Opinion, 226 N.C. 772, 39 S.E.2d 217 (1946).

The acceptance of a second office by one holding a public office operates ipso facto to vacate the first. While the officer has a right to elect which he will retain, his election is deemed to have been made when he accepts and qualifies for the second. Thus, the acceptance of the second office is of itself a resignation of the first. State ex rel. Barnhill v. Thompson, 122 N.C. 493, 29 S.E. 720 (1898); Whitehead v. Pittman, 165 N.C. 89, 80 S.E. 976 (1914).

Where a man accepts an office under the State, he vacates another held under the same sovereignty. State v. Cook, 273 N.C. 377, 160 S.E.2d 49 (1968).

As of Date of Acceptance. — Where a vacancy in a public office occurs by virtue of the constitutional provision against double office holding, such vacancy occurs as of the date of the acceptance of the second office, unaffected by the fact that the person accepting the second office continues to discharge the duties of the office in good faith, since ignorance of the law excuses no man. State ex rel. Atkins v. Fortner, 236 N.C. 264, 72 S.E.2d 594 (1952).

Unless First Office In a Federal Office. — The constitutional inhibition against double office holding is enforced in alternative ways, depending on whether the first office is a State or a federal office. Where one holding a first office under the State violates this section by accepting a second office under either the State or the United States without surrendering the first office, he automatically and instantly vacates the first office, and he does not thereafter act as either a de jure or a de facto officer in performing functions of the first office, because he has neither right nor color of right to it. Where one holding a first office under the United States violates the section by accepting a second office under the State without surrendering the first office, his attempt to qualify for the second office is absolutely void, and he does not act as either a de jure or a de facto officer in performing the functions of the second office, because he has neither right nor color of right to it. Edwards v. Board of Educ., 235 N.C. 345, 70 S.E.2d 170 (1952).

Where clerk of county recorder's court accepted the office of justice of

the peace without surrendering the first office, he automatically and instantly vacated the first office, and he did not thereafter act as either a de jure or a de facto officer in performing functions of the first office, because he had neither right nor color of right to it. State v. Cook, 273 N.C. 377, 160 S.E.2d 49 (1968).

The jurisdiction of a judge of a municipal recorder's court to impose sentence could not be successfully attacked on the ground that at the time the recorder was appointed as such he was mayor of the municipality and that he therefore held two offices in contravention of this section, since even if it was granted that the statute permitting a mayor to be appointed recorder conferred upon the mayor when chosen recorder other than ex officio duties, the acceptance of the office of recorder would vacate the office of mayor, but would not affect the office of recorder. In re Barnes, 212 N.C. 735, 194 S.E. 499 (1938).

A statute providing that the incumbent of one public office should also fill another public office is unconstitutional as violating this section, and cannot be upheld as merely affording a choice between the offices so that the acceptance of the second office would ipso facto vacate the first, since incumbency in the first is essential to incumbency in the second. State ex rel. Brigman v. Baley, 213 N.C. 119, 195 S.E. 617 (1938).

But a statute which creates no new office and appoints no additional officer, but merely attaches new duties to offices already existing, to be performed by the incumbents therein, does not violate this section. State ex rel. Brigman v. Baley, 213 N.C. 119, 195 S.E. 617 (1938).

Public-Local Laws of 1931, c. 341, providing that the chairmen of certain county boards of Madison County should elect a tax manager for the county, merely imposed additional duties ex officio upon the said chairmen, and did not provide that any one of them should hold two public offices in violation of this section. Freeman v. Board of County Comm'rs, 217 N.C. 209, 7 S.E.2d 354 (1940).

Delegation of Duties of City Manager. — A statute which places the affairs of a municipal corporation in the hands of a city council and a city manager and provides that in the event of a vacancy in the office of city manager, by sickness or otherwise, the council may delegate the duties of this office to one of its members, to be performed ex officio as

mere auxiliary duties, with such compensation as the council may determine, but with no salary as a member of the council, did not contravene this section. *State ex rel. Grimes v. Holmes*, 207 N.C. 293, 176 S.E. 746 (1934).

Appointment of Naval Officer to Office of Zoning Commissioner. — A naval officer holds office under the United States government, and therefore under the provisions of this section he could not hold the office of zoning

commissioner, and was neither a de facto nor a de jure commissioner. *Vance S. Harrington & Co. v. Renner*, 236 N.C. 321, 72 S.E.2d 838 (1952).

Quoted in *Moore v. Knightdale Bd. of Elections*, 331 N.C. 1, 413 S.E.2d 541 (1992).

Cited in *Arnold v. Varnum*, 34 N.C. App. 22, 237 S.E.2d 272 (1977); *Ratcliff v. County of Buncombe*, 759 F.2d 1183 (4th Cir. 1985).

OPINIONS OF ATTORNEY GENERAL

Old Department of Mental Health. — A person could not serve at the same time as a member of the North Carolina Department of Mental Health (now Department of Human Resources) and as a member of a county board of commissioners, as this would have constituted double office holding under former Art. XIV, § 7, Const. 1868. See opinion of Attorney General to Mr. F.P. Bodenheimer, Jr., 40 N.C.A.G. 571 (1969).

North Carolina Zoological Authority. — Membership on the Board of Directors of the North Carolina Zoological Authority is a public office. See opinion of Attorney General to Mr. Cecil J. Spears, Member, Board of Town Commissioners of Enfield, 40 N.C.A.G. 589 (1969).

Regional Housing Authority. — A county commissioner may not serve as a commissioner of a regional housing authority created under § 157-36 without violating former Art. XIV, § 7, Const. 1868. The positions of county commissioner and commissioner of a regional housing authority are public offices, and therefore, one person may not hold both positions at the same time. See opinion of Attorney General to Mr. E. Bruce Beasley, III, Mid-East Economic Development Commission, 40 N.C.A.G. 580 (1969).

Tax Lister. — The mayor of a town may not also serve as county tax lister without violating former Art. XIV, § 7, Const. 1868. The office of mayor is a public office, and the office of tax lister is also a public office, since the tax lister is appointed to a term of office and is required to take an oath of office, and his duties, imposed by statute, involve the exercise of a portion of the sovereign authority of the State. See opinion of Attorney General to Mr. Tom Hanson,

Macon County Tax Supervisor, 40 N.C.A.G. 582 (1969).

Watershed Improvement Commission. — Members of a watershed improvement commission created pursuant to (see now § 139-4) exercise powers and authorities which involve the exercise of a portion of the sovereign authority of the State and thus would be considered public officers within the meaning of former Art. XIV, § 7, Const. 1868. Furthermore, a member of a school board and a member of a redevelopment commission are public officials. Thus, persons may not serve in either of these offices and as a member of the watershed improvement commission at the same time. See Opinion of Attorney General to Mr. William Clarence Klutz, Rowan County Attorney, 40 N.C.A.G. 588 (1970).

Police Officer Holding Position as Elected Officer. — A person holding an appointive office as a police officer can concurrently hold a position as an elected officer in either State or local government, including as a school board member. See opinion of Attorney General to Captain Bobby Kilgore, Monroe Public Safety Department, 55 N.C.A.G. 34 (1985).

Service of County Commissioner or Board or Commission. — Under § 128-1.2, whenever a board of county commissioners appoints one of its own members to another board or commission, the county commissioner so appointed is considered to be serving on such board or commission as a part of his or her office as a county commissioner. See opinion of Attorney General to C. Preston Cornelius, Senior Resident, Superior Court Judge, 60 N.C.A.G. 50 (1990).

Sec. 10. Continuation in office.

In the absence of any contrary provision, all officers in this State, whether appointed or elected, shall hold their positions until other appointments are made or, if the offices are elective, until their successors are chosen and qualified.

History. — The provisions of this section are similar to those of Art. XIV, § 5, Const. 1868.

CASE NOTES

Quoted in Moore v. Knightdale Bd. of Elections, 331 N.C. 1, 413 S.E.2d 541 (1992).

CONGRESSIONAL, SENATORIAL AND HOUSE DISTRICTS OF NORTH CAROLINA

UNITED STATES CONGRESS

CONGRESSIONAL DISTRICTS

District 1: Beaufort County (part), Bertie County, Bladen County (part), Chowan County, Columbus County (part), Craven County (part), Cumberland County (part), Duplin County (part), Edgecombe County (part), Gates County, Greene County, Halifax County (part), Hertford County, Jones County (part), Lenoir County (part), Martin County (part), Nash County (part), New Hanover County (part), Northampton County, Pasquotank County (part), Pender County (part), Perquimans County, Pitt County (part), Vance County (part), Warren County, Washington County, Wayne County (part), and Wilson County (part).

District 2: Durham County (part), Edgecombe County (part), Franklin County, Granville County (part), Halifax County (part), Harnett County, Johnston County, Lee County, Moore County (part), Nash County (part), Vance County (part), Wake County (part), and Wilson County (part).

District 3: Beaufort County (part), Camden County, Carteret County, Craven County (part), Currituck County, Dare County, Duplin County (part), Hyde County, Jones County (part), Lenoir County (part), Martin County (part), Onslow County (part), Pamlico County, Pasquotank County (part), Pender County (part), Pitt County (part), Sampson County, Tyrrell County, and Wayne County (part).

District 4: Chatham County, Orange County (part), and Wake County (part).

District 5: Alleghany County, Ashe County, Burke County (part), Caldwell County (part), Caswell County, Forsyth County (part), Granville County (part), Guilford County (part), Person County, Rockingham County, Stokes County, Surry County, Watauga County, and Wilkes County (part).

District 6: Alamance County (part), Davidson County (part), Davie County (part), Guilford County (part), Randolph County, and Rowan County (part).

District 7: Bladen County (part), Brunswick County, Columbus County (part), Cumberland County (part), New Hanover County (part), Onslow County (part), Pender County (part), and Robeson County (part).

District 8: Anson County, Cabarrus County, Cumberland County (part), Hoke County, Iredell County (part), Mecklenburg County (part), Montgomery County, Moore County (part), Richmond County,

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Robeson County (part), Rowan County (part), Scotland County, Stanly County and Union County.

District 9: Cleveland County (part), Gaston County (part), and Mecklenburg County (part).

District 10: Alexander County, Avery County, Buncombe County (part), Burke County (part), Caldwell County (part), Catawba County, Davie County (part), Forsyth County (part), Henderson County (part), Iredell County (part), Lincoln County, McDowell County (part), Mitchell County, Polk County (part), Rutherford County (part), Wilkes County (part), and Yadkin County.

District 11: Buncombe County (part), Cherokee County, Clay County, Cleveland County (part), Graham County, Haywood County, Henderson County (part), Jackson County, McDowell County (part), Macon County, Madison County, Polk County (part), Rutherford County (part), Swain County, Transylvania County, and Yancey County.

District 12: Alamance County (part), Davidson County (part), Durham County (part), Forsyth County (part), Gaston County (part), Guilford County (part), Iredell County (part), Mecklenburg County (part), Orange County (part), and Rowan County (part).

NORTH CAROLINA STATE SENATE

- District 1 Beaufort County (Part); Bertie County (Part);
 (1) Camden County; Chowan County; Currituck County;
 Dare County; Hyde County; Pasquotank County;
 Perquimans County; Tyrrell County; Washington
 County (Part).
- District 2 Bertie County (Part); Gates County; Halifax County
 (1) (Part); Hertford County; Northampton County;
 Vance County (Part); Warren County.
- District 3 Carteret County (Part); Craven County; Pamlico
 (1) County.
- District 4 Carteret County (Part); New Hanover County (Part);
 (1) Onslow County (Part); Pender County (Part).
- District 5 Duplin County; Jones County (Part); Onslow County
 (1) (Part); Pender County (Part); Sampson County
 (Part).
- District 6 Edgecombe County (Part); Martin County (Part); Pitt
 (1) County (Part); Washington County (Part); Wilson
 County (Part).
- District 7 Jones County (Part); Lenoir County (Part); New
 (1) Hanover County (Part); Onslow County (Part);
 Pender County (Part).
- District 8 Greene County; Lenoir County (Part); Wayne County.
 (1)
- District 9 Beaufort County (Part); Lenoir County (Part);
 (1) Martin County (Part); Pitt County (Part).
- District 10 Edgecombe County (Part); Halifax County (Part);
 (1) Nash County; Wilson County (Part).
- District 11 Franklin County; Johnston County (Part); Vance
 (1) County (Part); Wilson County (Part).

DISTRICTS OF NORTH CAROLINA

- District 12 (2) Alleghany County; Ashe County; Guilford County (Part); Rockingham County; Stokes County; Surry County; Watauga County.
- District 13 (2) Durham County; Granville County; Person County (Part); Wake County (Part).
- District 14 (2) Johnston County (Part); Wake County (Part).
- District 15 (1) Harnett County; Johnston County (Part); Lee County (Part); Sampson County (Part).
- District 16 (2) Chatham County; Lee County (Part); Moore County; Orange County; Randolph County (Part).
- District 17 (2) Anson County; Hoke County (Part); Montgomery County; Richmond County; Scotland County; Stanly County (Part); Union County.
- District 18 (1) Bladen County (Part); Brunswick County; Columbus County; New Hanover County (Part).
- District 19 (1) Davidson County (Part); Guilford County (Part); Randolph County (Part).
- District 20 (2) Forsyth County (Part).
- District 21 (1) Alamance County; Caswell County; Person County (Part).
- District 22 (1) Cabarrus County; Rowan County (Part); Stanly County (Part).
- District 23 (1) Davidson County (Part); Iredell County (Part); Rowan County (Part).
- District 24 (1) Cumberland County (Part).
- District 25 (1) Cleveland County (Part); Gaston County (Part); Lincoln County (Part).
- District 26 (1) Catawba County; Lincoln County (Part).
- District 27 (2) Alexander County; Avery County; Burke County (Part); Caldwell County; Mitchell County; Wilkes County; Yadkin County.
- District 28 (2) Buncombe County (Part); Burke County (Part); McDowell County; Madison County; Yancey County.
- District 29 (1) Haywood County (Part); Henderson County (Part); Jackson County (Part); Macon County (Part); Swain County; Transylvania County (Part).
- District 30 (1) Bladen County (Part); Cumberland County (Part); Hoke County (Part); Robeson County; Sampson County (Part).
- District 31 (1) Guilford County (Part).
- District 32 (1) Guilford County (Part).
- District 33 (1) Mecklenburg County (Part).
- District 34 (1) Lincoln County (Part); Mecklenburg County (Part).
- District 35 (1) Mecklenburg County (Part).

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 (1)
- District 37 Cleveland County (Part); Rutherford County.
 (1)
- District 38 Davidson County (Part); Davie County; Forsyth
 (1) County (Part); Rowan County (Part).
- District 39 Gaston County (Part); Iredell County (Part); Lincoln
 (1) County (Part).
- District 40 Mecklenburg County (Part).
 (1)
- District 41 Cumberland County (Part).
 (1)
- District 42 Buncombe County (Part); Cherokee County; Clay
 (1) County; Graham County; Haywood County (Part);
 Henderson County (Part); Jackson County (Part);
 Macon County (Part); Polk County; Transylvania
 County (Part).

NORTH CAROLINA STATE HOUSE OF REPRESENTATIVES

- District 1 Camden County; Currituck County; Pasquotank
 (1) County; Perquimans County (Part).
- District 2 Beaufort County; Craven County (Part); Hyde
 (1) County; Pitt County (Part).
- District 3 Craven County (Part); Pamlico County (Part).
 (1)
- District 4 Carteret County; Onslow County (Part).
 (2)
- District 5 Bertie County (Part); Gates County; Hertford County
 (1) (Part); Northampton County.
- District 6 Bertie County (Part); Hertford County (Part); Martin
 (1) County (Part); Pitt County (Part); Washington
 County (Part).
- District 7 Edgecombe County (Part); Halifax County (Part);
 (1) Martin County (Part); Nash County (Part).
- District 8 Edgecombe County (Part); Greene County (Part);
 (1) Martin County (Part); Pitt County (Part).
- District 9 Greene County (Part); Pitt County (Part).
 (1)
- District 10 Duplin County (Part); Jones County (Part); Onslow
 (1) County (Part).
- District 11 Lenoir County (Part); Wayne County (Part).
 (1)
- District 12 Onslow County (Part); Pender County (Part);
 (1) Sampson County (Part).
- District 13 New Hanover County (Part).
 (1)
- District 14 Brunswick County (Part); Columbus County (Part);
 (2) New Hanover County (Part); Robeson County (Part).
- District 15 Wake County (Part).
 (1)

DISTRICTS OF NORTH CAROLINA

- District 16 Cumberland County (Part); Hoke County (Part);
 (1) Moore County (Part); Robeson County (Part);
 Scotland County (Part).
- District 17 Cumberland County (Part).
 (2)
- District 18 Cumberland County (Part).
 (2)
- District 19 Harnett County; Lee County; Sampson County
 (2) (Part).
- District 20 Franklin County (Part); Johnston County (Part);
 (1) Nash County (Part).
- District 21 Wake County (Part).
 (1)
- District 22 Franklin County (Part); Granville County (Part);
 (2) Halifax County (Part); Person County; Vance County
 (Part); Warren County (Part).
- District 23 Durham County (Part).
 (3)
- District 24 Chatham County (Part); Orange County (Part).
 (2)
- District 25 Alamance County; Caswell County; Orange (Part);
 (3) Rockingham County (Part).
- District 26 Guilford County (Part).
 (1)
- District 27 Davidson County (Part); Guilford County (Part).
 (1)
- District 28 Guilford County (Part).
 (1)
- District 29 Guilford County (Part).
 (1)
- District 30 Chatham County (Part); Guilford County (Part);
 (1) Randolph County (Part).
- District 31 Moore County (Part).
 (1)
- District 32 Montgomery County (Part); Richmond County;
 (1) Scotland County (Part).
- District 33 Anson County; Montgomery County (Part); Stanly
 (1) County (Part).
- District 34 Union County (Part).
 (1)
- District 35 Rowan County (Part).
 (1)
- District 36 Mecklenburg County (Part).
 (1)
- District 37 Davidson County (Part).
 (1)
- District 38 Guilford County (Part); Randolph County (Part).
 (1)
- District 39 Forsyth County (Part).
 (1)
- District 40 Alleghany County; Ashe County; Stokes County;
 (3) Surry County; Watauga County.

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- District 41 Alexander County (Part); Wilkes County; Yadkin County.
(2)
- District 42 Iredell County (Part).
(1)
- District 43 Catawba County (Part); Iredell County (Part).
(1)
- District 44 Gaston County (Part); Lincoln County (Part).
(1)
- District 45 Catawba County (Part); Gaston County (Part); Lincoln County (Part).
(2)
- District 46 Avery County; Burke County (Part); Caldwell County (Part); Catawba County (Part); Mitchell County.
(2)
- District 47 Burke County (Part).
(1)
- District 48 Cleveland County; Gaston County (Part); Polk County (Part); Rutherford County.
(3)
- District 49 Burke County (Part); McDowell County; Yancey County.
(1)
- District 50 Henderson County (Part); Polk County (Part).
(1)
- District 51 Buncombe County (Part).
(3)
- District 52 Graham County; Haywood County; Jackson County (Part); Madison County; Swain County.
(2)
- District 53 Cherokee County; Clay County; Jackson County (Part); Macon County.
(1)
- District 54 Mecklenburg County (Part).
(1)
- District 55 Mecklenburg County (Part).
(1)
- District 56 Mecklenburg County (Part).
(1)
- District 57 Mecklenburg County (Part).
(1)
- District 58 Mecklenburg County (Part).
(1)
- District 59 Mecklenburg County (Part).
(1)
- District 60 Mecklenburg County (Part).
(1)
- District 61 Wake County (Part).
(1)
- District 62 Wake County (Part).
(1)
- District 63 Durham County (Part); Wake County (Part).
(1)
- District 64 Wake County (Part).
(1)
- District 65 Wake County (Part).
(1)
- District 66 Forsyth County (Part).
(1)

DISTRICTS OF NORTH CAROLINA

- District 67 Forsyth County (Part).
(1)
- District 68 Buncombe County (Part); Henderson County (Part);
(1) Transylvania County.
- District 69 Mecklenburg County (Part).
(1)
- District 70 Edgecombe County (Part); Nash County (Part);
(1) Wilson County (Part).
- District 71 Edgecombe County (Part); Nash County (Part); Pitt
(1) County (Part); Wilson County (Part).
- District 72 Nash County (Part); Wilson County (Part).
(1)
- District 73 Forsyth County (Part); Rockingham County (Part).
(1)
- District 74 Davidson County (Part); Davie County.
(1)
- District 75 Cumberland County (Part).
(1)
- District 76 Gaston County (Part); Mecklenburg County (Part).
(1)
- District 77 Greene County (Part); Lenoir County (Part); Wayne
(1) County (Part).
- District 78 Granville County (Part); Vance County (Part);
(1) Warren County (Part).
- District 79 Craven County (Part); Jones County (Part); Lenoir
(1) County (Part); Pamlico County (Part).
- District 80 Onslow County (Part).
(1)
- District 81 Cabarrus County (Part); Union County (Part).
(1)
- District 82 Cabarrus County (Part); Stanly County (Part); Union
(1) County (Part).
- District 83 Rowan County (Part).
(1)
- District 84 Forsyth County (Part); Guilford County (Part).
(1)
- District 85 Hoke County (Part); Robeson County (Part).
(1)
- District 86 Chowan County; Dare County; Perquimans County
(1) (Part); Tyrrell County; Washington County (Part).
- District 87 Hoke County (Part); Robeson County (Part); Scotland
(1) County (Part).
- District 88 Forsyth County (Part).
(1)
- District 89 Guilford County (Part).
(2)
- District 90 Cabarrus County (Part).
(1)
- District 91 Alexander County (Part); Caldwell County (Part);
(1) Catawba County (Part).
- District 92 Durham County (Part); Wake County (Part).
(1)

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 (1)
- District 94 Davidson County (Part); Randolph County (Part).
 (1)
- District 95 Johnston County (Part).
 (1)
- District 96 Bladen County; Cumberland County (Part); New
 (1) Hanover County (Part); Pender County (Part);
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