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# THE NORTH CAROLINA GENERAL STATUTES COMMISSION

FRANK W. HANFT*

## *I. Origin, Powers, and Duties*

To aid in the continuing task of improving and modernizing its law North Carolina has developed an agency which is in some respects unique. In 1945 Dr. Robert F. Moseley, an educator[1] turned lawyer and legislator, introduced in the General Assembly legislation creating the General Statutes Commission. Upon its enactment[2] he was appointed to the Commission, which elected him as its first Chairman.[3]

By far the most important duty of the Commission is to improve the law of the state by submitting to the legislature bills embodying

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[1] Dr. Moseley was Principal of the Rocky Mount, North Carolina, High School 1919-20, and Superintendent of the Tarboro Public Schools 1920-22.

[2] N.C. GEN. STAT. §§ 164-12 to -19 (1964).

The statute creating the Commission was commented upon in *A Survey of Statutory Changes in North Carolina in 1947,* 25 N.C.L. REV. 376, 459 (1947).

Articles discussing law revision commissions in other jurisdictions are Stone and Pettee, *Revision of Private Law,* 54 HARV. L. REV. 221 (1940), in which the authors discuss law revision bodies, especially the New York Law Revision Commission, and make recommendations for future development of such agencies. Heineman, *A Law Revision Commission for Illinois,* 42 ILL. L. REV. 697 (1948) discusses law revision bodies and makes detailed recommendations for a law revision commission for Illinois. MacDonald, *Legal Research Translated Into Legislative Action,* 48 CORNELL L.Q. 401 (1963) is a detailed study of the New York Law Revision Commission by its chairman. The study includes the history of the commission and its organization, functions, methods and policies. Also included is material on such bodies in other states.

Ch. 98 [1931] N.C. Pub. L. 127 established the Commission for the Improvement of the Laws. The act is discussed in *A Survey of Statutory Changes in North Carolina in 1931,* 9 N.C.L. REV. 347, 380 (1931). However, a record in the office of the Attorney General indicates that the commission was not actually formed, and in 1943 the act establishing it was repealed. Ch. 746 [1943] N.C. Sess. L. 883.

[3] See A Joint Resolution Honoring Robert F. Moseley for His Services to the State of North Carolina as Chairman of the General Statutes Commission, Res. 15 [1961] N.C. Sess. L. 1652.

proposed statutes.[4] This involves introducing greater clarity, simplicity and consistency into the law, improving its organization and content, and keeping it abreast of the times. Bills prepared by the Commission range from the simple to the highly complex. Some merely correct small, inadvertent mistakes in the wording of statutes.[5] Others deal with some relatively narrow subject, such as Cy Pres.[6] Still others make revisions in large areas of the law, as did the Business Corporation Act and the Non-Profit Corporation Act.[7] Commonly, when the Commission undertakes an ex-

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[4] The statute creating the Commission makes it the duty of the Commission to "advise and co-operate with the Division of Legislative Drafting and Codification of Statutes of the Department of Justice in the work of continuous statute research and correction. . . ." N.C. GEN. STAT. § 164-13(a)(1) (1964); also to "make a continuing study of all matters involved in the preparation and publication of modern codes of law." N.C. GEN. STAT. § 164-13(a)(3) (1964). The Division of Legislative Drafting and Codification of Statutes in turn is required by statute to "Make a systematic study of the general statutes of the State . . . for the purpose of ascertaining what ambiguities, conflicts, duplications and other imperfections of form and expression exist therein and how these defects may be corrected," N.C. GEN. STAT. § 114-9(3)a. (1966), and to "[p]repare for submission to the General Assembly from time to time bills to correct such defects in the statutes as its research discloses." N.C. GEN. STAT. § 114-9(3)c. (1966).

As the Commission launched upon its work it soon became apparent that if revisions of the statutes were to be made in order to perfect their form, defects in their substance should not be retained. Accordingly in 1951 the Commission submitted, and the legislature passed, a bill giving the Commission the additional duty of recommending substantive changes in the law "as the Commission may deem advisable." N.C. GEN. STAT. § 164-13 (a)(4) (1964).

[5] An omnibus bill may be introduced to correct such mistakes which have come to the attention of the Commission during a biennium. N.C. GEN. STAT. COMM'N REP. 7 (1967). The report stated:

> This Bill corrects a number of errors in wording which have occurred in the General Statutes. There are numerous instances of the use of the word "by" for "be," "of" for "or" and similar mistakes. Occasionally a word or phrase obviously is omitted completely through inadvertance [sic], or an amendment will be made which would render some further rewording appropriate. . . . In this Bill the Commission proposes corrective legislation in many such instances.

The bill was enacted. Ch. 24 [1967] N.C. Sess. L. 61.

[6] This bill broadening the power of the courts in the administration of trusts or gifts by will for charitable purposes when the specific purpose of the donor becomes illegal, impossible or impracticable of fulfillment is summarized in N.C. GEN. STAT. COMM'N. REP. 5 (1967). It was enacted without change and is N.C. GEN. STAT. § 36-23.2 (Supp. 1967). The annotation to N.C. GEN. STAT. § 36-23.2 (Supp. 1967), makes liberal use of a special report of the Commission on this legislation.

[7] These acts are commented on in N.C. GEN. STAT. COMM'N REP. 5, 24 (1955). The Business Corporation act as later amended is N.C. GEN. STAT. §§ 55-1 to -175 (1965). The Non-Profit Corporation Act as later amended is N.C. GEN. STAT. §§ 55A-1 to -89 (1965).

tensive revision, it begins with a situation in which the existing law on the subject is fragmentary and scattered in various piecemeal statutes and judicial decisions, with diverse provisions on the same matters, often overlapping and sometimes inconsistent. The commission organizes the law, modernizes it to conform to current views and economic and social conditions, often states it with greater lucidity and accuracy, and where possible simplifies it.

Another important duty of the Commission is to aid in the compilation and publication of the statutes.[8] Pursuant to this assignment the Commission studied plans for republication of the General Statutes of the state, and in 1950 recommended to the legislature a permanent and continuous volume-by-volume replacement plan.[9] The plan was adopted, and since then the Commission has cooperated with the publishers and the Attorney General in bringing about the republication of volumes of the statutes.[10] From time to time the Commission has reported to the legislature on volumes of the statutes replaced by other volumes.[11] The Commission has participated in such matters as selection of a publisher,[12] pricing,[13] cover format,[14] annotations,[15] and indexing.[16] In 1950 the Commission

[8] The Division of Legislative Drafting and Codification of Statutes of the Department of Justice has the duty "To supervise the recodification of all the statute law of North Carolina and supervise the keeping of such recodifications current by including therein all laws hereafter enacted by supplements thereto issued periodically, all of which recodifications and supplements shall be appropriately annotated." N.C. GEN. STAT. § 114-9(2) (1966). It is the duty of the General Statutes Commission "To advise and co-operate with the Division of Legislative Drafting and Codification of Statutes in the preparation and issuance by the Division of supplements to the General Statutes pursuant to § 114-9(b)." ("b" should read "2.") N.C. GEN. STAT. § 164-13(2) (1964). Also "To make a continuing study of all matters involved in the preparation and publication of modern codes of law." N.C. GEN. STAT. § 164-13(3) (1964).

[9] N.C. GEN. STAT. COMM'N REP. 1-3 (1950).

[10] N.C. GEN. STAT. COMM'N REP. 1 (1961); 1 (1963); 1 (1965).

[11] N.C. GEN. STAT. COMM'N REP. 1 (1952); 7 (1955); 2 (1957); 1 (1959); 1 (1961); 1 (1963); 1 (1965); 2 (1967).

[12] N.C. GEN. STAT. COMM'N REP. 2 (1950).

[13] N.C. GEN. STAT. COMM'N REP. 2 (1950); 1 (1952); 7 (1955).

[14] N.C. GEN. STAT. COMM'N REP. 2 (1967).

[15] N.C. GEN. STAT. COMM'N REP. 3 (1950). "Pursuant to the suggestion of the Commission, the North Carolina comments on the Uniform Commercial Code were carried in the General Statutes." N.C. GEN. STAT. COMM'N REP. 2 (1967).

[16] N.C. GEN. STAT. COMM'N REP. 7 (1955); 2 (1961). In 1967, as reported in its minutes for Aug. 4-5, the Commission conferred with representatives of the publisher, the Reporter to the Supreme Court of North Carolina, and the Marshall-Librarian of that court, concerning the index to the Gen-

submitted a bill, recommended also by the Secretary of State,[17] and enacted by the legislature,[18] to expedite publication of the Session Laws.[19]

*II. Membership and Organization*

One of the most important and well conceived features of the statute providing for the Commission was the fashion in which its nine members were to be selected.

Under the terms of the statute[20] one member of the Commission is appointed by the Speaker of the House of Representatives of each General Assembly of North Carolina from the membership of the House, and one is appointed by the President of the Senate from the membership of the Senate. By this means the people are represented on the Commission by having on that body members named from the legislature which is elected by popular vote. Further, since the Commission is an arm of the legislature in the framing of laws, it is advantageous for the legislature to know that members of that body have participated in the framing of the bills submitted to it by the Commission. Besides that, when Commission bills are introduced, the services of these legislator members in piloting the bills through the legislature are invaluable.

Two members of the Commission are appointed by the Governor, thereby affording the Commission a direct link with the chief executive.

One member of the Commission is appointed by the dean of the school of law of the University of North Carolina, one by the dean of the School of law of Duke University, and one by the dean of the school of law of Wake Forest College (now Wake Forest University). Such representation enables the Commission to tap directly the legal scholarship of the three principal law schools of the state. Here was one of the beginnings on the state level of the rapid growth in the utilization by government of the personnel and resources of institutions of higher learning. This movement has

eral Statutes and its republication. A number of suggestions were made to the publishers.

[17] N.C. GEN. STAT. COMM'N REP. 4, 6 (1950).

[18] N.C. GEN. STAT. §§ 143-49(2), 147-43.1 (1964).

[19] The commission at its August 4-5, 1967 meeting, as shown in its minutes, further discussed with the publisher publication of the statutes as rapidly as possible after they are passed.

[20] The provisions for appointment of members of the Commission are in N.C. GEN. STAT. § 164-14 (1964).

played an important part in the current revolution which has transformed American government along with the economic and social life of the country.[21]

Under the statute setting up the Commission one member was to be appointed by the President of the North Carolina State Bar and one by the President of the North Carolina Bar Association. The North Carolina State Bar is an agency of the state consisting of all the lawyers licensed to practice law in North Carolina.[22] The Bar Association is a voluntary organization to which members of the bar may be admitted. Its alert and energetic interest in the improvement of the bar and the law of the state has been widely recognized.[23] Since the work of the Commission is largely in the field of what is sometimes called "lawyers' law," that is, law more concerned with technical legal rules and principles than with broad social and political policy, the presence on the Commission of a representative of each of these organizations of lawyers was especially appropriate. It brought to the Commission the skills and knowledge of two practitioners serving as representatives of practitioners, and also provided a liaison between the Commission and these lawyer groups.

However, on July 6, 1965, the President of the North Carolina Bar Association by letter to the Governor with a copy to the Chairman of the Commission gave notice that he, the President of the Association, and its Board of Governors felt that the organization "should assume no functions of government, but that it should remain a purely private, membership organization," and that he would therefore not appoint any person to the General Statutes Commission.

This position was mystifying in view of the fact that the presidents of the association had been making such appointments from the beginning of the Commission. An apparent explanation of this shift of policy lay in the fact that at that time the Bar Association admitted no Negroes, but the civil rights movement was under way, and segregation in governmental facilities and organizations was under legal attack. It may have been thought that compulsory desegre-

[21] An account of the expanding use of scholars in government is given by White, *The Action Intellectuals*, LIFE, June 9, 1967, at 43; June 16, 1967, at 44; June 23, 1967, at 76.

[22] N.C. GEN. STAT. §§ 84-15 to -38 (1965).

[23] An Award of Merit for outstanding achievement was presented to the North Carolina Bar Association by the American Bar Association in 1966 for the seventh time since 1956. The 1966 award was given for an outstanding Continuing Legal Education program. 18 BAR NOTES 11 (1966).

gation of the association by federal court decision could be escaped if the association were a purely private body. Now that the association has voluntarily admitted Negroes to membership, it is to be hoped that this highly effective and public spirited organization will at some future time be willing to contribute again to progress in the law of the state by naming a representative to the Commission. Meanwhile the appointment formerly made by the President of the Bar Association was made by the Governor,[24] and in 1967 the appointment was vested in the Commission itself.[25]

The varying sources from which appointments to the Commission come give the Commission a base of representation vastly superior, in an agency of this kind, to the representation where appointments are made by some single officer or body. In the establishment of governmental agencies more attention should be given to broadening the base of representation in a manner comparable to that employed in selecting members of this Commission.[26]

Members of the Commission are appointed for two years.[27] From time to time this created a difficulty with regard to the appointees of the Governor. Successive governors withheld numbers of appointments, including appointments to the Commission, until after the adjournment of the legislature. This resulted in intervals in which the terms of the old appointees expired before new appointments were made. In 1967 this defect was remedied by providing that a member's term continues until appointment of a successor has been made and reported to the secretary of the Commission.[28]

Five members of the Commission are appointed in even numbered years, four in odd numbered years.[29] This device of staggered terms

[24] N.C. GEN. STAT. § 164-14(d) (1964) authorizes the Governor to fill vacancies caused by failure to make appointments.

[25] N.C. GEN. STAT. § 164-14(2) (Supp. 1967).

[26] The selection of judges could be improved by setting up a nominating agency with a broad base of representation. Hemker, *Experience Under the Missouri Non-Partisan Court Plan,* 43 J. AM. JUD. SOC'Y 159 (1960) summarizes the Missouri plan for selecting judges from persons nominated by competent nominating commissions. He concludes that it has done more to improve the administration of justice in Missouri than anything else which has occurred in more than thirty years. The similar plan of the American Bar Association is briefly summarized in *The National Conference on Judicial Selection and Court Administration, Text of Conference Concensus,* 43 J. AM. JUD. SOC'Y 114, 119 (1959). See also Hanft, *The Prayer Decisions,* 42 N.C.L. REV. 567, 598 (1964).

[27] N.C. GEN. STAT. § 164-14(c) (1964).

[28] N.C. GEN. STAT. § 164-14(f) (Supp. 1967).

[29] N.C. GEN. STAT. § 164-14(c) (Supp. 1967).

of office is the standard one for insuring that on plural bodies there will at all times be experienced members. On this Commission it is further desirable that a substantial number of the members remain for more than two years, first because experience in the Commission's work is highly valuable, and second because some of its major revisions of the law are many years in preparation.[30] It is imperative that there be on the commission members who know the discussion and reasons behind the portions of a revision which are complete when new members take office, so that the work can go forward consistently with principles and policies already adopted. Sometimes the Commission, in letters to the appointing authorities, reminding them of appointments to be made, has called their attention to the value of retaining on the Commission experienced and able incumbents. The deans of the law schools of the University of North Carolina and Duke University have apparently been sensitive to this principle since they have kept the same representative on the Commission for many terms.[31] Some of the practitioner members have also served for a number of terms.[32]

Members of the Commission are paid seven dollars a day for attending meetings plus expenses.[33] Many of them from time to time, by reason of being especially interested in the subject, do research and drafting in connection with proposed legislation being worked on by the Commission. For this "home work" there is no pay. For lawyers of the caliber of those who serve on the Commission the seven dollars per diem for attending meetings is merely nominal compensation. The question why these men are willing to do the difficult and ex-

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[30] The Commission worked on the Business Corporation Act and the Non-Profit Corporation Act for about eight years, N.C. GEN. STAT. COMM'N REP. 2 (1948); 5 (1955), and on the Rules of Civil Procedure for about nine years. GEN. STAT. COMM'N, PROPOSED NORTH CAROLINA RULES OF CIVIL PROCEDURE 1 shows that the Commission undertook the work in 1958. The rules were introduced in the legislature in 1967.

[31] During the 22 years of the Commission's existence up to June of 1967 the terms of two appointees of the Dean of the Law School of the University of North Carolina spanned the entire period. Duke University had three appointees.

[32] For example the first chairman was a member of the Commission from June, 1945 until July, 1961. The present chairman, elected by the Commission in 1967, has been a member since 1960. Both are practicing attorneys.

The reports of the Commission from 1957 through 1967 show that in the successive bienniums 24 members were new appointees and 30 had continued to serve since the previous biennium.

[33] N.C. GEN. STAT. § 138-5 (1964), superseding N.C. GEN. STAT. § 164-19 (1964).

acting work of the Commission for nominal pay is an interesting one, and has a relation to the social and economic question whether and when superior work can be expected apart from the profit motive. I once discussed with the then chairman of the Commission the reason why he carried the work and responsibility of that position without any substantial pay for it. He modestly disclaimed any desire to serve his fellow men, and as I remember the conversation, said that his motive was something like that of men who climb mountains. They do it because a mountain is there to be climbed. Doubtless the challenge of the job is one of the reasons why men do work of this kind without pay. To invoke such a motive the job must be challenging, as is the work of the Commission. Notwithstanding the chairman's modest disclaimer, another reason people accept tasks of this sort is the deep seated desire in human beings to do something of value for others, to make a contribution, to make their lives count, to make them not necessarily important but worth-while. Neither modesty nor modern cynicism can erase this common human motive.

A reason why law professors have been willing to serve on the Commission is more obvious. Research and writing looking toward improvement in the law is a standard part of the work of legal scholars. Such activity conducted through the Commission is likely to bear fruit in actual advance of the law through the enactment of proposed legislation; whereas writing scholarly articles in learned legal publications advocating improvements in the law may not have such an immediate effect. Service as a member of the Commission is closely related to the normal scholarly activity of law professors; moreover it probably has a bearing on the professor's academic status.

The Commission has discussed the question of recommending an increase in the pay of its members to make the compensation more nearly commensurate with the work, but has not taken such a step. If the pay were made substantial, membership on the Commission could become a political plum sought by men of mediocre capacity. Without substantial pay the office has attracted many men of high ability. A partial list of distinguished men who have served on the Commission includes[34] a Justice of the Supreme Court of North Carolina, a Judge of the United States Court of Appeals, judges of

[34] The positions referred to in many instances were not held while on the Commission but were attained before or after such service.

the superior court of North Carolina, the first President of the North Carolina State Bar, Presidents of the North Carolina Bar Association, a president and a vice president and general counsel of one of the state's largest electric power and light companies, as well as some of the state's ablest practicing lawyers. The members from the law schools have commonly been full professors and senior members of the faculties. Of course the membership has included state senators and representatives because appointees from the Senate and House are on the Commission.

The question has been raised whether the General Statutes Commission would be improved by making its members full time and well paid employees of the state. Probably it would not, for two reasons. First, full time employment as members of such a body would not be attractive to the caliber of men many of whom have served on the existing General Statutes Commission. Second, the members of such a proposed commission would be separate and apart from the scenes out of which need for legal change arises. The practitioner members of the present Commission are in daily contact with the law at work in society. The members from the legislature are participants in the legislative process by which law is made and changed. The members who are law professors constantly participate in the process of examining and expounding the law, a process well adapted to bringing to light the law's strengths and weaknesses. In brief, the members of the Commission as it exists are immersed in the phases of the legal order which give rise to, or bring to light, the problems with which the Commission deals.

The officers of the Commission are a chairman and vice chairman elected in odd numbered years by the members of the Commission for two year terms.[35] As previously stated it is desirable that the Commission include at all times members who have served for more than single two-year terms, and it is especially desirable that this be true of the officers. The Commision has in fact reelected its chairmen until they have voluntarily stepped down. The result is that in the first twenty-two years of its existence the Commission had only two chairmen; the third was elected in 1967. In each case when a new chairman was named to succeed the one stepping down, the Commission elected the vice chairman as the successor. Thus the Commission has had chairmen thoroughly familiar with the work and pro-

[35] N.C. GEN. STAT. § 164-16 (1964).

cedures of the body and with the projects on which it was working at the time the chairmen took office.

The Revisor of Statutes is a key man in the Commission's organization. Among the bills submitted to the legislature in the Commission's first biennial report was one providing that the member of the staff of the Attorney General assigned to perform the duties of statute research and correction shall be known as the Revisor of Statutes.[36] The bill was enacted,[37] and the service of this member of the Attorney General's staff is primarily with the Commission. He is an *ex officio* secretary,[38] and organizes and keeps its files and minutes. He prepares the agenda for its meetings, although the Commission determines what subjects for legislation it will list for future consideration, and sometimes what it will take up at a particular meeting. The first Revisor, under the supervision of the Commission, prepared a handbook on drafting statutes for distribution to legislators, state officials, city and county attorneys, and others interested in drafting bills.[39]

The Revisor's most important duties are to do research and drafting for bills to be submitted by the Commission to the legislature. Sometimes a Commission member will do the studying and drafting on a particular bill, and in the case of major revisions the Commission frequently employs drafting committees, but in most instances the Revisor does the necessary research, submits the results to the Commission and prepares drafts of the proposed bills. He is frequently called on to participate in the Commission's discussions. When drafting committees are employed by the Commission the Revisor assists them with their work.

When bills are submitted to the legislature by the Commission the Revisor frequently meets with legislators and legislative committees to explain and discuss them, and submits briefs concerning the bills.[40]

His combination of functions requires of the Revisor skill in research and drafting, in discussion and presentation, and in dealing with people. For the salary paid, never as much as 10,000 dollars, no

[36] N.C. GEN. STAT. COMM'N REP. 2 (1947).
[37] N.C. GEN. STAT. § 114-9.1 (1966).
[38] N.C. GEN. STAT. § 164-16 (1964).
[39] N.C. GEN. STAT. COMM'N REP. 2 (1948).
[40] In 1955 the Commission adopted a Standard Order of Procedure including some of the functions of the Revisor.

older lawyer of outstanding ability of the kind required could be obtained. Accordingly the Commission has sought young law graduates, with some experience in practice, and a high order of ability demonstrated as law students and in their professional work. When a Revisor is to be selected the law schools are consulted to see if a recent graduate of the required capacity is available. The presence on the Commission of a faculty member from each of three law schools of the state has been an advantage in locating and appraising prospects for the position. Since the Revisor is a member of the staff of the Attorney General, his concurrence in the Commission's choice is necessary, and is customarily given. On some occasions the Attorney General has had on his staff a young lawyer suitable for the Commission's work, who with the concurrence of the Commission has been moved into the position of Revisor.

The Commission has been so successful in finding capable Revisors that the success has created a problem. These young lawyers have been of such a high order of ability that other opportunities have soon opened for them, and the office has been a stepping stone to advancement. The result has been that the successive Revisors have served an average of less than two years. In selecting a Revisor the Commission has in recent years had an informal understanding with him that his then present intent was to remain through the next session of the legislature, so that he could aid the legislature in its consideration of bills with which his work had made him familiar. The Revisor has abided by the informal understanding. Even so Revisors have come and gone more rapidly than is consistent with the needs of the Commission, and on occasions the Commission's work has suffered by reason of being without a Revisor due to inability for a time to find a replacement. Doubtless a succession of young men of skill, imagination and initiative is more to be desired than more permanent Revisors of lesser capacity. Nevertheless consideration needs to be given to the matter of the Revisor's salary and merit increases so that the position may become reasonably competitive with other opportunities, and incumbents of exceptional ability may be kept longer than they have in the past.

By statute the Commission is required to hold not less than two meetings each year, but may hold such other regular meetings as it may provide for by its rules, and special meetings may be called.[41]

[41] N.C. GEN. STAT. § 164-15 (1964).

In practice the Commission holds regular meetings on the first Friday and Saturday of each month, with variations for holidays or conflicts involving a number of members. Special meetings are held when the Commission wants to complete some major bill for submission to the next legislature, or when a meeting with some other group concerned with proposed legislation is advisable.

*III. Relations with Other State Agencies*

There is a close relationship between the Commission and the Department of Justice which is under the supervision of the Attorney General.[42] The Commission by statute advises and cooperates with the Division of Legislative Drafting and Codification of Statutes of the Department of Justice.[43] The Revisor is a member of the Attorney General's staff.[44] The room in which the Commission meets, and the office and working facilities of the Revisor and his secretary are included in the office space of the Department of Justice. The cordial and helpful attitude of the Attorneys General toward the Commission has greatly aided in its work.

A Judicial Council was created in 1949 by statute in North Carolina.[45] It is composed of a Justice of the Supreme Court of North Carolina, two judges of the superior court, the Attorney General or a member of his staff designated by him, two solicitors of the superior court, and eight additional members. Its duties include recommending to the legislature or the courts "such changes in the law or in the organization, operation or methods of conducting the business of the courts, or with respect to any other matter pertaining to the administration of justice, as it may deem desirable."[46] In order to avoid duplication of projects undertaken by the General Statutes Commission and the Judicial Council, a joint committee of the two bodies met in 1954 and arrived at an understanding as to the chapters of the General Statutes of primary interest to the one body or the other, and the chapters wherein they had a joint interest.[47] In general the Judicial Council was to concern

[42] N.C. GEN. STAT. § 114-1 (1966).
[43] *See* notes 4, 8 *supra*.
[44] N.C. GEN. STAT. § 114-9.1 (Supp. 1967).
[45] N.C. GEN. STAT. §§ 7-448 to -456 (1953).
[46] N.C. GEN. STAT. § 7-453 3. (1953).
[47] The agreed interests were: Chapters 1, Civil Procedure, joint interest; 2, Clerk of Superior Court, Council; 5, Contempt, Council; 6, Costs, Council; 7, Courts, Council; 8, Evidence, joint; 9, Jurors, Council; 13, Citizenship Restored, Council; 14, Criminal Law, Council; 15, Criminal Procedure,

itself primarily with the organization, administration and operation of the judicial system, leaving other statute law largely to the General Statutes Commission. It was also agreed that any suggestion for statutory change received by one agency falling into the field of the other was to be referred to the other.[48]

Cooperation between the two agencies is illustrated by the fact that when the Commission agreed to the request of the North Carolina Bar Association that the Commission draft new rules of civil procedure it consented on condition that the Council did not desire to undertake the project.[49]

In 1963 the General Assembly created a Legislative Council,[50] and in 1965 replaced it with a Legislative Research Commission[51] consisting of five senators, five representatives, and the President or President pro tempore of the Senate and the Speaker of the House. Included in its powers and duties is "to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner."[52] Its reports to the General Assembly may be accompanied by recommendations and bills to effectuate them.[53]

The Legislative Research Commission, under the above quoted statutory provision, is concerned with "matters of public policy." The General Statutes Commission has concerned itself largely with more technical legal matters not involving primarily choice of public policy. The nature of the two agencies supports such a division of function between them. Since the Legislative Research Commission is composed entirely of legislators, it would seem to be adapted to making investigations and studies, and formulating proposed legislation, in matters concerning broad political, social, and economic policy. In such matters political considerations may be important. On the other hand, by reason of representation on the General

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Council; 17, Habeas Corpus, Council; 28, Administration of Estates, joint; 110, Art. 2, Juvenile Courts, Council; 123, Impeachment, Council; Appendix I, Rules of Practice, Council. The primary interest in all other chapters was recognized to be in the General Statutes Commission.

[48] N.C. Gen. Stat. Comm'n Rep. 9 (1955); 2 (1957).

[49] This appears in the Commission's minutes for the meeting of April 5 and 6, 1957.

[50] N.C. Gen. Stat. 120-30.1 to -30.9 (1964).

[51] N.C. Gen. Stat. §§ 120-30.10 to -30.18 (Supp. 1967).

[52] N.C. Gen. Stat. § 120-30.17(1) (Supp. 1967).

[53] N.C. Gen. Stat. § 120-30.17(2) (Supp. 1967).

Statutes Commission of the state bar and three law schools, as well as the houses of the legislature and the Governor, that body is adapted to work in the more technical fields of the law.[54]

In 1963 by joint resolution[55] the General Assembly created the Courts Commission to draft legislation necessary to implement Article IV of the Constitution of North Carolina relating to the Judicial Department. Article IV had been amended in 1962 and the new article required extensive changes in the court system of the state.

The drafting of the new rules of civil procedure by the General Statutes Commission required coordination with the new court system formulated by the Courts Commission. Accordingly a tentative draft of the new rules was submitted by the General Statutes Commission to the Courts Commission for suggestions to make them fit the provisions relating to the courts. A considerable number of comments were received from the Courts Commission and acted upon by the General Statutes Commission.[56] Later a joint meeting of the two commissions was held concerning presentation to the legislature of the new rules.[57]

The possibly overlapping powers of these state agencies all engaged in preparing and submitting legislation for the improvement of the law of the state have created no problems beyond solution by cooperation of the kind above briefly sketched.

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[54] The General Assembly in 1967 made ten assignments to the Legislative Research Commission for study and report. Besides matters concerning various state agencies these included consumer credit and lending practices, revision of the liquor laws, etc. Sanders & Gergen, *State Government,* 34 POPULAR GOV'T 6, 12 (Sept. 1967). The minutes of the General Statutes Commission for June 3 and 4, 1966, show that the Legislative Research Commission referred to the General Statutes Commission a request from the authors of a recent article on joint ownership of corporate stock that their proposed statute be considered for submission to the next legislature. The Revisor advised the Legislative Research Commission that the General Statutes Commission had the subject under consideration, and the Revisor corresponded with the authors of the article. The minutes also noted that a discussion was had with the Secretary of the Legislative Research Commission to determine whether a "jurisdictional agreement" between the commissions was necessary. It was concluded that no such agreement was necessary "at this time."

[55] Res. 73 [1963] N.C. Sess. L. 1815.

[56] The General Statutes Commission's minutes for the meeting of April 1 and 2, 1966, show the action taken on the Courts Commission's comments. The great majority were either approved or referred to the General Statutes Commission's drafting committee on the rules.

[57] Minutes of the special meeting of the General Statutes Commission Feb. 17, 1967.

*IV. Sources of Suggestions for Commission Projects*

Suggestions and requests to the Commission for improvements in the law come from many sources. The revision of the public utilities law of the state was done at the request of the Governor. The North Carolina Bar Association asked the Commission to formulate the new rules of civil procedure. Other suggestions or requests come from judges, clerks of court, legislators, other public officials, lawyers, law teachers, the Commission's members, and the public generally.

One of these sources from which suggestions most frequently come is the membership of the bar. Deficiencies in the law are turned up in their practice, and the Commission has expressed the hope that to an even greater extent members of the bar will communicate with the Commission concerning any suggestions for revision.[58] Probably the most common source of suggestions is the membership of the Commission itself. By reason of its broad base of representation the Commission membership has contact with a great variety of legal matters and out of these contacts come knowledge of situations where the law needs improving. Law faculties are another fertile source of suggestions for change. From time to time in their courses law professors turn up law that is unsound or inadequate. Criticizing such law is standard classroom procedure, as it should be, because, among other reasons, skill in detecting defective law and expounding the defects is part of the technique of the lawyer in which the student should be trained. But plainly defects in the law should not be preserved because they are useful for classroom purposes. Members of law faculties in North Carolina should not rest content with decrying bad North Carolina law, but should bring it to the attention of the Commission with proposals for change.

*V. Procedure. General.*[59]

Minor mistakes in existing statutes, as they come to the attention of the Commission, are commonly collected over the course of a biennium, and corrections are included in an omnibus bill drawn

[58] N.C. GEN. STAT. COMM'N REP. 8 (1955). Communications can be sent to the General Statutes Commission, Department of Justice, Raleigh, N. C. 27602.

[59] The Standard Order of Procedure adopted by the Commission in 1955 has been treated as a set of guidelines rather than rules, and much of the procedure of the Commission depends on the exigencies of particular projects.

by the Revisor of Statutes, approved by the Commission, and introduced in the legislature.[60]

Some specific addition, change or revision in a relatively narrow area of the law may be contemplated by the Commission. The matter may be sufficiently familiar to the Commission or some of its members so that the Commission, upon discussion, is able to agree on the substance of a proposed statute, in which case the Commission may simply instruct the Revisor to draw a bill embodying what the Commission has agreed upon. The draft comes before the Commission at a regular meeting, where it may be approved for introduction in the legislature; or the Commission may require a redraft by the Revisor along lines worked out in the Commission's discussion.

Sometimes the Commission feels that it needs to be enlightened by a study of the legal subject before it prior to taking any action on the matter. Save for the exceptional case where a member of the Commission is particularly interested in or specially acquainted with the subject and undertakes to make a memorandum for the Commission or to draft a bill or both, the study is made by the Revisor. The extent of the required research varies with the problem in hand, but it commonly includes an investigation of the existing relevant North Carolina law; the law of other jurisdictions, especially statutes covering the same matter in other states; the federal law, particularly where the state law will be interrelated with the federal; articles and treatises; and any sources shedding light on the law and principles involved. When particular public officials or agencies, or private enterprises or organizations, will be specially affected, these may be consulted. By reason of the broad base of representation on the Commission, usually one or more of its members have at least some experience in or knowledge of the area of the law involved. If not, views may be sought from lawyers known by the Commission to have practice in this field.

The Revisor prepares a report to the Commission on his study. The Commission decides on the substance of the law it wants embodied in a bill, and the Revisor makes and submits a draft. There follows a process of discussion of the draft, commonly paragraph by paragraph, and approval or redrafts of the whole or portions to be considered at subsequent meetings, until either a bill to be introduced in the legislature is agreed upon and approved, or the Com-

[60] *See* note 5 *supra*.

mission concludes that proposed legislation on the matter is not advisable. It is not uncommon that research and discussion persuades the Commission that notwithstanding suggestions for change the existing law should be retained as it is.

Where feasible, copies of studies and drafts are sent to the individual members of the Commission in advance of the meeting where they are to be discussed.

Variations in the above described procedure occur, but the general nature of the procedure is as described. Further, when the Commission undertakes a revision of the law in some large and important area, the usual process is for the Commission to appoint a drafting committee of experts in the field to make the study and draft the proposed legislation. This procedure was worked out by trial and error in connection with the formulation by the Commission of a new corporation code for the state. The Commission when it undertook this project[61] was a relatively new state agency, finding its way in devising methods of handling its work. It appointed a subcommittee to make a study and make recommendations concerning revision of the corporation laws of the state, which met with a group of interested members of the bar and three professors of corporation law from Duke, Wake Forest, and the University of North Carolina. A well attended first meeting launched the project. But the second meeting saw a falling off of attendance. The number present later continued to dwindle. It became apparent that busy practitioners felt that they could not afford the time necessary to engage in the exacting process of study and drafting, extending over a period of years, necessary for a project of this magnitude. The three experts from the law faculties, however, were willing to perform the task, probably from motives similar to those of members of the Commission appointed from the law faculties. Such research and presentation of the results is of much the same nature as the scholarly research and writing necessary for the articles and books which are a standard product of legal scholars. The work for the Commission was at least as fruitful in actual contribution to the developing legal order, and also contributed to the professor's knowledge, to his classroom performance, and to his standing in the field.

At any rate the Commission found that experts from the law faculties were willing to serve on its drafting committee for the

[61] N.C. GEN. STAT. COMM'N REP. 2 (1948).

corporation code, and three professors expert in corporation law at the three major law schools of the state were appointed as the drafting committee.[62]

Thereafter it has been the usual practice of the Commission after deciding on a major revision to appoint as a drafting committee three faculty members of the law schools who teach the subject which includes the law to be revised. Sometimes, besides the experts from the law faculties, a particular lawyer may, to the knowledge of the Commission, have sufficient interest in a particular area of the law so that he is willing and able to do the long continued and exacting work necessary to serve on a drafting committee, and he is appointed to the committee.[63] The Revisor of Statutes is available to assist committees in their work.

At present the members of the drafting committees receive an honorarium of fifty dollars a month plus a per diem of seven dollars and expenses while attending meetings. Of course experts of the caliber necessary for such work could not be hired for such a figure in the absence of inducements beyond the pay. But the pay may help this work to compete with other opportunities for the use of the professor's time.

In the formulation of the corporation code the process whereby the Commission considers the work of a drafting committee also took shape. When the committee's work is far enough along to make it feasible, committee memoranda and drafts of a portion of the proposed statute are furnished to the Commission members, preferably well in advance of the regular Commission meeting at which they are to be considered. The drafting committee is present at the meeting. Its chairman or the member who has written the portion of the draft which is before the Commission usually makes a preliminary explanatory statement. The draft is then taken up by the Commission and considered paragraph by paragraph, sentence by sentence, and word by word. Normally sections or subsections are discussed and passed upon one at a time. They may be approved or changed. Frequently a Commission member who believes a provision can be improved drafts a changed version on the spot and this is discussed. The reaction of the experts on the drafting committee to the suggested changes, and the knowledge or data they bring to bear, are

[62] N.C. GEN. STAT. COMM'N REP. 5 (1955).

[63] The drafting committee on the lien laws includes a practicing lawyer. N.C. GEN. STAT. COMM'N REP. 2 (1967).

given great weight, but final decisions are made by the Commission. Very often after discussion particular provisions are referred back to the committee for redrafts. Many drafts and redrafts are normal before final approval by the Commission. Eventually by such a process of discussion with the committee and successive drafts a version of the whole revision satisfactory to the Commission is reached and a bill embodying it is submitted to the General Assembly.

This does not imply that the revision and all its sections and subsections are unanimously approved by the Commission. Often it is possible in the case of objections by some of the members to a particular provision to alter it in such fashion that it meets the approval of every member. Sometimes, especially where matters of debatable principle are concerned, such unanimity is not possible. In that event, after the most satisfactory wording of the provision has been worked out, and the Chairman of the Commission is satisfied that all points of view have had full opportunity for expression, a vote is taken. If a majority approves the provision, it becomes adopted by the Commission. This does not mean that no reconsideration is possible. The opposite is true. A member or members in the minority may later prepare a case for their position and present it to the Commission, and do this so well as to induce a majority to come over to their view in whole or in part on the point involved.

The process of detailed consideration by the Commission of drafts by the Revisor or a Commission member is much like that in the case of committee drafts except that the process extends over a shorter period of time.

During the long period, often years in duration, taken for completion of a major revision, the Commission also works on other more minor legislation, and it may have more than one major revision under way simultaneously. In 1967 the Commission had at work a drafting committee on the rules of civil procedure, one on administration of decedents' estates, and one on lien laws.[64] In that year the Commission, besides the new rules of civil procedure, submitted thirty other bills to the legislature.

Since the Commission exercises no power to legislate but only to draft and recommend legislation, it has felt free to conduct its pro-

[64] N.C. GEN. STAT. COMM'N REP. 1 (1967).

ceedings informally. One aspect of the informality is that the chairman participates in the Commission discussions as freely as any other member. No record is made of discussions, but minutes are kept for the use of the Commission showing matters considered and action taken.

*VI. Illustrative Projects*

First, two relatively minor bills submitted by the Commission will be considered as examples of action taken by the Commission to correct defective law on some particular point.

At one time it was the law in this state that if a mortgage or deed of trust secured an usurious obligation, the debtor would have to pay the debt with legal interest to obtain an injunction against the foreclosure of the security.[65] Thus the debtor was not entitled in this situation to the benefit of the North Carolina usury statute, which provides that charging usury results in a forfeture of all interest plus double the amount of any interest paid.[66] But the Supreme Court of North Carolina also held that when a junior mortgagee sought to enjoin foreclosure of the senior mortgage he was entitled to the benefit of the usury statute to the extent that he was not obliged to pay any interest.[67] This was what in non-legal terminology is known as a pretty kettle of fish. The debtor, from whom the usury was exacted, was denied the benefit of the statute enacted for his protection. The junior encumbrancer, who could see on the record the amount of the encumbrance ahead of him and who had no apparent right to complain of its size, and from whom no usury was exacted on any loan, did get the benefit of the usury statute.[68] The Supreme Court of North Carolina came to the conclusion that this incongruous law needed change, and it decided, reversing its former holdings, that the junior encumbrancer seeking equitable relief against foreclosure of the senior mortgage must pay the principal and legal interest.[69] The court did better in thus placing the junior mortgagee in the same boat with the mortgagor, but it was the wrong boat, especially for the mortgagor.

[65] Jonas v. Home Mort. Co., 205 N.C. 89, 170 S.E. 127 (1933). The mortgagee may have a decree for a foreclosure to pay the principal and legal interest. Thomason v. Swenson, 207 N.C. 519, 177 S.E. 647 (1935).

[66] N.C. GEN. STAT. § 24-2 (1965).

[67] Broadhurst v. Brooks, 184 N.C. 123, 113 S.E. 576 (1922).

[68] This law was pointedly criticized in 14 N.C.L. REV. 114 (1935).

[69] Pinnix v. Maryland Casualty Co., 214 N.C. 760, 200 S.E. 874 (1939).

When a creditor exacts an usurious mortgage from a debtor the latter may pay the secured obligation. Victims of usurers are likely not to belong to the class of people who can readily afford to hire lawyers. If the debtor simply pays and does nothing, the creditor has his usury. If the debtor cannot pay and does nothing to prevent foreclosure, again the creditor gets his usury, assuming the mortgaged property is adequate to secure the obligation and the usury. If the debtor does hire a lawyer who brings an action to enjoin the foreclosure, the usurer does not lose by his illegal conduct since he gets all he was legally entitled to in the first place, namely the principal plus legal interest.

This law and the reasons why it was unsound were brought to the attention of the General Statutes Commission, which prepared and submitted to the General Assembly a bill to add a provision to the usury statute. As enacted the bill provided:

> If security has been given for an usurious loan and the debtor or other person having an interest in the security seeks relief against the enforcement of the security or seeks any other affirmative relief, the debtor or other person having an interest in the security shall not be required to pay or to offer to pay the principal plus legal interest as a condition to obtaining the relief sought but shall be entitled to the advantages provided in this section.[70]

Another relatively minor bill submitted by the Commission illustrates improvement of the law on a particular point, and is also an example of a legal change made at the instance of the Commission which was but one phase of developing and changing law.

The Supreme Court of North Carolina repeatedly stated that conditional sales of chattels were in legal effect chattel mortgages.[71] There was much to be said in favor of such a position, but in North Carolina it involved a consequence which was not so desirable. In the case of a chattel mortgage the mortgagee, because he had the legal title, also had the right to possession of the mortgaged chattel even before any default by the mortgagor.[72] The court took the position

[70] N.C. GEN. STAT. § 24-2 (1965). The statute was reviewed favorably in *Comments on North Carolina 1959 Session Laws,* 38 N.C.L. REV. 154, 168 (1960).

[71] State v. Stinnett, 203 N.C. 829, 167 S.E. 63 (1933); Harris v. Seaboard Air Line Ry., 190 N.C. 480, 130 S.E. 319 (1925); Observer Co. v. Little, 175 N.C. 42, 94 S.E. 526 (1917).

[72] State v. Stinnett, 203 N.C. 829, 167 S.E. 63 (1933); Jackson v. Hall, 84 N.C. 489 (1881).

that since a conditional sale had the same legal effect as a chattel mortgage, the conditional vendor, being in the position of a chattel mortgagee, also had the right to the possession of the chattel even though the conditional vendee was not in default.[73] Thus its legalistic reasoning took the court far away from the realities of commercial life. Vast numbers of chattels are sold on time payments secured by conditional sales. The parties to such transactions understand that so long as the vendee keeps up his payments and is not otherwise in default he has the right of possession.[74] Such was the generally prevailing rule in other jurisdictions.[75] The commercial appeal of such transactions is that the vendee is able to use the article while paying for it. Fortunately little attention was paid to the law thus laid down by the North Carolina court. Conditional vendors did not in mass take possession of chattels sold conditional vendees before the latter defaulted. Nevertheless there was potential harm in the law fashioned by the court. A conditional vendor might bring an action to recover possession believing that the conditional vendee was in default. Even though he could not prove any default he might win since he had the right to possession anyway.

Even in the case of purchase money chattel mortgages securing time payments where the buyer is given possession it would seem that the parties contemplate that the buyer has the right to possession so long as he keeps up the payments and is not otherwise in default.[76]

To bring the North Carolina law into accord with commercial practice and general understanding the Commission submitted and

[73] State v. Stinnett, 203 N.C. 829, 167 S.E. 63 (1933). In Grier v. Weldon, 205 N.C. 575, 172 S.E. 200 (1934) the court took the same view but found an implied agreement that the vendee was to have possession.

[74] An exception is the seller's right to retake under an insecurity clause in the conditional sales contract. 21 COLUM. L. REV. 100 (1921).

[75] L. VOLD, SALES 286 (2d ed. 1959); 11 N.C.L. REV. 321 (1933); UNIFORM CONDITIONAL SALES ACT § 2.

The North Carolina rule was vigorously criticized in 11 N.C.L. REV. 321 (1933); 12 N.C.L. REV. 254 (1934); 21 N.C.L. REV. 387 (1943).

[76] Purchase money chattel mortgages "sustain a large volume of credit business under which buyers make productive use of the goods while paying for them." L. VOLD, SALES 278 (2d ed. 1959). In Hill v. Winnesboro Granite Corp., 112 S.C. 243, 248, 99 S.E. 836, 838 (1919), in the case of an instrument securing time payments which the court held to be a chattel mortgage the court said, "If at the time the mortgage is given, the possession of the property is delivered to the mortgagor, there is a presumption that it was the intention of the parties that he should retain possession until condition broken." (dictum).

the General Assembly enacted a law providing that if a chattel is sold and the price is to be paid in one or more installments secured by conditional sale, or purchase money chattel mortgage or deed of trust, or similar security on the chattel, and possession is by consent of the parties placed in the buyer, it shall be deemed the intention of the parties, in the absence of an express agreement to the contrary, that he shall have the right to possession until he defaults.[77]

With the enactment of the Uniform Commercial Code chattel mortgages, chattel deeds of trust and conditioned sales all were included as security interests in personal property,[78] and under the Code, unless otherwise agreed the secured party's right to possession accrues on default.[79] This implies that before default the debtor has the right to possession.[80] Thus the above North Carolina statute[81] granting buyers of chattels sold on installments the right to possession before default has given way to wider coverage. In the case of personal property security the rule applies to debtors generally.[82]

A major revision worth discussing for the light it sheds on the Commission's work, and for the variations in the Commission's normal procedures which it entailed, is the revision of the law of the state governing public utilities. This project was undertaken in 1961 at the request of the Governor. The task was of such magnitude that the Governor and the Commission agreed that in order for the revision to be completed and submitted to the legislature during the Governor's administration the research and drafting would require full time service. Accordingly an attorney, a former Revisor of Statutes, was employed as Utilities Law Counsel to do the work on a full time basis. The usual process of presentation of his studies and drafts to the Commission and detailed and painstaking consideration by it followed.

The public utilities laws of the state before the revision were an accumulation of statutes and decisions which had taken place over a long period of years. The body of law was unorganized, fragmentary in some areas, prolix and overlapping in others, in places inconsistent, and in many instances outmoded. Some laws

[77] N.C. GEN. STAT. § 45-3.1 (1966).
[78] N.C. GEN. STAT. § 25-9-102 (1965).
[79] N.C. GEN. STAT. § 25-9-503 (1965) and Official Comment.
[80] N.C. GEN. STAT. § 25-9-503 (1965) North Carolina Comment.
[81] N.C. GEN. STAT. § 45-3.1 (1966).
[82] Hanft, *Article Nine: Secured Transactions-Validity, Rights of the Parties; Default*, 44 N.C.L. REV. 716, 745 (1966).

were applicable to public utilities generally, but there are, of course, public utilities of many different kinds, such as railroads, motor carriers, electric companies, water companies, gas companies, and telephone and telegraph companies, and there were many statutes relating to one kind of utility or another but not to utilities generally. In many instances there were no apparent reasons for differences in the law; excellent provisions made for one kind of utility were equally excellent for others but were not made applicable to them. A basic principle kept in mind during the revising process was that the law should be uniform for the various types of utilities except where the nature of a particular kind of utility called for provisions adapted to it.

When a tentative revision was completed by the Commission, it was widely distributed and published. Written criticism, views and suggestions were solicited from all interested persons, and the Commission held two days of public hearings on the proposed revisal. Eighteen corporations, groups and associations were heard, including public utilities and organizations of public utilities, organizations of users of utility service, organizations of cooperatives, the North Carolina Rural Electrification Authority, the North Carolina State Grange, and the North Carolina League of Municipalities. Written memoranda were also submitted to the Commission, including suggestions from the Utilities Commission and its individual commissioners. The General Statutes Commission considered the changes suggested, and many of them were embodied in whole or in part in the revision.

A feature of the public utilities law revision was that, to a greater degree than in the case of other legislation prepared by the Commission, the revision brought the Commission into an area of debatable policy on matters of widespread public interest. The members realized when the project was undertaken that such would be the case, and some doubt was expressed as to the advisability of the Commission getting involved in matters of this kind. But the project had been proposed by the Governor, and moreover it did involve lawyers' law to a high degree. Organization, unification, simplification and modernization of complicated law is part of the Commission's job.

Because the revision brought the Commission into the area of public controversy, some important procedural problems arose. The

Commission was criticized in the press because the long process of study, drafting, and discussion which produced the tentative draft was conducted in closed meetings. Fully recognizing that the utilities laws were of proper concern to the public, the Commission felt that the drafting of such complicated and voluminous legislation would not be furthered but on the contrary would be seriously handicapped if every member had to participate in the discussion constantly bearing in mind what impression could be created by a newspaper version of his remarks. Freedom of discussion would be impossible under such a hazard.[83] It was not a case where the Commission had "something to hide." In its judgment the best time for public discussion would come when its tentative draft was made public, and debate could center on the merits of concrete proposals. As above stated, fruitful discussion did take place at that stage.

Further criticism arose because the Commission did not open its minutes to public inspection as the revision progressed. Here the Commission's judgment not to do so was founded in part on the same considerations which led it to conclude that its meetings should not be open to the public. Its minutes are compiled as summaries rather than as complete records. The Commission's view was that distortion rather than full understanding could result from opening them to inspection as the work progressed. Moreover, the Commission prepares and recommends legislation. It is an arm of the legislature. The Commission believed that the proper place for full public disclosure of its views and methods of arriving at them would be the legislature. In due time an extensive report was made to that body along with the submission of the revision. Further, the draftsman and the chairman of the Commission appeared before a joint committee of the House and Senate, explained the legislation, and answered questions concerning it. The Commission made it clear that all its records and data were available to the legislature. There was no concealment. The issue was not disclosure but the best time and place for disclosure.

The question as to whether and when deliberations of governmental bodies should be made public is a continuing problem af-

[83] A bill was introduced in the legislature in 1967 requiring all public boards, commissions, councils, and other public bodies, other than the General Assembly and judicial groups, to meet in open session. It was tabled in the Senate. Sanders and Gergen, *State Government*, 34 POPULAR GOV'T 6, 13 (Sept. 1967).

fecting a great number of agencies. The basic principle, of course, should be that absent security considerations the public's business and the manner in which it is conducted should not be kept secret from the public. But the principle is not automatic in operation. Juries do not conduct their deliberations in the presence of the press, nor do appellate courts. The town meeting of the whole citizenry is not the ideal place for drafting extensive and complicated law. Perhaps the Commission's adjustment to the ramifications of the problem as above described may be of some value in contributing experience to be considered in comparable cases.

The utilities law revision also involved the Commission in another procedural problem of broad scope. The question was raised whether any member of the Commission should disqualify himself because as attorney he represented privately owned public utilities. One member of the Commission at the time of the revision was associate general counsel for such a public utility company operating in the state.

The Commission took the position that the conflict of interest principle was irrelevant to the kind of work done by it. Legislatures do not disqualify their members who are farmers when legislation affecting farmers is being considered, nor their members who are lawyers or doctors when bills providing for regulation of those professions are before the legislature. In the mass of proposed laws before every legislature some private interest in what is enacted or not enacted exists in every legislator. It is to the general advantage of the public that this is so. Farm legislation is likely to be better informed if there are men in the legislature who are directly concerned. It is also to be noted that legislation favoring farmers commonly also affects the pocketbooks of all consumers of farm products, but legislators in that category are not disqualified either. If they were, silence would fall upon vacant legislative halls. The guaranty that legislation will be to the general advantage is found in breadth of representation of various interests, not lack of representation of any.

The Commission has no power to legislate, but only to recommend legislation, and the policy against conflict of interest would seem even less applicable to it than to a legislature. Indeed if a body were set up for the express purpose of drafting comprehensive law on public utilities it might well be decided to have the body include

representatives of the interests involved, including the utilities, and of the public. The nature of the representation contained in the membership of the Commission was such as to insure that the public interest would be kept in mind. Three members represented law schools, and professors are uncommonly free of axes to grind, except, of course, ideological axes, which professors especially enjoy grinding. The Chairman of the Commission had been both a teacher of public utility law and a member of the North Carolina Utilities Commission.

The interest of the general public in the content of the revision centered largely on two of its many provisions. One concerned the rate base on which charges to the customers were to be founded. The Commission clarified and followed the existing North Carolina law to the extent of retaining as the rate base the present fair value of the utility's property. One reason was that the Commission believed that rates founded on present value were more realistically adapted to the economic order. Moreover the Commission did not want to submit changes in existing North Carolina law unless there was reason for the changes, and the evidence received by the Commission failed to show convincingly that any different method of fixing rates would result in fairer or lower rates. Some of the evidence tended to show that the rates in states having the fair value rate base averaged as low or lower than those in other states.

The Commission advised the General Assembly that if it disagreed with this controversial provision it could be deleted and some other provision for determining rates be substituted. Otherwise put, this provision could be changed without affecting other sections. However, the General Assembly enacted the provision almost verbatim.[84]

The second focal point of public interest and controversy concerning the content of the revision was a provision authorizing any investor owned electric power or telephone company to purchase the franchise and assets of any electric membership corporation or telephone membership corporation when the purchase is determined by the Utilities Commission to be in the public interest, at a fair value fixed by that commission. Prior right to make the purchase was to be given any public utility organized by a majority of the members

[84] N.C. GEN. STAT. § 62-133(b)(1) (1965).

of the seller. Consent of the members of the membership corporations, meaning the cooperatives, was not required.

The reason for this proposal was that the cooperatives were subsidized by the taxpayers in two ways, first by loans from the federal government at two percent interest, which was below what the federal government in turn had to pay to borrow money, and second by exempting the cooperatives from most of the taxes paid by the investor owned utilities. The Commission acknowledged the great public service rendered by the cooperatives by extending service into rural areas, but took the position that when the area served by a cooperative has developed to the point that it can be served by a privately owned utility at reasonable rates the mission of the cooperative has been successfully accomplished and no reason exists for service in that area subsidized by the taxpayers.[85]

The Commission advised the legislature that if it disagreed with the policy embodied in the provision the latter could be deleted. In the revision as enacted,[86] this provision was omitted.[87]

The new rules of civil procedure and jurisdiction statute are the latest large scale revision of North Carolina law submitted by the Commission and enacted by the General Assembly.[88] This task was undertaken by the Commission in 1958 at the request of the North Carolina Bar Association.[89] A drafting committee of four, including two professors from the school of law of Duke University, was appointed. Three of the original appointees are still serving, but

[85] An uncommonly lucid and fair presentation of the issues involved in electric service by cooperatives as distinguished from privately owned electric companies was made by Davis, *Electric Co-Ops Will Be a Bitter Issue in N.C. Assembly,* The Winston-Salem (N.C.) Journal-Sentinel, Feb. 24, (1963).

[86] N.C. GEN. STAT. §§ 62-1 to -325, 74A-1 to -6 (1965). The legislature made some changes in the revision as submitted by the Commission, including the addition of a section providing for appeals from the Utilities Commission directly to the Supreme Court in cases authorizing rate increases. N.C. GEN. STAT. § 62-99 (1965). The provision was, however, held unconstitutional in State *ex rel.* North Carolina Util. Comm'n v. Old Fort Finishing Plant, 264 N.C. 416, 142 S.E. 2d 8 (1965), commented on in Hanft, *Administrative Law,* 1966 *Survey of North Carolina Case Law,* 44 N.C.L. REV. 889, 890 (1966).

[87] The discussion in the text above of the utilities law revision is based in large part on GEN. STAT. COMM'N, REPORT AND RECOMMENDATIONS OF A PROPOSED NORTH CAROLINA PUBLIC UTILITIES ACT i-v (1963).

[88] Ch. 954 [1967] N.C. Sess. L. 1274. The rules and jurisdiction statute as submitted were enacted with very few changes.

[89] GEN. STAT. COMM'N, PROPOSED NORTH CAROLINA RULES OF CIVIL PROCEDURE 1.

four successive appointees from the school of law of the University of North Carolina have served. Although the membership of the Commission at the time the project was undertaken included an appointee of the president of the North Carolina Bar Association and an appointee of the President of the North Carolina State Bar, still the project was of such especial importance to the lawyers of the state that the Commission invited each of these organizations to appoint an additional representative to work with the Commission in the formulation of the new rules and participate in meetings considering the rules, with the privilege of discussion but without a vote. Each organization appointed such a representative, and these men made valuable contributions to the work.

The base for the new rules as eventually drafted was the Federal Rules of Civil Procedure, but with numerous changes. In instances where the existing North Carolina law was deemed superior to that contained in a federal rule, the former was adopted. The Commission declared

> [O]ur objective has been to eliminate so far as practicable what has been called 'the sporting theory of justice' and to insure, so far as rules of procedure can do so, that lawsuits will be decided on their merits and not on procedural technicalities. We have sought a system whereby this objective can be achieved expeditiously and economically.[90]

A draft of the new rules and jurisdiction statute with an introduction and commentaries on the separate rules and provisions was published in 1966 in the official publication of the North Carolina State Bar.[91] Suggestions and criticisms from the members of the bar were invited.[92] Not many suggestions were received, but some of these resulted in changes.

Since the rules would govern procedure in the new court system formulated by the Courts Commission, the latter was consulted for suggestions as previously discussed herein.[93]

On one occasion the Commission submitted to the General Assembly a bill providing for an amendment to the Constitution of North Carolina. Legislation enacted at the instance of the Commission had given either spouse the right to dissent from the will of

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[90] *Id.* at 3.
[91] 13 N.C. BAR No. 3 (1966).
[92] *Id.* at 1.
[93] *See* p. 482 *supra.*

the other and take instead a share specified by statute.[94] The Supreme Court of North Carolina held that to the extent that this gave the husband the right to dissent from the wife's will and take the statutory share, the statute violated the provision of the Constitution of North Carolina stating that the separate property of a married woman "may be devised and bequeathed, and, with the written assent of her husband, conveyed by her as if she were unmarried."[95] The written assent of the husband applied only to a conveyance by her. She could devise and bequeath as if unmarried, and therefore according to the court's reasoning, the statute authorizing him to dissent from her will and take a statutory share was unconstitutional.[96] In order to validate such a statutory dissent provision the Commission authorized the Estate Law Drafting Committee to prepare for Commission approval a bill submitting an appropriate constitutional amendment. A bill was prepared, enacted by the legislature,[97] and approved by the voters at a general election. The amendment substituted for the words, "and, with the written assent of her husband, conveyed by her as if she were unmarried," the words, "and conveyed by her subject to such regulations and limitations as the General Assembly may prescribe."[98] Thus as amended the Constitution now reads that the married woman's separate property "may be devised and bequeathed and conveyed by her subject to such regulations and limitations as the General Assembly may prescribe." She may therefore devise and bequeath her separate property, but this is subject to legislative regulation, such as the provision for the husband's dissent from the wife's will. The amendment, besides this, also removed the requirement that he assent to her conveyances.[99]

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[94] As amended N.C. GEN. STAT. §§ 30-1 to -3 (1966).

[95] N.C. CONST. art. X. § 6 (1868).

[96] Dudley v. Staton, 257 N.C. 572, 126 S.E.2d 590 (1962); criticized in 1963 DUKE L.J. 161; 41 N.C.L. REV. 311 (1963).

[97] Ch. 1209 [1963] N.C. Sess. L. 1690.

[98] N.C. CONST. art. X, § 6 (Supp. 1967).

[99] The amendment made another change. The last sentence of N.C. CONST. art. X, § 6 had read, "Every married woman may exercise powers of attorney conferred upon her by her husband, including the power to execute and acknowledge deeds to property owned by her or by herself and her husband or by her husband." The amendment struck the words "by her or" following "owned." This removed her own property from the power of attorney provision. Since under the previous provision of the amendment she can convey her property without her husband's assent she needs no power of attorney for such a conveyance.

*VII. Presentation to the Legislature*

The Commission makes a report to each biennial session of the General Assembly. The report includes, among other things, a list of bills to be submitted by the Commission, and a brief explanatory statement concerning each bill. Some of the bills are deemed to be of such importance that separate and more elaborate explanations concerning them and commentaries on their particular provisions are furnished to the legislature. If a bill is prepared by a drafting committee, the commentaries are also prepared by the committee and passed on by the Commission before submission to the legislature. This was also true of the revision of the utilities laws of the state with commentaries drafted by the Utilities Law Counsel.

Bills prepared by the Commission after its report is made but while the legislature is still in session are frequently submitted, especially if there is reason for enactment during the current session.

When the bills are introduced, the fact that each house of the legislature has a representative on the Commission is of great value in the process of piloting the bills through to ultimate passage. The Revisor of Statutes keeps close contact with the movement of the bills through both houses, and is available to legislative committees considering the bills in order to answer questions and furnish any information needed. Skill at this kind of contacts with legislators is one of the most important abilities needed in the Revisors. Members of the Commission also frequently appear before legislative committees in support of Commission bills, particularly when such members are expert in the matters dealt with by the bills or otherwise have special knowledge of such matters. Members of the drafting Committees also make appearances before the legislative committees considering the bills on which the drafting committees worked as experts. In the case of the bill embodying the new rules of civil procedure, the North Carolina Bar Association having initially requested the Commission to undertake the formulation of the rules, the President of the Association and other members appeared, along with members of the drafting committee and the Commission, in support of the bill at a joint hearing of House and Senate committees.

When the corporation code formulated by the Commission was before the legislature, it was enacted to take effect after the next

ensuing session of that body. This is a valuable device in the case of legislation too extensive and complicated for most of the legislators, in view of the mass of other bills to be considered, to become familiar with the provisions before enactment. The ensuing two year period enables the legislature to acquire a more thorough knowledge of the act before it takes effect. During the two year period actual problems arising in the field of law covered can be considered in the light of the new provisions, and needed changes can be thus discovered. Further, the waiting period enables the bar and others affected to acquire a working knowledge of the extensive new law before having to operate under it. Actually the corporation code, to which there was considerable opposition in the session enacting it, so proved itself in the next two years that the ensuing legislative session saw little opposition to allowing it to go into effect as scheduled. Some changes and additions were made at the instance of the Commission.[100]

The new rules of civil procedure also received support that might not otherwise have been given, by reason of the fact that their effective date was set after the next legislative session. The General Assembly set up a commission for the study of the Rules of Civil Procedure, consisting of three senators from each of the two Senate judiciary committees, and three representatives from each of the two House judiciary committees. These twelve members may appoint two retired or emergency superior court judges as additional members. This commission is directed to "study the Rules of Civil Procedure enacted by the 1967 Session . . . and to submit to the 1969 General Assembly such recommendations for the improvement of the Rules of Civil Procedure as it finds to be appropriate." The General Statutes Commission is directed to cooperate with and assist this legislative commission.[101] At the outset of its work the new Commission and the General Statutes Commission met together for a discussion, and the General Statutes Commission indicated that its drafting committee would be available to the new Commission for consultation. This variety of interim study may prove a valuable device where the effective date of a major revision is suspended for a biennium.

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[100] N.C. GEN. STAT. COMM'N REP. 3 (1957).
[101] Res. 77 [1967] N.C. Sess. L. 1977.

*VIII. Output and Batting Average*

According to summaries prepared by the Revisor of Statutes, during the period from 1957 through 1967 the Commission submitted 111 bills to the legislature. Of these 92 were enacted during the session in which they were submitted. Some were enacted as submitted; some, with changes made by the legislature. Nineteen failed to pass during the session in which they were submitted. This means that almost 83% of the bills were so enacted. The percentage of success becomes larger when it is noted that some of the bills which failed initially were passed in later sessions. Sometimes, in the light of objections raised in the legislature the Commission is able to make changes in the bills which eliminate the objections and result in the enactment of the later versions. Thus in 1957 a bill was submitted by the Commission, the purpose of which was to enable a surety when sued by the creditor to have the debtor joined and thereby have the advantage of the debtor's defenses.[102] It failed of enactment. A bill to the same effect was submitted in 1959 with a provision added that the court could join the debtor on motion by the surety provided he could be made subject to the jurisdiction of the court.[103] This time the bill was enacted.[104] Another bill which failed to pass in the session in which it was introduced but was enacted in the next session was the one giving installment buyers the right to possession of the goods sold on which the sellers retained a security. This statute is discussed previously in this article.[105]

Moreover, in the list of nineteen bills not enacted in the session submitted two covered the same subject. In 1961[106] and again in 1967[107] bills were introduced to eliminate the North Carolina requirement that in order to have an absolute deed declared to be for security, it must be shown that the defeasance was omitted by reason of ignorance, mistake, fraud or undue advantage. The North Carolina law would have been brought into line with the law gen-

[102] N.C. GEN. STAT. COMM'N REP. 5 (1957).
[103] N.C. GEN. STAT. COMM'N REP. 4 (1959).
[104] N.C. GEN. STAT. § 26-12 (1965). The reasons for the provision are stated in *Comments on North Carolina 1959 Session Laws,* 38 N.C.L. REV. 154, 167 (1960).
[105] *See* p. 491 *supra.*
[106] N.C. GEN. STAT. COMM'N REP. 5 (1961).
[107] N.C. GEN. STAT. COMM'N REP. 4 (1967).

erally by requiring only a showing of the intent of the parties.[108] The bill failed both times, but a report of the Revisor to the Commission indicated that the bill might have survived in 1967, but the legislature could not get to it in time. Apparently it was a casualty of the rush of business before the legislature and may not necessarily be permanently defeated.

One of the bills submitted by the Commission would have revised the inadequate and incomplete North Carolina Bulk Sales Act.[109] The bill did not pass, but the Uniform Commercial Code Article 6[110] on bulk transfers later replaced the Bulk Sales Act,[111] so that the Commission's proposal that the latter be revised was later realized in other legislation.

Further, the success of the Commission in having its proposed legislation enacted is not measured just by counting the number of bills passed and the number which failed to pass. More important is the Commission's uniform success in having enacted large scale revisions of extensive areas of North Carolina law, on which the Commission spent a major amount of time and attention. Among the bills in this category, introduced during the period of the Commission's existence, all enacted into law with or without changes in the legislature, are those bills relating to attachment and garnishment;[112] judicial sales and execution sales;[113] sales under a power of sale;.[114] pre-trial examination;[115] execution, revocation and pro-

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[108] 26 N.C.L. REV. 405 (1948); 40 N.C.L. REV. 817 (1962).

Absolute bills of sale of personal property as security under the Uniform Commercial Code is discussed by Hanft, *Article Nine: Secured Transactions—Validity, Rights of the Parties; Default,* 44 N.C.L .REV. 716, 728 (1966).

[109] N.C. GEN. STAT. COMM'N REP. 4 (1957). The then existing Bulk Sales Act was substantially N.C. GEN. STAT. § 39-23 (1966).

[110] N.C. GEN. STAT. §§ 25-6-101 to -6-111 (1965).

[111] The North Carolina Bulk Sales Act was expressly repealed by N.C. GEN. STAT. § 25-10-102 (1965).

[112] N.C. GEN. STAT. COMM'N REP. 2 (1947); as later amended N.C. GEN. STAT. §§ 1-440.1 to -440.57 (1953), discussed in *A Survey of Statutory Changes in North Carolina in 1947,* 25 N.C.L. REV. 376, 386 (1947).

[113] N.C. GEN. STAT. COMM'N REP. 2, 3 (1948); N.C. GEN. STAT. §§ 1-339.1 to -339.71 (1953), discussed in *A Survey of Statutory Changes in North Carolina in 1949,* 27 N.C.L. REV. 405, 479 (1949).

[114] N.C. GEN. STAT. COMM'N REP. 2, 3 (1948); as later amended N.C. GEN. STAT. § 45-21.1 to -21.33 (1966), discussed in *A Survey of Statutory Changes in North Carolina in 1949,* 27 N.C.L. REV. 405, 479 (1949).

[115] N.C. GEN. STAT. COMM'N REP. 4, 6 (1950); N.C. GEN. STAT. §§ 1-568.1 to -568.27 (1953). These sections are repealed and replaced by the new rules of civil procedure effective in 1969. Ch. 954, § 4, [1967] N.C. Sess. L. 1274, 1353.

bate of wills;[116] corporations (the Corporation Code);[117] intestate succession;[118] acts barring property rights;[119] public utilities;[120] alimony;[121] liens on personal property;[122] and rules of civil procedure.[123]

The fact that a revision has been submitted by the Commission and enacted does not mean that the Commission's work in that connection is done. The continuing nature of the Commission's task, even with regard to legislation enacted at its instance, can be seen in a bill introduced by it in 1967. As noted above, among the earlier major revisions made by the Commission and enacted by the legislature were those of the law relating to judicial sales, execution sales, and sales under a power of sale. In 1967 further legislation concerning all three was submitted by the Commission. The report of the Commission to the legislature explains the bill in part as follows: "This bill makes uniform a number of changes which have been made in Article 29A, Chapter 1, relating to Judicial Sales, Article 29B, Chapter 1, relating to Execution Sales, and Article 2A, Chapter 45, relating to Sales under a Power of Sale. These Articles were made as uniform as possible when enacted in 1949, with identical

[116] N.C. GEN. STAT. COMM'N REP. 2 (1952); as later amended N.C. GEN. STAT. §§ 31-1, 31-3.1 to -3.6, 31-5.1 to -5.8, 31-8.1, 31-10, 31-18.1 to -18.4, 31-46 (1966), discussed in *A Survey of Statutory Changes in North Carolina in 1953*, 31 N.C.L. REV. 375, 444 (1953).

[117] N.C. GEN. STAT. COMM'N REP. 5, 24 (1955); as later amended N.C. GEN. STAT. §§ 55-1 to -175, 55A-1 to -89 (1965). The proposed Business Corporation Act was discussed in an article by the drafting committee. Latty, Powers, and Breckenridge, *The Proposed North Carolina Business Corporation Act*, 33 N.C.L. REV. 26 (1954).

[118] N.C. GEN. STAT. COMM'N REP. 2 (1959); as later amended N.C. GEN. STAT. §§ 29-1 to -30 (1966); McCall, *North Carolina's New Intestate Succession Act. Its History and Philosophy*, 39 N.C.L. REV. 1 (1960); Bolich, *Election, Dissent and Renunciation*, 39 N.C.L. REV. 17 (1960); Wiggins, *Distributive Provisions*, 39 N.C.L. REV. 42 (1960). The authors of the above articles were the members of the drafting committees for the act.

[119] N.C. GEN. STAT. COMM'N REP. 2 (1961); as later amended N.C. GEN. STAT. §§ 31A-1 to -15 (1966); Bolich, *Acts Barring Property Rights*, 40 N.C.L. REV. 175 (1962).

[120] GEN. STAT. COMM'N, REPORT AND RECOMMENDATIONS OF A PROPOSED NORTH CAROLINA PUBLIC UTILITIES ACT (1963); as later amended N.C. GEN. STAT. §§ 62-1 to -325, 74A-1 to -6 (1965).

[121] N.C. GEN. STAT. COMM'N REP. 3 (1967); N.C. GEN. STAT. §§ 50-11, 50-16.1 to -16.10 (Supp. 1967).

[122] N.C. GEN. STAT. COMM'N REP. 2 (1967); N.C. GEN. STAT. §§ 44A-1 to -6 (Supp. 1967).

[123] GEN. STAT. COMM'N, PROPOSED NORTH CAROLINA RULES OF CIVIL PROCEDURE; N.C. GEN. STAT. COMM'N REP. 1, 4 (1967); Ch. 954 [1967] N.C. Sess. L. 1274.

wording in most parallel sections. Changes since made in only one or two articles are here carried through to all three articles."[124] The legislature struck some additional provisions of the bill, but retained those restoring uniformity in the three acts.[125]

*IX. Philosophy and Esprit de Corps*

The Commission's discussions and debates about particular provisions in proposed laws do not take the form of philosophical disputes over the merits of various schools of juristic thought. Any analysis of the Commission's juristic philosophy over a period of years is a matter of impression and opinion. Having participated as a member for almost the entire life of the Commission to date, I believe that the unspoken working philosophy of the Commission is a blend of the positions maintained by schools of juristic thought. The core of truth contained in each of the various philosophies is likely to be a working reality in the minds of thoughtful men seeking to formulate good law for their time, whether or not those men are acquainted with the formal juristic philosophies. The members go along with the Analytical School[126] to the extent of believing that one important guide in their work is adherence to rules and principles so as to accomplish logical order and consistency in the law. They go along with that school's imperative theory of law in that they believe in the efficacy of legislation to make basic changes. But they are aware of the limitations on the concept of law as the command of the lawmaker. They are affected by the substance behind the Historical School's belief that law arises out of the life of the people,[127] inasmuch as they recognize that legislation cannot successfully depart too far from currently accepted views, customs and practices. The Commission members are Utilitarians to the extent that they are concerned about the usefulness of the law they formulate, and are Pragmatists[128] in so far as they are aware that the people of the state have wants, felt needs, interests, and that much law is shaped to satisfy those interests. But the members are also adherents of the Natural Law[129] because they proceed on the work-

[124] N.C. GEN. STAT. COMM'N REP. 2 (1967).
[125] Ch. 979 [1967] N.C. Sess. L. 1402.
[126] Pound, *The Scope and Purpose of Sociological Jurisprudence*, 24 HARV. L. REV. 591, 594 (1911).
[127] *Id.* at 598.
[128] Justice, to the pragmatist, is simply satisfying as many demands as possible. See R. POUND, JURISPRUDENCE vol. III 16 (1959).
[129] J. HALL, READINGS IN JURISPRUDENCE 3-86 (1938).

ing assumption that justice and right are realities having a nature of their own, and are sensitive to justice and injustice, right and wrong, in making their judgments. In short, although the members may not think in the terminology of various schools of juristic thought, they are sensitive to the realities with which these schools deal.

The pragmatic approach has another bearing on what the Commission does. It knows that it must take into account what the legislature is likely to accept or reject. For example, if the Commission is considering whether certain controversial provisions should be put into a bill covering a wide area of law, the probable reaction of the legislature to the provisions is taken into account. The Commission is in a good position to appraise such reactions due to the fact that two of its members are appointed from the legislature and others may have served in it. If it is felt that the legislature will be likely to view the particular provisions unfavorably, and that the result might be the defeat of the whole bill, such provisions are likely to be left out, perhaps to be submitted separately later when the legislature can consider them on their own merits without endangering the larger bill.

Members of the Commission have varied from the highly liberal to the highly conservative. However, the conservatives, the liberals, and the many in between have alike been capable of considering proposed changes in the law on their merits. Respect for each other's views and willingness to consider them thoughtfully is characteristic of the Commission's discussions. Debate is frequently vigorous but not acrimonious. The objective of the Commission's work is to formulate law which will best serve the people of the state. Determining what law will accomplish this obvious goal is often a complex matter involving complicated problems and difficult solutions. Basic views may vary. But such a goal held in common results in greater likelihood of agreement although it falls short of insuring unanimity.

*X. Conclusion*

The present vast and rapid expansion of law in this country has aptly been called a legal explosion. Explosions both physical and legal can be destructive or useful depending on whether they are controlled. Among the valuable and well conceived devices for helping to channel the legal explosion in this state is the General Statutes Commission.