

NCINSIGHT

NEWS RELEASE from the Governor's Office



Wednesday, May 10, 1978

STATEMENT BY GOV. JIM HUNT ON BANKING COMMISSION REPORT

I am today releasing this summary of the State Bureau of Investigation's report on the State Banking Commission. I believe the citizens of North Carolina should have a full accounting of the circumstances behind the resignations of two top officials in that regulatory commission.

I am aware, however, that this case raises serious questions about the handling of SBI investigations, particularly in light of the court order. I

Government Secrecy vs. Public Access

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to know how to reconcile that conflict. With this summary,
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entiality of SBI investigative reports.

Article II At the Top of the Heap Changing Currents at the Utilities Commission



by Mercer Doty

FROM THE CENTER OUT

Mercer Doty is a former director of the legislative fiscal staff and is the Center's director.

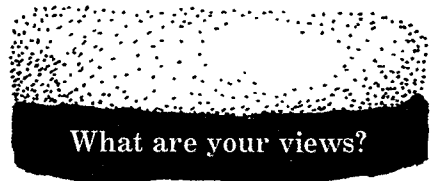
Is North Carolina prepared to care for its growing population of older citizens? The urgency of this question is underscored by a recent rise in the proportion of older North Carolinians. Accounting for less than six per cent of the population at the turn of the century, the percentage of citizens over 60 is now more than twice that and the total number is approaching 800,000, according to recent data from the state Division of Aging. The importance of finding reasonable ways of caring for the aging lies in the recognition that times have changed over the past 70 years, and in the fact that these statistics pertain not to mere figures, but to human beings.

Not long ago most older people were relatively comfortable in their communities, surrounded by familiar faces and landscapes, and encouraged to maintain their independence as long as their strength allowed. When their health failed they were frequently taken into the homes of kin who lived close by and cared for by the family doctor who stopped in occasionally on his rounds.

Once this comfortable scenario was common, partly because sons and daughters tended to stay near where they were born, and partly because communities were smaller and more closely knit. Then, too, the number of older people was much, much smaller in comparison to their younger relatives. The pattern is still followed in North Carolina, perhaps more than we realize, because this is still a state with many small towns. And more than half the state's older population lives in rural communities.

But the comfort that older people can take from these facts is scant indeed as sons and daughters increasingly seek their fortunes in Charlotte or Chicago and governments struggle to make up for the assistance that relatives would have provided in former days. Care for the aging has become a crisis of money as well as conscience. In spite of repeated increases in Social Security payments 63 per cent of the older people in this state have incomes of less than \$3,000 a year. With few alternatives available, older people now more frequently than ever before turn to rest homes, nursing homes and hospitals, where costs can range from about \$350 a month to a staggering \$100 a day. For the elderly much of the cost is borne by Medicare and Medicaid, for which total federal, state, and county expenditures in North Carolina now amount to well over \$600 million a year. But an even greater cost of putting older people in institutions may be psychological and emotional, especially for those who could live at home if adequate service or financial support were available.

In North Carolina the term "individual and family support services" is used to describe help provided in the home that ranges from housecleaning to home management. But the level of state support for such services is so low that many counties provide few of them. Of the \$26 million allocated for individual and family services in the 1977-78 state budget, the federal government provided 75%. The remaining 25% of the cost was shared by the state and the counties with the state share amounting to as little as 3% in some cases. Although recommended by the Legislative Research Commission Study on Aging, a bill that would have increased the state's share of the costs and required all counties to provide certain minimum services failed to win approval in the 1978 session of the legislature. This decision is precisely the kind that limits services needed by older people to maintain their independence and to avoid, or at least postpone, the use of institutional alternatives that are often costly and dehumanizing. Nor was there any move by the 1978 General Assembly to provide more income tax relief for families that help their older members. Under most circumstances North Carolinians still get a better tax break for contributions to colleges, hospitals, public charities and state agencies than they do for assisting their aging parents. So much for the spirit of Mother's Day and Father's Day.



What are your views?

On the articles in this magazine, on other issues related to state government, on what the Center is doing—or should be doing. We welcome letters to the editor.



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The Magazine of the N.C. Center for Public Policy Research

4 \ Government Secrecy vs. Public Access

Has the SBI become a State Bureau of
Intrusion?

—Fred Harwell

8 \ Changing Currents at the Utilities Commission

Chairman Robert Koger defends the
commission's policies

—Betsy Taylor

10 \ Article II

A Guide to the N.C. Legislature

—Fred Harwell

12 \ At the Top of the Heap

How the Governor Organizes His Power

—Bob Dozier

2 From the Center Out

15 And furthermore

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Government Secrecy VS. Public Access

by Fred Harwell

THERE are bad apples in most bureaucratic barrels, so it is not surprising when high-level government employees occasionally depart from office under strained circumstances. But the resignations under fire of two members of the State Banking Commission on April 27, 1978, proved to be more disruptive and controversial than most other personnel shake-ups. Within days of the announcement that the Banking Commissioner and the Deputy Banking Commissioner had been asked to resign because of official misfeasance, the *Raleigh News & Observer* was suing for full disclosure of the investigative report which had led to the dismissals and the Executive Branch had been cleaved by Governor Hunt's release of a "summary" of the report over the objections of the Justice Department and the State Bureau of Investigation. While interest in the resignations soon subsided, Hunt's handling of the matter left questions both about the legality of his actions and about the state's policies regarding suppression of information gathered at taxpayers' expense and used to shape decisions which affect the lives of its citizens.

Debate about "public access" has always been an essential aspect of politics in this country. "A popular government without popular information," James Madison warned the framers of the Constitution, "is but a prologue to a farce or a tragedy or perhaps both." The Bill of Rights, ratified in 1791, seemed to embody the concept of "public access" in the First Amendment admonition that "Congress shall make no law . . . abridging the freedom . . . of the press . . ." But it was not until 1966, after 11 years of committee consideration, that Congress enacted the Freedom of Information Act (5 U.S.C. 552), which for the first time gave private citizens, including journalists, clear authority to obtain the release of many previously unavailable federal documents and records. The Freedom of Information Act (FOIA) repealed an earlier law which reserved the government's right generally to withhold information "for good cause found" and "in the public interest." These vague standards had effectively foreclosed public access by placing the burden on private

citizens to prove, first, that there was no "good cause" for denying the release of records and documents, and then that the petitioner was "legimately and properly concerned" about the information being sought.

North Carolina has no state freedom of information law, but the concept of public access to government documents has been manifest in state statutes since at least 1935. That year the General Assembly produced "An Act to Safeguard Public Records . . ." which declared, among other things, that documents of the state "and of the counties and municipalities thereof constitute the chief monuments of North Carolina's past and are invaluable for the effective administration of government, for the conduct of public and private business, and for the writing of family, local and state history." The 1935 law defined "public records" as all written and printed matter "made and received in pursuance of law by the public officers" of the state as well as of counties and municipalities, and required that "every person having custody of public records shall permit them to be inspected and examined at reasonable times . . ."

Over the years this early public records law has been revised by the General Assembly, and as recently as 1975 the definition of "public records" was substantially expanded to include "all documents . . . or other documentary material, regardless of physical form or characteristics." (G.S. 132-1) At the same time, exceptions have been carved out of the definition of "public records," including state tax returns and state personnel files. Such statutory exceptions are usually intended to protect personal or proprietary information from unnecessary disclosure. They reflect, among other things, a legislative effort to balance the concept of public access against the practical need to maintain the confidentiality of some government records. In North Carolina this balance is achieved by patchwork "privacy" amendments to various provisions of the General Statutes. Under federal law the balance is established by refinements in the controlling language of the FOIA which are enumerated within the law itself, and by the Privacy Act of 1974 (5 U.S.C. 522), which provides for disclosure of the existence of

Fred Harwell, a writer and lawyer, is an associate director of the Center.

federal records kept on private citizens and for inspection by individuals of records which pertain to them.

While the Freedom of Information Act and the Privacy Act have not been devoid of criticism and controversy, they are generally regarded as positive steps in the direction of greater public access. The disorganized state approach of combining an omnibus public records law and a variety of specific privacy amendments, on the other hand, has restrained access in North Carolina with sometimes befuddling statutory gymnastics. In 1975 the legislature removed state personnel files from the inspection provisions of G.S. 132-6 but not from the definition of "public records" in G.S. 132-1, thereby creating a hybrid document that is both "public" and unavailable to the public. (G.S. 126-22) A separate 1975 amendment (G.S. 126-23) specified that certain personnel information was, after all, to be held open for inspection, while another amendment (G.S. 126-24) declared that "all other information" in state personnel files "is confidential." In 1977 the legislature elaborated this statutory maze with additional "personnel act" amendments, but it soon became apparent that the unwieldy effort to dampen access had, instead, swamped it. One of the first bills introduced in the 1978 General Assembly was an amendment to G.S. 126-24 for the purpose of allowing the easier release "of certain information pertaining to state employees," including justifications for promotions and firings.

A less complex but more troubling exception to the public records law was enacted in 1947 as an amendment to Chapter 114, pertaining to the State Bureau of Investigation. Language was added to G.S. 114-15 which stated that "all records and evidence collected and compiled by the Director of the Bureau and his assistants shall not be considered public records... and may be made available to the public only upon an order of a court of competent jurisdiction." Disclosing little or no sensitivity to questions of public access or the protection of individual privacy, the language of this amendment has been interpreted by state courts as a broad prohibition against releasing the contents of SBI documents to anyone. Under state law even a criminal defendant is accorded no right to view the SBI reports relating to his case, and the North Carolina Supreme Court has consistently ruled that a judge's refusal to give SBI reports to a criminal defendant is not grounds for overturning a lower court judgment. The matter is less clear under federal law, where U. S. Supreme Court opinions suggest that a defendant might be entitled under some circumstances to have access to such reports.

Though often subjected to courtroom attack, the 1947 amendment to G.S. 114-15 had never seemed politically controversial until May 10, 1978. On that date, without deferring to the authority of a judge,

Governor Hunt released his "summary" of the SBI investigation into the activities of the two Banking Commission officials who had recently resigned.

... by unilaterally releasing portions of the SBI files the Governor might have violated ... the General Statutes of North Carolina."

In doing so, Hunt was following a suggestion made several days earlier by *News & Observer* editor Claude Sitton, who wrote without reference to the language of the statute that its purpose was merely to prevent disclosure of "unverified information" and "the identities of SBI informants." In his newspaper column, Sitton opined that the purpose of the law could "be served... by making a sanitized version of the report" available through the Attorney General rather than the courts. The Governor's summary, which did omit sensitive information such as the names of sources, nevertheless contained verbatim passages from the original Bureau report. Opinions about the implications of Hunt's actions would differ, but some state attorneys conceded later that by unilaterally releasing portions of the SBI files the Governor might have violated the letter if not the spirit of the General Statutes of North Carolina.

GOVERNOR Hunt's decision to reveal the substance of the SBI report did more than place him in a tender legal position and open a schism between his office and the Justice Department. It also brought into sharp focus the need for reorganization and clarification of state laws pertaining to public access. Recognizing that "this case raises serious questions about the handling of SBI investigative reports," the Governor acknowledged that "the citizens of North Carolina should have a full accounting of the circumstances behind the resignations of two top (state) officials... Clearly, we have a conflict between the public's right to know and the need for confidential SBI investigations. It is difficult to know how to reconcile that conflict."

The issue of access versus confidentiality had been raised in this instance because members of the Attorney General's staff who were sworn agents of the SBI conducted an investigation into the activities of two public officials. The Governor and his staff agreed with journalists, who were trying to obtain information about the circumstances of the resignations, that the public had a right to know what was going on inside the State Banking Commission. "We simply had a responsibility to account for the firings," Gary Pearce, the Governor's press secretary, explained. "Our responsibility was to account for why we wanted them to resign." According to Jack Cozort, Hunt's legal advisor, the Governor "realized

there was some problem" with the release of the SBI report. "We resolved it by releasing basically what we considered a summary rather than the report itself," Cozort said. "You do come to a point sometimes when the people do have a certain right to

"Under state law, there is no way for private citizens to determine whether they have ever been investigated by the SBI ..."

know, particularly when an investigation involves essentially public servants. The people deserve more explanation about that than they would (about) other SBI investigations which may not necessarily involve public employees."

But other state lawyers disagreed, both with Hunt's decision and with his resolution of the statutory conflict between access and confidentiality. Assistant Attorney General Andrew Vanore, who represented the Justice Department in the newspaper suit to obtain the full report, objected to the precedent which he said might be set by the release even of a summary of the investigation. He argued that SBI work would be impeded in the future, especially if sources feared that their identities might be revealed. Mike Carpenter, legal advisor to the Director of the Bureau, felt that G.S. 114-15 effectively barred disclosure either of the report or of a summary of its contents: "I think it was the intent of the legislature to make it absolutely clear that SBI reports were not to be made available to the public without a court finding it something that ought to be done. I don't think the legislature intended that a private citizen could walk in off the street and say I want to see a copy of an SBI report"

WHAT was the legislature's intent?

In North Carolina, as in many other states, it is often difficult to know precisely what policies have been codified in the General Statutes because there is no "legislative history" or other record of committee discussion and floor debate. Reasonable extrapolation based on the language of the statute is frequently the only means of arriving at an interpretation of the policies which lie behind the words, though even this is not always a successful, or even satisfactory, process. The language of G.S. 114-15 plainly removes SBI "records and evidence" from the definition of public documents. But what are "records and evidence?" William Lassiter, counsel for the *News & Observer*, took the view that G.S. 114-15 did not even apply. "It is my opinion," he said, "that the (SBI) report does not come within the meaning of 'all records and evidence.'" Not surprisingly, Lassiter's interpretation agitated the opponents of disclosure in the Justice Department

and the SBI. They feared that every one of the more than 5,000 investigative reports produced annually might be thrown open to public scrutiny. "What we're trying to do," said Carpenter, the Bureau's lawyer, "is to protect the principle" of confidentiality.

INTENSIFYING distrust of big government has recently resulted in a profusion of both state FOIA laws guaranteeing access to information and state privacy laws limiting "official" intrusions into the private lives of private citizens. Although three limited privacy bills were passed by the 1975 North Carolina General Assembly, including the amendments pertaining to state personnel files, the state's information access law has never been overhauled to bring it into line with changes in the relationship between the people and their public servants. When "An Act to Safeguard Public Records . . ." was added to the statutes in 1935, there was no State Bureau of Investigation.* Since 1947, when SBI records were accorded at least a limited cloak of secrecy, the Bureau has expanded both in numbers of agents and in the scope of its operations. If each of the more than 5,000 reports filed annually by the SBI were about a different person, one in every one thousand North Carolinians might have been the subject of a confidential state police inquiry during 1977. Over the past decade, a dossier with information about one in every one hundred North Carolinians might have been added to SBI records. But under state law there is now no way for private citizens to determine whether they have ever been investigated by the SBI or, if they have, to find out what information has been gathered about them and why.

There is, clearly, a substantial need to protect the confidentiality of certain government records. Names of police sources and unverified hearsay which might damage the reputations of innocent people are only two of the most obvious examples. But there is also a fundamental need to ensure broad access to government information, if only to assess the performance of public servants and to constrain the expansion of state power. Both the Freedom of Information Act and the Privacy Act of 1974 contain specified exemptions which protect confidentiality while allowing

** Enabling legislation to establish the SBI was enacted in 1937. Organizationally, the Bureau was transferred to the Justice Department, and thus to the control of the Attorney General, in 1971. Under current law, the SBI has original jurisdiction to investigate damage and theft involving state property and "to investigate and prepare evidence in the event of any lynching or mob violence." In addition, the Bureau is authorized at the request of the Board of Elections to investigate possible vote frauds, and is required to aid the Governor with "such services (as, in his judgment) may be rendered with advantage to the enforcement of the criminal law." (G.S. 114-15)*

broad access both to records of government activities and to records kept by the government on the activities of its citizens. There are few indications that FOIA and Privacy Act requests for information in FBI and CIA files have actually hampered the legitimate operations of these agencies, even though such requests have revealed illegal and over-zealous investigations by both.

In North Carolina, the State Bureau of Investigation operates behind a veil of secrecy that shields it from public review and invites abuses of its power. No issues of national or state security justify the suppression of information about the range and depth of its methods and procedures. The Bureau is unlike other state government agencies both in its purpose and in its potential for intrusion and misuse, but these differences suggest a greater rather than a lesser need for constant oversight. How is the public to judge the adequacy or inadequacy of the SBI's work? How are the Governor and the Attorney General to be held accountable at the polls for the activities of the Bureau? How is the General Assembly to monitor the expenditure of public funds allocated to the SBI, which totalled \$6.599 million during fiscal 1977?

Indeed, how under current law are the legislators to determine whether any of that money was spent to investigate them?

In an open democracy, government secrecy can be nothing more than a limited and specific exception to the general premise that the people's business should always be open to the people. In North Carolina, this premise has been blurred both by vague statutory language and by *ad hoc* exceptions to the public records law. A comprehensive, reasonably qualified clarification of "public access," a state freedom of information act and a state privacy act, should be on the agenda for consideration during the 1979 session of the General Assembly. In addition, the legislators should carefully study the broad statutory powers of the Governor and the Attorney General to manage the SBI, with a view to retrieving some control themselves over the clandestine activities of the Bureau. Without such steps, public officials and private citizens are likely to remain trapped between the letter and the spirit of the current law, and state government will more and more take on the appearance of "a farce or a tragedy or perhaps both." □

POSTSCRIPT

North Carolinians got a peek behind-the-scenes at the State Banking Commission this spring, only to have the curtain hastily rung down on public access to Banking Commission records by an obliging General Assembly. Close on the heels of a Superior Court decision that Commission confidentiality regulations were in violation of the state's public records law, and smarting from the ouster of Banking Commissioner John Tropman and his deputy, Jesse Yeargan, State Treasurer Harlan Boyles sought and got temporary legislation which clamped a tight lid on information about current and past activities of the Commission and the Commissioners.

The State Treasurer, an elected public servant, is also *ex officio* chairman of the Banking Commission. But Boyles is no adversary of bankers, even though he heads the state board which is supposed to regulate banking business. He received a prime interest rate loan of \$115,000 from First Citizens Bank when he ran for Treasurer in 1976 and \$25,000 in contributions from bankers and businessmen across the state at a fund-raising dinner held in Raleigh in April, 1978.

The Boyles proposal to shut off public disclosure of investigations into banking practices hardly got a dispassionate review in the General Assembly. Of the 31 legislators on the Senate and House banking committees, 17 have close professional or financial ties with the banking industry. None declined to participate in committee hearings on the matter because of potential conflicts of interest. The proposed bill was criticized vigorously by representatives of the N. C. Press Association during the brief hearings. Boyles retorted that the Banking Commission did not "need the news media to tell us whether we are doing a good or bad job."

But who else is there to let him know? The SBI investigation which led finally to the dismissals of Tropman and Yeargan revealed irregularities in their conduct going back to 1974. A summary of the SBI report released by the Governor stated that "at the time the request was received to investigate the alleged activities of Jesse Yeargan, the general public was aware from newspaper articles and interviews that officials and employees . . . may have received gratuities and gifts . . . in the form of free trips and home security alarm systems." (Emphasis added) The Yeargan investigation eventually broadened to include Tropman.

The General Assembly will reconsider its 1978 action when a study commission reports to the 1979 session on proposed permanent limits to the disclosure of Banking Commission records. Instead, the legislature should enact a comprehensive state freedom of information act which would apply to the Banking Commission and to all other government agencies as well.

As of June 1, the policy changes outlined in Koger's letter had yet to be implemented. Nevertheless, Koger's responsiveness and the proposed changes in the Utilities Commission's policy deserve recognition.

Changing Currents at the Utilities Commission

by Betsy Taylor

An article in the spring issue of *N. C. Insight*, "Small Change at the Utilities Commission," recommended measures to help the public get complete information on the business of the North Carolina Utilities Commission. The article proposed:

- Reducing the price of hearing transcripts. (The cost of \$1 a page has been prohibitive for private citizens and attorneys representing citizen groups.)
- Giving, on request, copies of pre-filed testimonies to the press prior to hearings, loaning copies to any interested citizen prior to hearings, and giving free copies to any individual who attends a public hearing. (Witnesses frequently submit testimony in writing prior to a hearing and make no verbal statements during the hearing itself. Consequently, citizens and members of the press have difficulty following the cross-examination of witnesses.)
- Making a minimum of two copies of all hearing transcripts available to the State Library, one to be kept for reference and one to be loaned out. (During business hours, a citizen is supposed to be able to read the official record kept on file by the Chief Clerk at the Utilities Commission. When a member of the Center's staff visited the Clerk's office, however, she found that documents she requested could not be located.)

In a reply (see opposite page), Utilities Commission Chairman Robert K. Koger stated that the article "did not reflect current policies and practices of the Commission..." The article was written in late March and reflected the policies of the Commission that were then in effect. After receipt of Koger's letter, (dated May 22), the Center staff checked on each one of the policy changes he outlined and found that, as of June 1, they had yet to be implemented. Pre-filed testimonies and other documents had not been placed near the hearing room for public perusal.

Betsy Taylor, formerly a teacher in England, is the Center's administrative assistant.

Public notices had not included announcements that trial documents can be obtained through public libraries. And the transcript fee remained at \$1 per page.

Nevertheless, Koger's responsiveness and the subsequent changes in Commission policy deserve recognition and commendation. It should be noted that the Commission does intend to place copies of all trial documents, including written testimony submitted prior to hearings, in regional libraries around the state upon request. The first Public Notice to include a statement of this new policy was released early in June. It is hoped that the Commission will guarantee public access to all trial documents, even if materials must be sent to a county library rather than merely to one of North Carolina's 15 regional libraries.

Placing written testimonies and court documents near the Commission's hearing room for public examination should help citizens and reporters follow the cross-examination of witnesses.

Although Koger said in a telephone conversation that he could not recall ever having loaned a transcript to an attorney representing a consumer group, he affirmed that such loans would be made in the future upon request.

On May 8, the Commission produced a draft bill proposing that the legislature reduce the price of one transcript page from \$1 to 50 cents. The reduced fee was approved by the 1978 legislature. Again, the Commission has been responsive. The fee, however, remains high when the actual production cost for one page is 3.5 cents.

Finally, the Commission's recent decision to experiment with the use of tape recorders and television cameras during public hearings should be applauded. The implementation of this policy will vastly improve the public's ability to analyze hearings that lead to decisions affecting the lives of all North Carolina citizens. □

“

Ms. Betsy Taylor
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State of North Carolina
Utilities Commission
Raleigh 27602

May 22, 1978

Dear Ms. Taylor:

We have read your article in the Spring Issue of the *N. C. Insight* regarding the Utilities Commission with interest. While some of your points were well taken, we regret that your article did not reflect current policies and practices of the Commission - some of which were initiated by your inquiry, some by other parties, and some by the Commission itself.

For example, beginning with action taken in early April of this year, the Commission instructed the Chief Clerk and the Public Staff to revise Public Notices in accordance with the following:

- (1) "Based on various requests that the Commission has received over the past several weeks, the Commission decided in Conference last week to require the filing of various material in general rate cases and rule-making proceedings at regional libraries around the State upon public request. To accomplish this, we plan to include in the Public Notices a statement along the lines that follow:

"That upon request, the Commission will place copies of all trial documents in centrally-located public libraries; that the material may be copied without prohibition at the library."

A copy of my memorandum to the Public Staff is attached. *

- (2) In respect to public hearings on any major case or rule-making, we have directed the Chief Clerk to maintain sufficient copies in her office to ensure that one will *always* be available for public inspection. We also will experiment with providing copies for perusal in the small room behind the hearing room on the second floor.
- (3) In respect to your comment regarding Mark Sullivan, attorneys intervening to represent the public or other interests have in the past received copies of all testimonies, briefs, orders, and exhibits free. This, of course, will be continued. Also, transcripts of any hearings will be made available to any attorney representing consumer groups. We have loaned transcripts to members or representatives of such groups in the past and will continue to do so.
- (4) The Commission has recommended to the Utility Review Committee of the North Carolina General Assembly that the fee for transcripts be reduced. We are confident that some reductions will be made, but we doubt that the reduction will be sufficient to accommodate all concerned because of the loss of general fund revenue that would result. That is the reason we are directing the placement of the materials in libraries, adopting a more flexible plan for loaning copies for perusal or reproduction purposes, setting rules for the Chief Clerk to follow in ensuring that one or more copies are always available to the Public in her office, and experimenting with placing copies in a room adjacent to the hearing room.
- (5) The Commission is studying the possibility of allowing tape recorders and television cameras to be used during our hearings. At the present time, we are following the practice of the other courts in North Carolina and are precluding the use of these during the hearing itself. I hope to be able to advise you of our action in this matter soon. I mention this because I believe that normally members of the public are only interested in selected parts of most hearings and might desire to tape these parts as opposed to obtaining a transcript.

I hope that you will have an opportunity to let your readers know that many of the practices and policies that you discussed in your article are not presently being followed by this Commission. We and the Public Staff have and are expending great effort in trying to open up communication lines with the public and we think we have made much progress. I would be happy to discuss other efforts we have made in this area at your convenience. Also, since you used a title for your article which implies to some people that "small changes" may have resulted from the reorganization and reconstitution of the Commission in 1977, I would hope you would consider doing a follow-up article on a broader perspective of our operations.

Sincerely,
Robert K. Koger
Chairman

RKK:ss

Attachment.

cc: Directors of *N. C. Insight*
cc: Members of the Commission
cc: The Honorable Hugh A. Wells
Executive Director
PUBLIC STAFF - North Carolina Utilities Commission

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* Author's Note:

This memo, dated April 3, referred exclusively to the first proposed action mentioned in Koger's letter and included a request for the Public Staff's help in implementing this new policy.

The structure of Koger's letter suggests there were actually five "actions taken in early April of this year." However, the only action taken was a decision to publicize the availability of trial documents in centrally-located public libraries.

ARTICLE II

A Guide to the N.C. Legislature

Q•How are the people of North Carolina to learn which members of the General Assembly are their most effective legislators?

A•Ask those in the best positions to know: the legislators themselves, the registered lobbyists, the experienced capital correspondents.

So in March, as part of the production of *Article II: A Guide to the N. C. Legislature*, the Center did just that. Survey forms asking for a rating of each legislator's "effectiveness" were sent to 39 journalists, 288 lobbyists, 48 senators, and 112 representatives. The response was good--52% from the senators, 50% from the representatives, 41% from the correspondents, 24% from the lobbyists--and the results were published as an appendix to *Article II* late in April.

The survey was undertaken to identify, in a general way, those senators and representatives who had made the most significant contributions to the General Assembly during prior sessions. "Effectiveness" was defined as a combination of attributes, including participation in committee work, skill at guiding bills through floor debate, general knowledge and expertise in special fields, respect from peers, enthusiasm for legislative responsibilities, political power, ability to sway opinions, and aptitude for the overall legislative process. Respondents were encouraged to use their personal perceptions, as well as these criteria, in replying to the Center questionnaire.

Legislators were graded on a scale of 1 (low effectiveness) to 10 (high effectiveness). The scores received by each legislator were averaged to arrive at an overall score, which appeared beside his or her name in the list published in *Article II*. Members of the Senate and the House were evaluated separately, and then ranked according to their overall scores. (The rankings are reproduced on page eleven.)

The survey had already rankled some feelings while it was under way. "I consider it inappropriate for me to evaluate my colleagues," one representative had responded. "I . . . feel that I would be put in an embarrassing position to complete it," wrote another, though the survey form was confidential. Even the high rate of response among legislators was bitterly interpreted by one state senator, who had thrown his form away as soon as it arrived. Hearing that more than half of his fellow senators had promptly returned the questionnaire, he was silent for a moment before muttering, "They were probably

afraid *not* to fill the damn things out, since you sent them to lobbyists and newsmen too."

Perhaps predictably, legislator reaction was mixed when the survey scores were published. "I deeply appreciate it," said Kenneth Royall, ranked the most effective senator. "I don't think those ratings tell you anything," said Reid Poovey, rated the least effective representative.

Article II contained much information besides the survey results. Each senator and representative was profiled with personal, professional, and campaign data, committee assignments, a partial list of bills introduced, and a tabulation of votes cast on seven issues of statewide interest during the 1977 session. But it was the "effectiveness" rankings that got most of the attention. "Without some such aid," one newspaper editorialized, "it can take years to acquire some notion of which legislators are likely to bite which bait, which have clout and which don't, who is expert in dealing with which interest and who is merely in those interests' pocket. That's one reason lobbyists are well paid."

Maybe so. An obviously irate lobbyist had called the Center early in March after receiving a survey questionnaire. "Will you tell your board of directors when they meet," he demanded, "that I think it's a lot of bull and a lot of bunk."

He didn't buy a copy of *Article II*, but many other lobbyists did.

- Fred Harwell

Survey Rankings•

Senate

1.	Royall	84
2.	Hardison	78
3.	Harrington	74
	Scott	74
5.	Whichard	73
6.	Garrison	72
	Rauch	72
8.	Britt	70
	Henley	70
	Lawing	70
11.	Smith, M.***	67
12.	Hill	57
	Renfrow	57
14.	Davis***	56
15.	Crawford	54
	Wynne	54
17.	Childers	53
	Smith, W.***	53
	Stallings	53
	Walker	53
21.	Jordan	52
	Totherow**	52
	White	52
24.	Sebo	51
	Soles	51
26.	Daniels	50
27.	Barnes	49
28.	Allsbrook	47
29.	Harris	46
	Vickery	46
31.	Raynor	44
32.	Marion	43
33.	Kincaid	42
	Swain	42
35.	Gray	41
	Lake	41
	Marvin	41
	Sharpe***	41
39.	McDuffie*	40
40.	Alford	38
	Ballenger	38
	Speed	38
43.	Palmer	36
44.	Mathis	35
45.	Combs	32
46.	Alexander	31
47.	Somers***	30
48.	Popkin***	27

House of Representatives

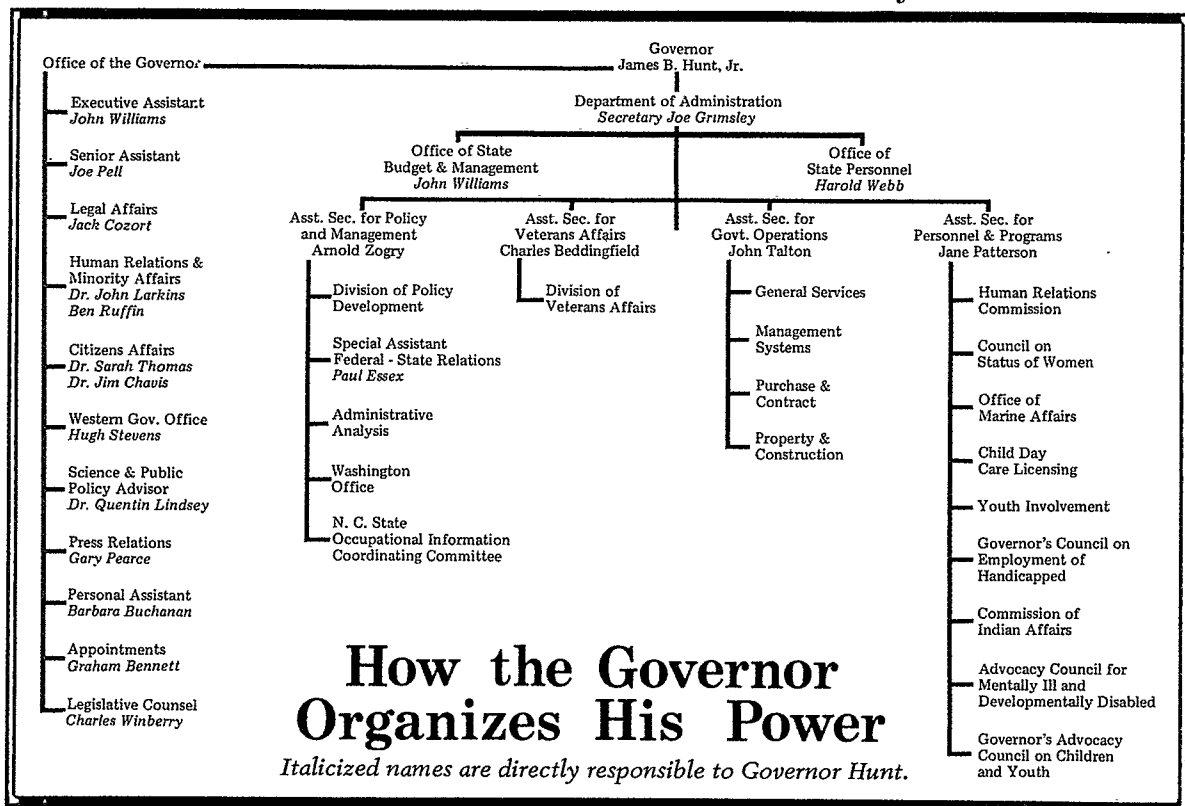
1.	Stewart	89	56.	Gentry	42
2.	Ramsey	82		Holroyd	42
3.	Davenport***	76		Smith, A.	42
	Rountree	76	59.	Ellis	41
5.	Holmes	73		Nye	41
	Miller	73		Rhodes	41
7.	Tison	70		Spoon	41
8.	Helms	67	63.	Bissell	40
9.	Messer	65		Brennan	40
	Short***	65		Lambeth	40
11.	Frye	64		Revelle	40
12.	Hunt	63		Setzer***	40
	Watkins	63		Thomas	40
14.	Campbell	61		Varner	40
	DeRamus	61		Woodard	40
	Gamble	61	71.	Chapin	39
	Huskins	61		Falls	39
18.	Adams	60		Locklear	39
	Bell	60		Morris	39
20.	Jones*	58		Parnell	39
21.	Quinn	57		Smith, N.***	39
22.	Church	56		Taylor	39
	Morgan	56		Tyson	39
24.	Ezzell	55	79.	Beard	38
	Jernigan	55		Gardner*	38
	Lilley	55		Hux	38
27.	Bumgardner	54		Lachot**	38
	DeBruhl*	54		Nesbitt	38
				Seymour	38
29.	Johnson	52			
30.	Auman	51	85.	Clarke	37
	Cook	51		Enloe	37
	Plyler	51		Pickler	37
	Tally	51		White, E.	37
34.	Creech***	50	89.	Cullipher	36
	Foster	50		Nash	36
	Webb	50		Sawyer***	36
37.	Bundy	49	92.	Collins	35
	Chase***	49		Gregory*	35
	Holt, C.	49		Harris	35
	James	49		Hurst**	35
	Wright	49		Martin	35
42.	McMillan	48		Pugh	35
43.	Edwards***	47		Ward**	35
	Kaplan	47	99.	Brubaker	34
	Schwartz***	47		Fulcher	34
46.	Barker	46	101.	Grady	33
	Ray***	46		Griffin*	33
48.	Hunter**	45		Hightower	33
	Tennille	45	104.	Bright	32
50.	Barbee	44		Lutz	32
	Diamont	44		Wiseman***	32
	Greenwood	44	107.	Economos	31
	Holt, B.	44	108.	Easterling	30
54.	Baker*	43	109.	Hall*	29
	White, W.*	43	110.	Dorsey***	28
				Poovey	28

●Number following name represents overall score.

*Defeated in first primary; **Defeated in second primary; ***Did not seek re-election.

At the Top of the Heap

by Bob Dozier



BECAUSE North Carolina's chief executive does not have veto power, the office of governor often seems weaker and more ceremonial than it really is. Taken together, other powers available to the governor make him the most important official in state government. The governor's strength inheres largely in his control of the state's budget. He not only prepares and proposes the budget, he administers it once it is enacted by the General Assembly. The Advisory Budget Commission works with the governor to prepare recommended budgets for consideration by the legislature. The governor appoints four of its twelve members. These four may or may not be legislators; by statute, the other eight are members of the General Assembly.

Control of the budget is the basis of the governor's influence in the nineteen departments that constitute the Executive Branch of state government. This is especially true in the eight departments whose elected secretaries have powers not subject to gubernatorial control. The remaining nine secretaries, all appointed by the governor and more directly under his dominion, constitute the cabinet. Of these, the Department of Administration is the most important.

Bob Dozier is working with the Center this summer.

Through it, the governor exercises power over all the other departments.*

The *North Carolina Manual* describes the Department of Administration as "the business, management, and policy development office of state government and the administrative arm of the Governor's office." First established in 1957 during the administration of Governor Luther Hodges, the Department's main functions are to regulate expenditures of state money; manage state property; run the state personnel system; manage the state's programs for veterans; and house assorted small boards, advocacy groups, and agencies. It is a grab bag of functions that cut across the boundaries of other

*The cabinet includes the secretaries of the Departments of Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Human Resources, Natural Resources and Community Development, Revenue, and Transportation. The eight elected officials head the Departments of Secretary of State, State Auditor, State Treasurer, Justice, Agriculture, Labor, Insurance, and Public Education. The Offices of the Governor and Lieutenant Governor are the other two executive departments.

more narrowly defined departments. As Joe Grimsley, the Department's Secretary says, "You don't treat this Department like it's just another department. It's a first among equals."

These functions are not simply administrative. Control of jobs, money for jobs, and development of comprehensive government policy are natural opportunities for a governor to create and exercise political power as well as administrative leadership. Governor James B. Hunt, Jr. relies on two areas of the Department so regularly that his connections with them can be considered direct rather than subordinate to his relationship with Secretary Grimsley. These are the Office of State Budget and Management headed by John Williams (\$40,000) and the Office of State Personnel directed by Harold Webb (\$36,936).*

In January, 1978, John Williams became Executive Assistant to the Governor while retaining his duties as state budget director (his entire salary is still paid by the Department of Administration). This dual role is unique in recent North Carolina government. Hunt admits that he has "pulled the budget closer to the Governor's Office" because "if you know what you want to do programmatically, you've got to have the budget close to you." As Executive Assistant, Williams is Hunt's liaison with the nine cabinet departments and has the authority to speak for the Governor. As budget director, he has the power to authorize the transfer of funds among various government programs and, in some instances, within such programs. His clout in each role is immense, partially because he holds both jobs.

Williams has offices near the Governor in the Old Capitol and in the Department of Administration. A wealthy Raleigh businessman, he is working full-time in state government after having been active in politics for many years. He served on the Advisory Budget Commission from 1969 until 1973. To indicate his importance within the Hunt administration, Williams' pay is intentionally set above that of Joe Grimsley. At \$39,900, Grimsley is the second highest paid member of the cabinet and, as Secretary of the Department of Administration, is nominally Williams' boss. Dr. Sarah Morrow (\$57,108), Secretary of the Department of Human Resources, is the most highly paid cabinet officer.

THE Office of the Governor was legally created as one of the 19 major departments of the Executive Branch in 1971. As of April 30, 1978, its budget for fiscal year 1977-78 included \$1,439,986, of which \$1,232,730 came directly from the General Fund (state revenues other than highway funds). The budget included an additional \$55,000 in state

funds transferred from the Science and Technology Committee in the Department of Commerce. The rest of the budget was funded by federal grants and a private foundation gift that supported planning for a science high school. In 1975-76, the last full

John Williams' role as both Executive Assistant and Director of the Office of State Management and Budget is unique in recent N.C. government.

fiscal year of the Holshouser Administration, the Governor's Office received \$831,747 from the General Fund. Nearly two-thirds of the state appropriation for the Governor's Office is spent on salaries and fringe benefits, including the \$45,000 salary and \$5,000 expense account allotted to Hunt. The Governor's Mansion, his official residence in Raleigh, has a separate budget of \$231,196 (as of April 30, 1978) funded by the Department of Administration.

The Governor is authorized "to appoint such personal staff as he deems necessary to carry out effectively the responsibilities of his office" [G.S. 147-12(9)]. Employees of the Governor's Office are not subject to the provisions of the State Personnel System [G.S. 126-5(b)]. Simply put, Hunt exercises the governor's traditional broad personal authority to select, appoint, and pay his staff as he pleases. The Department of Administration pays the salaries of some people who are formally members of the Governor's Office, while some key advisors to Hunt work in the Department itself. Only the Governor and about a third of the staff paid through the Governor's Office actually have offices in the Old Capitol. The others work in the Department of Administration building.

The following summaries describe the important divisions of the Governor's Office aside from the special role Williams plays.

Senior Assistant. Joe Pell (\$40,000), a successful Surry County businessman, handles patronage, political support, and special projects. Hunt calls him "my eyes and ears in the field." Pell chairs weekly meetings of the Governor's staff and provides limited supervision of their work.

Legal Affairs. Jack Cozort (\$20,124), a Wake Forest law graduate, left a job in the Attorney General's office to become policy advisor and legal counsel to Hunt.

Human Relations and Minority Affairs. Dr. John Larkins (\$32,436), a black leader with more than thirty years' experience in state government, is a Special Assistant to Hunt who helps coordinate minority patronage and political support. On May 1, 1978, Ben Ruffin (\$32,436), a black leader from Durham, left his job as Director of the State Human Relations Commission to join Dr. Larkins. As a policy

*Salaries noted in this article were effective in May, 1978, prior to changes made by the 1978 General Assembly.

advisor, Ruffin specializes in issues affecting minorities and the poor. Geoff Simmons (\$17,460) is Ruffin's assistant.

"Simply put, Hunt exercises the governor's traditional broad authority to select, appoint, and pay his staff as he pleases."

Office of Citizen Affairs. Hunt established this office to promote volunteer services and better communications between citizens and government. It is divided into the Office of Citizen Help, Community Involvement Programs, and a Citizen Participation group.

Dr. Sandra Thomas (\$30,900), a vice-president of Meredith College on leave, is serving as Executive Director of the Office of Citizen Affairs. Dr. Jim Chavis (\$26,772) directs the Citizen Help program as Chief Ombudsman. He is on leave from his post as Dean of Student Affairs at Pembroke State University.

Western Governor's Office. The director of Hunt's Asheville office is Hugh Stevens (\$21,120), a Hunt political supporter and former U. S. marshal. The Western Executive Residence in Asheville receives \$3,314 annually for maintenance from the Department of Administration.

Science and Public Policy Advisor. Dr. Quentin Lindsey (\$37,428), a Harvard-trained economist, promotes the use by state and local governments of scientific research resources in North Carolina. Dr. Lindsey taught Hunt as both an undergraduate and graduate student at N. C. State and later persuaded the Governor to spend two years (1964-66) in Nepal working for the Ford Foundation in an economic development program.

Press Relations. Special Assistant Gary Pearce (\$28,092), a former *News & Observer* reporter and editor, runs Hunt's press office. Either Pearce or his assistant, Stephanie Bass (\$18,300), approves a final draft of each speech the Governor delivers.

Personal Assistants. Barbara Buchanan (\$22,140) is Hunt's Special Assistant and personal secretary for appointments in the Capitol. Two other secretaries work with her. Priscilla Hartle (\$20,124 paid by the Department of Administration) schedules the time Hunt spends outside the Capitol.

Appointments. Graham Bennett (\$16,644), a scheduler in the Hunt gubernatorial campaign and son of Bert Bennett, a Winston-Salem businessman and longtime Democratic Party insider, coordinates Hunt's appointments to state boards, commissions, and other bodies (Hunt will make roughly three thousand appointments during his four-year term). His assistant, Lucie Duffer (\$16,644), is paid by the Department of Administration.

Legislative Counsel. Charles Winberry, a Rocky Mount attorney who directed Robert Morgan's 1974 Senate campaign, is Hunt's lobbyist in the General Assembly. His work includes research, writing, and bill drafting, as well as political chores. He works full-time when the General Assembly is in session. The Department of Administration pays him \$3,000 for each month he works.

DESPITE the availability of this expensive, extensive staff, Hunt must rely on research and policy support scattered throughout the bureaucracy to handle the diverse issues he faces. By bringing experts from throughout state government together, Hunt has concentrated this help in the Division of Policy Development under Arnold Zogry (\$37,428), Assistant Secretary for Policy and Management in the Department of Administration. This think-tank unit was formed in January, 1977, as the successor to the Division of State Planning. Through an approach of "more action than paper," Zogry, Grimsley, and Hunt believe the Division can bring expert information to bear on both pressing and long-range problems, thus serving as the key to creating overall state policy. The Division's work is divided into four areas: economic research under Kenneth Flynt (\$30,900), Chief Economic Advisor to the Governor; economic development under Peter Rumsey (\$28,092); regional programs directed by Billy Hall (\$28,092); and human development headed by Florence Glasser (\$23,208) and Ted Parrish (\$26,772).

The Division of Policy Development has a budget of roughly \$1.6 million, of which about \$780,000 (as of April 30, 1978) comes from state funds. The Division absorbed the Office of Intergovernmental Relations in 1977, and its budget, therefore, includes \$199,000 to cover North Carolina's share of the administrative costs of the Appalachian Regional Commission and the Coastal Plains Regional Commission. Most federal fund requests from local governments pass through the Division before going to Washington. Paul Essex (\$35,664), the Governor's Special Assistant for Federal/State Relations, maintains his office here even though he reports directly to Hunt. The Division also houses Betty Owen (\$25,524), the Governor's Special Assistant for Education. Overall, the Division of Policy Development has about forty-five employees, roughly half of whom make more than \$15,000 annually.

The state's office in Washington is also under Zogry's direction. Its staff monitors and lobbies Congress and the entire federal government to protect North Carolina's interests. Most of its \$129,854 budget goes for salaries, including those of Patricia Shore (\$35,664), William Garrison, Jr. (\$26,772), and Judy Love (\$21,124).

Harold Webb, head of the Office of State Personnel, wields power in personnel matters parallel

to Williams' control of the budget. Hunt works closely with both Webb and Joe Pell, his patronage man. The power to transfer or demote a worker is almost as effective a control tool as the power to hire or fire him. The 1977 General Assembly effectively established five years as the probationary period during which a state employee is subject to any of these sanctions without recourse to the State Personnel System's grievance procedures. Using authority created by the 1975 General Assembly, Hunt designated 868 "policy-making positions" in 1977, thus exempting them from the protections of the Personnel System regardless of the length of service in state government of those who occupy such offices.

By making Williams his Executive Assistant and Director of the Office of State Budget and Manage-

ment, Hunt has integrated day-to-day control of the budget with his own office, thus consolidating the centers of executive power in state government. By exercising direct control over personnel, budget, and policy decisions, Hunt has begun to make the bureaucracy respond to his will. The 1977 constitutional amendment that permits a governor to serve a second term has extended his authority over a bureaucracy that could formerly use delaying tactics while awaiting the arrival of a new governor. Despite the absence of veto power, the office of governor in North Carolina affords its occupants diverse opportunities to control state government. By skillfully exploiting most avenues available for exercising the influence of his position, the present governor has demonstrated that the governorship itself is often misjudged as weaker than it truly is. □

—And furthermore—

A Luxury Item?

The spring, 1978, issue of *N. C. Insight* reviewed several state-funded studies which have questioned the propriety of building a school of veterinary medicine in North Carolina, and recommended delaying additional appropriations for the project at least until after an American Veterinary Medical Association manpower study is released in July.

A forthcoming report by the Southern Regional Education Board, made available to legislators in early June, proposed an end to all vet school construction in the South, including North Carolina, because existing schools can meet anticipated needs for vets in the foreseeable future.

On June 14, the state legislature appropriated \$7.2 million of the taxpayers' money for the construction of a vet school in North Carolina.

Buying and Selling the Public's Land

The Center's first major report, *This Land Is Your Land: Here's How The State Buys and Sells It*, recommended a number of measures to tighten controls over the buying and selling of state land. (See *N. C. Insight*, Winter 1978). Several of the practices suggested by the report have since been adopted by the Council of State. Others have yet to receive official attention.

Two of the major recommendations---establishing a land review panel and opening to the public the meetings of the Council of State, which acts on state land deals---have been on the Council's agenda since February. According to Joseph W. Grimsley, secretary of the Department of Administration, the Council of State considered these two recommendations significant enough to warrant full discussion. At its meeting on July 10 the Council of State, with the Governor absent, finally dealt with the proposal for a land review panel and disapproved it. The question of open meetings was once again deferred.

According to Grimsley, the Department of Administration is in favor of open meetings as long as the Council retains the right to call for closed meetings under certain circumstances. (The Center's report recommended that the Council, whose members are the state officials elected by the people of North Carolina, meet in public except when a majority of the members voted to close a session.) "The more we have looked at it from the Department of Administration's point of view," Grimsley said, "open meetings would not hurt anything . . . and that is the statement we have made to the Governor and the Council of State."

Most of the members of the Council of State were receptive to the idea of establishing a land review panel when the Center's original study on land transactions was released late last year, but this recommendation ran into opposition in the Department of Administration. Grimsley said his department remains convinced that a land review panel is unnecessary. Nevertheless, he said, the department took the position that the question deserved full consideration by the Council of State.

we're taking names

addresses and anything that we can use to track down potential members of the Center. Send us the names and addresses of people you think share your concern about state government. We'll do the rest.

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