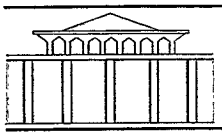

IN THE LEGISLATURE

The Citizen Legislature: Fact or Fable?

With this column, North Carolina Insight *launches another regular feature designed to examine policymaking—and the process of that policymaking—by the N.C. General Assembly. This initial column focuses on the difficulties involved in maintaining a citizen legislature. As the lawmaking process consumes more and more days, legislators have less time to earn a living and to maintain a family life. Future columns will examine specific legislative proposals, legislative ethics, study commissions and other facets of the legislative process.*

by Chuck Alston

Rep. Martin Lancaster (D-Wayne) did something in June that is unusual for a politician. He called it quits before someone else did it for him. And he did it while his star was still rising.

In the process of quitting, Lancaster rekindled the long-running debate whether North Carolina's General Assembly will survive as a citizen legislature.

A Goldsboro attorney, Lancaster is perhaps best known as the House shepherd for the Safe Roads Act, former Gov. James B. Hunt's package of laws to combat drunken driving. He is also one of the few House members tapped to chair a committee in his second term in 1981. Since 1983, as chairman of the House Judiciary III Committee, Lancaster has developed a reputation as a hardworking, bright legislator willing to tackle tough issues.

What most folks don't know about Martin Lancaster is what they don't know about most politicians: about his family. His two daughters, Ashley, 8, and Mary Martin, 7, have grown up while their father has spent much of his time in Raleigh. It has fallen to his wife, Alice, who teaches history at Wayne Community College, to attend the PTA meetings and drive the carpools and make sure Ashley and Mary Martin practice their music lessons.

Lancaster, 42, wants to spend more time at home, attending the PTA meetings and helping with driving his daughters to swim team practice at the Goldsboro Y. But not even a bright, hardworking lawmaker can legislate more than 24 hours into a day. So something had to give, and Lancaster decided it was the legislature.

Lancaster did something else unusual for a politician. He sat down and wrote a lengthy statement about why he won't seek re-election in 1986, not so much for its news value, but to bring attention to the problems he sees facing the General Assembly. Some excerpts:

"Service in the General Assembly is ostensibly part-time, but it requires so much time at so little remuneration that my profession and family have both suffered from my service."

"Since the 1979 session, every regular session that I have served in has been longer than the session before. I am hopeful that the 1985 session will reverse that trend. However, despite some progress in decreasing the length of the session, it is still difficult for a person to be away from his family and job for almost half a year at a time. As my seniority and influence have grown, so have my responsibilities. This has taken additional time away from my family and job."

"I believe the future of the General Assembly rests in a renewed commitment to the concept of the citizen, part-time legislature."

The statement once again raised the long-standing question: Is the concept of the citizen legislature, long revered in North Carolina, in peril? Or is that an outmoded precept?

Some defenders of current legislative practices would argue that life is much more complex now than in the days of Jefferson and Madison, who rode horseback to the Capital for a short legislative session before returning home for spring plowing. Legislatures need more time to study before decisions are made now, and the wish to maintain a citizen legislature may be a yearning for a return to a simpler time.

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The major problem for a citizen legislature is the time spent in session, and, thus, how much time a lawmaker spends away from home and work. North Carolina splits its regular legislative sessions into a long session, usually of about six months, in the odd years and a short session, usually of about a month, in the even years. Since 1975, the long sessions have ranged in length from as few as 108 days in 1979 to as many as 138 days in 1983. Those numbers reflect the days actually spent in session, so the actual length of the session on the calendar is much longer. The 1985 session, for example, met 118 days over 164 calendar days.

The most common tool used by other states to control the length of sessions is a constitutionally imposed deadline. But there is little sentiment among the legislature's leadership here to impose a hard and fast deadline on adjournment or to make the sweeping revisions in the committee system necessary to effect such a change.

North Carolina's problem is also the nation's problem. Increasingly, says Bill Pound of the National Conference of State Legislatures in Denver, Colorado, "the feeling exists in a lot of places" that the citizen legislature is in danger. Iowa, Colorado, and Alaska have taken steps since 1980 to limit sessions, according to Pound. Iowa imposed a date after which legislators could no longer collect per diem expenses; Alaska and Colorado added constitutional deadlines.

In the Southeast, North and South Carolina are the only two states that do not legislate under a constitutional deadline. Virginia to the north and Tennessee to the west do. Among the 10 most populous states, North Carolina is more at home. Of those 10, only two—Texas and Florida—impose a deadline. Eight of the second 10 most populous states do impose a deadline.

The barriers to a shorter session are many. Two of them seem most prominent. First, the growing complexity of state government itself causes long sessions. Increasingly, state government is beckoned by its citizens and the federal government into new areas of governance, increasing the legislature's workload. Moreover, the General Assembly is no longer content to pass the governor's budget without lengthy scrutiny, or at least the appearance of it. And the appropriations process gobbles up much of the legislature's time.

Lancaster has offered these solutions, both within and without the legislature, to hold down the length of sessions and prolong the tradition of the citizen legislature:

- Shorten the legislative week to three days, Tuesday to Thursday. Lawmakers now work Monday night to Friday noon when in session.
- Curtail committee assignments. Most lawmakers serve on eight or nine committees. Lancaster suggests a maximum of two or three to enhance expertise. He further suggests the standing committees meet year-round, replacing the current system of interim study panels. The standing committees would then be prepared to report bills as soon as the session convened.
- Lengthen terms to four years. Legislators now serve two-year terms. Lancaster suggests that a four-year term would allow "legislators to devote more time to their families and business and less time to politicking." Voters soundly rejected such a proposal in 1982.
- Pay higher salaries. Lancaster says that higher salaries would reduce the financial strain imposed by legislative service. In 1987, pay will rise to $9,240 a year (from the current $8,400) for the rank-and-file legislator, plus an expense allowance of $230 a month, up from a current $209 a month. Even at that rate, Lancaster figures the compensation per hour is less than that of a day laborer. North Carolina ranks roughly in the middle among the 50 state legislatures in terms of pay—28 have higher salaries, one is about the same and 20 have smaller salaries, according to the National Conference of State Legislatures.

From time to time, various other legislators also have taken a stab at reform, the most dramatic of which came from former state Sen. William G. Hancock (D-Durham). In 1983, Hancock drafted legislation called the Citizen Legislature Act. It proposed to limit the session to a total of 100 days over the two-year span, allow standing committees to meet throughout the year, impose a system of rigid internal deadlines for handling bills, and allow bills to be filed and considered by committees year-round.

The bill died, but some of its ideas survived. House and Senate leaders agreed in 1984 to delay convening until Feb. 5, 1985, three weeks later than normal. A May 15 deadline was imposed for the introduction of public bills, except for appropriations and pork-barrel spending bills. Bills filed after that deadline required not only a resolution passed by a two-thirds majority for introduction but also a two-thirds majority for passage. Although more than 200 public bills were filed after the deadline, it nevertheless was helpful in holding back the traditional flood of last-minute legislation. Only 58 public bills filed after the deadline were approved by the General Assembly.

—continued page 52

IN THE COURTS

—continued from page 49

counted in a close state Senate race. Chief Justice Thomas Ruffin wrote that the justices responded because they "deemed it a duty of courtesy and respect to the Senate." Few other state supreme courts extend that courtesy to the executive or legislative branches of government, and most of those states have a specific constitutional provision for advisory opinions.

Still, the N.C. Court hasn't always been courteous.

In 1869, for example, the N.C. Supreme Court refused to advise the General Assembly on how the 1868 Constitution affected certain classes of debt that were incurred before the new Constitution's adoption. Then, wrote Chief Justice Richmond Pearson, "The functions of this court are restricted to cases constituted before it. We are not at liberty to prejudge questions of law."

And in 1984, the justices did not respond to a request from Gov. James B. Hunt, Jr. on the constitutionality of sections of the Safe Roads Act of 1983. Their denial is not part of any written record. They simply didn't answer it, said Branch. The reason? People accused of drunk driving already were being prosecuted under the new law. Thus, any defendant's lawyer could raise the constitutional question. "With a pending criminal case, it's questionable whether we could give one (an advisory opinion). It would be bad on the man who was about to be tried," explained Branch.

Over the years, in other states, debate has centered on the appropriateness of the advisory opinion. U.S. Supreme Court Associate Justice Felix Frankfurter called them "ghosts that slay," meaning that they can come back to haunt a court that acted hastily in issuing an advisory opinion.

That can happen because requests for the opinion don't present a sharply defined controversy between opposing sides. The N.C. Supreme Court doesn't want to receive written briefs on the issues or to be presented oral arguments from people interested in the matter. Requiring briefs and hearing arguments "really gives it the stature of an opinion, it seems to me," Branch said.

North Carolina's expert on advisory opinions, the late professor Preston Edsall, explored these problems and recommended the the court take steps to avoid the pitfalls of advisory opinions. Based on the infrequency of such opinions in recent years, the practice has not been abused. Perhaps that has worked in the North Carolina Supreme Court's own best interest—as a sort of legal talisman to ward off those "ghosts that slay."[5] □

FOOTNOTES

[1]N.C. Constitution, Article 3, Section 1.

[2]See "Assessing the Administrative Procedure Act," N.C. Center for Public Policy Research, May 1985.

[3]Warren, The Supreme Court in United States History, 108-111 (1922).

[4]Felix Frankfurter, Note on Advisory Opinions, 37 Harvard Law Review 1002, at 1008 (1924).

[5]Preston Edsall, The Advisory Opinion in North Carolina, 27 N.C.L.R. 297 (1949).

IN THE LEGISLATURE

The measures trimmed about a month off the 1985 session when compared to 1983. Even more internal reforms are on the way, according to House Speaker Liston Ramsey and Lt. Gov. Robert Jordan, the Senate president. The two have discussed convening the session even later, perhaps in mid-February. "There is a lot of wasted time at the beginning of a session," Ramsey said. They have also discussed new internal deadlines: moving the deadline for public bills back to May 1, and requiring all bills to clear the chamber of their introduction by June 1 or else die. "My position has been let's take this logically and move one step at a time," Jordan says.

A major overhaul of the committee system is an idea whose time has not yet come. Ramsey, for one, is adamantly opposed to year-round meetings of standing committees, although he is considering naming members to fewer committees. Jordan would like to have not more than eight or 10 Senate committees instead of the current 29. However, he notes that fighting tradition isn't always so easy as it sounds. Majority-party Democrats with seniority are used to touting their chairmanships back home. Fewer committees mean fewer chairmanships and some disgruntled ex-chairmen. Jordan frames the committee dilemma as a question that could well apply to the broader issue of how to make sure the Martin Lancasters don't quit the General Assembly before their time—and whether the increasing demand for new laws can be balanced with the desire for a citizen legislature.

"How do you get from where we are to there?" Jordan asks. "That'll be difficult." □