

The Coming of Age of the N.C. General Assembly

by Jack Betts



Photo by Paul Cooper

On November 21, 1978, the Democrats in the North Carolina House of Representatives kissed tradition goodbye by nominating Gastonia lawyer Carl Stewart for a second two-year term as their speaker. Before 1978, the House had usually bowed to a long-standing policy of rotating positions of leadership among its members, not only the speaker but also the major committee chairmanships. But in 1977, the voters had approved a gubernatorial succession amendment, which meant both the governor and the lieutenant governor (who presides over the Senate) could serve up to eight years. The House members quickly saw the advantages of having a multi-term speakership — such as gaining some parity with the Senate.

When the General Assembly convened in 1979 and formally elected Stewart to a second term as speaker, the legislature turned an important corner in its development. Since the governor has no veto power in North Carolina, most government analysts regard the legislature in this state as one of the nation's most powerful in its relationship to the executive branch. But despite this position of strength vis-à-vis the governor, the General Assembly as late as 1971 ranked 47th in the nation in terms of efficiency and professionalism in the view of The Citizens Conference on State Legislatures. In 1971, that group published its rankings in *The Sometime Governments: A Critical Study of the 50 American Legislatures*, and found, for example, that the N.C. legislature was operating "with a level of professional staff service below minimally acceptable standards."

As that 1971 report was being prepared, the General Assembly had already begun to address some of its most glaring weaknesses, such as the lack of fiscal and legal staff and the relative absence of year-round committee structures. The election of Stewart capped a series of structural

Rep. Al Adams (D-Wake) (right) confers with Speaker of the House Liston Ramsey (D-Madison) as he presides in the October session.

improvements and began a new era that is just beginning to unfold — an era of more centralized legislative leadership, more career-oriented legislators, and a more professional, Congressional-like structure. The speaker of the house, the major committee chairmanships, and the lieutenant governor have become important power bases in themselves, no longer positions to be rotated as a kind of reward for long party loyalty or government service.

This new-found continuity of leadership is the most obvious symbol of a process that has been slowly taking shape for a decade. The N.C. General Assembly is flexing considerable muscle in its relationship with the executive branch, and in the process is changing the way it does business and the way it relates to its constituency, the voters of the state. In a recent article called "Fifty Years of the General Assembly,"¹ longtime legislative observer Milton Heath of the Institute of Government described the trend as "the growing tendency of the contemporary legislature to build an independent base for itself."

The most obvious ways in which the General Assembly has built itself a stronger base show up in the current structure of the institution itself — its staff, its buildings, its computer system, its longevity, its frequency in meeting, and its cost. The process began in earnest in 1971 when the legislature es-

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tablished its legislative services office. By 1978, this office included four separate divisions: fiscal research, general research, bill drafting, and administrative. These divisions gave the legislature a capability of gathering and analyzing financial data, reviewing details of specialized issues, and drafting bills independent of the executive branch. The legislature also added computers for instant location of the progress of a bill and later for recording of roll-call votes, more attorneys as staff to specific committees, and finally in 1981, a spanking-new \$8 million legislative office building next to the 20-year old Legislative Building.

As the staff capabilities increased, so did the frequency of the sessions of the General Assembly — in a dramatic fashion. Until 1973, the legislature generally met only during the odd-numbered years for about five months. The legislators passed a biennial budget, a host of local bills, general legislation, and then left the reins of government in the hands of the executive branch for about 18 months. But in 1973, Republicans took over the executive branch and the now annual and increasingly complex budget ballooned to \$3 billion. Consequently, the Democrat-controlled General Assembly decided to meet the next year for what it dubbed a “budget session.”

Since 1974 — the beginning of annual sessions — the General Assembly has met more and more frequently. In 1981, the legislature met three different times (January-July and twice in October) for its longest session ever, and it could be back in January of 1982 for another redistricting session. North Carolina has no statutory or constitutional limits on the length of sessions — as do 28 states including Virginia.² In addition, the N.C. legislature can call itself into session by a petition of three-fifths of its members. And once convened, they can continue meeting for as long as they wish thanks to the repeal in 1969 of a law that limited their pay to only 120 days per session. Moreover, the legislature’s standing committees have begun to meet regularly throughout the year, as have select interim committees and study commissions.

As the longevity increased, so did the salaries, to a still-modest \$6,936 per year. But add to this sum \$50 per day in expenses during a session, including weekends, a monthly expense account of \$172, and reimbursement for a round-trip home each week. In a two-year term, an average legislator can now get about \$25,000 in total compensation.

In just a decade, from 1971 to 1981, the General Assembly has entered the modern era of computer-recorded roll-call votes, legal staff for committees, successive terms and full-time staff for legislative leaders, and year-round legislative analysis by committees and staff. In 1982,

the voters of the state could extend the growing professionalism of the legislature by approving a proposed constitutional amendment to lengthen the terms of both House and Senate members from two to four years. The legislature, which placed this proposal on the ballot through a 1981 action,³ said that running for office every two years was too expensive and tended to limit its professionalism. But various groups and newspapers have expressed concern about the four-year term. As the *Winston-Salem Journal* put it in an editorial: “How can legislators be more accountable to the people if they have to face the people only half as often as they do now?”

In flexing its muscles vis-à-vis the executive branch, in asserting its growing independence, and in responding to the higher visibility brought about by annual sessions, the legislature has already developed a power base somewhat removed from voter accountability. Through an increased presence on boards and commissions, through the powerful Advisory Budget Commission (ABC), and through unusual legislative maneuverings, members of the General Assembly are wielding more and more power in Raleigh in ways not easily discernible by the voters.

Members of the General Assembly now hold more than 200 positions on 76 boards and commissions in the executive branch; 50 of these groups have been created in the last eight years. Placing legislators on these executive-branch bodies stems from the idea that by their presence legislators would ensure that a board functioned in compliance with legislative intent and that it would have the ear of the legislative branch. Thus legislators have a new vehicle for monitoring activities within the executive branch and for influencing the hearing that recommendations from the advisory groups get before the legislature.

The most visible and most powerful of the boards and commissions on which legislators sit is the Advisory Budget Commission (ABC), a hybrid agency that sometimes seems to wrap executive and legislative functions all in one. Along with the governor, the ABC develops the state budget every two years and makes recommendations for supplemental budgets for the budget sessions of the legislature. By statute, the ABC can also make a statement of disagreement with the governor’s proposals, which are the final word on recommended budgets.

Some legislators, like the veteran Sen. Julian Allsbrook (D-Halifax), believe the commission represents an unconstitutional intertwining of the legislative and executive branches and have attempted to have it repealed. And many analysts judge the ABC, by its very structure, to weaken



Photo courtesy of N.C. Division of Archives and History

Until 1963 the 120 members of the N.C. House of Representatives met in this chamber. It is now preserved for tours in the old Capitol in Raleigh.

the power of the governor to develop his own budget. Nevertheless, governors seem to like the ABC because at least 8 to 12 of its members are legislators, usually the most powerful members of the General Assembly. If a governor can convince the legislators on the ABC to support his budget, he generally has an easy time getting it through the entire 170-member legislature.

Last year the legislative membership of the ABC meant enough to Gov. James B. Hunt, Jr. for him to bypass a political ally, Charlotte Mayor Eddie Knox, for another term as chairman. Instead, Hunt picked Sen. Kenneth Royall (D-Durham), to head the ABC. Already the chairman of the Senate Ways and Means Committee and, at the time, head of the Legislative Services Commission's personnel committee, Royall has emerged as one of the most influential state senators in Tar Heel history.

The Governor and the legislative members of the ABC "have been able to work together well," says Royall. "They (the executive branch) have never tried to ram something down our throats. But I would attribute that to the fact that a majority of the members of the Advisory Budget Commission are legislators."

Royall views the General Assembly and the executive branch as on an equal footing. The way in which Royall and his colleagues approach their job is helping to keep that balance in place. Royall, owner of a furniture and home-decorating business now run by his sons, does not have to juggle his legislative duties with the pressures of a

legal practice or the worries of spring planting. And on the House side, Rep. Liston Ramsey (D-Madison), a retired merchant, may hang onto his gavel indefinitely. The citizen legislature of farmers and attorneys of years past has given way to a new breed of professional legislator, certainly at the leadership level and increasingly within the ranks as well.

The growing professionalism has bred a new level of sophistication in using the legislative process to gain more power, particularly in relationship to the executive branch. In 1981, for example, the General Assembly attempted to pass a law giving it veto power over regulatory actions taken by the executive branch. Gov. Hunt opposed the bill and was able to weaken its scope. But a law did pass that gives the Administrative Rules Review Committee broader powers in reviewing executive agency rules than the committee formerly had.⁴ When this committee finds that an executive agency has exceeded its statutory authority in promulgating a rule, it can delay the rule from going into effect. The committee does not have an outright veto over an administrative action; an agency can contest the committee's delaying of a rule and the committee decision can be reversed in some cases by the governor alone and in others by the Council of State. The standard for review in North Carolina is whether the proposed rule is thought to be outside the statutory authority granted the agency. Still, despite the active lobbying of the Hunt administration against the measure, North Carolina joined 37 other states in adopting a legislative review of administrative regulations.

The legislature has also used its growing sophistication to intrude on powers traditionally exercised by the judicial branch. In 1981, for example, the General Assembly gave the Joint Legislative Committee on Governmental Operations control over a restricted reserve fund which cannot be allocated without the committee's approval and which may affect the expenditure of funds for judicial personnel.⁵ This action may conflict with General Statute 7A-102(a) which gives the Administrative Office of the Courts authority to set the number of employees and salaries and perform other fiscal functions. In the Nov./Dec. 1981 issue of the N.C. Bar Association's *Barnotes*, N.C. Superior Court Judge Frank W. Snapp expressed alarm over such actions: "The independence and integrity [of the judicial branch] have come under increasing assaults from the General Assembly. . . . This trend must be reversed if the separation of powers between the legislative and judicial branches of government is to be maintained."

Legislators have even begun to bypass normal legislative routes to accomplish their ends. For example, during the 1981 session, the Legislative

Services Commission, which oversees operation of the General Assembly, cut off funding to the Governmental Evaluation Commission (popularly known as the Sunset Commission), a predominantly executive-appointed body with review power over certain state agencies and boards, the current usefulness of certain statutes, and other regulatory acts. Thirty-three states have a sunset law, developed usually in an effort to make government more efficient and relevant to current problems. Using a fiscal maneuver, the Legislative Services Commission cut off the Sunset Commission's ability to function and then transferred the same review powers to a special committee of the legislature and its staff.

Legislators — as well as the governor — have begun to use another avenue to power by placing important proposals before the General Assembly in the form of special provisions in the appropriations bills. These provisions often are unrelated to the budget, at least directly. Instead, they might contain major policy proposals that get approved in the same breath that legislators use to give the eye to the appropriations bill, which is seldom successfully attacked during floor action. For instance, when the legislature met in 1978 for a short session, the appropriations bill submitted by Gov. Hunt to the General Assembly, with the concurrence of the Advisory Budget Commission, contained 45 provisions, 21 of them dealing with policy. The technique had not gone unnoticed by the legislators either; if such a foray was good for the goose, it was good for the gander. Legislative leaders began putting more and more of their own policy directives in provisions within appropriations bills.

Legislative Building during construction in 1962.

Photo courtesy of N.C. Division of Archives and History



By the October 1981 "budget" session, the legislative leaders had become expert at this technique, skilled enough to ratify 84 special provisions, two of which Gov. Hunt questioned as an unconstitutional encroachment on his power. One provision in the October budget bill created a special committee to review and approve shifts of the block-grant funds that the state will get as a result of federal budget cuts. And guess who chairs that committee? The same Sen. Royall who heads the Advisory Budget Commission and the Senate Ways and Means Committee. Hunt has asked the Attorney General for an informal (and therefore not published) advisory opinion on whether this committee, as formed, infringes upon the executive's powers as defined by the N.C. Constitution (see pages 28-29 for details on the legal issues).

The other matter in question would limit the Governor's authority to transfer money within the state budget and his ability to use unspent funds for other purposes. If the Hunt administration wanted to transfer more than one-tenth of the money from one line item to another, the matter, according to this budget-bill provision, would have to go before the legislature's Governmental Operations Commission for review and approval.

At one point during the October session, the legislature reached so far with an attempted special provision that the effort backfired. Legislative staff were requested to draft a provision for the budget bill which would have effectively gutted the Coastal Area Management Act (CAMA), a controversial land-management law passed in 1974 which has had a great impact on coastal development policies. Aware of the implications of the draft provision, Secretary of Natural Resources and Community Development Joseph Grimsley, a strong CAMA advocate, pointed it out

to the press. Newspapers picked up the story — some placing it on the front page — and focused on Grimsley's linking the legislative effort to kill CAMA with the fact that Kenneth Royall owns coastal property affected by CAMA. Royall admitted owning the property and opposing some CAMA regulations but vigorously denied having anything to do with the special provision. The controversy that swirled around these two powerful political personalities effectively killed the provision. Without such a high-charged exchange between an administrative and legislative leader, the General Assembly might well have used a simple amendment to a budget bill to wipe out a major state program that has been in place for seven years — with little or no debate on the land-use policies in question.

The CAMA incident in October epitomizes the dangers of using special provisions within the budget bill to recast state policy. Legislators tend not to analyze and question such bills in the same way they do other pieces of legislation. Moreover, the Appropriations Committees, through which the special provisions are added to the budget bill, may not have the proper jurisdiction to add non-budget related items to the appropriation bills.

In the last 10 years, the legislature has centralized power into the hands of its leaders, has begun to function more like Congress and less like a band of part-time, citizen legislators, and has flexed its muscles in dealing with the executive branch. A wide range of factors have caused this process, three of the most important being: 1) the legislators' perception of the need to check the growing strength of the executive branch; 2) the return to power of the conservative faction of the Democrat party to the legislative leadership positions; and 3) a desire to curtail the effectiveness of the first Republican governor in North Carolina in this century in 1973-77.

House Speaker Liston Ramsey contends that despite the absence of a veto, the executive branch has the upper hand. "The legislative branch doesn't hire or fire anybody or appoint anybody," says Ramsey. "The governor does all the hiring and firing and spending all of the money and all of the highway money, too. I've heard that old story about the legislative branch being the most powerful in the nation because the governor doesn't have the veto, but I don't buy that."

Given such feelings, Ramsey certainly wouldn't want the governor to gain additional powers. Ramsey, along with Royall and Lt. Gov. Jimmy Green, tend to direct the legislature as if they have the duty to protect this body — and the constituents it represents — from "executive branch creep." Controlling state expenditures has been a primary

vehicle for curbing executive growth and power. Legislators usually have been able to come to some agreement with the executive branch on fiscal matters, primarily through state Budget Officer John A. Williams, Jr., Hunt's chief assistant. From the conservative wing of the party himself, Williams has tended to function in a collegial rather than a confrontational style with the legislative leaders.

The Governor has acted similarly. Even after the legislature appeared to be usurping some executive power with its recent provisions regarding the review of block grant funds and executive spending patterns, Hunt moved cautiously in challenging the legislative leadership — the very people he has courted so ardently since he took office in 1977.

Royall contends that the legislators were not trying to assume undue power through the October provisions. "It was just a matter of us trying to become informed," says Royall. "I don't think that (action) had anything to do with the balance of power."

Royall views the balance of power between the two branches as remaining stable so long as the two sides cooperate. But he said the legislature would move quickly to establish supremacy if it felt threatened. "I really believe the legislature would take over. They wouldn't let the administration run them over," says Royall. When Royall talks, people tend to listen. And if he says the legislature will flex its muscles when it sees fit, the executive branch should believe it.

Under its current leadership — which might be there for awhile — the General Assembly appears likely to retain if not expand the extent of its power in running the state. Moreover, the legislature has turned into an efficient, modern institution with computers, staff analysts, expanded office facilities, and annual sessions. It is doubtful that a national survey would now rank the North Carolina legislature near the bottom of the nation in efficiency. And if any group ever attempts the more difficult task of surveying the states to determine which legislature has the most power in relation to the other branches of state government, it might well place the North Carolina General Assembly near the top. □

FOOTNOTES

¹*Popular Government*, Winter, 1981, p. 20.

²Where comparisons to other states are made in this article, the source is *The Book of the States*, 1980-81, pp. 77-142.

³Chapter 504 of the 1981 Session Laws (SB 300).

⁴Chapter 699 of the 1981 Session Laws (SB 250), which amends G.S. 120-30.26ff.

⁵Chapter 964 of the 1981 Session Laws (HB 42), Section 20.