the 1972 General Election

CONSTITUTIONAL PROPOSITIONS AND VOTING PROCEDURES

by H. Rutherford Turnbull, III

The 1972 general election to be held Tuesday, November 7, hardly needs to be called to the voters' attention. On the federal level, it brings the presidential election. On the state level, it involves balloting for United States senator and representatives, Governor, members of the Council of State, and members of the General Assembly. On the local level, it will settle for two years the important but frequently overlooked issue of membership on county boards of commissioners. On the state level it also offers voters no less than five propositions for amending the North Carolina Constitution.

PROPOSED CONSTITUTIONAL AMENDMENTS

The five proposed constitutional amendments (not necessarily in the order in which they will appear on the ballot) are:

1. Constitutional amendment (Art. VI) to allow 18-year-olds to vote but restrict elective officeholding to persons 21 years old or older.
2. Constitutional amendment (Art. IV) to require the General Assembly to prescribe maximum age limits for service as justices and judges.
3. Constitutional amendment (Art. IV) to empower the General Assembly to prescribe procedures for the censure and removal of justices and judges.
4. Constitutional amendment (Art. VII) to limit the authority of the General Assembly with regard to the incorporation of cities and towns within close proximity of existing municipalities.
5. Constitutional amendment (Art. XIV) to add a statement of policy regarding the conservation and protection of natural resources.

OFFICEHOLDING AND 18-YEAR-OLDS

On November 3, 1970, the Constitution of North Carolina was amended to become effective July 1, 1971. One amendment made technical or stylistic changes in the language of Article VI dealing with elections. As amended, it provided that voters must be 21 years of age (Art. VI, § 1) and that, generally, every qualified voter shall be eligible for election by the people to office (Art. VI, § 6). The effect of these provisions is to require voters and officeholders to be 21 years old, subject to the exceptions explained below. However, a recent amendment to the Constitution of the United States has affected these provisions.

On July 5, 1971, the United States Administrator of General Services certified that the Twenty-Sixth Amendment to the United States Constitution had been ratified by the legislatures of at least three-fourths of the states and had become effective. This amendment lowered the minimum voting age in all elections to 18 and made ineffective the portion of the North Carolina Constitution that fixes the voting age at 21.

The State Constitution provides, in general, that any qualified voter is entitled to hold any elective office. The offices of Governor, Lieutenant Governor, and state senator are exceptions to this principle. To be Governor or Lieutenant Governor, one must be 30 years old; to be a state senator, 25. Thus, except as noted, ratification of the Twenty-Sixth Amendment opened to registered voters between the ages of 18 and 21 the right to hold office in North Carolina.

On the opening day of the 1971 legislative session, a bill [Ch. 201 (H 2), as amended by Ch. 1141 (H 1495)] was introduced that proposed a referendum to decide whether the North Carolina Constitution should be amended to lower the voting age to 18 but restrict elective officeholding to persons 21 years old or older. Since the eligibility of 18-year-olds to *vote* was determined by the Twenty-Sixth Amendment, the live issue of the 1972 referendum will be whether to take the right to *hold office* from registered voters between the ages of 18 and 21.

The language in which this ballot states the issue was adopted before the Twenty-Sixth Amendment was ratified. It is therefore somewhat confusing:

- ☐ FOR State constitutional amendment reducing the voting age to 18 years and providing that only persons 21 years of age or older shall be eligible for elective office.
- ☐ AGAINST State constitutional amendment reducing the voting age to 18 years and providing that only persons 21 years of age or older shall be eligible for elective office.

Adoption of the "For" proposition would deny 18-year-old voters their present eligibility to hold most state and all local offices. Therefore, if a voter wants to restrict officeholding to those at least 21 years old, he should mark the ballot "For." But if he wants to keep the age of officeholding at 18, he should mark the ballot "Against."

[The next two sections—on the proposed amendments prescribing maximum age limit for service as a justice or judge, and establishing censure and removal procedures for judges and justices—were written by C. E. Hinsdale of the Institute of Government. He served as staff to the Courts Commission, where the proposed amendments originated.]

MANDATORY RETIREMENT OF JUDGES

Ch. 451 (S 63), as amended by Ch. 707 (S 805)

North Carolina has no mandatory retirement age for justices of the State Supreme Court, judges of the Court of Appeals, or district court judges. The law in regard to superior court judges provides that, depending on the dates of their birth and last election to office, some judges must retire at age 70 while others may serve beyond their seventy-seventh birthday. A proposed amendment to the State Constitution that will appear on the November ballot would require the General Assembly to prescribe maximum age limits for service as a justice or judge.

Subject to the amendment's adoption, the General Assembly has provided, effective January 1, 1973, mandatory retirement ages of 72 for all appellate judges and 70 for all superior and district court judges. The handful of judges over these age limits who might be in office on January 1, 1973, would be allowed to complete their terms. No judge now in office would be forced to retire until he had qualified for retirement compensation.

About two-thirds of the states have age ceilings on service as a full-time judge. Most of these states require that a judge retire from full-time service not later than age 70. A few others reach the same result by curtailing retirement benefits for judges who do not voluntarily retire at age 70. These laws merely recognize for the judiciary what has long been accepted in the business world and in public employment generally. Mandatory retirement at age 65—sometimes earlier—is the prevailing rule in industry, and the North Carolina Teachers' and State Employees' Retirement Act requires retirement at the end of the year in which an employee reaches age 65, except only for those few whom the employer, on a year-to-year basis, specifically requests be retained.

The principle of compulsory retirement at a predetermined age has demonstrated its desirability, and it should be extended to the judicial branch of state government. The proposed age limits of 70 and 72 make it reasonably certain that the state will not be deprived of a judge's peak years of productivity, but also guarantee that no person will occupy the important office of judge indefinitely beyond those years.

The work of an appellate judge is physically less demanding than that of a trial judge, which justifies an additional two years of service by an appellate judge before mandatory retirement.

Under present law, judges who remain physically and mentally able may be recalled from time to time for short periods of service as emergency judges. This desirable practice is used occasionally by the appellate courts and more frequently on the superior court level. It gives the state the advantage, on a part-time basis, of the talents of those over-age judges who can still serve usefully. This practice would continue unchanged under the proposed amendent.

REMOVAL OF JUDGES FROM OFFICE

[Ch. 560 (H 86), as amended by Ch. 707 (S 805)]

In North Carolina, Supreme Court justices, Court of Appeals judges, and superior court judges may be removed from office by impeachment by the General Assembly, or if the cause be mental or physical incapacity, by joint resolution of two-thirds of all the members of each house of the General Assembly. District court judges may be removed for misconduct or mental or physical incapacity, after a due process hearing, by a superior court judge. Short of removal, there is no formal means for disciplining any judge, and the only way to remove a Supreme Court justice, Court of Appeals judge, or superior court judge for misconduct is through impeachment.

Legislative procedures to remove a judge are not effective. Impeachment is cumbersome, expensive, inappropriate for all but the most severe misconduct and is frequently tainted with political partisanship. It has been attempted only a few times in this state—never successfully. The joint resolution procedure has apparently never been used.

While North Carolina has enjoyed a singularly scandal-free judiciary, the potential need for an effective means of disciplining judges or for removing or retiring them for misconduct or disability has increased enormously in recent years. The number of full-time, state-paid judges has increased fourfold since 1955, and news of major scandals involving judges in other states — Florida, Illinois, Louisiana, Massachusetts, Missouri, Michigan, New York, Oklahoma, and Pennsylvania, to name a few—appears all too frequently in the press.

An amendment to the North Carolina Constitution has been proposed that would require the General Assembly to prescribe a procedure, in addition to the ineffective impeachment and joint resolution procedures now on the books, for removing a judge for *mental or physical disability of a permanent nature* and for censuring or removing a judge for *misconduct in office, willful failure to perform his duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.*

Modern, effective machinery to censure, remove, or retire the unfit or disabled judge has been established in over thirty states in recent years. Most of these states have done so by means of a body generally called a judicial qualifications (standards) commission. This group of judges, lawyers, and laymen investigates complaints against a judge. If the complaints are well founded, they recommend censure, removal, or retirement of the judge to the Supreme Court, which takes final action.

The North Carolina General Assembly has estab-

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FOR CONTINUING

PROGRESS VOTE FOR THE WINNERS

AND EFFICIENT

ECONOMICAL GOVERNMENT

THEY HAVE CAUSED BRUNSWICK COUNTY TO MOVE AHEAD MORE IN TWO YEARS THAN 38 YEARS OF DEMOCRAT CONTROL AND AT THE SAME TIME BROUGHT ABOUT TAX CUTS & MORE EFFICIENCY.

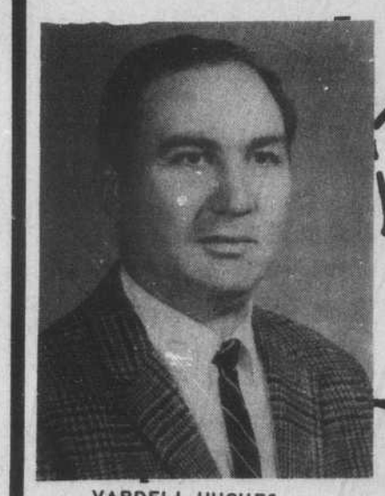
INCREASED COUNTY FUNDS FOR SCHOOLS TO IMPROVE EDUCATION.
UPGRADED SHERRIFF'S OFFICE DUE TO DRUGS & INCREASED POPULATION IN COUNTY.
HELPING TO FIGHT BEACH EROSION.
HELPED OBTAIN DREDGING FOR LOOKWOODS FOLLY RIVER AND STARTED STUDY FOR REOPENING CORNCAKE INLET.
ESTABLISHED SANITARY LANDFILLS.
WORKED TOGETHER AS A TEAM ON PROJECTS TO HELP BRUNSWICK CO.

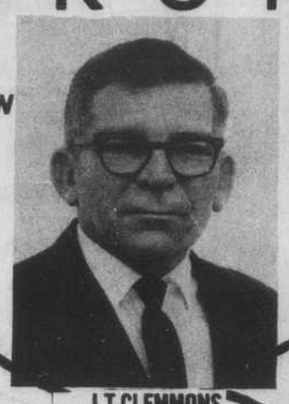
HELPED OBTAIN 8.6 MILLION DOLLARS IN FEDERAL FUNDS FOR BRUNSWICK COUNTY PROJECTS.
STARTED COUNTY MANAGER FORM OF GOVERNMENT.
LOCATED PROPERTY NEVER BEFORE ON TAX BOOKS.
CONSOLIDATED COUNTY BANK ACCOUNTS.
INVESTED COUNTY FUNDS TO DRAW INTEREST.

LOWERED TAXES BY A WHOPPING ONE FOURTH.

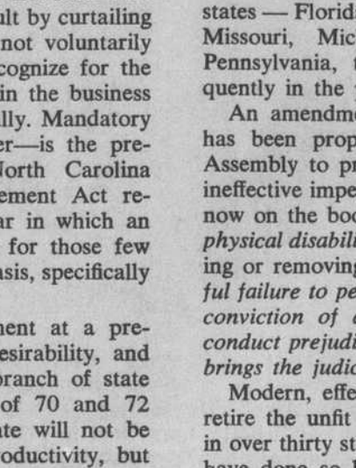
RE-ELECT A WINNING TEAM FOR BRUNSWICK COUNTY
LET'S KEEP THE COUNTY MOVING. VOTE REPUBLICAN

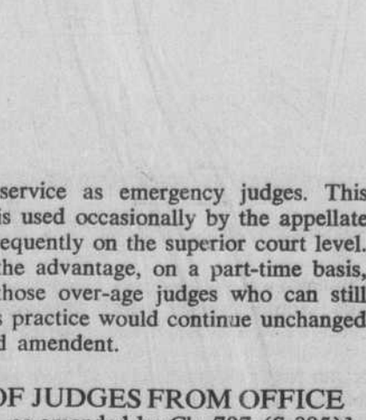
(BRUNSWICK COUNTY REPUBLICAN EXECUTIVE COMMITTEE)


VARDELL HUGHES
County Commissioner


J.T.CLEMMONS
County Commissioner


ARTHUR KNOX
Register of Deeds


WILLIAM A. KOPP, JR.
County Commissioner


TOMMY HARRELSON
House of Representatives


JOHN BRAY
County Commissioner


ROBERT SIMMONS
County Commissioner

Phoenix
Maco
Leland
Town C
Winnabo
ivia
Supply
Boiling Spring Lakes
Waccamaw
Ash
Longwood
Shallotte
G
Calabash
Ocean Isle Beach
Shallotte Inlet
Holden Beach
Lockwood's Folly Inlet
Long Beach
Yaupon Beach
Caswell Beach
Southport
Smith Island
CAPE FEAR RIVER
74 76
17
130
211
133

Economy & Efficiency in Government