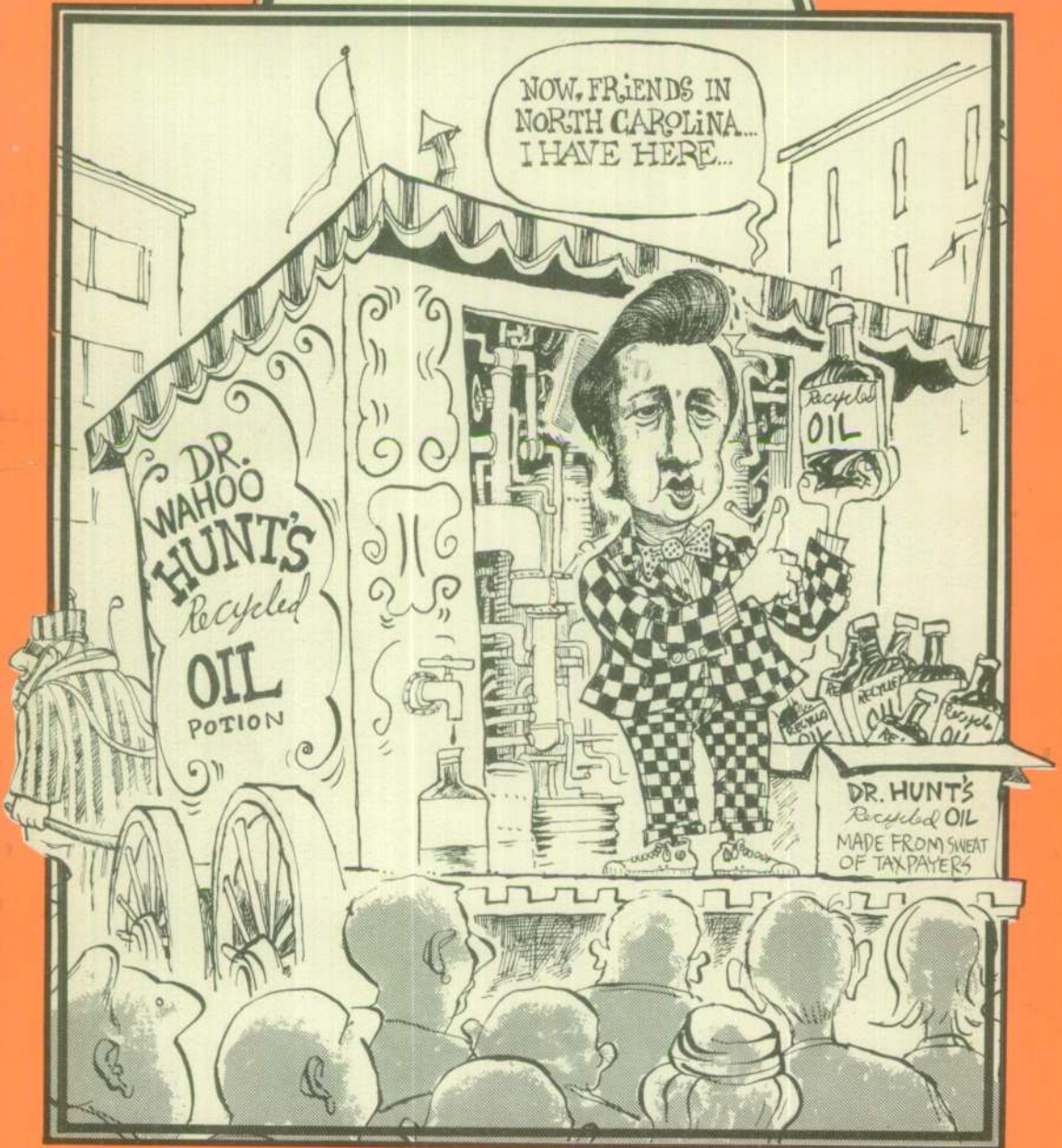


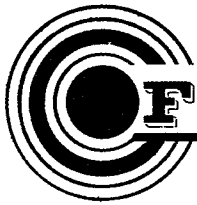
vol.1·no.1

winter 1978

NCINSIGHT



Oil: A Slippery Business
An Old Dog's New Tricks
"This Land Is Your Land"



By William G. Hancock

FROM THE CENTER OUT

William G. Hancock is chairman of the Center's Board of Directors and an attorney in Durham. He is the former director of N. C. Common Cause.

With this first issue of *N. C. Insight* the North Carolina Center for Public Policy Research begins what we hope will become a continuing dialogue with our members, people who, as the ad says, "like calling North Carolina home."

When the Center opened in March of 1977, it was the culmination of 18 months of planning and work by a number of North Carolinians who believed there was a need here for an organization designed to help all of us constructively evaluate the performance of our state government. Since the opening, the Center has had a productive first 10 months. The board of directors increased to its present complement of 34 members, representing all areas of the state. A talented professional staff came to work, moved into the Center's headquarters in Raleigh, and produced the Center's widely-praised first major report, *This Land Is Your Land*, which criticized several aspects of state land management policy and recommended a number of reforms, most of which already have been adopted formally by state officials.

The creation of the Center was made possible by grants from the Mary Reynolds Babcock Foundation of Winston-Salem, the Carnegie Corporation of New York, the Rockefeller Brothers Fund and the Ford Foundation. These foundations had the vision to realize the necessity for independent, non-profit, citizen-based evaluation of state government operations and policies, and saw in the Center an opportunity to help create a model research organization of this kind which could be duplicated by citizens in other states.

A key feature of the Center's development plan from the beginning was the publication of this journal—*N. C. Insight*—as a means of regular communication with members. In November of last year the Center began to ask North Carolinians to become members and to support this effort through tax-deductible contributions. The response has been excellent. This support directly from the people of North Carolina is essential to the future of the Center, and we hope that all of you who have joined will urge your friends to do likewise.

During 1978, the Center will publish a number of major reports on important state problems similar to *This Land Is Your Land*, and will send its members four quarterly issues of *N. C. Insight*. Each issue of *N. C. Insight* will contain summaries of major Center reports as well as reactions to them from the press and public officials, articles on other state government matters of interest, profiles of state officials and agencies, follow-up on previous reports and stories and many other items. This column will not always be hoarded by this writer, but will be written by the director or other staff members or board members of the Center, or by some other North Carolinian selected by the Center's staff. Essentially, it will be a column of personal opinion on subjects related to state government problems and policies and, as such, will not constitute an official editorial judgment of the Center.

We have heard from dozens of North Carolinians who share our enthusiasm for the work of the Center, and we are encouraged and gratified by that. We also have received some criticism of the Center's first report, and we have learned from it and are equally grateful for that.

We encourage the comments of members and others with respect to any aspect of the Center's activities, and we earnestly solicit suggestions for topics which the Center might study. The Center is, and will remain, an independent organization run by and for the benefit of all the people of our state. With your help, it will make an important contribution to the quality of life in North Carolina as it works to find ways that government might serve all of us more humanely and effectively.

(From now on, we'll be publishing letters and comments from you—the citizens of North Carolina. We would like to have your ideas and insights about what the Center is doing—or should be doing. Limit your comments to 250 words and include your name and address.)

vol.1 no.1

winter 1978

NC INSIGHT

N. C. CENTER FOR PUBLIC
POLICY RESEARCH, INC.

Board of Directors

William G. Hancock, Chairman
Patricia H. Wagner, Vice Chairman
Grace Rohrer, Secretary
James E. Harrington, Treasurer
Thomas L. Barringer
Thad L. Beyle
William L. Bondurant
John T. Caldwell
Charles E. Daye
Walter E. Dellinger III
Walter DeVries
Dennis Durden
Joel L. Fleishman
Nathan T. Garrett
Harry E. Groves
Watts Hill, Jr.
Wilbur Hobby
Mary Hopper
Herbert Hyde
Walter T. Johnson, Jr.
Thomas Lambeth
Thelma Lennon
Roxanne Livingston
Larry McDevitt
Wayne Montgomery
Donald D. Pollock
Mary Semans
Robert W. Spearman
Charles H. Taylor
Richard A. Vinroot
James C. Wallace
Harrison Wellford
Betty H. Wiser
George Wood

Mercer M. Doty,
Acting Center Director

N. C. Insight Staff

John Eslinger, Editor
Mercer Doty
Sallye Branch
Jessie Cannon
Howard Covington
Tom Earnhardt
Shelia Hartsfield
Betsy Taylor
Mary Margaret Wade

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

4 Oil: A Slippery Business Cleaning Up in N.C. -Mercer Doty

10 An Old Dog's New Tricks Henry Bridges audits more than numbers -Jessie Cannon Tom Earnhardt

12 This Land Is Your Land A Center Report

2 From the Center Out 9 1975 Edifice

15 The Full Weight of the Law

N. C. INSIGHT is a quarterly magazine published by the North Carolina Center for Public Policy Research, Inc. (a non-profit, tax-exempt corporation) at 700 West Morgan Street, Post Office Box 10886, Raleigh, North Carolina 27605. Telephone (919) 833-1656. Annual membership rates: Individual, \$15; Library or non-profit group, \$30; Corporation, \$50. Third class postage paid at Raleigh, North Carolina.
Copyright 1978 by the North Carolina Center for Public Policy Research, Inc. Articles reprinted by permission.
Printed by The Regulator Press, Durham, N. C. Cover illustration by Dwane Powell, Raleigh, N. C.

Views in this publication do not necessarily reflect the views of the individual members of the Board of Directors.



OIL: A Slippery Business

Cleaning up in N.C.

by Mercer Doty

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

On August 26 of last year Gov. Jim Hunt announced that North Carolina would spend \$1.4 million to establish the first plant in the United States to use a new process developed by the Phillips Petroleum Co. for the recycling of waste engine oil from automobiles. The reaction of the public and the news media was favorable. It seemed like a happy union of environmental protection, resource conservation, and good politics. And the Governor said the plant would pay for itself in five years and make \$1 million per year profit after ten years.

For North Carolina, the project is a major step toward responding to the N. C. Energy Conservation Plan, signed by Hunt in early 1977, which included as one of several options the operation of a state-owned recycling facility.

The Center found, however, that:

- The proposed state plant is supposed to operate at a profit, but it will be competing for waste oil with some of the state's own private businesses. This seems likely to force the price of waste oil to rise and increase the cost of the state program as well as the costs of private processors.

- The oil produced by the Phillips process has not been subjected to accepted quality tests by an independent laboratory. The state's conclusions concerning the quality of the re-refined oil have been based entirely on test data supplied by Phillips.

- The state has agreed to buy a process that has never been publicly disclosed and, as a result, has not been widely discussed and debated by scientists and engineers best qualified to evaluate it. According to Phillips Petroleum the process is probably understood by only one person in North Carolina, and he is under oath not to disclose it.

- The proposed plant is supposed to be a good buy, but at least two other alternatives may be feasible at less cost, and they use processes that are fully disclosed and currently undergoing independent testing. These alternatives have not been adequately studied.

In view of these findings the Center asked the Governor's office why the administration signed a contract with Phillips and entered a field in which private enterprise is expected to expand rapidly in the next few years. Gary Pearce, the Governor's press secretary, responded that "The answer is basically a leadership issue. The state saw, and seized, an opportunity to be part of a pioneering energy- and money-saving effort. Gov. Hunt feels strongly that it is the role of government to take the initiative and break new ground in this area, and this reprocessing plant, the first of its kind in the world, is a prime example of state government fulfilling its role. . ."

According to a 1976 Federal Energy Administration fact sheet, more than 18 million gallons of waste oil is generated in North Carolina each year, and a lot of it is either dumped by people who change their own oil or it is spread on roads to settle the dust. Both practices create serious environmental problems.

For years the petroleum industry has known that waste oil can be cleaned and re-used because oil never wears out in normal use. But, in the past, opposition from the industry as well as federal tax and labeling rules have crippled the shrinking waste oil re-refining business. Now, however, oil shortages and growing concern for the environment are changing this, and since 1972 the federal government has been doing research aimed at the recovery and re-use of waste oil and at reviving the re-refining industry. The opposition of the big oil companies has quietly diminished, and in 1975 the Congress passed the Energy Policy and Conservation Act (EPCA) that provides financial support for state plans to reduce energy consumption by 5 per cent by 1980. The preparation of the Energy Conservation Plan for North Carolina in response to this federal legislation began in the fall of 1976. By March, 1977, it had been completed, signed by Gov. Hunt, and sent to Washington.

The state plan included three proposals dealing with engine lubricating oil. One was for the state purchasing office to test synthetic oils by using them in state vehicles. Willis Holding, the state purchasing officer, says that nothing is being done on this because the use of synthetics does not yet appear to be economically feasible. Their initial cost is indeed high—about \$11.50 a gallon wholesale or about nine times the price the state pays for a gallon of conventional oil. But the synthetics have shown amazing durability while improving both fuel and oil economy. A former chief of engine lubrication for the Ford Motor Co. has been quoted as saying that he will use synthetic oil and change it every 100,000 miles or five years, whichever comes first.

The second proposal in the state plan involved legislation to encourage the public to recycle waste engine oil and to improve and regulate waste oil collection. It would require stores that sell more than 500 gallons of oil per year for off-premises use to provide and clearly mark collection points where used oil can be turned in. Rep. Charles Holt of Fayetteville introduced such a bill in the 1977 General Assembly. It didn't get very far even though the state energy office estimated it would save over 900 million BTU's in North Carolina by 1980, or about 1 per cent of the state's energy savings goal. According to Holt, his bill stopped dead in committee because "about the time we got ready to take it up they passed the bill that put the state in the business."

The third proposal was for the state to operate a waste oil reprocessing program "as a profit-making venture." This idea ultimately led to the Governor's announcement.

According to state feasibility study recommendations the plan is to collect waste engine oil in tank trucks and deliver it to Raleigh where it will be re-refined in a plant now being assembled by Phillips Petroleum. The original idea was to get the waste oil from state and local governments, but the authorization passed by the General Assembly puts no restriction on the sources. The plant will be shipped to North Carolina and reassembled this summer if all goes well. Once re-refined, the oil will be sold to state and local government users in 55-gallon drums. The re-refining facility as well as the collection and distribution systems will be operated by Prison Enterprises, the arm of the Department of Correction that runs about 14 service and manufacturing activities which train inmates and sell products to tax-supported agencies.

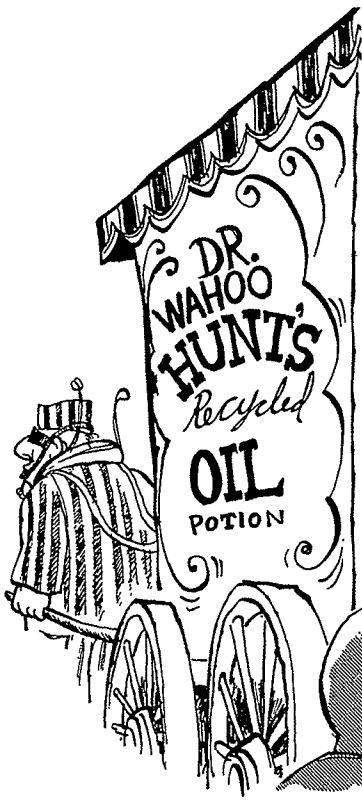
The project began to take shape in early 1977 when Willis Holding, the state purchasing officer, suggested that Prison Enterprises look into the possibility of an oil recycling program similar to one operated by West Virginia. However, according to G. M. "Gil" Holland, chief of Prison Enterprises Services, he did not consider the West Virginia approach attractive because it involved the high cost of trucking used oil to the Motor Oils Refining Company (MORC) in Chicago. Nevertheless West Virginia claimed to be saving tax money with its system while taking advantage of the technological competence of the largest waste oil re-refining company in the United States.

When the Center talked to R. E. Poindexter, MORC manager of automotive and industrial sales, it discovered that MORC re-refines and returns used lubricating oils from as far away as the Pacific Northwest, usually transported by rail. Holland acknowledged that he had not looked into the possibility of using railroads to reduce transportation costs.

Holland also talked to several of the large oil companies, including Texaco and Exxon, in early 1977, as well as to waste oil reprocessing firms. The big oil companies showed little

**"The answer is basically
a leadership issue."**

**- Gary Pearce
Gov. Hunt's press secretary**



The State's Oil Options - THEN

- Pass legislation to encourage the public to turn in waste oil for processing by private firms operating in the state.
- Ship waste oil to the largest re-refinery in the U. S. and exchange it for re-refined oil that will soon be of proven quality.
- Invest in a secret process developed by private industry that produces re-refined oil not yet proven by accepted independent lab tests.
- Use a process developed by the federal government that might be less costly.
- Develop a more efficient method of collecting oil from government vehicles and sell it to the highest bidder.
- Test the use of synthetic oil in government vehicles and determine the costs involved.



interest, according to Holland, and the reproprocessors "didn't impress" him much. As a result, in February, 1977, he turned to Dr. James K. Ferrell, head of the chemical engineering department at N. C. State University, for help in identifying ways to recycle waste oil. Ferrell, a former employee of the Sun Oil Company, says he took a look around and didn't find much. He recalls talking with Exxon, Gulf, and with some university departments familiar with petroleum engineering. Finally in March, he contacted a friend at Phillips who told him that the company had been working on a new waste oil re-refining process for five or six years and was about ready to market it. Ferrell was aware of other new processes, but his review of available information convinced him that the Phillips approach was a good one. He was also impressed by the company's willingness to build a plant and ship it to North Carolina, thus allowing the state to avoid the complicated and time-consuming problem of construction.

The Center discussed the Phillips process with people who are knowledgeable about waste oil research, including officials of the U. S. government's Bartlesville (Oklahoma) Energy Research Center (BERC), the

National Bureau of Standards and the Army Mobility Equipment Research and Development Center. All of the experts contacted said they could not evaluate the Phillips process adequately because the company had been very reluctant to provide information about it. Phillips' spokesman R. E. Linnard said this was necessary to protect the company's proprietary interests in the process.

Nevertheless, the Phillips proposition seemed like the answer to a prayer to Prison Enterprises. Visits by company officials armed with company data appeared to confirm this. Throughout this period, Prison Enterprises relied heavily on the opinion of Dr. Ferrell, according to Holland. Yet Ferrell says he functioned only as a consultant, a technical advisor, and that his principal role was to offer assurances that the Phillips process would work. Even on that point he concedes that there are some who are skeptical about it.

In the contract with Phillips, the state recognizes that there will be a reduction in the design capacity of the plant if the waste oil put through it is not "free of... products such as brake fluids, antifreezes, and solvents such as those used in cleaning engines and

parts." Yet most service stations and motor pools dump these contaminants into a collecting tank along with waste motor oil. When questioned by the Center, Ferrell agreed that this can be a problem but suggested that it can be solved by separating the waste oil from the other fluids. As he pointed out, however, this in turn generates another problem: How do motor pools and service stations then dispose of these contaminants? Ferrell said he didn't know why the state chose a process with this limitation. N. C. State University has a continuing interest in the project, according to Ferrell, and in the next few months it will submit a grant proposal to the National Bureau of Standards to do experimental work on quality control aspects of the Phillips process. The aim is to find an acceptable, inexpensive substitute for the current waste oil test procedures that cost about \$25,000 to run.

Gil Holland and the people at Prison Enterprises felt that because they now deliver products to all sections of the state, it would be possible to collect waste oil and redistribute the re-refined oil without major additional cost. Nevertheless, there would be a need for money. The plant alone would sell for about \$1.25 million, according to Phillips, and that kind of money could come only from the General Assembly. Holland said his heart sank when he heard the figure because he saw no way for the state to make that much available. He underestimated legislative response to executive leadership.

Before the proposal could be taken to the legislature, however, it had to be accepted by the Department of Administration and the Governor. In the department the largest share of the responsibility rested on Holding, the highly regarded state purchasing officer, and on John Talton, an assistant secretary and Holding's immediate boss. Holding, who said he also relied on Ferrell's technical advice, maintains that the Phillips process is the only one that met the state's primary needs: recovery of 90 per cent of the waste oil processed, a finished product as good as virgin oil, and a process that caused no significant environmental effects.

The state also made an investment in Phillips' name. As Dr. Ferrell and others have pointed out, the company may be sure the plant works because so much attention is being paid to the North Carolina sale. Yet the Center found that the re-refined oil produced by the Phillips process has never been subjected to accepted tests by an inde-

pendent laboratory. The company has provided test results from its own facilities, but the question is whether this is sufficient evidence for the investment of \$1.4 million in public funds, not to mention any possible risk of damage to some 97,000 vehicles owned by state and local governments.

The North Carolina approach stands in vivid contrast to that of Iowa. There, re-refined oils are being used in state vehicles for 24 months on a test basis, and the various collection, distribution, and re-refining options are being concurrently studied. After two years some of the engines will be torn down and examined by an independent laboratory to determine wear. Then Iowa will make its decision.

North Carolina has the same options as Iowa. It could, for example, increase the collection of waste oil and sell it. John Talton said this alternative had not been studied because there is no used oil processor in the state that meets the federal environmental standards. The Center found, however, that the Holston Fuel Co. of Waynesville buys and processes about 3 million gallons of waste oil a year, and James Breece, the Holston vice president for quality control, claims the company meets federal requirements. Breece says his company now buys about 1 million gallons of waste oil each year in North Carolina, including government oil, and it is considering a suit against the state because the state will soon be competing for some of the same oil.

Although state law generally prohibits agencies from providing services customarily provided by private enterprise, the Advisory Budget Commission can make exceptions for prison industries. Such exceptions are subject to review by the General Assembly.

Talton also said that no one had looked into the relative economics of the Phillips process as compared to one developed by the federal energy laboratory in Oklahoma. Data on the federal process is readily available. Its product is being thoroughly tested in the Iowa program. The process is patented and can now be used by anyone for a \$10 fee. According to a study prepared by Richard J. Bigda & Associates of Tulsa, Oklahoma, the preliminary estimate of the cost of a plant using this process is about \$2 million. The plant capacity would be 10 million gallons a year or five times that of the Phillips plant, but the cost would be only 1.4 times that of its Phillips counterpart. The profitability of a plant using the

federal process also seems likely to be greater than that of the plant purchased by North Carolina.

Phillip's re-refined oil has never been subjected to accepted tests by an independent laboratory.

The Holston Fuel Co. offers still another possible alternative for the state. Although the estimate is very rough, the company thinks it could expand its existing plant for \$750,000 and do for the state the same job Phillips claims it will do. Gerald Breece, the president, said the company would be happy to work with the state in any way as long as it didn't cost his company any business.

Under the circumstances it is surprising that there seemed to be no doubts about the Phillips proposal in the Department of Administration. And, if there were, the doubts apparently were not shared by Gov. Hunt. On June 13, 1977, less than three weeks before the legislature adjourned, an administration-backed bill was introduced by Sen. Kenneth Royall of Durham to appropriate \$1.3 million to buy the Phillips plant. During brief discussions Royall spoke for the project, as did Sen. Harold Hardison of Deep Run and Sen. James Garrison of Albemarle, both of whom are in the oil business. With no opposition and no debate the measure sailed through the legislature. One prominent house member said, "My feeling was that it came up very late—at the last minute. I would have liked to have known more about it." It didn't have to come up so late. Phillips says the company provided written material on the plant in April, a good six weeks before Royall introduced his bill.

When the 79-page operating appropriation bill was ratified on June 29 the waste oil re-refining plant was included in Section 50.55, but there had been some interesting changes. Instead of an outright appropriation, Section 50.55 said that the Advisory Budget Commission could use up to \$1.3 million of the funds already appropriated for other purposes to pay for the facility. Also included was a requirement that any money used to build the plant be repaid from the profits. The most interesting change from Royall's original bill,

however, was the omission of any restriction on the sources of waste oil for the plant. This means that the state can compete with private collectors and processors for the oil it must have to use its plant capacity. Shortly after the General Assembly adjourned on July 1, John Talton, an assistant secretary of the Department of Administration, ordered an economic feasibility study of the Phillips proposal. The study estimated that 350,000 gallons of waste oil would be available for the plant from government sources and concluded that the "two key elements to profitability will be maintaining a production level in excess of 600K - 700K (600,000 - 700,000) gallons annually and extremely tight controls over the variable costs." The study then went on to say, "The major sources of spent motor oil are the auto dealerships in the metropolitan areas. They alone can supply approximately 400-500K (400,000 - 500,000) gallons annually at a nominal cost."

These conclusions, coupled with the lack of restrictions on oil sources in the appropriation bill, have far-reaching implications. If the state competes with its own businessmen for waste oil the price will almost certainly go up and alter the economics of the state operation. If the state does not buy waste oil somewhere it will operate its 1.5 million gallon plant at a level below that recommended for profitability. What competition can do to the price of waste oil is reported in a recent story in *Energy User News* about the Milwaukee area: "A number of oil reclamation companies are scrambling for used lubricants from gas stations, auto dealers and some industry. Competition for the oil has caused a recent price war among the larger companies, and has resulted in prices going from about a nickel a gallon at stations to 15 cents." In contrast, the state's feasibility study used a price of 5 cents per gallon for the first year of plant operation, rising to 10 cents by the sixth year and to 18 cents by the tenth year.

Late in July, 1977, while the feasibility study was being completed, a group of North Carolina officials visited the Bartlesville, Oklahoma, plant of Phillips Petroleum to look at the process proposed for installation here. The delegation included Sen. Garrison, who is a Phillips dealer and a member of the Advisory Budget Commission; Willis Holding, the state purchasing officer; Dr. James K. Ferrell, head of the chemical engineering department at N. C. State

University; and Paul Jordan, the state analyst who was working on the feasibility study. Dr. Ferrell, after signing a secrecy agreement, was allowed to view the Phillips process and laboratory procedures while the rest of the group discussed other aspects of the project. They flew home satisfied, even though they did not talk with the people at the federal energy research laboratory in the same town, a facility that has been doing waste oil research for years.

Reassured by Garrison and Department of Administration representatives, the Advisory Budget Commission approved the project on August 26. Members of the commission were told by the Budget division that the General Assembly had appropriated an estimated \$1.3 million that the department would not need—money that could thus be used to build the plant. The commission also authorized Prison Enterprises to provide up to \$250,000 to get the plant into operation. Later the same day the agreement with Phillips was signed, and the Governor announced “the location in North Carolina of a unique oil recycling plant that will save the state money as well as fuel.” When asked about the apparent rush of all of these events on the same day, the Governor’s office replied: “We were in no real hurry. We had the opportunity to take the lead, we were advised by technical experts at N. C. State University that this was a unique opportunity for the state and we conducted our own feasibility study.”

Perhaps the most interesting part of the agreement with Phillips has to do with

publicity. The company can use the plant as a showpiece for visitors and publicize its location using photographs, provided it uses discretion and gets the state’s approval before “publishing any advertisement that would constitute an endorsement” by the state. Even the plant site was subject to Phillips’ approval. The company has already obtained some publicity from the sale at meetings around the country, including hearings of a U. S. House subcommittee, and in letters sent to some waste oil reclaimers.

The Phillips agreement does require two test runs before the plant will be accepted by the state. But the state has not included in the contract rigorous standards for Phillips to meet. The product must only be what is described as “usable as a high grade engine lubricating oil,” a meaningless definition unless accompanied by further technical specifications, according to a representative of the Society of Automotive Engineers. In addition, the contract says that the state “shall be provided with a full opportunity to monitor the test” but it contains no specific provision that allows the state or an outside laboratory to conduct separate tests.

Perhaps North Carolina can get Phillips to agree to tests that offer some real assurances of quality. In the meantime, the state will do well to take a much closer look at the economics of the entire project. Whether or not a suit is brought against the state, it ought to be a matter of special concern that the state not launch a venture that can be just as well undertaken by private business.

1. CHEVY '76 CUSTOM COUPE. Home
clearing, brakes, vinyl top. Only
\$1,400. Call after 6.

2. 1975 EDIFICE. Available now.
One owner, Never used, Located
in beautiful Research Triangle
Park, Ideal for driving research.
Apply N. C. state government.

3. DON'T PAY A LANDLORD!
Reduced on this 2 bedroom cottage.
Quiet neighborhood, near schools.

4. BENE
large
near
cal
LE
NA
2
tr

When the 1973 General Assembly appropriated about \$1.8 million to construct and operate a building for the National Driving Center (NDC) in the Research Triangle near Raleigh, legislators were told that the NDC, an affiliate of Duke University, would do just about everything that needed doing in traffic safety research with the help of a steady flow of research grants.

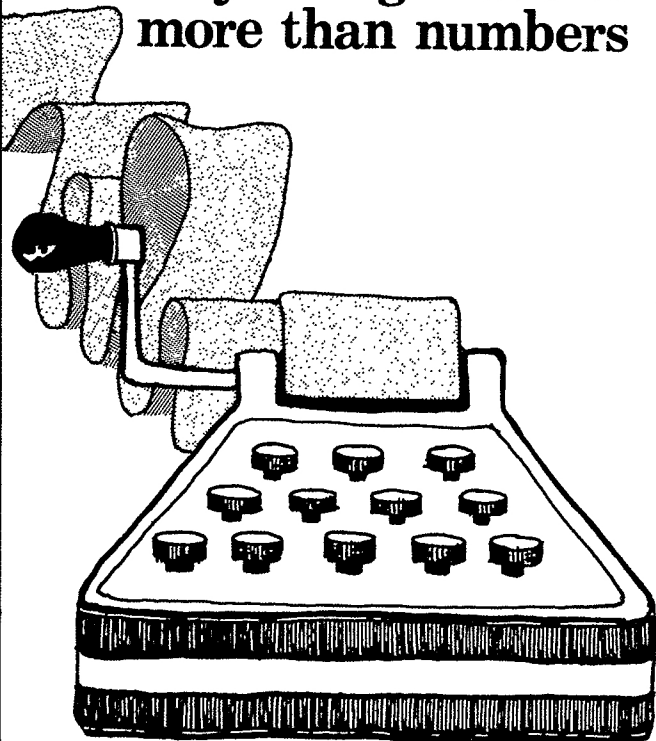
By the time the building opened in early 1976, however, the NDC has become the Edsel of the traffic safety research field. Having fallen on hard times from a lack of research grants, the NDC never occupied the attractive building that today stands empty except for a security guard who answers the telephone.

Help is on the way. As a final gesture of its impatience with the entire project, the 1977 General Assembly transferred the building to the University of North Carolina Board of Governors for use by the new Institute for Transportation Research and Education, an amalgam of the remnants of the National Driving Center and UNC's own National Highway Safety Research Center, which already was in operation when NDC was still an affiliate of Duke University in 1973.

The new research center may have the building open for business in time to celebrate the second anniversary of its completion.

AN OLD DOG'S NEW TRICKS

Henry Bridges audits more than numbers



by Jessie Cannon
and Tom Earnhardt

Every year millions of dollars are held by the clerks of court in this state from such sources as cash bonds, alimony and support, fines and forfeitures, judgments requiring money to be paid to the clerk of court, trust accounts and other sources. If the funds are handled properly and within the law, one might assume that the state Auditor's function would be satisfied. Not so, say Auditor Henry Bridges and Sam Newman, the director of the operational audit program in the Auditor's office.

Attorney Tom Earnhardt, a former assistant secretary in the N. C. Department of Administration, is an associate director of the Center.

Jessie Cannon maintains a Raleigh CPA practice as well as being an associate director of the Center.

Newman and his staff found that the checking account balances of the 100 clerks' offices amount to almost \$14.7 million, but most of the money is held in non-interest-bearing accounts. If the money had been invested in interest-bearing accounts, the operational audit team found, it would have earned almost \$790,000 in interest in each of the last three years.

In a November, 1977, operational audit entitled "Investment of Available Funds Within the State's Court System," the Auditor's office identified all funds held by clerks of court in excess of normal requirements, estimated the amount of interest which could reasonably be earned by investment and suggested several procedures for investment while still providing the clerks with flexibility in management of the funds. The report included responses from several clerks of court, state Treasurer Harlan Boyles, Bert Montague of the Administrative Office of the Courts and an opinion by the office of the Attorney General.

The Auditor's office proposes to let the Treasurer's office act as the "bank" for the courts and allow clerks to administer their own funds and write checks against a Treasurer's account rather than a private bank. This system would allow the Treasurer—who is agreeable to the idea—to invest the surplus and earn \$790,000 annually for the state.

The Attorney General's opinion, which included citations to several cases, says that the Treasurer's office could be used but that any interest would have to be distributed to persons entitled to the principal. The Administrative Office of the Courts and several clerks also expressed concern at the loss of income but disagreed with the report on legal grounds for the same reasons set forth by the Attorney General's office.

To these problems the Auditor's office responded in the audit: "We also recognize that questions over legality will apparently preclude any voluntary action by the court system. Therefore, the loss of interest income will continue indefinitely, with neither the 'owners' of these funds nor the citizens of the state receiving any return. This report, thus, is presented. . . in the hope that some workable solution may be found to this problem."

Regardless of which side of the legal question one falls on, the report leaves the reader with one inescapable conclusion—investment income is being lost, and nothing is being done to prevent it.

To learn about this new approach to government accountability, the Center talked to Bridges, the state's Auditor for 31 years; Bridges' deputy John Buchan and Newman, the program director. But Bridges probably summed up his work best in an appearance before the legislature's Joint Appropriations Committee in February, 1977. The primary goal of the program, he said, "is to determine the cost and resulting benefits of particular state government programs and activities. We try to provide factual, independent information and professional

common-sense observations that will allow legislators, state agencies and taxpayers to determine the effectiveness of specific programs or activities."

The operational audit program was authorized on April 30, 1974, by an act of the legislature requested by Bridges. Bridges said it was an idea that "I had kicked around for years but felt I had no specific authority."

Report topics and issues are often submitted to Newman and his staff by financial auditors who are in a good position to spot problems when conducting their annual audits of state agencies. State agency heads, legislators and even private citizens are encouraged to submit ideas. Newman said that to date no request has been received from the executive branch of state government.

After proposals are received they are reviewed by Buchan and Bridges before the staff is authorized to proceed. When asked if projects were ever rejected for political considerations, Bridges insisted that he calls "a spade a spade, and politics is not a consideration."

Newman believes that the Auditor's office is the ideal place for the program because of the office's independence and general lack of political activity. "The executive branch does not have the independence found in this office," he said.

There are now six full-time staff members in operational audits. Nearly all of them started with financial audits, although one came from the systems section of the office.

Both Newman and Buchan agree that the staff may need people from other disciplines (engineering, social services, management consulting, for example) to be more effective. Until now the emphasis of operational audits has been financial---saving money. But Newman says that the scope has been broadened with each report.

The 17 reports completed to date cover a variety of topics. Titles include: "A Study of Cost Variance in the Driver Training Education Program of North Carolina," "Reduced Tuition Rates for Special Non-Resident Students," "Law Enforcement Training Facilities," "State Funds to Local School Units," and "Public Information Related Activities in North Carolina State Government."

All reports follow essentially the same format. After the topic is chosen, staff members are sent out to get legal background and talk with top management. Findings are compiled from interviews and collected work papers. For each topic the writer analyzes the law, the cause of the problem, the effect---losing money, for example---and finally makes the recommendation. Newman then reads the final draft, edits it and passes it on to Buchan and Bridges for final review before it is released.

The Auditor's office does not have enforcement power. Newman says that if anything illegal is found it would go to the Attorney General. Neither Bridges, Buchan

nor Newman want the power to enforce. It is Bridges' philosophy that top management should ultimately be responsible for changes. "It is not our style to force management or to stick it down their throats," Newman said. Buchan says he feels that the Advisory Budget Commission should follow up on the reports.

The checking account balances of the offices of the clerks of court amount to almost \$14.7 million. Most is held in non-interest-bearing accounts.

The reports are sent to legislators who request them, the Advisory Budget Commission, the Governor, the agency that was audited and people in the news media who have been asked to be put on the mailing list. Although Newman acknowledges that the distribution is limited, he says the reports are available to anyone who is interested in them.

The objective of the reports is, of course, to get results. Newman says that after the audited agency has had time to review the reports, an "exit conference" is held with agency heads. He says that the "positive approach" of the audit staff is usually well received by agency heads. Hostile receptions to suggestions have been rare.

"Management letters," which are not part of the report, are also sent to the agency. All pertinent and important information is contained in the report itself, Newman said. A future report will deal with workman's compensation, and when it is completed one operational audit report will be issued but 12 different management letters will also be sent to affected offices and agencies. Such letters are often more frank and detailed than the reports and speak more specifically to the problems of an agency, according to Newman. He said that to the best of his knowledge, other officials and reporters have been permitted to see management letters after such requests have been reviewed by Bridges or Buchan.

It can be argued that since the Auditor's office has no enforcement powers it should take a tougher approach in seeking improvements in agencies by making the management letters part of the operational audit reports. As Sam Newman explained, however, the strong arm, high-visibility approach simply is not Henry Bridges' style. ■

THE CENTER REPORTS:

This Land Is Your Land

Two months ago the Center published its first major report on state government activities. The report examines state land transactions stretching over four administrations and is entitled, *This Land Is Your Land: Here's How The State Buys and Sells It*. On December 6 the Council of State voted to adopt several new policies for the State Property Office which were based on some of the recommendations made by the Center. The following article consists of excerpts from the report, including the Center's recommendations, and a summary of the Council of State's action in the December meeting.

State lands have been bought, sold, swapped and even loaned during the past four administrations for the advantage of private interests and at the expense of taxpayers. In managing the public's property, state officials have sometimes relied on wrong or inadequate information, bowed to influential politicians, been victimized by bad judgment and poor planning and even ignored the laws and their own established procedures.

In two instances examined by the North Carolina Center for Public Policy Research, the state bought or swapped for land the sellers didn't even own. In two others, property was loaned to private organizations for use as security for construction loans and mortgages, and in others property was sold for a fraction of its appraised value. These transactions should not be considered a condemnation of all—or even a majority of—land transactions by the state. Neither should they be considered rare or extreme. Some turned up in a simple review of real estate transactions in 15 counties selected for examination because of the heavy concentration of state-owned land or the development potential of the area. Others were suggested by current or former state officials who have been involved, either directly or indirectly, and believed the public's interests had not been protected.

In five specific cases, the Center found shortcomings in the procedures that ended up costing the state money. In three others, state property was used in such a way as to violate the intent, if not the letter, of the law.

Most of these transactions were handled through the normal channels established by law or under the internal procedures that have evolved in the property office. As a result, each of the examples illustrates problems that have occurred, sometimes more than once, and which can occur again.

- In the case of the North River Game Lands in Currituck County, state property officials and the Wildlife Resources Commission staff members were “stampeded,” as one who was involved put it, into a \$750,000 land purchase before they had a proper survey of the property or even a complete title search of the ownership.

- In the case of marshland off Figure 8 Island near Wilmington, the Council of State was supplied incorrect information on two separate occasions under two administrations that resulted in the sale of navigable waters, contrary to state law, to resort developers in Wilmington. Today, the state still does not control these channel bottoms.

- The Division of Marine Fisheries invested five years, hundreds of hours in state employees' time and a valuable piece of property in Morehead City in the development of a possible park and office complex that may never be built because someone forgot to get a proper deed from another state agency that controls the land.

- Land developers in Morganton were allowed to profit from the sale of prime commercial property, rather than the taxpayers who owned the land, because state officials disposed of the property through private negotiations rather than a public sale.

- The state Constitution prohibits any exclusive emoluments or privileges for “any person or set of persons” in North Carolina, but the University of North Carolina loaned land to five private fraternities at Chapel Hill which used the property to secure building loans of as much as \$120,000. If there is a default on the loans, the bank can take the public's land if the university does not buy the building and pay off the debt.

Each of these transactions passed through the Department of Administration, which is legally responsible for investigating them before forwarding them for approval to the Council of State—composed of the Governor, Lieutenant Governor, Attorney General, Secretary of State, Treasurer, Auditor, Superintendent of Public Instruction and Commissioners of Insurance, Labor and Agriculture. The department is charged by law with the job of buying, selling and leasing land for all state agencies except land used in highway construction. This office processes requests from various agencies to buy or sell land for such things as hospitals, prisons, parks, wildlife game areas, easements for use of state channel bottoms and marshes, new state office buildings and the preservation of historic homes.

Many of the mistakes, intended and unintended, could have been avoided if the state's laws and written procedures had provided reasonable safeguards. The Center recommends a number of changes which should help North Carolina to protect its people's interest in land transactions.

LAND REVIEW PANEL The Center recommends that the Council of State establish a land review panel or screening committee that would serve in an advisory role to the property officer and the council. This panel should be composed of members with specialties in various areas of real estate---appraisals, surveys, engineering, architecture, law, agriculture, geology and state fiscal procedures. All of these skills are available within state government or at state universities in or near Raleigh. The members of this panel, serving staggered terms, could meet in Raleigh as often as needed to review proposed transactions with the property officer. In the event of differing opinions, the committee's dissent would be made known to the Council of State. To make the most of the panel members' time, the panel should be limited to reviewing sales and purchases of \$50,000 or more, those in which land of particular ecological, historic or sociological significance is involved or privately negotiated transactions.

On December 6 the Council of State approved a new procedure that calls for notice of all land transactions to be presented to the members of the council seven days before the council meets. This has been standard procedure for some time but its inclusion in the administrative code will make it binding. This action, however, does not address itself to the problems of the past in which the council approved flawed land transactions because of its failure to get adequate or correct information. At the same meeting, the council briefly discussed the idea of a Land Review Panel and will discuss it again at its regular meeting on February 7.

PUBLIC ADVERTISEMENT OF SALES The public should be notified of every piece of real estate that the state decides to dispose of. Public advertisement of dispositions is now optional within the administrative code. The Center recommends that the property office should be required to advertise every piece of property regardless of whether the office is considering a swap or trade with another property owner or not. This would provide additional information on the value of the property in the open market. The Council of State is not now bound to accept the high bid in a public auction of state land, and this option should continue. This would leave state property officials the opportunity to present the options to the council of either an outright sale or an exchange, whichever is most desirable.

The Council of State adopted a new procedure which requires that all state land for sale be advertised in a newspaper of general circulation for 15 days to allow time for persons to bid. The council reserved the right to waive this procedure, however, in specific cases.

PROPERTY APPRAISALS The Center recommends that the administrative code be amended to clearly establish the minimum standards for real estate appraisals used by the state property office. These standards, many of which are the present policy of the office, should be no less than those found in any competent real estate text. The property office should also include in its administrative procedures a requirement that at least two appraisals be obtained when the land involved is worth \$100,000 or more, or when the property has unique qualities on which even qualified appraisers may disagree. The property officer should also be responsible for insuring that appraisers are selected on their qualifications, as established in the administrative procedures, and not because of any political favoritism.

The Council of State adopted a new policy in which at least two appraisals will be required on all properties having a value of more than \$100,000 unless waived by the council. It left to the property officer, however, the decision on whether to obtain appraisals on land with unique features.

TITLE INSURANCE The Center recommends that the state require title insurance whenever the purchase price of the property involved is more than \$100,000, and in other instances when the Council of State decides it is necessary. This requirement will protect the public's investment as in Florida where the Division of Parks and Recreation requires title insurance in nearly all of its purchases. According to Charles I. Holliday of the North Carolina property office, title insurance is secured only if it is recommended by the Attorney General's office. With insurance against defects in the reported ownership of the property, the state can recover any money paid for property the sellers did not have the right to dispose of, such as in the case of the North River Game Lands.

The Council of State adopted a new requirement that title insurance will be purchased when recommended by the Attorney General, apparently removing the option from the property office.

TITLE SEARCHES The Center recommends that local attorneys hired to research titles to property involved in state land transactions be chosen for their ability and not their political allegiance to the Governor or Attorney General. The present patronage system in which the Attorney General chooses lawyers from a list prepared by the Governor should be scrapped in favor of a more equitable procedure that provides all attorneys interested in doing state work an opportunity to be hired.

Action on the recommendation would lie with the Governor and Attorney General.

Reactions to Transactions

Reaction to the land report was generally favorable, but there were notable exceptions. Former Gov. Robert W. Scott, who held office when two of the transactions mentioned in the report took place, thought that the report reads "just like what it is—a newspaper reporter writing a story to prove a preconceived point." He felt that a few of the recommendations in the report were good, a few "so-so," and that a couple would be detrimental.

Stanley Moore, editor emeritus of the *Morganton News-Herald* was sharply critical of two chapters in the report on land transactions in Morganton, and said the Center "sought to document its arguments by use of insinuation, innuendo and circumstantial evidence which spreads clouds over many people whose participation in transactions was thoroughly legal and approved up and down the line from board to Raleigh authorities and back. . ."

More than a month after the report was released, the *Chapel Hill Newspaper* took issue with a section of the report which questioned the lending of state lands to private fraternities in Chapel Hill in order to provide them with security for obtaining construction loans. "In the strictest sense of the law this might be a violation," said the editorial, but "considering the same (housing) problem in the realm of need and common sense it should be done." In a comment which can only be considered unusual for a daily newspaper, the editorial began with this paragraph:

"As far as this Newspaper is concerned, the jury is still out on the North Carolina Center for Public Policy Research. It can be either a tremendous asset or a tragic liability to the people of North Carolina. After looking over the first report, a word of caution is offered: Gather as much information as possible, but act cautiously and with restraint before criticizing bodies of state government and public officials in future reports. If something is uncovered that seems to be in violation of the law, then turn the facts over to the Attorney General's office and allow them to handle the matter. Comments on possible improprieties are not fair to anyone."

SURVEYS The Center recommends that before the state acquires any property it be surveyed by a competent registered surveyor whose work must meet minimum standards established by the state property office. Like the standards for appraisals, these standards for surveys should be incorporated into the office's administrative procedures and filed with the Attorney General. In addition, the state property office should begin immediately to have all state lands surveyed and these surveys placed on file in Raleigh and in the county register of deeds offices where the property is located. These surveys should also meet the standards established by the state property office.

The Council of State adopted a new procedure that surveys, when required by the property officer, must comply with the "Manual of Practice for Land Surveying in North Carolina."

OPEN MEETINGS The Center recommends that the Council of State conduct the public's business in public and maintain a complete account of its business. If meetings had been open to the public and the press, it is at least possible that questions would have been raised about the wisdom of several of the transactions covered in the Center's report. The Council of State is presently exempted from the state's public meetings law. This blanket exemption should be removed, and the council should hold open meetings except when a majority of the members vote to hold closed sessions because they believe it is essential to protect the public interest. The reasons for holding closed sessions should be determined in advance by the council and published in its administrative procedures. The Center found in its research that an accurate study of past land transactions is hampered by a lack of substantive information from previous council meetings. Only the barest details are recorded.

The council is scheduled to discuss the matter at its February 7th meeting.

Editor's note: J. K. Sherron, property officer in the Hunt administration, says that many of these changes have been standard practice in his office in 1977. It should be noted, however, that the council's decision to write them into the administrative code gives more assurance that the improvements will remain in force in future administrations. ■

Copies of the report *This Land Is Your Land* are available from the Center for \$5.00 postpaid.

Elsewhere, newspaper editorials praised the land report and the Center itself. *The News and Observer* in Raleigh said the report had "uncovered enough bad practices in specific cases to justify a full review and judicious tightening of state property management procedures. . . . The land report issued Monday offers good promise for the Center's work."

The Greensboro Daily News wrote that the Center "is off to an auspicious start. Its choice of a first topic, covering Democratic and Republican administrations, establishes its non-partisan approach. The report is balanced, informative and highly readable, neither hungry for sensation nor bogged down in technicalities."

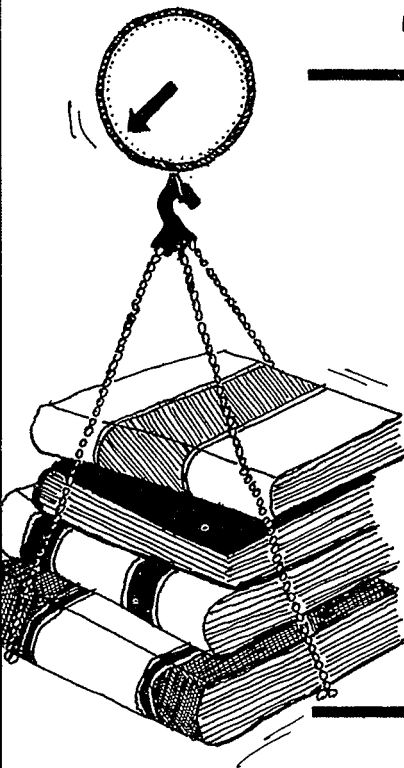
The Charlotte Observer concluded that "The first effort suggests the Center will perform a valuable service for state government---and the taxpayers."

The Fayetteville Times said the Center "has made a useful start," and that if it continued to study areas of state government that are ignored by the press "it will surely grow in usefulness."

The Fayetteville Observer said that the land report "has served a good public purpose" and praised the Center's recommendation that Council of State meetings should be open to the public.

The High Point Enterprise said the Center "has the means as well as the dedication to go the state press at least one better in investigative reporting. . . . We believe that subsequent events will prove that it was a good day for North Carolina when this organization was established. It could have the positive effects of a Ralph Nader-type system but without the drawbacks of scattergun complaint. It bears watching."

what's yours ?



The Full Weight of the Law

Frank Marina Sr. of Morehead City makes his living selling "anything I can put my hands on for an honest dollar." Right now, Marina has his hands full.

In early November Marina was the high bidder for 27,000 volumes of North Carolina General Assembly session laws, "casebound and weighing from 2½ to 5½ pounds each," according to the records at the state Surplus Property Agency. The agency operates somewhat like a flea market for state government, selling surplus or other property which has outlived its use. In the case of the books, which cost \$2 to \$19 apiece new, the Secretary of State's office was simply overstocked. John Cheney of the office said the books date back to 1931.

Marina's high bid was \$127, not much by the pound. In fact, removal costs may be even higher.

What's Marina going to do with them? "I'm going to put them on a truck, and I'm not going to stop 'til I get rid of them," he said. He said he'd sell to anyone who wants them.

Cheney said the Secretary of State's office has cut back on the larger printing orders of the past to prevent such stockpiling in the future.

The North Carolina Center for Public Policy Research, Inc. is a non-profit, non-partisan, non-ideological research institution committed to the independent scrutiny of state government directed solely to the improvement of governmental performance. It is governed by a Board of Directors broadly representative of the people of North Carolina.

NORTH CAROLINA CENTER FOR
PUBLIC POLICY RESEARCH, INC.
P. O. Box 10886, Raleigh, N. C. 27605

Nonprofit Org.
U. S. POSTAGE
PAID
Raleigh, N. C.
Permit No. 1121