



NORTH CAROLINA CENTER FOR
PUBLIC POLICY RESEARCH INC.

NEWS RELEASE

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NINETY EXECUTIVE BOARDS HAVE LEGISLATIVE MEMBERS

The N. C. Center for Public Policy Research has released a list of 90 boards, commissions, and councils in state government which have legislators as members. That practice was held unconstitutional by the N. C. Supreme Court last month, which said having legislators on an executive branch board violated the separation of powers provision in the state constitution. The Center's study also includes an analysis of whether the Supreme Court decision applies to all 90 groups.

"Few people realized how extensive the practice was, but we found 90 groups in 15 executive departments with legislative members," said the Center's director, Ran Coble. This is approximately one-fourth of the boards, commissions, and councils in state government, said Coble, and includes the Advisory Budget Commission, Board of Agriculture, Board of Transportation and Governor's Waste Management Board. The Center identified 203 positions on boards currently held by legislators who were usually appointed by the Speaker of the House and Lieutenant Governor.

Center staffers Lacy Maddox and Jim Bryan said an additional surprise in the group's research is the extent to which Governor Hunt has contributed to the legislative involvement in the executive branch. The Governor has chosen to appoint legislators to 45 positions on 32 of the 90 groups.

The N. C. Constitution requires that "The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other." The state Supreme Court ruled that having four legislators on the Environmental Management Commission violated that provision since the Commission performs executive or administrative functions.

The key question in considering whether the January decision applies to all 90 executive groups with legislators on them is whether these groups also perform administrative or executive functions, said the Center's report. Such executive functions include the power to:

- contract;
- sue and be sued;
- promulgate rules;
- establish program standards or set eligibility criteria;
- buy and sell land;
- allocate funds appropriated to the group;
- hire staff;
- issue permits or licenses; and
- hear and decide appeals on decisions by executive agencies.

At least 36 of the 90 groups have executive functions and probably violate the separation of powers provision, said the Center's report. The other 54 function primarily as advisory groups. Even so, the court's decision could affect all 90 executive bodies which have legislators as members, the Center said.

"We recommend that the General Assembly deal with this problem in its June, 1982 session -- because of the extent of the problem and because decisions by these commissions may be challenged in additional lawsuits," said Coble. The Board of Transportation was sued last week, while another suit may be filed soon against the State Ports Authority. The Center also recommended that the Legislative Services Commission appoint a study commission to review the problem, with instructions to report to the June session.

The latest release from the Center is part of a larger report on the approximately 400 boards, commissions, and councils in state government. That report is expected to be published in April. The Center is a private, nonprofit corporation that studies state government policies and practices. It is supported in part by grants from the Z. Smith Reynolds Foundation and Mary Reynolds Babcock Foundation in Winston-Salem.

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