Report of the North Dakota Legislative Research Committee

Pursuant to Chapter 54-35 of the North Dakota Century Code

Thirty-eighth Legislative Assembly

1963

North Dakota
Legislative Research Committee

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The Honorable William L. Guy
Governor of North Dakota

Members, Thirty-eighth Legislative Assembly
of North Dakota

Pursuant to law we have the honor to transmit to you the report and recommendations of the Legislative Research Committee to the Thirty-eighth Legislative Assembly.

This report includes the reports and recommendations of the Legislative Research Committee in the fields of education; general affairs; Indian affairs; legislative post audit and fiscal review; natural resources; taxation; and other miscellaneous subjects considered by the Committee. In addition, you will find a short explanation of all bills being introduced by the Legislative Research Committee.

Respectfully submitted,

NORTH DAKOTA LEGISLATIVE
RESEARCH COMMITTEE

George Longmire

George Longmire
Chairman

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Summary

Briefly - - - This Report Says

EDUCATION

General Observations:

From a series of four hearings held throughout the State members of the subcommittee gained a good general knowledge of some of the problems connected with school district reorganization and also with the office of County Superintendent. School officials and interested citizens in general showed a great interest in the Committee's work and many suggestions were forthcoming as a result of the hearings.

One frequently mentioned complaint was in regard to the approval of reorganization plans which simply were not adequate, from the standpoint of the tax base contained therein and the number of students in the district, to offer acceptable programs of education. Irregular boundary patterns was another subject of criticism. There appeared to be a considerable desire for more definite standards to guide State and county reorganization committees in the formulation and approval of reorganization plans. Other people mentioned the possibility of requiring all school districts to become a part of a high school district. The inflexibility of the reorganization plan was another subject mentioned. More guidance and assistance from the State level for local citizens in the formulation of reorganization plans was deemed desirable by many. The possibility of a statewide professional survey looking toward reorganization of all districts by legislative action was also mentioned.

Office of County Superintendent:

On this subject, the Committee noted the large variety of duties currently placed upon the office of County Superintendent by law. The law provides that the County Superintendent shall have the responsibility for general superintendence over all schools in the county not employing a superintendent. While at first glance it might appear that the duties involved in the office have been declining due to reorganization plans which place more schools under the direct superintendence of a local superintendent, the Committee found that this simply has not occurred. In-

stead, the workload upon the County Superintendent has actually shown a rather marked increase, principally due to his duties in connection with school district reorganization, and foundation and transportation payments.

To carry the workload of the office of County Superintendent, the Committee recommends that in counties in which less than 50 teachers are employed in the public schools, the County Superintendent be authorized a full- or part-time deputy, and in counties with more than 50 teachers he be authorized a full-time deputy, with additional help to be within the discretion of the board of county commissioners.

The Committee also recommends a resolution which if adopted would authorize the Legislative Assembly to set up the office of County Superintendent on a district basis, thus allowing one superintendent to serve two or more counties. It is believed that adoption of this proposal would be a major step toward encouraging trained personnel to seek the office of County Superintendent and, in addition, may enable less populous counties to secure a qualified superintendent which they might otherwise be unable to obtain.

School District Reorganization:

The Committee noted that while school district reorganization has made substantial strides in North Dakota, the number of school districts having decreased from 2,271 in 1947 to less than 1,000 in 1962, the process is not yet complete. It has for some time been apparent that an adequate high school education is a minimum, essential prerequisite to success in the world today and that the improvement of our high school and elementary education systems through the reorganization of school districts is a major factor in securing such minimum education for all. Over recent years a number of items have arisen in connection with our school district reorganization law which appear to the Committee to be worthy subjects for legislation designed to improve the reorganization process.

The Committee recommends that the voters of a school district be granted authority to make internal changes in the school district reorganization plan, except for boundary changes, by a majority vote without going through the entire procedure of submitting the change to the State and county committees for approval in the same manner as the original plan. Also along these lines, it was the opinion of the Committee that a school board in a reorganized district should be freed from restrictions contained in the reorganization plan after a 5-year period and granted all of the normal powers generally possessed by a school board since at some time all plans become obsolete.

Also recommended is legislation which would relieve the board of county commissioners of all duties in connection with school district annexation proceedings and transfer such duties to the county committee for school district reorganization. The Committee also recommends that membership of the State Board of Public School Education be changed by removing the membership of the Governor, the Attorney General, and the North Dakota Education Association and School Officers' representatives, and expanding the membership of the board to seven, consisting of the Superintendent of Public Instruction and one member to be appointed

by the Governor from each judicial district. It is believed that these proposals would be beneficial to the annexation and reorganization processes by substituting board members who are both interested in and familiar with school problems for present members who, as elected public officials, are already hard pressed with many other duties and may lack information and even interest in annexation and reorganization problems.

One of the most, if not the most, significant proposals of the Committee is one which would require the County Superintendent, on July 1, 1967, to report to the county committee on school district reorganization the existence of any school district not operating a high school offering at least a minimum curriculum, taught by teachers possessing the required qualifications. The county committee would then be required to provide for the annexation of such districts to a district operating a high school meeting minimum standards. This would, in effect, place all territory within the State in a high school district operating a high school providing a minimum curriculum. It has the important advantages of assuring the availability of an adequate high school education to all students, and providing greater equalization in the financial support of education. In addition, in giving districts until July 1, 1967, to reorganize or petition for annexation, it assures that the local citizens will have ample opportunity to solve the problem themselves before the county committee begins annexation proceedings.

In response to suggestions expressed at field hearings, the Committee recommends that the State Board of Public School Education be required to promulgate rules and regulations to govern the county and State committees for school district reorganization in the development and approval of reorganization plans, as a means of assuring that only plans providing an adequate tax base to properly offer the minimum curriculum taught by qualified teachers are approved.

A final proposal in the field of school district reorganization would require the state's attorney to serve as legal advisor to the county committee unless such service would lead to a conflict with other official duties, and would also require actual domicile of a member of the county committee within the county he represents.

Other Recommendations:

While not the subject of a specific bill, the Committee recommends that funds be made available to the Department of Public Instruction for the purpose of employing a full-time director of school district reorganization to coordinate and assist local groups and county committees in the formulation and implementation of school district reorganization plans.

The Committee has also, by resolution, urged the State Board of Higher Education to appoint a special committee to study admission standards, curriculums, and related matters in the teacher training field with a view toward evaluating our teacher training institutions in the light of criticism expressed on the national level that American teachers' colleges were turning out graduates who knew all about how to teach, but very little about the substantive content of the courses they teach.

State Aid for Transportation:

In view of the vital importance of the transportation program as a factor in school district reorganization, the Committee undertook a review of such program. It was brought to the attention of the Committee that the number of pupils transported has increased substantially within the past three years, due mainly to reorganizations.

A survey of 17 school districts throughout the State revealed that these districts varied in the percentage of their actual transportation costs received from the State from a low of 4.8% all the way up to a high of 123.6% of their costs.

The Committee is of the opinion that some change is required in the present ½c per-pupil-mile formula under which these inequities exist. After experimenting with a number of possible formulas, the Committee recommends adoption of a formula which would reimburse school districts for their expense in transporting pupils at a flat rate of 10c per bus mile for buses having a capacity of 20 or more pupils, and 7c per bus mile for buses having a capacity of 19 or less pupils. Based on a sample of 95 school districts it is estimated that these rates will result in a reimbursement to the school districts of just under 50% of their transportation costs and result in a saving of $800,000 during the next biennium to the State Equalization Fund and greater sums in subsequent bienniums. To soften the effect of the new formula on districts receiving less State aid under the new formula, provision is made for reduction over a three-year period, and authority is included for the levy of a tax at the local level to bring in the amount of the reduction.

The final recommendation of the Committee in the field of Education is the granting of authority to school districts to levy a tax of not to exceed 5 mills over and above existing limitations, for the purpose of providing transportation and maintenance for pupils wherever attending school. This would replace the present law which grants such authority only in regard to payments for pupils attending school outside the district.

GENERAL AFFAIRS

Motor Vehicle Safety Laws:

North Dakota's laws vary substantially from those found in the Uniform Vehicle Code in the motor vehicle equipment field. The Uniform Vehicle Code was found to be more specific in matters covered and also covers many matters not dealt with by our laws. Because of this wide variance, the Committee felt that the most effective way to bring our laws into compliance with those of the Uniform Vehicle Code would be to repeal our present vehicle equipment chapter and enact a new chapter substantially in conformity with the Uniform Vehicle Code. Therefore, the Committee has prepared and recommends approval of a bill providing for a new law in relation to motor vehicle equipment. The greatest emphasis in this bill is on improving the requirements relating to vehicle lighting.

Our speed laws are difficult to read and understand and for this reason the Committee has prepared and recommends a modified version of

the speed law contained in the Uniform Motor Vehicle Act. The principal change in actual speed limitations is one definitely authorizing a 75 m.p.h. maximum on the Interstate System.

The Uniform Vehicle Code provides for one central department, known as the "Department of Motor Vehicles", to handle all functions related to motor vehicle administration. The Committee, in considering this aspect of the Uniform Vehicle Code, was unable to foresee any great benefits which might result from a complete reorganization through the formation of a central motor vehicle department, but it is of the opinion that two changes in the organization of departments would be most beneficial.

The Committee recommends that the Public Safety Division be made a division of the State Highway Patrol rather than of the State Highway Department since a much greater use could then be made of highway patrolmen in promoting safety. It was felt that the personal contact of highway patrolmen in local safety promotion would have a greater impact on the public than is possible under the present program.

The second major recommendation is that of placing the Truck Regulatory Division of the State Highway Department under the control of the State Highway Patrol. The State Highway Patrol now has authority over all motor vehicle laws, including those enforced by the Truck Regulatory Division, but the Truck Regulatory Division personnel have no authority to make an arrest unless a weight or registration infraction is involved. The Committee bill, which would consolidate the State Highway Patrol and the Truck Regulatory Division, would provide the necessary employment safeguards for present employees of the Truck Regulatory Division. The Committee feels that the consolidation of these two departments will result in a much greater degree of efficiency in enforcing the highway laws of North Dakota for the same enforcement dollar.

Pardon and Parole Laws:

North Dakota's pardon and parole system is supervised by the State Pardon Board, consisting of the Governor, Chief Justice of the Supreme Court, Attorney General, and two electors appointed by the Governor. This five-man board holds three regular meetings a year and in case of an emergency the three ex officio members meet as the emergency board.

In 1947 North Dakota enacted what is commonly referred to as the "suspension of imposition of sentence statute". Under this law many offenders may be placed on probation for a given period of time instead of being sentenced to the State Penitentiary or the State Farm. Following a satisfactory period of probation the court may dismiss the action, thus leaving the probationer free of a conviction.

The Pardon Board appoints and supervises five parole and probation officers. One parole officer spends the majority of his time in the office as the administrator of parole and probation matters and in preparing cases for review by the Pardon Board at its regular and emergency meetings. This leaves four parole officers to supervise and report on approximately 500 parolees and probationers. National authorities believe that if a parole officer is to do an adequate job and assist the district court in preparing pre-sentence files, his workload should not exceed 40 cases. The

Committee recommends that the appropriation for State parole officers be increased in an amount sufficient to provide one additional parole officer who would work part time in the preparation of social and case histories for the Parole Board and spend the balance of his time doing field parole work, thereby lightening the caseload of other parole officers to some extent and providing the Parole Board with more complete information for each case.

A comparison was made and, on the whole, North Dakota's pardon and parole laws compare quite favorably with the Model Pardon and Parole Act, and in a few areas are more advanced. The proposed bill reflects those areas where improvement is deemed desirable.

It is the opinion of the Committee that the election of the Governor, the Chief Justice of the Supreme Court, or the Attorney General is based upon their qualities to perform the principal duties of their offices and does not necessarily mean they are qualified to sit on the Pardon Board. It is also the Committee's opinion that the Pardon Board does not have adequate time to properly review each case appearing before it during the course of the annual three regular meetings. For these reasons the Committee recommends that the duties in regard to probation and parole be transferred from the Pardon Board to a Parole Board of three members appointed by the Governor, consisting of one member experienced in law enforcement, another a licensed attorney, and the third qualified by special education or experience. Such a board would also be able to meet for two or three days as often as six times a year in order to devote sufficient time to the study and consideration of each case.

State Farm:

The State Farm was built to confine 40 prisoners and was intended for first offenders only. It presently houses a population in excess of 70, many of whom have served time in penitentiaries for felony convictions. The Committee recommends a bill that would prohibit the sentencing to the State Farm of prisoners who have served sentences in any penitentiary for felony convictions, or who have histories of moral or sexual degeneration. Also, in order to discourage sentences to the State Farm merely because it is less expensive than confinement in the county jail, it is recommended that the cost, charged to the county, be raised from one to three dollars per day.

Corporate Farming:

North Dakota's anti-corporate farming law was enacted in 1932 by the people as an initiated measure during the depression of the early 1930's when large corporations were acquiring large blocks of farm land through mortgage foreclosures. Briefly, the law prohibits corporations from engaging in farming or ranching operations. Since the law was enacted, a number of bills have been introduced that proposed to allow corporations to engage in various restricted agricultural operations. None were enacted.

The Committee conducted three hearings during the course of which all farm groups, other interested organizations, and the general public were invited to present their viewpoints in regard to corporate farming.

A number of arguments favoring corporate farming were advanced, among which were:

1. State and Federal tax laws favor corporations over individuals, give tax and retirement benefits, and

2. Corporate farming will ensure continuity of operation through the passing of stock upon the death of a stockholder.

Opponents of corporate farming also presented a number of arguments, among which were:

1. Corporations are not eligible for certain types of federally-backed loans, and

2. It might discourage small family-type farms.

The Committee recommends that domestic corporations be allowed to carry on farming or ranching operations within the State provided each shareholder is related to each other shareholder as either a first cousin or is within the third degree of consanguinity, or is a spouse of a person so related. It is further recommended that the corporation be allowed to have only one class of shares, that a stockholder-officer of the corporation actively supervise the corporation's operations, that nonresident aliens shall not be allowed to hold shares, and that at least 80% of the corporation's gross income shall come from farming or ranching operations.

INDIAN AFFAIRS

The Committee began its work with a series of hearings in all Indian counties in the State. The interest in these hearings was quite high, with residents of the reservations, local officials, and interested citizens attending in substantial numbers.

The Committee has recognized from the beginning that the existing problems of North Dakota Indians can only be solved through the joint efforts of the Federal Government and the State of North Dakota. The historic and legal responsibility for most of the normal services of government for Indians lies with the Federal Government, but by treaty and various congressional acts the Federal Government has delegated substantial authority to Tribal Governments and the State of North Dakota and its political subdivisions. In view of this divided responsibility the State alone cannot affect all areas in which serious problems exist. Therefore, the Committee has not limited its recommendations to only those areas in which the State might have authority to take action, but has suggested various areas in which the Federal Government and Tribal Governments should also take action. It is the firm belief of the Committee that the aid now given to Indians by the Federal Government should in no instance be terminated, but rather be supplemented by the addition of new Federal, Tribal, and State services.

The Committee has developed a broad program designed to alleviate many of the problems now existing in reference to our Indian population. This program, which has been endorsed by the North Dakota Indian Affairs Commission, has been broken down into four parts. Some of the principal recommendations are as follows:

1. It is recommended that the Federal Government take action through an act of Congress, action by the Secretary of the Interior, or joint action by the Secretary of the Interior and the Tribes involved, to provide to the Indian the basic constitutional rights provided in the United States Constitution; to provide for the improvement of the criminal codes governing Indian reservations; to improve the court systems of the Indian reservations; to provide for better methods of law enforcement; to improve the health service rendered by the U. S. Public Health Service; and to provide for improved educational opportunities.

2. It is recommended that the State of North Dakota and its political subdivisions assume the responsibility for providing "general assistance" in non-reservation counties to Indian citizens, provided adequate reimbursement from the Federal Government can be obtained through contracts with the Bureau of Indian Affairs and suitable enabling legislation and an adequate appropriation from Congress. This recommendation involves initial action by the Federal Government and pertains entirely to the field of welfare.

3. It is recommended that the State of North Dakota assume such civil jurisdiction over Indian reservations and Indian country as is authorized by Public Law 280. Such jurisdiction would not apply to real or personal property held in trust by the United States or subject to a restriction upon alienation imposed by the United States, to any matter in regard to which jurisdiction would be prohibited under a treaty, or over other matters in which State jurisdiction would be restricted under Public Law 280. It should be emphasized that the Committee does not recommend the assumption of "criminal" jurisdiction over Indian reservations because it is believed by the Committee that a majority of the Indian citizens do not wish the State to assume such jurisdiction.

4. It is recommended by the Committee that an appropriation of $65,000 be made to the State Employment Service in order to provide an intensive job placement program for a two-year period for Indian citizens. This is intended more as an experimental and demonstration program than a permanent program, in order to determine the degree of success that can result from an intensive job placement program within the State of North Dakota.

The benefits to be derived if these recommendations were to be followed are many and have been listed in detail in this report.

In order to implement the State's portion of this proposed program the Committee has prepared and recommends three specific bills designed to improve the status of Indian citizens.

Also contained in this report is an excellent article, written by Mr. Melvin E. Koons, Jr., and Mr. Hans C. Walker, Jr., which outlines the

many complex jurisdictional problems presently existing in the criminal field affecting Indians.

LEGISLATIVE POST AUDIT AND FISCAL REVIEW

Post audit is a final review or examination of State financial transactions after they have been completed to assure that revenues have been collected in compliance with the laws, that funds have been expended within the scope of legislative intent and sound financial practice, that the Executive Branch is carrying out only activities and programs authorized by the Legislature, and that the assets of the State are safeguarded and properly used. From the legislative point of view, this information is necessary to provide the Legislature with formal objective information of revenues and the expenditure of appropriated funds, and to provide a basis for legislative action to improve the fiscal structure and financial transactions of the State.

The term "fiscal review" could include all of the functions in the post audit field as well as a review of whether the function should be carried on at all, whether it should be carried out by the agency presently having such responsibility, whether it could be handled in another manner to provide better service at less cost, and whether the State is getting a dollar of value for each dollar expended.

More than half of the States have created new facilities or designated older ones to make such studies and reviews. In the 1959 Governmental Reorganization Act the State Auditor was given responsibility for auditing all State agencies and reporting to the Legislative Assembly. Through oversight the 1961 Legislative Assembly did not provide for an interim committee to receive and process these reports.

It is recommended that such an interim committee be provided by the Legislative Assembly to meet periodically during the interim to receive, study, and make recommendations to the Legislative Assembly, based upon the information contained in these audits. It is believed that such a committee would result in improved and more efficient State Government and would provide substantial savings to the State.

NATURAL RESOURCES (WATER LAWS)

Basic Water Laws:

The removal of all conflicts between the basic water laws and the property laws in regard to ownership of water was the Committee's first concern. The "conflicts" referred to are occasioned by the existence within North Dakota law of two basic and diametrically opposed theories—the riparian doctrine and the appropriation doctrine. Under the riparian doctrine the owner of land which lies contiguous to or over a body of water is vested with certain rights to the use and flow of the water by virtue of such land ownership, while under the appropriation doctrine the party

who first diverts and applies to a beneficial use the waters of any body of water acquires a priority right to continued use.

Since North Dakota is not blessed with a surplus of water and since the development of the State makes firm and reliable water rights an absolute necessity, the Committee strongly recommends that North Dakota join 17 other Western States in adopting the appropriation doctrine of water rights.

It is further recommended by the Committee that only two classes of water use be given priority—"domestic use" and "livestock use". All other users would be on an equal basis with priority in time of appropriation giving the better or superior right. This will not preclude a later user from purchasing the water right from a prior user. In addition an adverse user (one who has not acquired a water permit but has used water for a statutory period of time) will be allowed two years from the passage of this Act to file proof of his use with the State Engineer in order to protect his water right.

Drainage and Water Management District Laws:

A number of miscellaneous changes in the laws dealing with Water Management Districts and Drainage Districts are recommended. In addition, provision is made to permit drainage districts to reorganize under our water management district laws.

Irrigation District Laws:

North Dakota's irrigation districts are faced with certain organizational and operating problems as a result of discrepancies within our law. Such problems deal with the electors of an irrigation district, notice of elections, scheduled board meetings, petitions to the board relating to specific orders or operation of irrigation ditches, and determination of unpaid assessments. The recommendations of the Committee will correct these problems.

Garrison Conservancy District Laws:

In order that the Garrison Conservancy District might always be adequately financed the Committee recommends that only those counties which are not now and which will not be benefited in any way, either directly or indirectly, be allowed to exclude themselves from the district insofar as assessments are concerned.

State Watermaster:

At present there is no State agency or office that is responsible for policing water rights. If an individual has a complaint in regard to misappropriated water his only remedy lies with the courts which, because of the time element, is not always an adequate remedy. Therefore, the Committee recommends that the State Engineer be allowed to appoint one or more watermasters whose duties it shall be to check those areas af-

fected by the use and ownership of water and to aid in the settling of any disputes relating to such use and ownership.

Small Dams and Impoundments:

It is the Committee's opinion that the law restricting the height of livestock dams to 10 feet is unrealistic and therefore recommends that the only restriction upon the construction of small stock-watering dams should relate to the amount of water which may be impounded. The Committee suggests a 10 acre-foot limitation, which would total over 3 million gallons.

Acquisition of Right of Way and Easements:

Because of the possible delay involved in present condemnation proceedings the Committee recommends that the State Water Conservation Commission be allowed to condemn land for use by the State in water projects, in the same manner in which the State Highway Commissioner presently condemns land for highway construction.

Miscellaneous Matters:

A miscellaneous bill is recommended by the Committee that will, among other things, allow political subdivisions of the State to participate with the State in conducting water surveys, authorize the State Engineer to administer oaths and issue subpoenas, and prohibit the drainage of a meandered lake without the State Engineer's written consent.

TAXATION

Status of State Equalization Fund:

A review by the Committee of financial estimates on the status of the State Equalization Fund leads to the conclusion that this fund will face a deficit of about $2,500,000 at the end of the current biennium, to be made up by a deficiency appropriation if current obligations of the fund are to be met. Projecting the status of the fund through the 1963-1965 biennium, a potential shortage of $11,600,000 appears probable if no changes are made in the Foundation Program or revenue sources of the fund.

Foundation Program Payments:

The County Equalization Fund supports education in the county. It is made up of the proceeds of the mandatory 21-mill county levy and payments from the State Equalization Fund. As a result, when less money is realized from the proceeds of the 21-mill levy, more money is required in payments from the State. A low revenue yield from the 21-mill levy,

with the resultant higher demand on the State Equalization Fund, may be attributed to one of two factors or a combination thereof. The first factor is an insufficient property base over which to spread the tax; the second is the under-assessment of property within a county. If a low revenue yield at the local level is due to an insufficient property base, then the State can properly be called upon to make up the deficiency. If, however, such low revenue yield is due in whole or in part to the under-assessment of property within a county, it is not equitable to ask the State Equalization Fund to make up the deficiency at the expense of other counties which may be doing a good job of assessment.

In an attempt to correct this situation which does exist, the Committee recommends that the Tax Commissioner certify to the Superintendent of Public Instruction information in regard to those counties which are assessing below the statewide average of assessment, as determined by a sales-assessment ratio study to be made by the Supervisor of Assessments. The Superintendent of Public Instruction can then compute the amount of money which would have been raised in each under-assessed county by the 21-mill levy if property had been assessed at the statewide level of assessment and reduce State Equalization Fund payments by a like amount. The enactment of such proposal should be a major step toward tax equity by taking the profit out of under-assessing, and should reduce the drain on the State Equalization Fund by about $2,000,000 per biennium when fully implemented.

Sales and Use Taxation:

The sales tax is by far the principal source of revenue for the State Equalization Fund. If additional revenue from the sales tax is desired to support Equalization Fund programs at their present level, three means of obtaining such increase appear possible. They are: increasing the rate, broadening the base, and improving enforcement. The Committee does not recommend any rate increase at this time.

The Committee recommends that a 2% use tax be imposed upon gasoline upon which the 6-cent State excise tax is refunded. The revenue yield from such a proposal will approximate $1,400,000 per biennium. Because of the "anti-diversion" provision in the State Constitution, the proceeds of the tax will be used for building county farm-to-market roads.

Also recommended are proposals to impose a 3% excise tax at the wholesale level on cigars and tobacco products, other than cigarettes and snuff, and on the nonalcoholic components of mixed drinks, when the latter are sold to licensed beverage dealers. These items are presently subject to the retail sales tax, but because their sale is so closely related to the sale of other tax-exempt items, collection of the sales tax has been made exceedingly difficult.

Along the lines of auditing and enforcement of the sales and use tax, the Committee recommends that the statute of limitations on actions to recover sales and use tax collections be lowered from fifteen to six years. With this change, auditors of the State Tax Department will be able to concentrate their efforts in the field of more recent delinquencies, upon which a greater percentage of recovery can be made. Also recommended is legislation giving the Tax Commissioner authority to revoke a

sales tax permit when returns are filed showing no tax due for four consecutive quarters. Approval of this proposal should aid in clearing the State Tax Department records and also eliminate a number of permits which, under the law, should not be outstanding.

As an aid in enforcing sales tax collections, the Committee recommends that wholesalers be required to obtain permits and keep records of sales to retail sales tax permit holders. This information would then be available to serve as a cross check on sales tax remittances by such retailers. The laws governing the licensing and bonding of contractors would be strengthened under another Committee proposal. A bond to secure collection of all State and local taxes would be required of all contractors, and contractors buying from out-of-State suppliers would be responsible for remitting the use tax to the State Tax Department.

The final recommendation of the Committee in the field of sales and use taxation is an appropriation of $15,000 for the purpose of employing professional personnel in the tax administration field to conduct a study of State laws, policies, and procedures in the area of sales and use taxation. In the opinion of the Committee, substantially increased collections can result from such study and the implementation of resulting policies and legislation.

Income Taxation:

In this field the Committee recommends amendment of present laws governing individual income tax rates and personal exemptions. Under legislation proposed by the Committee, a new rate schedule would be adopted providing a tax of 1% on the first $1,000 of taxable income, graduated on a straight line in $1,000-1% increments, to a maximum of 10% on that portion of income exceeding $9,000. Individual exemptions would also be raised to $2,000 for married couples, $1,000 for single taxpayers, and $750 for each dependent. While a more progressive and fair tax structure is the basic object of this proposal, it should also result in a revenue increase of $400,000 during a biennium.

Another recommendation of the Committee involves the institution of withholding from wages of nonresidents or persons who have not filed a State income tax return for the preceding year. While the Committee considered a general withholding applicable to residents as well as nonresidents, it reached the conclusion that withholding only from nonresidents offers the best percentage of return for each dollar spent in administering the system. Revenue estimates indicate a potential additional revenue recovery of about $1,000,000 per biennium.

In an effort to find additional sources of revenue to bolster State finances in general and the State Equalization Fund in particular, the Committee recommends imposition of an additional tax of 1.2% upon the net income of individuals, estates, and trusts. The tax would be imposed after the deduction of personal exemptions, but prior to nonbusiness deductions. As an offset against the tax, the taxpayer would be given a credit for 25% of all real and personal property taxes paid. The credit is in line

with the Committee's opinion that property is approaching the saturation point insofar as its use as a basis for taxation is concerned. It is estimated that this additional tax will yield $4,500,000 per biennium in increased revenue to the State.

Taxation of Telephone Companies:

The Committee recognized that inequities exist in this field whereby companies providing like services are taxed on a different basis, depending on their type of corporate organization. Various types of gross earnings taxes were considered, but not recommended, because of time limitations which precluded the more detailed study necessary. The Committee recommends legislation which would tax privately-owned companies serving rural areas and communities of less than 500 population in the same manner as mutual and cooperative companies are taxed — on a per phone basis. In view of the inequities which the Committee feels will still exist in this field, it is further recommended that a study of methods of taxing telephone companies be assigned to the Legislative Research Committee during the next biennium.

Property Assessment:

Recognizing the fact that uniformity of assessments between taxpayers and between assessment districts is very often lacking, the Committee recommends that the board of county commissioners in each county be given the responsibility of spot-checking at least 1% of all of the personal and real property assessments, with authority to change such assessments as are found to be inequitable, after notice to the local board of equalization concerned. It is believed that this spot check should provide an impetus toward equity of assessments.

Present law requires that property be assessed at its true and full market value. In practice this is not done and every assessor seems to select whatever level of assessment he chooses or as suggested by the local board of equalization. Since the requirement that property be assessed at its true and full value does not work in practice, the Committee recommends a bill which would require that all property be assessed at such percentage of its true and full value (between 25% and 40%) as may be set by the State Board of Equalization. This would give all assessors at least a common starting point in the assessment process.

Miscellaneous Items:

It was noted from the State Treasurer's report that a large number of special funds exist of which the State Treasurer is custodian. The Committee believes that the existence of these funds can lead to overspending in certain areas and, in addition, can make the overall financial picture of the State difficult to ascertain. The Committee recommends that the Retail Sales Tax, Equalization, and Public Welfare Funds be eliminated and the balances in such funds, plus future sales tax collections, be placed into the General Fund. In addition, the Committee recommends the transfer to the General Fund of the balances in some 11 special funds of lesser size and importance.

Under present law, unexpended balances in appropriations cannot be canceled until the expiration of two years after the biennium for which they were appropriated. In the opinion of the Committee, this further makes it difficult to ascertain the financial position of the State at a given time. The Committee recommends that these appropriations be canceled 30 days after the end of the biennium for which they were appropriated.

Employees of certain employers, notably the Federal Government, face possible discharge if they become delinquent in the payment of State taxes. Under our present law, however, there is no way in which the Tax Commissioner can inform an employer of his employee's delinquency. The Committee recommends that our secrecy laws in the income tax field be amended to permit such disclosure as a means of stimulating collection of delinquent taxes.

The final recommendation of the Committee in the field of taxation would permit the County Board of Equalization to raise or lower an individual taxpayer's property assessment, after notice to the taxpayer and the appropriate local board of assessment. The County Board of Equalization currently has authority to adjust assessments between classes of property, but can do nothing about individual inequities.

History and Functions of Legislative Research Committee

HISTORY OF THE COMMITTEE

The North Dakota Legislative Research Committee was established by act of the 1945 Legislative Assembly.

The legislative research committee movement began in the State of Kansas in 1933 and has now grown until 40 States have established such interim committees, with further States considering this matter at their 1963 legislative assemblies.

The establishment of legislative research committees is a result of the growth of modern government and the increasingly complex problems with which legislators must deal. Although one may not agree with the trend of modern government in assuming additional functions, it is nevertheless a fact which the legislators must face. There is a growing tendency among legislators of all States to want the facts and full information on important matters before making decisions or spending the taxpayers' money.

Compared with the problems facing present legislators, those of but one or two decades ago seem much less difficult by comparison. The sums they were called upon to appropriate were much smaller. The range of subjects considered was not nearly so broad nor as complex. In contrast with other departments of government, however, the Legislature in the past has been forced to approach its deliberations without records, studies, or investigations of its own. Some of the information that it has had to rely upon in the past has been inadequate and occasionally it has been slanted because of interest. To assist in meeting its problems and to expedite the work of the session, the legislatures of the various States have established legislative research committees.

The work and stature of the North Dakota Legislative Research Committee has grown each year since it was established in 1945. Among its major projects since that time have been revision of the House and Senate rules; soldiers' bonus financing; studies of the feasibility of a state-operated automobile insurance plan; highway engineering and finance problems; oil and gas regulation and taxation; tax assessment; drainage laws; reorganization of State education functions; highway safety; business and cooperative corporations; Indian affairs; licensing and inspections; mental health; public welfare; credit practices; elementary and secondary education and higher education; special State funds and nonreverting appropriations; homestead exemptions; governmental organization; minimum wages and hours; life insurance company investments; partnerships; republication of the North Dakota Revised Code of 1943; legislative organization and procedure; securities; capitol office space; welfare records; revision of motor vehicle laws; school district laws; investment of State funds; mental health program; civil defense; and tax structure.

Among the major fields of studies included in the work of the Committee during the present biennium are school district reorganization; the office of county superintendent; state aid to transportation; pardon and parole laws; motor vehicle safety laws; corporate farming; Indian affairs; legislative post audit and fiscal review; water laws; and taxation.

In addition, many projects of lesser importance were studied and considered by the Committee, some of which will be the subject of legislation during the 1963 Session of the Legislature.

FUNCTIONS OF THE COMMITTEE

In addition to making detailed studies which are requested by resolution of the Legislature, the Legislative Research Committee considers problems of statewide importance that arise between sessions or upon which study is requested by individual members of the Legislature and, if feasible, develops legislation for introduction at the next session of the Legislature to meet these problems. The Committee provides a continuing research service to individual legislators, since the services of the Committee staff are open to any individual senator or representative who desires specialized information upon problems that might arise or ideas that may come to his mind between sessions. The staff of the Committee drafts bills for individual legislators prior to and during each legislative session upon any subject on which they may choose to introduce a

bill. In addition, the Committee revises portions of our Code which are in need of revision and compiles all the laws after each session for the session laws and the supplements to the North Dakota Century Code.

METHODS OF RESEARCH AND INVESTIGATIONS

The manner in which the Committee carries on its research and investigations varies with the subject upon which the Committee is working. In all studies of major importance, the Committee has followed a practice of appointing a subcommittee from its own membership and from other members of the Legislature who may not be members of the Legislative Research Committee, upon whom falls the primary duty of preparing and supervising the study. These studies are in most instances carried on by the subcommittees with the assistance of the regular staff of the Legislative Research Committee, although on some projects the entire Committee has participated in the findings and studies. These subcommittees then make their reports upon their findings to the full Legislative Research Committee which may reject, amend, or accept a subcommittee's report. After the adoption of a report of a subcommittee, the Legislative Research Committee as a whole makes recommendations to the Legislative Assembly and where appropriate the Committee will prepare legislation to carry out such recommendations, which bills are then introduced by members of the subcommittee.

During the past interim, the Committee by contract obtained the services of the Bureau of Business and Economic Research at the University of North Dakota to aid the Committee in a study of the tax structure of North Dakota. In all other instances, the studies carried on by the Legislative Research Committee during this interim were handled entirely by the subcommittee concerned and the regular staff of the Committee. On certain occasions the advice and counsel of other people employed by the State government have been requested and their cooperation obtained.

REGIONAL MEETINGS AND INTERSTATE COOPERATION

The Legislative Research Committee is designated by statute as the State's committee on interstate cooperation. The most important and noteworthy activity of the Committee in this field has been through the Midwestern Regional Conference and the Four-State Legislative Conference which held meetings at Bismarck and Billings, Montana.

Reports and Recommendations

Education

House Concurrent Resolution "M" directed the Legislative Research Committee to study the requirements, standards, laws, and procedures for school district reorganization. Senate Concurrent Resolution "I" directed the Committee to study the organization and functions of the office of county superintendent. These resolutions were assigned for study to the Subcommittee on Education, consisting of Senators Rolland Redlin, Chairman, Philip Berube, Ralph J. Erickstad, Lester N. Lautenschlager, Leland Roen, and C. W. Schrock; Representatives Howard F. Bier, Sam O. Bloom, Walter Christensen, Arne Dahl, Don Halcrow, Clarence P. Loewen, Ted G. Maragos, Robert F. Reimers, and Abraham Thal.

GENERAL

In order to make it convenient for county superintendents, school board members and officers, and interested citizens to appear before the subcommittee in regard to the school studies, the subcommittee held five hearings throughout the State, beginning at Bismarck, then at Lisbon, New Rockford, and Crosby, and finally at Bowman. Approximately 500 people attended these hearings. The Committee was very pleased with the constructive-type criticism of school district reorganization laws and programs that was voiced by school board members, county reorganization committee members, and citizens in general who appeared before the subcommittee. There was an almost complete lack of accusations, shouting, and table pounding. With very few exceptions, all persons agreed as to the necessity of some type of school district reorganization, with disagreement expressed primarily in regard to the type of reorganization that was desirable or to the methods used. This indicates a substantial change of public opinion in regard to school district reorganization within the last ten years.

Perhaps the most common complaint expressed was that the county school district reorganization committees and the State Board of Public School Education have at times approved plans that were too small to offer acceptable programs of education at the desired level of quality. It was said that some of the smaller reorganization plans could not provide the desirable operating efficiencies, an acceptable curriculum, or a sufficient tax base to continue permanently as separate school districts. Some reorganization proposals seem to have been made solely to add additional taxable valuation to existing high school districts for the purpose of continuing inadequate school programs, without any real improvement offered in the quality of education. Instances were cited where approval of small reorganization plans may have encouraged these districts to construct new facilities and saddle themselves with heavy tax burdens to retire bonded indebtedness when, in all probability, these facilities may not be fully used after acceptable reorganization plans are finally developed.

Another common criticism was that many reorganization plans are submitted and approved with illogical patchwork boundaries that result from attempts to include in a reorganization plan those people who wish to become a part of a reorganized district, and to leave out those who might oppose it. This can result in inefficiencies in any transportation program and in irregular attendance patterns.

The most common recommendation for improvement received at the hearings was that the State should establish definite standards that must be met before reorganization plans could be approved by county and State committees, in order to ensure at least minimum standards of quality in the educational program after a reorganization plan has been adopted, with suitable exceptions for those areas where such minimum standards are impossible to meet. Many citizens urged that all school districts become part of an accredited high school district by some given date, in order to spur local reorganization efforts and to provide greater equality in tax contributions toward the support of education.

Another suggestion was that a means be found for making minor changes in the school program or internal organization after a district has been reorganized without the necessity of again going completely through the reorganization proceedings.

The request was often made by those appearing before the subcommittee that the State offer greater assistance and guidance in the development of reorganization plans to local districts, local citizens' committees, and county committees for school district reorganization. It was the almost unanimous opinion of those appearing before the subcommittee that if the State would offer the services of full-time personnel to provide professional and unbiased assistance to local districts, local animosities would be less likely to develop and a plan directed toward the best possible education under the local circumstances would be more likely to be accepted.

The recommendation was made to the subcommittee that a statewide professional survey be conducted before further plans are approved, which survey would block out the desirable reorganized districts and would become the basis of action by the county and State committees on school district organization. Some people recommended that such a survey become the basis of a single statute, to be passed by the Legislature, which would completely reorganize all school districts in the State by one legislative measure. The majority of people, however, felt that local citizens should participate in the reorganization process and should definitely be permitted to vote for the purpose of approving or rejecting any specific plan.

It is clear to the Committee that while school district reorganization has made substantial strides in North Dakota, the number of school districts having decreased from 2,271 in 1947 to less than 1,000 in 1962, the process is not yet complete.

When North Dakota first became a State, an eighth-grade education was considered an adequate goal for the majority of our citizens; consequently, the common school system, usually including only a single township, was designed to provide an elementary eighth-grade education. A high school education was looked upon as somewhat of a luxury, to be provided at the special expense of those taxpayers who might desire it. As a result, in order to provide a high school for themselves it was necessary for citizens to voluntarily form special school districts. Today it is difficult to find a citizen in the State who does not believe that a high school education is the minimum educational opportunity that must be made available to all. Yet there still exist many school districts in the State which are not part of high school districts, and which do not directly contribute to the cost of operating high schools, except through the county 21-mill levy or through payment of tuition for students who are attending neighboring high schools. At present there are 218 school districts that do not operate even elementary schools, and there were 57 school districts last year which levied no taxes at all for school purposes. Of the 345 high schools operating in North Dakota today, 112 of them do not meet the minimum requirements for accreditation by providing the minimum statutory curriculum, taught by teachers teaching within their majors or minors. Sixteen high schools are unaccredited for other reasons.

It is obvious therefore that North Dakota citizens will continue to strive to raise the level of education in their communities through reorganization procedures, to meet at least the minimum goals that have been established by the State, and to work toward more equity in the support of education by requiring all people and property to make a more nearly equal contribution toward the cost of education. In addition, some districts with reorganization plans which were approved in the early years of the reorganization process, and which today have unusually small enrollments and tax bases, will be the subject of re-reorganization in order to increase the efficiency of their school systems and improve their school programs. All of these factors point to continued widespread activity in school district reorganization for a good number of years. The adequacy of our school district reorganization laws, procedures, and standards will therefore be of concern to the Legislative Assembly and the people of the State for a long time to come.

OFFICE OF COUNTY SUPERINTENDENT

In the past the office of county superintendent has largely been looked upon as performing the duties of a school superintendent for those rural school districts which do not have a superintendent of their own. Many people have assumed that, as the number of rural school districts has decreased through reorganization, the work of and the need for this office has substantially diminished. From information and testimony made available to the Committee, it appears that the workload of this office has not decreased and the need for a type of county or district superintendent will continue. Among the many statutory duties of the county superintendent of schools are those relating to:

1. General superintendence over all schools

in the county except those which employ a city superintendent;

2. Visitation of schools under his supervision at least once a year and to observe and advise the teachers;
3. Carrying out the instructions of the Superintendent of Public Instruction and conducting teachers' meetings as directed by him;
4. Supervising and instructing school district officers in keeping district records;
5. Convening annual meetings of school boards and clerks for discussion of school management;
6. Filing lists of presidents and clerks of all school districts annually with the county auditor and county treasurer;
7. Ensuring that the required subjects are taught;
8. Settling all controversies arising over administration of school laws, subject to appeal to the Superintendent of Public Instruction and the courts;
9. Reporting annually to the Superintendent of Public Instruction such information as may be required by him;
10. Reporting on the number of schools and departments to the county auditor;
11. Making recommendations to the county commissioners as to the dissolution or attachment of school districts and publication of notices in regard thereto;
12. Serving as a member and as secretary of the county agricultural and training school board;
13. Arbitrating disputes as to school district debt and equalization;
14. Approving attendance of pupils in other districts;
15. Serving as a member of the board of appraisers for the sale of original grant school lands;
16. Serving as a member of the county board of health;
17. Apportioning state tuition fund moneys;
18. Enforcing of compulsory attendance laws;
19. Certifying high school correspondence course enrollments;
20. Providing rules for fire drills;
21. Supplying forms for the school census and reporting in regard to handicapped children;
22. Approving teachers' reports;
23. Calling of elections to fill vacancies of school district offices;
24. Supervising evening schools;
25. Recording teachers' certificates;
26. Reporting on unsanitary or unsafe schools;
27. Reporting teachers' insurance and retirement assessments;
28. Submitting requests to the state equalization fund for aid;
29. Investigating and certifying claims by school districts to equalization fund;
30. Checking and certifying claims for transportation payments to the Superintendent of Public Instruction;
31. Determining and certifying elementary per-pupil payments from the county equalization fund;
32. Appointing county school district reorganization committee and acting as secretary thereof;
33. Assuming responsibility in adjustment of school district assets and liabilities upon reorganization;
34. Appointing county board of special education and serving as secretary and executive officer thereof; and
35. Performing numerous other services for schools and their officers in his county both in the school administration and in the educational fields.

There appears little question but that the work of the office of county superintendent has actually increased as a result of the various duties involved in the foundation education program, the reorganization laws, the transportation program, and additional statistical work in regard to school districts of each county.

At present a number of counties are experiencing difficulty in attracting qualified people to the office of county superintendent. In 1957 a new State law was passed which requires each county superintendent to hold a first-degree professional certificate, in order to make the requirements of that office equal to the requirements for teachers in accredited high schools. In 1960, 16 of the 53 county superintendents were qualified under this new law, and the balance were serving under a "grandfather" clause. The salary levels provided by law, especially in the less populous counties, do not appear sufficiently high to attract qualified persons unless they have another source of income. In addition, present law ties the availability of office and field deputies to the number of rural teachers under the county superintendent's supervision. Consequently, as the number of rural districts have decreased, the amount of assistance available to a county superintendent has decreased in spite of an increase in workloads in other fields.

Since the need for the office of county superintendent or an office of this type does exist, either on a county or district level, it is obvious that some changes must be made. As a minimum, it would appear necessary to provide authority in those counties having a low population to jointly employ a county superintendent and provide adequate office or field assistance in order to offer a salary sufficient to retain and attract competent people. It would also be desirable to authorize certain more populous counties on a local option basis to jointly employ a county superintendent. Several other alternatives appear to have merit and could be considered. Some States have established and others are considering the establishment of the office of county superintendent on a multi-county or district basis throughout the entire State. Such an organizational pattern would not only meet the objective of attracting competent personnel, but would permit the offering of professional educational services which districts might be unable to provide for themselves. Field deputies could be stationed in county seats of some counties if administrative requirements made this necessary. Such a multi-county or district office could then be supported by the counties which it serves and provide an intermediate link between the office of the Superintendent of Public Instruction and the school districts themselves.

Before any changes in regard to the structure of the office of county superintendent can be made a constitutional amendment would be required. The Constitution at present requires that a county superintendent be elected for "each county" and this would preclude the election or appointment of a county superintendent to serve more than one county. It is possible, however, for the Legislative Assembly to amend the law in regard to the number of office and field deputies to give more discretion to the county superintendent and the board of county commissioners in providing the superintendent with such assistance as local circumstances require.

RECOMMENDATIONS - OFFICE OF COUNTY SUPERINTENDENT - SCHOOL DISTRICT REORGANIZATION

The Committee's recommendations in regard to the office of county superintendent and to school district reorganization can probably best be presented by reference to the bills which would carry out such recommendations, together with a brief discussion of the problems they are designed to solve. From this point, therefore, the report will discuss the bills being presented by the Committee.

Senate Concurrent Resolution "A". This measure is a concurrent resolution for the submission to the electorate of an amendment to section 150 of the Constitution, relating to the office of county superintendent. It would permit a subsequent Legislative Assembly to reorganize the office and provide that a county superintendent may serve more than one county or establish the office on a district basis, in whatever manner the Legislative Assembly might determine.

Senate Bill No. 40. This bill would amend section 15-22-06 in order to allow greater discretion to the Superintendent of Public Instruction and the board of county commissioners in providing the necessary field or office assistance to the office of county superintendent. In counties in which there are less than 50 teachers employed in the public schools, the county superintendent would be allowed to appoint a full- or part-time office deputy. In counties in which there are 50 or more teachers employed in the public schools, the county superintendent would be allowed to appoint an office deputy or a field deputy. Upon approval by the board of county commissioners, additional deputies could be appointed. Salaries of all deputies would be fixed by the board of county commissioners.

Senate Bill No. 41. This bill would amend section 15-53-32 so as to allow the electorate of a school district to make internal changes in a school district reorganization plan by a majority vote, voting by rural and urban areas in the same manner as in the original school district election. Changes in boundaries, however, would not be permitted without approval by the State and county committees under regular reorganization proceedings. It appeared reasonable to the Committee that if a majority of both the rural and the urban areas in a reorganized district wish to make internal changes regarding the operation of the school district, they should be permitted to do so without going through the entire reorganization proceedings again and obtaining the approval of the State and county committees. Also included is a provision that electors in any area which has been annexed to a reorganized district shall vote with the electors of the contiguous geographical unit to which they have been annexed in the manner determined by the school board. This provision is designed to remove uncertainty as to where the residents of a newly annexed area would cast their ballots.

This bill would also create section 15-53-33, permitting the school board of a reorganized district after the passage of five years from the effective date of the reorganization plan to exercise all the normal powers granted to a school board in regard to internal operations within the district, except that it could not reduce the transportation program provided in the plan, discontinue schools contrary to the reorganization plan or law, sell or remove school buildings except as authorized by law, alter the proportionate rate of tax if one has been established in the plan, or change the adjustment of assets and liabilities as provided in the plan except in the manner provided by law. It must be recognized that, as the years pass and conditions continue to change, even the best designed school district reorganization plan governing the internal operations of a district may grow obsolete. At some time it becomes necessary that the school board of a reorganized district be able to exercise the greater portion of the normal powers of management available to unreorganized districts, in order to meet changing conditions and provide an acceptable educational program at a reasonable level of cost. It appears to the Committee that after the passage of five years such powers should again be vested in the school board.

Senate Bill No. 42. This bill would relieve the county commissioners of all duties relating to school district annexation proceedings and transfer such functions to the county committee for the reorganization of school districts. At present, confusion results from the overlap of functions and duties of the county reorganization committee and the board of county commissioners. It cannot be expected that a board of county commissioners, whose principal duties lie in other fields, will have the degree of knowledge and interest in the field of education that will be found among members of a county committee on school district reorganization. This bill would also clarify the duties of the county superintendent in notifying the county committee of the existence of school districts that have discontinued school operations for a period of two years or more, or in notifying them of the existence of unorganized territory. Provision is also made for an appeal to the State Board of Public School Education in the event that two county committees should become deadlocked over annexation proposals that cross county lines. Section 15-53-21 has been rewritten in order to remove surplus and ambiguous language.

Senate Bill No. 43. This bill would reorganize the State Board of Public School Education by removing the membership of the Governor and the Attorney General and expanding the size of the board to seven, consisting of the Superintendent of Public Instruction and one member from each of the six judicial districts to be appointed by the Governor, with the consent of the Senate. Provision in the present law for appointment of two members by the North Dakota Education Association and the State School Officers Association has been deleted on the grounds that elementary and secondary education is a matter of general concern to all citizens and, therefore, appointment should be made upon a statewide basis rather than by private or professional organizations without regard to geographical representation.

It was often pointed out to the subcommittee in the course of its hearings, and the Committee agreed, that the Governor and the Attorney General are elected to their offices because of their qualifications to perform the principal duties of those offices. Their service upon the State Board of Public School Education in regard to educational matters is only an incidental duty. Consequently, such officials may or may not always have the special interest, knowledge, and experience that are necessary to properly perform the duties of this board. The large amount of time expended because of their membership on the board cannot but materially interfere with the performance of the principal duties of their of-

fices. In addition, such elected public officials may be subject to greater pressure from active local minorities and pressure groups than members who are not holding elective political offices.

In the opinion of the Committee, the membership of the board as recommended in Senate Bill No. 43 will permit the Governor to select for service upon this board persons who have real interest, substantial knowledge, and broad experience in the educational field. Such a part-time per diem board member will have more time to adequately study and review the reorganizational and other problems that face the board, as well as to assist local groups in developing reorganizational plans. The Superintendent of Public Instruction would continue to serve as secretary and chief executive officer of the board.

Senate Bill No. 44. This bill would repeal the authority provided by law for the classification of the property in rural and urban areas of school districts and its taxation at different rates. In the opinion of the Committee, there are strong questions in regard to the constitutionality of the present statute and it is believed that in practice it may breed discontent and animosity between rural and urban residents. In addition, it is contrary to the philosophy of equalizing taxation in the support of education. At present only two districts have used the differential tax levy. The Committee does not believe that equalizing the levies upon all property will constitute a hardship to these districts.

Senate Bill No. 45. This bill would require the county superintendent to report on July 1, 1967, to the county committee on school district reorganization the existence of any school district which is not operating a high school offering the minimum statutory curriculum, taught by teachers possessing the required qualifications. The county committee would thereupon be required to provide for the annexation of territory in such district to a district or districts within the county, or the adjoining counties, which operate a high school meeting the minimum standards or which will have the capacity to meet them after the annexation proceedings. Such annexation would then be subject to approval by the State Board of Public School Education in the manner provided by law for voluntary annexations. The Superintendent of Public Instruction would be authorized to waive the accreditation requirements in accordance with section 15-41-26 for those districts which cannot be reorganized upon a reasonable basis to meet the minimum accreditation standards. The law would affect only those districts not providing the minimum curriculum taught by qualified teachers. It would not affect other high schools that meet these standards but which may not be fully accredited because of lack of proper facilities or other reasons.

This bill has three purposes: first, it will ensure that at least the minimum level of high school education is made available in all high schools of the State; second, it will provide for greater equalization in the financial support of education by placing all property within a high school district; and third, it will encourage locally initiated reorganization and annexation plans during the four years prior to the effective date of mandatory reorganization proceedings, thereby giving local residents an ample opportunity to locally shape the future of their school systems.

The necessity for this bill can perhaps be best explained by quoting from the 1959 report of the Legislative Research Committee:

> "Unless a minimum level of course offerings and quality of instruction is available in a high school, it is a high school in name only and not in fact. The provision of sub-par course offerings and instruction to the student under the guise of calling it a high school is almost equal to perpetrating a fraud upon the student, and may seriously limit his achievements during the rest of his life. If it is believed that all youth of the State should have an opportunity to develop to a reasonable level within the limits of their capabilities, it is necessary that some floor be placed under the curriculum of the high schools in order to ensure that a minimum curriculum is offered at a reasonable level of quality. It is recognized by the Committee, however, that any standards adopted must of necessity be less than the ideal minimum in view of the number of small high schools that exist, some of which must continue to operate regardless of any future reorganization plans."

To quote further from the 1959 Committee report, the Committee then stated:

> "Some high schools have such limited course offerings and poor quality of instruction that they are high schools in name only, which in effect cheat the students who believe they

are obtaining a high school education."

Senate Bill No. 45 will also remove the tax inequity that results in the case of school districts which make little or no levy for school operations, as pointed out earlier in this report. It has the general objective of all reorganization plans — that of providing an improved level of education and obtaining the maximum amount of education for each dollar expended. It takes cognizance of the fact that an eighth-grade education, while considered adequate at the time that North Dakota became a State, is not sufficient for modern life and that a high school education is the minimum that must be available to all. It recognizes that the right of all citizens to at least a minimum level of educational opportunity is a two-edged sword, and with it goes the responsibility for all citizens and property to make at least an equivalent minimum financial contribution to the support of our educational system.

Senate Bill No. 46. This bill would require the State Board of Public School Education to promulgate rules and regulations to govern the county and State committees for school district reorganization in the development and approval of reorganization plans. It states the intent of the Legislative Assembly that such standards require that any school district formed or reorganized to provide for a high school shall, under any reorganization plan or annexation proceedings, have sufficient tax base and fiscal capacity to clearly permit such district to offer the minimum curriculum prescribed by law, taught by teachers possessing the necessary qualifications. Exceptions would be allowed to such standards only in extreme cases where because of sparsity of population or geographical barriers it is an absolute impossibility to obtain compliance with them. Senate Bill No. 46 further directs the county and State committees to approve no reorganization plan unless it has logical boundaries following a uniform pattern without undue irregularities.

Senate Bill No. 47. This bill provides that state's attorneys shall advise and represent the county committees for school district reorganization when requested to do so. In the event of a conflict of duties, the board of county commissioners would be authorized to employ special counsel to represent a county committee. It was noted by the subcommittee that in some counties the state's attorneys do provide such assistance to the county reorganization committees, but in other counties the method of obtaining legal assistance is uncertain. Since lawsuits occasionally involve the county reorganization committees, provision should be made for the services of attorneys to defend them at public expense rather than requiring them to pay for legal services personally.

Another amendment contained in this bill would change section 15-53-05 to require that members of the county committee on school district reorganization be domiciled within the commissioner district which they represent. The Committee believes that a member actually residing within the district he represents will be more interested in and provide better representation for the other residents of such district.

Other Recommendations

While not the subject of a specific bill, it is strongly recommended by the Committee that funds be made available by the Legislative Assembly to provide for a full-time Director of School District Reorganization within the Department of Public Instruction. In addition, a full-time assistant director for a period of several years would be highly desirable. If reorganization and annexation programs are to be facilitated it is absolutely essential that the State provide direct assistance and advice to local groups and county reorganization committees in developing local plans. It is clear that local groups cannot develop acceptable plans if they look only to the needs of their own school districts or their own counties, because each reorganization plan has a direct impact upon the future organization pattern of other districts and on plans in other counties.

If field assistance in local planning could be provided by the State through personnel representing the Department of Public Instruction and the State Board of Public School Education, local people and the state director could jointly develop plans to provide for the best and most acceptable plan for the district in question, and also give consideration to the needs of other districts and to plans in other counties. If plans are based upon surveys and suggestions from unbiased people representing the State Board of Public School Education, suspicion and animosity between communities and residents are less likely to result and the plans may have greater chances of local acceptance. It should also result in plans being adopted that are more nearly geared to meet the standards demanded for approval by the State board. A final but very important benefit would be the assistance by field personnel in advising the

State board, upon the basis of direct personal knowledge, of the facts and local conditions affecting a plan. This type of information is essential if the State board is to be able to evaluate conflicting testimony and to make informed decisions in regard to reorganization and annexation plans.

The Committee has by resolution urged the State Board of Higher Education to appoint a special committee for the purpose of reviewing admission standards, curriculums, and related matters in regard to teacher training. The resolution urges that such special committee review the policies and courses of instruction in the teacher training field at state institutions of higher education, with a view toward providing better screening and guidance for students entering the educational field; more emphasis upon substantive or content courses and less emphasis upon methods courses; more stringent limitations upon course proliferation through the subdivision and expansion of course hours in education beyond the value of their content; stricter grading standards; better evaluation of qualifications of students, particularly in the practice teaching field; and, in general, upgrading the standards of teacher education in order to improve the quality of graduates with degrees in the field of education, and through such actions challenge and increasingly attract outstanding students to the educational field. The Committee recognizes that in recent years there has been a substantial amount of national criticism of teacher training institutions, and it is believed by the Committee that the higher educational activities of the State of North Dakota in the teacher training field should be reviewed in the light of such criticism.

A further resolution was passed by the Committee urging the Governor of North Dakota to request The Council of State Governments to arrange a sectional meeting among midwestern governors at the 1962 Governors' Conference to discuss the possibilities of and potential benefits from the formation of a compact providing for interstate cooperation in the field of higher education in the midwestern region. The resolution noted that the cost of maintaining a complete system of higher education in all fields is often prohibitive in the more sparsely populated States. It pointed out that in an effort to make available all types of higher education without providing complete facilities in each State and to ensure the maximum utilization of educational facilities, regional compacts have been entered into by the Western, Southern, and New England States providing for the reciprocal exchange of students.

In the opinion of the Committee, the existence of such compacts now in effect in areas surrounding the midwestern region will make it increasingly difficult to place North Dakota students in specialized schools because of enrollment demands of students from States that are members of these compacts. In order to assure the availability of all types of higher education for North Dakota students, it appears highly desirable that North Dakota enter into a regional compact of this type with its neighboring States. In recent years it has been recognized by even the most wealthy and highly populated States that they cannot afford to provide the finest facilities in every field of higher education. It is an advantage for an institution to specialize and become truly outstanding in one area, while an institution in another State might specialize and become equally outstanding in a different field. By this method, high-quality educational facilities can be available in almost all fields in the midwestern region instead of, as too often happens, making mediocre educational facilities available in many fields, with each State attempting to provide everything for its own students. In part because of the interest of the Committee, the 1961 Midwestern Regional Conference passed a resolution to provide for a survey of higher educational facilities among the Midwestern States by The Council of State Governments in order to determine the feasibility of, and interest in, cooperation in the field of higher education. The resolution to the Governor was an attempt to interest the chief executive of each State in the midwestern group in the possibilities of such a program. As a result of an invitation from the Governor, the Governors of the Midwestern States held the meeting requested and a substantial amount of interest was shown. Formal action by the Legislature to implement such a program cannot be taken, however, until the survey now in process is completed.

STATE AID FOR TRANSPORTATION

In view of the extreme importance of an adequate transportation program in the school district reorganization process, the Committee felt it proper to review the operation of the transportation program being carried on by the school districts and the State aid program supporting school districts in meeting the cost of providing transportation. In addition, the Subcommittee on Taxation requested the Subcommittee on Education to review the State aid for transportation program in view of the rapidly increasing costs to the State Equalization Fund.

As is well known to all members of the Legislative Assembly, the increased number of reorganized school districts has resulted in an increase in the need for the transportation of students. This, together with the impetus provided by the 1959 Act authorizing State aid for transportation, has resulted in a spectacular increase in the total number of students transported by district-owned or contract buses. During the 1958-59 school year, 19,552 pupils were transported by districts using the school bus system. During the 1959-60 school year, this total increased to 30,759 pupils. By the end of the 1960-61 school year, the total number being transported had reached a record 40,234 pupils. The increase in school district reorganization and the rapidity with which school districts took advantage of the state aid for transportation law resulted in the State's costs for the aid program exceeding all estimates by a wide margin. The total expense of school districts in providing for transportation for the 1959-60 school year was $2,762,168; and in the 1960-61 school year was $3,534,688. The average cost per pupil transported during the 1959-60 school year of $89.80 decreased to $87.85 during 1960-61, because of the trend on the part of school districts toward using larger, more efficient types of school buses.

The foundation program itself has not substantially exceeded estimates, nor, in all probability, has the cost to the State Equalization Fund exceeded that which would have been paid out under previous equalization programs. The rapid and unexpected rise in school bus transportation and increased enrollments have been the principal causes of the increased drain upon the State Equalization Fund. It is estimated that the Legislative Assembly will be required to make an emergency appropriation of about $2.5 million during the next legislative session in order to provide complete payment of all foundation and transportation program payments for the 1962-63 school year. In addition, it will be necessary for the Legislative assembly to provide substantially increased revenues during the next biennium to finance these programs during that period, if no changes are made. Proposals for the financing of the foundation and transportation programs will be contained in the Committee's report on Taxation.

In order to begin its review of the State aid for transportation program, the Committee requested the Department of Public Instruction to provide information in regard to transportation costs, state aid payments, and other related information in 17 typical school districts in the counties of Burke, Divide, Eddy, Emmons, McLean, Mercer, Nelson, Pembina, Ramsey, Rolette, Stutsman, Ward, and Wells. Of special importance is the information in regard to the total costs of transportation in each district and the amount or percentage of such total costs that were received as reimbursement from the State and county equalization funds. The total transportation costs and the amount of State reimbursement for the 17 sample districts are as follows:

Name of District	Actual Transportation Costs	State Transportation Aid	Percentage of Reimbursement
Bowbells Public (Burke Co.)	$17,704.04	$13,109.92	% 74.05
Fertile Valley (Divide Co.)	2,113.66	763.51	36.12
McCoullough (Divide Co.)	2,788.49	134.64	4.82
Sheyenne (Eddy Co.)	16,689.15	10,120.88	60.64
Hazelton-Moffit (Emmons Co.)	27,507.59	15,246.74	55.42
Mercer (McLean Co.)	19,723.50	5,499.52	27.88
Mercer (Mercer Co.)	6,011.76	3,672.87	61.09
Lakota (Nelson Co.)	21,200.49	13,203.31	62.27
Drayton (Pembina Co.)	7,113.20	8,796.45	123.66
Devils Lake (Ramsey Co.)	30,117.21	23,770.52	78.92
Starkweather (Ramsey Co.)	12,323.89	15,025.40	121.92
St. John (Rolette Co.)	11,252.06	4,306.44	38.13
Rolette (Rolette Co.)	34,020.00	13,992.89	41.13
Kensal (Stutsman Co.)	13,202.26	9,140.60	69.23
Minot (Ward Co.)	17,526.02	10,931.51	62.36
Berthold (Ward Co.)	22,605.00	8,012.91	35.45
Fessenden (Wells Co.)	19,454.38	11,482.94	59.02

It is the purpose of the State aid for transportation program to encourage school district reorganization and to equalize educational opportunity by making suitable educational facilities more readily available to those students who do not live in close proximity to a school. The present formula for state aid for transportation was based upon a distance factor as well as a pupil factor, in recognition of the higher per-pupil costs of transportation in areas involving great distances and low populations. It appeared logical, and had been the experience of a number of other States, that the cost to a school district for transportation would increase as the total number of students transported increased. Consequently, in the pupil-mile formula, the same weight was given to the pupil factor as was given to the mileage factor. It was intended that the program would uniformly reimburse all districts for a fair share of their costs.

It is obvious that the pupil-mile formula did not have the expected results. A brief review of the 17 school districts contained in the sample will show that one district received only 4.8% of its total costs; another district received only 27.8% of its total costs; while other districts received as much as 123.6% and 121.9% of their respective transportation costs. This unfair situation resulted from giving too much weight in the formula to the number of pupils transported and too little weight to the number of miles the vehicles operated.

At the request of the Committee the Department of Public Instruction calculated the results of various alterations in the state aid formula, to determine the effect upon the sample districts. Among these variations were decreases in the rate of payment from the present figure of one-half cent per-pupil mile; payments based upon a flat sum per student transported; proportional weighting of the mileage factor in the pupil-mile formula; proportional decrease in the weight of the pupil factor in the pupil-mile formula; a flat mileage payment for all vehicles, regardless of size; and other variations.

A review of the operating costs of the various sizes of buses in the school districts indi-

cated that the average cost per mile of a vehicle designed to carry less than 12 passengers was 18.3c per mile. The operating cost of a bus having a capacity of 25-42 passengers was 20.4c per mile, while that of a bus having a capacity of 43-54 passengers was 21.2c per mile. While the difference in operating costs per mile of any of the vehicles did not vary too greatly, there was a wide variance in the actual dollars-and-cents cost per pupil transported, in view of the relative inefficiency of the smaller vehicle.

The average annual cost of transporting each student in a vehicle having a capacity of less than 12 passengers was $135.29; for a vehicle having a capacity of 12-24 passengers the cost was $108.48; for a vehicle having a capacity of 25-42 passengers, the cost was $99.72; while in a vehicle having a capacity of 43-54 passengers, the average annual cost dropped to $69.02 per pupil. It is therefore obvious that any State aid program should be designed to encourage the use of the larger type of equipment in order to hold the annual transportation cost per pupil to a reasonable figure. If State aid payments are made at the same rate per mile for small vehicles as are made for large vehicles, there will be little incentive to use the larger, more efficient vehicles. In fact, there will be a tendency on the part of a school district to use smaller vehicles regardless of the costs involved, because of the convenience to the patrons of the district. The use of small vehicles will result in many, many more miles being driven by school buses and, consequently, in a substantial increase in State aid payments under any formula where mileage is an important factor.

After a review of all the alternative formulas designed to promote more equity between the school districts by reimbursing them on a basis more in accordance with their actual costs, it was the Committee's unanimous opinion that the most equitable program, and the one most easy to administer, would be one which would pay a flat sum per mile for vehicles having a capacity of 19 or less passengers, and use a second schedule of a flat sum per mile for vehicles having a capacity of 20 or more pupils. Since the vehicles having a capacity of 25-42 passengers have an average per-mile cost of 20.4c, and those having a capacity of 43 and over have an average per-mile cost of 21.2c, the Committee recommends that the districts operating larger school buses be reimbursed at a rate of 10c per bus mile, which would be almost one-half of their average per-mile cost of operation. For vehicles having a capacity of 19 or less, the Committee recommends that the formula provide State aid in the amount of 7c per bus mile. Since the average per-mile operating cost of the smaller vehicle is somewhat less, the lower State aid rate of payment is justified. In addition, it will encourage the use of the larger, more efficient buses. The use of smaller buses which have a much higher annual transportation cost per pupil because of the greater number of miles driven to transport fewer pupils should not be encouraged, as it would result in a substantially greater drain upon the State Equalization Fund.

The exact results of this proposed formula in regard to the 17 sample districts can be seen by examination of the tabulation prepared by the Superintendent of Public Instruction found at the end of this portion of the report. In addition, for the purpose of verifying the accuracy of the costs of the 17 sample districts, the Department of Public Instruction has made available similar information in regard to school bus operating costs from approximately 100 additional districts. Based upon estimates of the 1963-65 transportation program, the proposed formula would reduce the biennial payments from the State Equalization Fund by approximately $800,000.00.

Senate Bill No. 48. The recommendation of the Committee in regard to the revision of the State aid for transportation formula is found in Senate Bill No. 48. It will be noted that section 3 of such bill would authorize any school district to levy a tax for the general fund of the district to offset any reduction in transportation payments that may result from the proposed change in the transportation formula for a period of five years after the passage of the Act. Some districts will gain additional State aid under the proposed formula and others will receive less. A means must be provided for any school district which is already levying the maximum mill levy authorized by law to levy the additional amount that may be needed to operate its transportation system, in the event the new formula would reduce the transportation aid payments for that district. To further alleviate the adverse effects upon districts receiving less revenue under the new formula, the bill provides that any reduction in State payments be made in three increments over a three-year period.

Senate Bill No. 49. The Committee recommends one other bill in regard to the field of transportation. Section 15-34-09.1 at present authorizes a school board to levy up to five mills over and above the normal general fund mill levy limitation

for the purpose of providing transportation or an allowance for living expenses for a student attending a high school in another school district The Committee recommends in Senate Bill No. 49 that this restriction be removed and that the district be permitted to make such levy for transportation or living allowances for students attending school either within or without the district. It is recognized by the Committee that most school districts have great difficulty in providing sufficient funds within the normal general fund levy limitations to both operate their schools and provide an adequate transportation system, or pay living expenses for students. This is shown by the fact that approximately half of the high school districts in North Dakota have already voted, or will do so shortly, upon the question of increasing the general fund mill levy limitation of the district above the 27-mill maximum. The broadening of the authority to make such a levy for transportation or living allowances for students will materially aid school districts in providing educational programs and in providing transportation systems. In addition, the removal of the restriction would authorize the payment of allowances for board and lodging for pupils who attend school, either within or without the district, in instances where that is more practical than furnishing actual transportation.

The Committee has considered many matters other than those that have been mentioned in its report or included in its recommendations. A brief review of the voluminous minutes of the Subcommittee on Education will indicate the scope of its interest and study. In addition, a review of the bills recommended will indicate other technical or detailed changes which, for the sake of brevity, were not discussed in this report.

The Committee is indebted to the many citizens of the State who appeared before them at various hearings and meetings. The Committee is especially appreciative of the exceedingly fine cooperation of Mr. M. F. Peterson, State Superintendent of Public Instruction; Mr. A. R. Nestoss, Deputy Superintendent of Public Instruction; and Mr. Howard J. Snortland, Director of Finance and Statistics of the Department of Public Instruction. The suggestions and full participation of the Superintendent of Public Instruction and members of his staff in the Committee's work, and the many hours of work of personnel of that department in gathering and analyzing various data and statistical information requested by the Committee, contributed immeasurably to the Committee's study.

Name of District	Number	Present Payment Received at ½c Per Pupil Mile	Payments Received at 10c and 7c Per Bus Mile
ADAMS COUNTY			
Bucyrus	15	$ 2,077.41	$ 2,596.59
BARNES COUNTY			
Litchville	52	10,327.50	5,533.20
BENSON COUNTY			
Esmond	25	12,575.26	8,281.00
BILLINGS COUNTY			
Fryburg	6	1,913.87	$3,349.08
BOTTINEAU COUNTY			
Newburg	48	5,349.27	3,906.00
Bottineau	1	7,339.17	5,287.74
BURKE COUNTY			
Bowbells	14	13,109.92	10,235.00
Powers Lake	27	13,989.78	12,290.40
BURLEIGH COUNTY			
Sterling	35	6,456.29	4,776.90
CASS COUNTY			
West Fargo	6	11,191.39	4,377.60
CAVALIER COUNTY			
Sarles	42	5,560.87	3,990.00
Munich	19	8,471.16	4,896.32
DICKEY COUNTY			
Oakes	41	16,915.45	12,248.90
DIVIDE COUNTY			
Outlook	28	1,627.71	1,503.00
Writing Rock	23	638.34	1,056.51
Fertile Valley	25	763.51	941.03
McCoullough	19	134.64	434.70
DUNN COUNTY			
Killdeer	16	4,012.34	4,144.68
EDDY COUNTY			
Sheyenne	12	10,120.88	8,366.40
EMMONS COUNTY			
Hazelton-Moffit	6	15,246.74	12,337.20
Linton	36	940.64	1,003.80
Braddock	7	4,532.55	3,780.00
FOSTER COUNTY			
Glenfield	14	6,479.61	3,713.60
GRAND FORKS COUNTY			
Midway	128	16,835.35	9,263.12
GRANT COUNTY			
Roosevelt	18	12,426.36	11,830.40
Elgin	16	11,218.63	13,204.11

Name of District	Number	Present Payment Received at ½c Per Pupil Mile	Payments Received at 10c and 7c Per Bus Mile
	GRIGGS COUNTY		
Binford	23	$ 8,327.68	$ 6,028.62
	HETTINGER COUNTY		
Regent	14	18,036.85	10,862.72
Mott	6	10,220.41	11,037.60
	KIDDER COUNTY		
Steele	26	17,433.76	12,222.85
	LAMOURE COUNTY		
Edgeley		12,769.14	8,334.60
LaMoure		13,974.41	10,158.72
	McHENRY COUNTY		
Drake	57	20,772.41	13,208.40
Newport	4	13,434.32	11,623.59
	McINTOSH COUNTY		
Wishek	19	25,105.47	16,295.60
Ashley	9	16,505.67	11,238.50
	McKENZIE COUNTY		
Grail	1	6,371.25	7,585.36
Yellowstone	14	6,696.07	4,500.00
	McLEAN COUNTY		
Mercer	56	5,499.52	7,374.53
Turtle Lake	72	22,808.81	15,763.54
	MERCER COUNTY		
Mercer	2	3,672.87	2,512.80
Defiance	32	244.88	423.85
Goldman	9	164.50	423.85
	MORTON COUNTY		
New Salem	7	3,856.82	4,434.75
Flasher	39	14,346.07	12,740.31
	MOUNTRAIL COUNTY		
New Town	1	7,635.87	7,205.44
Parshall	3	21,386.66	13,841.40
	NELSON COUNTY		
Unity	80	11,929.59	9,852.48
Lakota	66	13,203.31	11,517.44
McVille	46	8,165.32	6,160.00
	PEMBINA COUNTY		
Drayton	19	8,796.45	6,317.50
Walhalla	27	11,693.17	6,899.10
Cavalier	6	23,586.05	16,970.76
	PIERCE COUNTY		
Rugby	5	28,593.62	25,066.44
Wolford	1	12,299.18	8,949.60

Name of District	Number	Present Payment Received at ½c Per Pupil Mile	Payments Received at 10c and 7c Per Bus Mile
RAMSEY COUNTY			
Devils Lake	1	$23,770.52	$17,391.60
Starkweather	44	15,025.40	8,036.16
Crary	3	6,963.61	5,565.12
Edmore	2	8,355.97	7,362.00
RANSOM COUNTY			
Enderlin	22	11,298.74	7,740.00
Lisbon	19	29,414.56	18,576.08
RENVILLE COUNTY			
Mohall	9	11,264.78	9,223.20
Glenburn	26	15,282.35	7,917.00
RICHLAND COUNTY			
Wyndmere	42	20,438.30	24,818.94
North Central	10	5,667.24	5,302.33
ROLETTE COUNTY			
St. John	3	4,306.44	3,186.72
Rolette	29	13,992.89	11,429.40
Mt. Pleasant	4	730.03	1,744.37
Dunseith	1	4,793.15	4,970.87
SARGENT COUNTY			
Milnor	2	12,387.93	7,057.75
Sargent Central	6	21,020.85	13,409.79
SHERIDAN COUNTY			
Goodrich	16	14,146.49	10,626.21
McClusky	19	15,734.64	11,185.52
SIOUX COUNTY			
Oak Grove	12	2,109.75	1,983.52
STARK COUNTY			
South Heart	9	16,867.46	11,861.24
Richardton	4	11,574.33	15,337.67
STEELE COUNTY			
Hope	10	5,441.97	5,854.46
Finley	3	10,426.68	6,492.50
STUTSMAN COUNTY			
Kensal	19	9,140.60	5,202.56
Streeter	42	9,479.08	9,037.60
Woodworth	30	10,779.74	9,310.40
TOWNER COUNTY			
Southern	8	14,345.19	9,162.56
East Central	12	3,219.63	1,522.20
TRAILL COUNTY			
Central Valley		9,481.97	8,161.92
Hillsboro		14,798.55	8,782.40
WALSH COUNTY			
Park River	78	8,013.00	5,994.00
Hoople	42	5,683.65	3,111.68

Name of District	Number	Present Payment Received at ½c Per Pupil Mile	Payments Received at 10c and 7c Per Bus Mile
	WARD COUNTY		
Minot	1	$10,931.51	$ 7,203.00
Berthold	54	8,012.91	8,590.32
United	7	8,345.05	5,887.00
Kenmare	28	10,272.94	10,444.90
	WELLS COUNTY		
Fessenden	40	11,482.94	8,453.20
Bowdon	23	12,131.56	7,361.60
Pleasant Valley	35	6,275.61	4,732.80
	WILLIAMS COUNTY		
Tioga	15	5,315.11	3,417.60

General Affairs

House Concurrent Resolution "J" directed the Legislative Research Committee to study the motor vehicle safety laws of the State, with particular emphasis upon a comparison of such laws with the provisions of the Uniform Vehicle Code and upon the possibility of reorganizing the State departments and agencies concerned with the administration of such laws. House Concurrent Resolution "I" directed the Legislative Research Committee to study the pardon and parole laws of the State. Senate Concurrent Resolution "K-K" directed the Legislative Research Committee to study the "feasibility of the development and passage of laws authorizing limited farming and ranching operations by corporations". These studies were referred to the Subcommittee on General Affairs, consisting of Representatives Charles F. Karabensh, Chairman, Bert A. Balerud, Walter O. Burk, Leonard J. Davis, K. A. Fitch, Oscar J. Sorlie, Thomas R. Stallman, Jacque Stockman, and E. A. Tough; and Senators Leonard A. Bopp, Adam Gefreh, Isak Hystad, Alex Miller, Duane Mutch, and Harry W. Wadeson.

MOTOR VEHICLE SAFETY LAWS

The Uniform Vehicle Code is a comprehensive work, covering every field of motor vehicle law ranging from the organization of a motor vehicle department, registration and certificates of title, to rules of the road and vehicle equipment. Because the study resolution specified "safety" laws, certain subjects such as registration, titles, and financial responsibility were given only passing consideration.

A detailed comparison of the North Dakota laws on subjects such as regulations governing operators and traffic, rules of the road, accident reports, and traffic signs revealed that in such areas our laws were in substantial compliance with the Uniform Vehicle Code; thus, only minor amendments in a few areas are being proposed. Amendments which are being proposed lie principally in the fields of vehicle equipment, speed limitations, operators' licenses, and the reorganization of departments.

Vehicle Equipment

In the field of vehicle equipment, chapter 39-11 of the North Dakota Century Code. there is a substantial variance from the Uniform Vehicle Code. In general, the Uniform Vehicle Code provisions are more specific in matters covered and, in addition, cover many matters not dealt with at all in our present law. Because of this variance, the Committee was of the opinion that the most desirable way to bring our law into substantial compliance with the Uniform Vehicle Code was to repeal our present chapter dealing with vehicle equipment and to enact a new chapter on this subject.

The Committee has prepared and recommends approval of a bill which would provide a new law relating to motor vehicle equipment. A number of the provisions in the bill are the same or substantially similar to the provisions in our present law. The most significant improvements contained in the proposed bill are in the field of vehicle lighting. Requirements relating to clearance lights and reflectors on trucks and buses, lighting on farm tractors and equipment, and tail lights have been inserted in the bill in compliance with the Uniform Vehicle Code, replacing present law which is almost nonexistent on these particular points. Some sections of the Uniform Vehicle Code have been re-written for easier understanding.

In addition, the bill contains provisions relating to such subjects as visibility distance and mounted height of vehicle lights, emergency lights and signals, number of lights permitted, and hydraulic brake fluid, which are not contained at all in the present law. Still other provisions of the Uniform Vehicle Code, such as a table relating to the performance ability of brakes, have been omitted as not suitable for North Dakota.

Speed Limitations

Because the subject of speed limitations is directly connected with highway safety, and because various parties have expressed the opinion that our speed limit laws are not the most desirable, the Committee next turned its attention to this field.

Present law provides a number of limitations in specific situations such as approaching railroads and highway intersections, passing schools, and driving in business and residential districts and parks. In addition, a basic speed limit of sixty miles per hour is provided outside of these areas in the absence of any posted limit. The

State Highway Commissioner and the Superintendent of the State Highway Patrol are given authority to post highways with limits up to seventy miles per hour, and may also post lower limits where deemed necessary. The Commissioner has also the authority to post limits on the interstate highway of seventy-five miles per hour during the daytime, and sixty-five miles per hour at night for passenger vehicles, and sixty miles per hour for trucks at all times.

The speed limitation bill prepared and recommended for approval by the Committee would remove a number of these specific limitations and establish four basic limits. These would be: thirty miles per hour in a city or village; seventy miles per hour daytime and sixty miles per hour nighttime on all State highways; seventy-five miles per hour daytime and sixty-five miles per hour nighttime on the interstate highway; and sixty miles per hour at all times on other highways. The overall requirement that speeds must be reduced appropriately under hazardous conditions is retained.

The Highway Commissioner, the Superintendent of the State Highway Patrol, and local authorities within their jurisdictions would be given authority to post higher or lower limits in all instances, except that the limits on the interstate highways would not be subject to alteration. No distinction is made between passenger vehicle and truck speeds. Phrases such as "presumably shall be lawful" and "prima facie lawful" which have caused confusion in the past have been eliminated and all limits, whether established by law or posted under authority of law, would be absolute. In addition, authority is provided for the posting of minimum speed zones.

Operators' Licenses

In the field of operators' licenses, the Committee noted some variance between our law and the Uniform Vehicle Code. The drivers' licensing division of the State Highway Department presented a number of proposed changes in the law governing this field, and some of these changes were accepted by the Committee. They involve such subjects as authorization for the State Highway Commissioner to appoint an agent to handle license suspensions and revocations; a requirement that all valid out-of-State licenses be surrendered before a North Dakota operator's license may be issued; and a clarification as to when nonresidents must acquire North Dakota operators' licenses.

Certain other amendments such as the setting of a fourteen-year minimum age for operator's license applicants, making a conviction under a municipal ordinance equivalent to a conviction under State law for purposes of suspension or revocation of licenses, and the removal of the word "serious" from the law relating to the suspension of operators' licenses for offenses against traffic laws, were considered by the Committee but were not recommended because the Committee was of the opinion that such amendments were either extremely controversial, or were not in accord with local conditions, or both. It will be noted that some of the changes rejected by the Committee would actually have altered law which is presently in conformity with the Uniform Vehicle Code.

Reorganization of Departments

The Uniform Vehicle Code provides for one central department, known as the "Department of Motor Vehicles", to handle all functions related to motor vehicle administration. It specifies that there be divisions within the department for registration, drivers' licenses, and safety and patrol, with such additional divisions as the Commissioner shall prescribe. Powers granted to the department by the Uniform Vehicle Code are stated in very broad terms, and include generally all things necessary to the administration of motor vehicle laws.

A survey of the organizational structure in the other States indicates that some twenty-one States have motor vehicle departments. However, only three of these States appear to have completely centralized all functions relating to motor vehicles in these departments. The Committee noted a great diversity in the various State agencies administering motor vehicle functions. Because the Committee was unable to foresee any great benefits which might result from a complete reorganization through the formation of a central motor vehicle department, no such changes are recommended at this time.

The Public Safety Division of the State Highway Department was established by the 1953 Legislative Assembly. The director is appointed by the Governor, and this director, plus clerical help, have comprised the entire division since its establishment. Its principal method of operation has been through the mailing of publications and other materials on safety to various individuals and groups throughout the State, encouraging publicity in the safety field, promotion of safety

councils, and general promotion of safe driving practices.

The Committee is of the opinion that it is highly desirable that the Public Safety Division be made a division of the State Highway Patrol in order to make maximum use of highway patrolmen in carrying out safety functions in the field, such as speaking to various groups and organizations, encouraging driver education classes in the schools, and, in general, engaging in safety promotion. It is believed that the personal contact of highway patrolmen in local safety promotion will result in more effective safety promotion than is possible under the present organizational structure. The Committee has prepared and recommends approval of a bill which would transfer the Public Safety Division to the State Highway Patrol.

As a division of the Highway Patrol, the Public Safety Division would be headed by a director who would be a member of the Patrol, appointed by the Superintendent, and possessing such additional qualifications in the field of public safety as the Superintendent shall determine. In addition to the director, the Committee believes that an amount substantially equal to the current $50,000 biennial appropriation for the Public Safety Division would enable the Highway Patrol to employ one additional patrolman in the field to aid in the assumption of safety functions. It is contemplated that the addition of the director, plus one patrolman in the field, will enable each highway patrolman to devote a substantially greater portion of his time - which portion is currently estimated at one-half of one percent - to safety promotion without detracting from the overall law enforcement activities of the Patrol. This will do much to advance the cause of public safety in a more effective manner.

The Committee next turned its attention to the Truck Regulatory Division of the State Highway Department. This division is responsible for permanent scales on the principal highways throughout the State, and portable scales at shifting locations, for the purpose of enforcing weight restriction laws. In addition, the division is active in enforcing the registration and ton mile tax laws.

The Legislative Research Committee in its 1959 report (page 81) recommended that the Truck Regulatory Division be consolidated with the Highway Patrol. In the opinion of the Committee, about the only factor which has changed since the 1959 recommendation is the fact that the Truck Regulatory Division now employs 58 field personnel, whereas the 1959 total was 53.

The Committee is of the opinion that the Truck Regulatory Division of the Highway Department should be consolidated with the Highway Patrol. It was noted that the present distribution of functions is substantially equivalent to having two separate police forces in the field. The State Highway Patrol now has authority over all motor vehicle laws, including those enforced by the Truck Regulatory Division. However, the converse of this situation is not true in that the Truck Regulatory Division personnel have no authority, for example, to arrest a drunken driver or apprehend a speed limit violator (unless by chance he is driving an overweight vehicle).

While the Committee found evidence that the cooperation between the Patrol and the Truck Regulatory Division was generally good, they could not find justification for the continuance of the two organizations as separate entities. Thus, the Committee has prepared and recommends approval of a bill which would transfer the field enforcement activities and equipment of the Truck Regulatory Division from the State Highway Department to the Highway Patrol. Authority to set load limitations and issue overweight and oversize permits, being largely a matter of engineering, would remain with the Highway Department with only enforcement activities transferred.

To ensure that the transfer of enforcement activities is accomplished with a minimum of hardship upon present employees of the Truck Regulatory Division, such employees are given preference for hiring as highway patrolmen. The Superintendent of the Highway Patrol is required to waive age and physical requirements if the employee is otherwise qualified as a patrolman. Those who fail to qualify despite such waivers are granted preference by the bill for employment by the Highway Department in other capacities. Employees of the Truck Regulatory Division who are over forty years of age at the time of transfer will be covered by federal social security, as State employees are presently covered. Those under forty years of age, upon appointment to the Highway Patrol, shall have an option between social security and the highway patrolmen's retirement system; thus the actuarial soundness of the patrolmen's retirement system will be maintained.

The bill will provide for the financing of the weight control functions of the Highway Patrol

by legislative appropriation from the State Highway Fund. While the Committee considered deducting the amount thus appropriated from the 3% standing appropriation to the Highway Department for administration, it was learned that the present costs of the Truck Regulatory Division are paid out of the State Highway Fund and not charged as an administrative expense and that to do so would reduce the amount available for administration of the Highway Department considerably below the amount required. The general expenses of the Highway Patrol for law enforcement other than weight control would continue to be met by legislative appropriation out of the general fund.

The Committee noted that the Highway Patrol currently has the responsibility for enforcing laws relating to motor vehicle common carriers and the rules and regulations of the Public Service Commission established pursuant to such laws. The transfer of weight control functions to the Highway Patrol would place highway patrolmen in much closer contact with such carriers and aid in promoting a more thorough and efficient enforcement of such laws and rules and regulations than is presently possible.

The Committee is of the opinion that the transfer of weight control functions from the Highway Department to the Highway Patrol will, as is stated in the 1959 report:

> ". . . provide better enforcement of all laws concerned. By having one larger force with overall enforcement authority a single agency could stress the duty that is most pressing at any one time and turn to other duties as the need arises. In other words, it would provide greater flexibility and better enforcement at peak periods in the various fields of enforcement."

At a later point, the report continues, and the Committee wishes to emphasize their agreement:

> "A transfer of the Weight (Control) Division to the State Highway Patrol would provide improved enforcement from the same enforcement dollar, as well as remove the confusion that results from having two agencies operating in the same field. Such a transfer is therefore recommended by the Committee."

PARDON AND PAROLE LAWS

In the course of this study the subcommittee conferred with members and the secretary of the State Pardon Board, the State's chief parole officer, and the warden of the State Penitentiary. In addition, representatives of the State Bar Association met with the subcommittee to give the benefit of recommendations of their association. Some members of the subcommittee attended the August 19, 1961, parole board meeting in order to obtain firsthand knowledge of the problems facing the State Pardon Board. Numerous reports and writings upon the subject of probation and parole were reviewed.

The pardon and parole system of North Dakota is supervised by the State Pardon Board, as established in Section 76 of the North Dakota Constitution. This board consists of the Governor, the Chief Justice of the Supreme Court, the Attorney General, and two electors appointed by the Governor. Under the Constitution the board has the power to remit fines and forfeitures and to grant reprieves and pardons for all offenses except treason and cases of impeachment. The Legislative Assembly has the power to regulate the manner in which the board carries out its functions. By statute the Legislative Assembly has added the function of authorizing paroles to the duties of the State Pardon Board.

This five-man board holds regular meetings at the State Penitentiary three times a year to hear all cases coming before it. Prior to 1961 only two meetings a year were authorized. In addition to holding three regular meetings the emergency pardon board, consisting of the three ex officio members of the State Pardon Board, hold emergency meetings from time to time for the transfer of inmates from the State Penitentiary and the State Farm to the State Hospital, as well as authorizing emergency and temporary paroles for an inmate to return home in case of serious illness or death in his family.

The Pardon Board appoints and supervises five parole and probation officers in the State. One parole officer spends the greater portion of his time in the office as administrator of parole and probation matters and, as clerk of the Board of Pardons, prepares cases for review by the Pardon Board at regular and emergency meetings. This leaves four parole officers to do the field work. In addition to the personal contact made by parole officers with each parolee and probationer, a monthly report is required. Parole officers are frequently called upon to appear in

court where there has been a violation of parole and most judges require a written report by the parole department on all probation violations when a probationer is brought before the court.

The passage of the "suspension of imposition of sentence statute" in 1947 resulted in a major change in the way in which the State of North Dakota dealt with criminal violations. Under this law, young men and women who find themselves in serious difficulty for the first time may be placed upon probation by the district judge for a given period of time instead of being sent to prison. They are placed under the supervision of the parole officers working for the Pardon Board. Following satisfactory completion of the probationary requirements the judge may dismiss the action, leaving the probationer free from a felony conviction. This statute enables a dismissed probationer to truthfully state that he has never been convicted of a felony. The program appears to be highly successful in terms of the number of probationers who satisfactorily complete the probationary periods and whose convictions are dismissed by a judge. It also has the advantage of permitting a person to continue in gainful employment and to support his family, in contrast to the expense incurred by the State when he is lodged in the penitentiary and welfare assistance is provided to his dependents.

At present there are approximately 100 parolees from the State Penitentiary under the supervision of the state parole officers, and slightly less than 400 probationers. This is a very heavy workload for each parole officer since in excess of 100 cases per officer must be assigned. Some national authorities have stated that if a parole officer is to do an adequate job and assist the district courts in providing pre-sentence investigations, his workload should not exceed 40 cases. At present, parole officers have very little time to carry on pre-sentence investigations for district judges, and no provision is made for follow-up procedures on persons released from the State Penitentiary or the State Farm upon the completion of sentence.

A detailed section-by-section comparison of North Dakota's pardon and parole laws was made with the model Pardon and Parole Act. It is the opinion of the Committee that, on the whole, North Dakota's pardon and parole laws compare very favorably with the Uniform Act, and in a few areas are more advanced. However, in those areas where improvement seems desirable the bill presented will reflect the improvements which the Committee recommends.

In the opinion of representatives of the State Bar Association, which opinion is concurred in by the Committee, the State Pardon Board as presently organized has difficulty in adequately performing the duties assigned to it. The three ex officio members—the Governor, the Chief Justice, and the Attorney General — are elected by the people primarily on the basis of their qualifications to perform the principal functions of their offices. Their service as members of the State Pardon Board is an incidental duty that would be unlikely to be considered in their nomination and election to office. There is no reason to expect that these elected officers would have any interest, or special experience or ability, qualifying them to make the best possible evaluation of the risks of parole for inmates of the penitentiary. The demands of the principal duties of their offices are such that they do not have the time to perform their duties in regard to paroles in the manner the Committee would recommend. It was found by the Committee that even by holding three meetings a year, each lasting two days, it is necessary for the Pardon Board to begin a meeting early in the morning and to continue until the late hours of the night in order to interview every prisoner who is applying for a parole; to briefly review an abstract of his record; and to make a decision in regard to the risks of his parole. It was indicated that the Pardon Board is able to allot only about fifteen minutes to each prisoner applying for a parole.

In the opinion of the Committee it is highly desirable that members of the State Parole Board have some experience in law enforcement, legal training, or other special experience which would be of assistance in evaluating the risks of parole. Such board should have adequate time to review a complete social and case history of every applicant appearing before them, as well as adequate time to thoroughly interview the applicant. This is not possible with the limited time available to the members of the present Pardon Board. In some States, particularly in Minnesota, they have solved this problem by appointing a full-time parole board which makes continual review and investigation of prisoners in order that full information is available to make the best possible decisions in regard to their parole. Because of the smaller number of parolees and probationers under the supervision of our State Pardon Board, this type of full-time board is not practical in North Dakota. However, the principal benefits of this type of board could be obtained if a part-time per diem board were created having authority to pass upon paroles. Such a board could meet for two or three days as often as six times a year,

in order to process applications for parole and to provide adequate time for a proper review of the complete case and social history of each parole applicant, as well as to properly interview him. This detailed social and case history could be prepared by a parole officer who would spend part of his time at the State Penitentiary working as an institutional parole officer, and part of his time carrying out the regular field duties of a parole officer. The cost of such a special parole board would not be great since the expense and per diem of the members would not be likely to exceed $3,000 per year.

For this reason the Committee recommends that the functions in regard to parole and probation be transferred from the State Pardon Board to a specially created State Parole Board consisting of three members appointed by the Governor. One member would be required to be experienced in law enforcement, another to be a licensed attorney, and a third member to be qualified by special education or experience to deal with the type of matters facing a parole board. Such a board would be able to adequately handle the caseload and properly review all information available in regard to each applicant, without unfair delays to the parole applicant, as well as to better protect the public in evaluating the risks of parole.

Parole Officers

It was noted earlier in the report that North Dakota has a caseload in excess of 100 parolees and probationers for each parole officer, as against a nationally recommended caseload figure of 40. It was also noted in the report that it is desirable for one parole officer to be assigned part time at the State Penitentiary as an institutional parole officer in order to develop social and case histories on inmates for the purpose of providing the State Pardon Board with adequate information in regard to each prisoner as an aid to evaluating the risks of parole. It is recommended by the Committee that the appropriation for state parole officers be increased in an amount sufficient to provide one additional parole officer who would work part time in the preparation of social and case histories for the State Parole Board and who would spend the balance of his time doing field parole work, thereby lightening the caseload of other parole officers to some extent.

State Penitentiary

The Committee believes that it would be highly desirable to provide separate facilities for mentally ill inmates of the State Farm and the State Penitentiary. There is little that the State can do in the line of rehabilitation for such mentally disturbed prisoners when they are kept in custody at the penitentiary. Such prisoners also tend to be troublemakers and have a very disturbing influence on other prisoners when they intermingle with them. These inmates can now be sent to the State Hospital temporarily for observation or treatment but there is no permanent place for their custody where adequate treatment can be given over a long period. At present one staff member from the State Hospital is available at the penitentiary for one day each week for evaluation and treatment of mentally disturbed inmates. Without question, it would be desirable to establish a separate facility for mentally disturbed inmates of the State Penitentiary and the State Farm at some place near the State Hospital where treatment could be offered by the staff of the hospital. In view of the cost of establishing and operating such a separate facility, however, the Committee does not feel that it can make a recommendation at this time for its establishment. With the completion of new facilities at the State Penitentiary it should be possible, nevertheless, to provide some degree of segregation of mentally disturbed inmates and make it unnecessary for them to mingle as freely with other inmates as is presently the case.

State Farm

The State Farm, originally intended to confine only first offenders, has a capacity of 40 inmates. At present it is housing a population in excess of 70, many of whom have served time in penitentiaries for felony convictions. The indiscriminate sentencing of experienced criminals to the State Farm contributes to the overcrowded conditions and tends to defeat its primary purpose of preventing the intermingling of first offenders with more hardened criminals. The Committee therefore recommends a bill which would prevent the sentencing to the State Farm of prisoners who have served sentences in any penitentiary for felony convictions, or who have histories of moral or sexual degeneration.

It was brought to the attention of the Committee that the law presently provides that in instances where a person could be committed to the county jail upon conviction, but is committed to the State Farm instead, the county is responsible for costs of his care in an amount of one dollar per day. The Committee believes that this low amount encourages commitments to the State

Farm, thus contributing to overcrowded conditions at the State Farm. Also included in the abovementioned bill is a provision which would raise the payment required to three dollars per day. It is believed that this will have some effect in discouraging sentences to the State Farm merely from the cost standpoint.

Conclusions

It is now generally recognized that the purpose of our penal system is not revenge, but rather rehabilitation of the offender. Because of the comparatively small population of the State and its limited facilities, North Dakota faces real problems in providing for the proper care, custody, and rehabilitation of those violating our laws. However, it is believed that the present probation laws of North Dakota can and do provide for the rehabilitation of a substantial portion of our offenders. The small cost of a part-time per diem board to better evaluate parole applications and to pass upon such applications without undue delay will make a material contribution to the success of our parole system. The employment of one additional parole officer to provide the necessary information to the parole board and to lighten to some degree the workload of the field parole officers should actually be viewed as an investment toward returning offenders to society as productive taxpayers and useful citizens, which is far preferable to the social and economic costs of a custodial program maintained at our penitentiary for such offenders, and the welfare costs incurred in caring for their families. Numerous other recommendations for improvement in our pardon and parole laws are made in the bill which is recommended by the Committee and these will be apparent upon an examination of the bill.

CORPORATE FARMING

Our present anti-corporate farming law is the result of an initiated measure approved by the voters of North Dakota on June 29, 1932, by a vote of 114,496 to 85,932. The law was one of a number of "depression-type" measures passed during this period, and was brought about by a growing concern over an exceptionally large number of mortgage foreclosures, by means of which insurance companies, banks, and other types of corporations were acquiring ownership of substantial amounts of North Dakota farm land. The measure voted upon by the electorate remains largely unchanged today, and may be found as Chapter 10-06 of the North Dakota Century Code.

Basically, the law provides that no corporation shall engage in the business of farming or agriculture. Corporations owning agricultural land were given a period of ten years to dispose of such land, with the stipulation that such land could be used for agricultural purposes by the owning corporation until disposed of. Cooperative corporations with 75% bona fide farmer membership were exempted from the operation of the law. As a penalty for noncompliance, it was provided that the land involved should escheat to the county in which it was located and be sold at public sale, with the proceeds thereof, after expenses, to be returned to the former owning corporation. The constitutionality of the law was upheld by both State and Federal courts, up to and including the United States Supreme Court.

Throughout the years since 1932 several bills have been introduced to allow corporations to engage in various types of farming. None have been able to secure passage. The most recent attempt was Senate Bill No. 114, introduced in the 1961 Session, which would have exempted corporations with not more than ten stockholders, which could not include a nonresident alien or another corporation, not more than one class of stock, with an officer of the corporation actively supervising operations, and at least eighty percent of corporate income derived from farming or ranching operations.

Using Senate Bill No. 114 as a starting point, and realizing that the bill was not satisfactory to a majority of the members of the Legislature, the Committee considered some of the alternatives available in the nature of further restrictions on the possible formation of farming corporations. These restrictions included:

1. A limit on the total number of acres which might be owned by a farming corporation. This limitation was rejected mainly because of the vast differences between various types of farming and ranching operations in the matter of acreage requirements, and the differences involved in the size of operations in various parts of the State.

2. A limit on the total dollar value of assessed valuation of land which might be owned or leased by a farming corporation. This limitation, while an improvement

over Number 1, was also rejected because by its very nature it could not take into account the variance in assessment practices from county to county, and also could make no provision for appreciation in value of land which might eventually change a legal operation into an illegal one.

3. A requirement that all stockholders be related to each other stockholder within a certain prescribed degree. Of the three alternatives, this appeared to have the best possibilities of success in practical operation, if any alternative was to be adopted. A bill was thus prepared which would allow farming by a corporation meeting the requirements of Senate Bill No. 114, with an additional requirement that each stockholder be related to each other stockholder within a specified degree; namely, that of parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, great-grandparent, great-grandchild, or first cousin, or the spouse of a person so related.

Three hearings were held on the subject of corporation farming — one at Bismarck, one at Wahpeton, and the other at Williston. Representatives of all farm groups, other organizations, and the general public were invited to present their viewpoints in regard to the bill and the present status of corporation farming in general.

From the testimony thus taken, the Committee summarized the points made by those in favor of allowing corporation farming and by those opposed. Points allegedly in favor may be briefly summarized as follows:

1. Option to be taxed as a partnership rather than as a corporation under the Internal Revenue Code.
2. Continuity of operations through the passing of stock upon the death of a stockholder, rather than a forced "split-up" and sale of farm property because of diverse ownership.
3. Maximum use of gift tax law provisions by gifts of stock to other stockholders, principally children, thus reducing estate tax payments on death.
4. Limited liability of stockholders as compared with a partnership or individual proprietorship.
5. Broadened programs of social security benefits available to stockholders, who could also be employees of the corporation.
6. Retirement programs for stockholder-employees which could permit deferment of the income tax on funds set aside until after retirement, when such funds are withdrawn.
7. Group programs in the fields of life and medical insurance, sick pay, etc., can be set up for the stockholder-employee.

Opponents of corporation farming advanced the following points of contention:

1. If an amendment were once made, the Legislature might be more inclined to permit future amendments which could eventually do away with all restrictions on corporation farming.
2. Total taxes upon a corporation and its stockholders could be greater than on an individual.
3. It might prove difficult for a minority stockholder to dispose of his stock at a reasonable price should he desire to do so.
4. Corporations are not eligible for certain types of federally-backed loans, namely FHA loans.
5. Total social security contributions on the stockholder-employee are higher than on an individual.
6. It would tend to discourage small family-type farms.

While the Committee realizes that there exists among individual citizens and organizations within the State a rather sharp division of opinion as to the desirability of authorizing farmers to incorporate, the Committee recommends legislation which would permit domestic corporations to carry on farming and ranching operations within the State, subject to certain restrictions. Stockholders, who could not exceed ten in number, would each have to be related to each other stockholder within the degree of relationship specified earlier in the report. In addition, under the Committee's proposal, nonresident aliens and other corporations could not hold stock; there could be but one class of stock; an officer of the corporation would have to actively supervise operations; and at least 80% of the corporate income would have to come from its farming or ranching operations.

Indian Affairs

Senate Concurrent Resolution "R-R" and House Concurrent Resolution "T-1" of the Thirty-seventh Legislative Assembly directed the Legislative Research Committee to study the field of Indian Affairs. Senate Concurrent Resolution "R-R" directed that a broad study be made in the field of law enforcement, education, health, and welfare problems and services, while House Concurrent Resolution "T-1" called for special emphasis in regard to law enforcement problems and services.

This study was assigned to the Subcommittee on Indian Affairs, consisting of Representatives Harold R. Hofstrand, Chairman, Lawrence Dick, Donald Giffey, Brynhild Haugland, Louis Leet, Kenneth C. Lowe, Joseph Menz, John Neukircher, Oscar Solberg, and M. C. Tescher; and Senators Dan Kisse, Elton W. Ringsak, Bronald Thompson, and Clark Van Horn.

Although much has been said about reservation problems at numerous conferences and meetings, and even on the floors of the Legislative Assembly, the Committee decided to begin its work by obtaining thorough, first-hand information about Indian law enforcement, education, health, and welfare problems directly from the Indian citizens themselves.

A series of hearings was therefore held on all reservations in all Indian counties in the State. The hearings and meetings followed the pattern of meeting at the county seat with representatives of the counties and cities, law enforcement officials, juvenile commissioners, and interested citizens — plus such Indian citizens from the areas as might choose to attend. The Committee would then shift its hearing to a location on the reservation that would be more convenient for the attendance of Indian citizens, and all residents of the reservation as well as representatives of the Bureau of Indian Affairs were invited to attend. Such meetings and hearings were held at the cities of Rolla and Dunseith in Rolette County and at Belcourt on the Turtle Mountain Indian Reservation; at Parshall and New Town in Mountrail County; at Halliday and at the Twin Butte School in Dunn County for the Fort Berthold Reservation; at Fort Yates in Sioux County for the Standing Rock Reservation; at Minnewaukan in Benson County and at Fort Totten for the Fort Totten Reservation.

All of these hearings were well attended and in every instance residents of the reservations, local officials, and interested citizens spoke freely and frankly. At several of the hearings the interest was so high that it was necessary for the hearings to be continued for several hours past their scheduled time for adjournment.

The Committee recognized from the beginning that the responsibility for government on the reservations and the provision of governmental services is in fact a partnership affair. While the historic and legal responsibility for most of the normal services of government rests with the United States, by treaty and by congressional act, the Federal Government has delegated substantial authority to tribal governments, and over the years the State of North Dakota and its political subdivisions have provided substantial governmental services, especially in the field of welfare. In view of the divided responsibility for reservation government and governmental services, it was obvious to the Committee that State action alone could not affect all areas in which serious problems exist. In addition, there is much confusion as to which level of government has the responsibility for certain functions or services, or even which level of government might have jurisdiction to offer services.

Following a number of Committee meetings and the series of hearings described earlier in this report, the Committee decided that its report and recommendations should not be limited to only those areas in which the State might have authority to take action, but should view the matter as a whole, delineate the problems, and suggest the areas in which the Federal, tribal, or State governments should be active, and recommend specific action by each level of government.

In preparing this overall list of problems and recommendations, the Committee at all times started with the firm premise that the State of North Dakota firmly opposes any termination of reservations within the State and opposes any termination of Federal responsibility for services presently provided by the Federal Government to Indian citizens, and believes that the provision of any new State services should be in addition to normal Federal activities and not as a replacement for Federal or tribal efforts.

The following program was developed by the Committee and endorsed by the North Dakota Indian Affairs Commission, consisting of the Governor, Commissioner of Agriculture and Labor, Superintendent of Public Instruction, Executive Director of the Public Welfare Board, State Health Officer, Director of the North Dakota State Employment Service, chairmen of the Boards of County Commissioners of the counties of Sioux, Mercer, McLean, McKenzie, Dunn, Rolette, Benson, Mountrail, and Eddy, and tribal chairmen from the four reservations. It is divided into three parts:

Part I contains recommendations that must be accomplished entirely by an act of Congress, action by the Secretary of the Interior, or joint action by the Secretary of the Interior and tribes involved.

Part II relates entirely to the field of welfare, and is in an area in which the initial action would have to be taken by the Government of the United States, primarily in the form of enabling legislation, contracts, or the provision of appropriations. Subsequent action by the Legislative Assembly or the execution of contracts by the Public Welfare Board would be required to fully carry out the recommendations.

Part III contains actions that may be taken by the State of North Dakota to fill jurisdictional voids upon the reservations or to increase services for which the State has already accepted some responsibility. The recommendations of Part III affect areas in which the State can, by itself, take action to improve the status of Indian citizens.

This proposed program, as well as a brief statement of the resulting benefits should it be enacted, is as follows:

PROPOSALS BY THE COMMITTEE FOR ACTION BY THE TRIBES, AND STATE AND FEDERAL GOVERNMENT FOR IMPROVEMENT OF THE STATUS OF NORTH DAKOTA INDIANS

Part I

1. Constitutional Rights

It is proposed that the protection provided in the United States Constitution, especially in the Bill of Rights, be extended to all Indian reservations, regardless of the type of reservation government or court system that may exist, by Act of Congress or action of the tribes with approval of the Secretary of the Interior.

Resulting Benefits:

a. Less favoritism in law enforcement and abuse of police powers;

b. Provision of a remedy for unreasonable searches and seizures;

c. Will provide an absolute right to be represented by an attorney in any type of Indian court;

d. Would promote the establishment of normal court rules and procedures;

e. Would establish the principle of reasonable doubt in criminal cases in all Indian courts;

f. Would provide an absolute right to trial by jury;

g. Would prohibit double jeopardy;

h. Would prohibit a person from being forced to be a witness against himself;

i. Would prevent a person from being deprived of life, liberty, or property without due process of law;

j. Would prevent the taking of private property for public use without due process;

k. Would ensure the right to a speedy and public trial;

l. Would provide an absolute right to be informed of the cause or nature of an accusation;

m. Would provide to any person a right to be confronted by witnesses against him;

n. Would provide a right to compel the presence of witnesses in a person's favor;

o. Would prohibit excessive bail, excessive fines, or cruel or unusual punishments;

p. Would provide many other general and specific rights and protective provisions.

2. Criminal Laws

Passage of an act by Congress or action by the tribes with the approval of the Secretary of the Interior to improve the criminal codes governing Indian reservations by requiring all Courts

of Indian Offenses or tribal courts to follow an "Assimilative Crimes Act" on all crimes except 11 major crimes. (An "Assimilative Crimes Act" would make all acts or omissions that constitute a crime under State law also constitute a crime on reservations and punishable by the tribal court or Court of Indian Offenses.)

Resulting Benefits:

a. Would result in a greater portion of the criminal laws of any State having full application to the reservations as administered by the Courts of Indian Offenses or tribal courts;

b. Would accustom Indian people to living under State criminal laws;

c. Would give the benefit of a vast amount of State case law in the administration of justice on reservations;

d. Would resolve or minimize the importance of conflict of law questions;

e. Would make it practical for the State Attorney General and the county state's attorneys to give legal advice and assistance in the administration of justice on the reservations by the Courts of Indian Offenses and the tribal courts;

f. Would provide more adequate criminal penalties;

g. Would provide a sound basis in law for improved law and order upon reservations.

(There presently exists an Assimilative Crimes Act for crimes committed on an Indian reservation when the crime is prosecuted in Federal District Court, but this Act does not apply to crimes prosecuted in the tribal courts or U. S. Courts of Indian Offenses.)

3. Court System

Congressional action or action by the Secretary of the Interior to improve the court system on Indian reservations and the court personnel administering such court system through:

a. Providing better trained judges;

b. Provision of an appellate court for appeal of decisions from the Courts of Indian Offenses or tribal courts with definite procedures for appeal;

c. Provision of definite facilities and procedure for change of venue;

d. Provision of a juvenile court system and juvenile court services to promote probation and rehabilitation;

e. Establishment of a full parole and probation system with competent probation officers;

f. Requirement for a unanimous vote for conviction on jury offenses;

g. In the event that an act of Congress should not extend the protection of the United States Constitution to Indian reservations, such rights, to the maximum extent possible, should be provided by tribal action and administrative regulation from the Secretary of the Interior and be made binding upon Courts of Indian Offenses, tribal courts, and all personnel involved in the administration of justice and law enforcement on the reservations.

Resulting Benefits:

a. Less influence of courts by Indian police and officials of the U. S. Bureau of Indian Affairs;

b. Less favoritism in prosecution and punishment;

c. More attention to and greater efforts in crime prevention and the rehabilitation of offenders;

d. Tend to relieve overcrowded jails;

e. General improvement of the administration of justice and the law enforcement system on the reservations.

4. Law Enforcement and Jail System

It is proposed that the following improvements be made in the law enforcement and jail system of the reservations:

a. Improved qualifications and training program for Indian police officers;

b. Adequate regulation and supervision of police officers and jail personnel to ensure prompt and adequate medical treatment for prisoners;

c. Provision of physical facilities for use as jails of adequate size to prevent overcrowding.

Resulting Benefits:

a. Less abuse of authority by police officers and jailers;

b. More consistent law enforcement;

c. Improved case preparation and gathering of evidence;

d. Greater attention to the rights of defendants;

e. Greater respect toward law enforcement officers and the laws of the reservation by the residents of the reservation;

f. General improvement in law and order upon reservations.

5. Health Services

It is proposed that the health services rendered by the U. S. Public Health Service be improved by:

a. Expanded public health nursing program upon the reservations;

b. Expansion of off-reservation medical services to Indian residents residing off the reservation;

c. Increased use of contract medical services with established hospitals and private physicians where practical;

d. Provision of eyeglasses and dentures in the course of the medical care program.

6. Improved Educational Opportunities

In this field it is recommended:

a. Increase in the number of educational grants and loans from the Bureau of Indian Affairs for higher education and vocational training of Indian citizens through the provision of more adequate appropriations from Congress.

b. The provision of a boarding school-type trade and vocational school within North Dakota for North Dakota Indians and those of nearby reservations in other States, designed primarily for the education of Indian students;

c. In all educational programs developed in the future by the Bureau of Indian Affairs, the cooperation of the State and local school districts should be obtained in order that such schools can be operated on an integrated basis in view of the success of integrated programs that have been initiated to date.

PART II

1. Welfare, General Assistance

Assumption by the State of North Dakota and its political subdivisions of the responsibility for providing "general assistance" to Indian citizens residing off the reservation in non-reservation counties, if adequate reimbursement from the Federal Government can be obtained through contracts with the Bureau of Indian Affairs and suitable enabling legislation and an adequate appropriation from Congress.

Resulting Benefits:

a. Would give freedom of movement to Indian citizens, both on and off the reservations;

b. Would permit Indians to live off the reservations where job opportunities exist, more adequate housing can be found, improved services are available, and improved general environments exist;

c. Will encourage integration in education, employment, and all other phases of living between Indians and the non-Indian community;

d. Will tend to reduce the population of the reservation to more closely correspond with the job opportunities and economic base of the reservation, since it will become practical to live off the reservation;

e. Will remove the necessity for Indian citizens to return to the reservation when they are unemployed, when illness strikes, or other adversities occur, since the services and assistance in the welfare and health fields would be fully available off the reservation where the Indians reside;

f. Would permit Indian citizens to receive welfare and health services in the same manner and amounts and on the same basis as non-Indian citizens of the county in which they reside;

g. In some counties the higher State and county standards for general assistance would provide a more adequate level of existence for Indian citizens during per-

iods when their livelihood depends upon the general assistance;

h. Would remove the jurisdictional problem of whether the Bureau of Indian Affairs or the State has the responsibility for providing general assistance in the case of mixed marriages between Indians and non-Indians;

i. Would stop the practice of shuttling needy Indians back and forth between county welfare boards and the welfare offices of the Bureau of Indian Affairs, with each agency claiming that the provision of welfare is the responsibility of the other;

j. Would be an important factor in improving the opportunity of Indian citizens to become independent and self-supporting.

2. Foster Home Care

Expansion of State foster home care for Indian children, with adequate reimbursement under contract with the Bureau of Indian Affairs and after the provision of adequate appropriations by Congress. (This has been partially accomplished by a contract between the Bureau of Indian Affairs and the State Welfare Board during the present biennium.)

Resulting Benefits:

a. Substantially expanded and improved program for foster home care for Indian children;

b. Would provide foster care services for Indian children on the same basis as the State provides it for non-Indian children;

c. Would permit North Dakota to share in reimbursement program now made available to certain other States, thereby removing present inequities;

d. Would relieve, in part, the substantial pressure upon the State Public Welfare Fund, which is the basis for the present restriction of the foster home care program.

3. Reimbursement in Other Welfare Programs

Reimbursement of the State of North Dakota for the cost of providing old age assistance, aid to the permanently and totally disabled, aid to the blind, and aid to dependent children, at a rate comparable to that provided to the States of New Mexico, Arizona, and Utah for services to tribes in those States.

Resulting Benefits:

a. Would remove inequities between North Dakota and the other States mentioned, in regard to federal reimbursement for welfare programs through the recognition that the financial ability of the State of North Dakota is less, or certainly no greater, than the States mentioned;

b. Relieve, in part, the substantial pressure upon the State Welfare Fund and possible revenue shortages.

PART III

1. Civil Jurisdiction

The Committee proposes assumption by the State of North Dakota of full civil jurisdiction over Indian reservations and Indian country, as authorized by Public Law 280. Such jurisdiction would not apply to real or personal property held in trust by the United States or subject to a restriction upon alienation imposed by the United States, to any matter in regard to which jurisdiction would be prohibited under a treaty, or over other matters in which State jurisdiction would be restricted under Public Law 280.

Resulting Benefits:

a. Provision of equal protection to Indians and non-Indians under the civil laws of the State of North Dakota;

b. Increased credit sources for Indian citizens by ensuring the protection of creditors' rights;

c. Would encourage private investment and business development on reservations and in Indian country;

d. Would make all North Dakota case law in regard to civil matters available for the determination of civil matters affecting reservations;

e. Result in recognition of judgments and decrees of all courts having jurisdiction on reservations in all other courts of the United States;

f. Accustom Indian citizens to living under the civil laws governing all non-Indian

citizens of the State;

g. Accustom Indian citizens to using State courts;

h. Provide a means for State and county welfare boards to prevent some of the abuses of public welfare programs upon Indian reservations;

i. The assumption of civil jurisdiction by the State would provide, among other things, a tool for:

1. Determining the parentage of children;

2. Enforcing support by the head of the household for the wife, children, or dependents;

3. Placement of children in foster homes, both on and off the reservations;

4. Termination of parental rights and provisions for adoption of Indian children;

5. Providing institutional custody and rehabilitation services for juvenile delinquents in some instances;

6. Handling divorces and other matters affecting mixed marriages;

7. Involuntary commitment of mentally ill Indians to mental institutions;

8. Enforcement of contracts between Indians and non-Indians;

9. Providing a tribunal for trying tort actions (wrongful injuries to persons or property);

10. Permitting the service of civil process process upon reservations by State authorities;

11. Providing a tribunal for the settlement or trial determination of many types of actions too numerous to mention.

2. Criminal Jurisdiction

The Committee does **not** recommend the assumption of **criminal** jurisdiction over Indian reservations because it is believed that a majority of the Indian citizens do not wish the State to assume such jurisdiction.

3. Services of Special Assistant Attorney General

Assignment of or provision of the services of a Special Assistant Attorney General to become a specialist in Indian law and jurisdictional law affecting reservations.

Resulting Benefits:

a. As representative of the Attorney General's office he would be able to provide real assistance to the county state's attorneys in defining the boundaries of State authority in the morass of jurisdictional problems and developing a common approach to criminal law enforcement in reservation counties;

b. Provide specialized assistance to State and local administrative agencies on Indian law and jurisdictional problems;

c. Assist the tribal councils in revising their Constitutions and bylaws to more nearly parallel State laws so far as similar tribal laws are practical and acceptable to the tribes. This might also be accomplished by the adoption of an "Assimilative Crimes Act" by the tribes with the approval of the Secretary of the Interior, in order to make criminal law governing the reservations as similar to State law as is practical and acceptable to the tribes.

4. Employment and Industrial Development

An appropriation of $65,000 of State funds for an intensive job placement program by the State Employment Service.

Resulting Benefits:

a. Increased job opportunities for Indians;

b. Improved standards of living for Indian citizens in off-reservation employment;

c. Reduced welfare costs;

d. Permit Indians to develop skills and develop work histories;

e. Encourage integration between Indians and non-Indians;

f. Tend to reduce the population of a reseration to a reasonable level more closely approaching its economic base;

g. Reduce the incidence of law violations and juvenile delinquency through the

gainful employment of Indian citizens and youth;

h. Increase the tax base and improve the general economy of counties containing Indian reservations and of the State in general;

i. Improved standards of living for Indian citizens on reservations and in reservation communities.

In the Committee's opinion the provision of employment opportunities in reservation areas and elsewhere throughout the State will have a greater impact than any other factor in improving the status of North Dakota Indians.

RECOMMENDATIONS FOR STATE ACTION

From these recommendations, the Committee recommends three specific bills.

The first bill would authorize the Public Welfare Board to execute an agreement with the U. S. Bureau of Indian Affairs whereby, in non-reservation counties, any Indian citizen who has a residence on a reservation or in a reservation county and who has not yet acquired residence for welfare purposes in another county in which he is living could obtain general assistance from the county in which he is located, with the Bureau of Indian Affairs reimbursing such county for its costs for a period of 24 months (to be a resident of a county for welfare purposes a citizen must live in a county for a period of 12 months without receiving welfare assistance). If welfare residence was not acquired within such 24-month period, such aid would continue to be given to the Indian citizen, but after the 24-month period the State would be required to reimburse the county for its costs until the individual concerned does acquire residence for welfare purposes in the non-reservation county. This would accomplish the objectives listed in paragraph 1 of Part II of the program recommended by the Committee.

The second bill recommended by the Committee is an appropriation of $65,000 to the State employment Service in order to provide an intensive job placement program for a two-year period for Indian citizens. This is not necessarily intended to be a permanent and continuing program by the State, but rather is intended as an experimental and demonstration program to determine the degree of success that can result from an intensive job placement program within the State of North Dakota. This recommendation, which is found in paragraph 4 of Part III of the Committee's proposed program, will have all of the many benefits listed in that section if it is successful. The Committee also considered the recommendation of a similar appropriation to the Economic Development Commission for intensive efforts to develop industries adjacent to reservations, but in view of the general responsibility of the Economic Development Commission in this area and rather intensive efforts in this field being carried on by the Bureau of Indian Affairs, the Committee does not believe that specialized efforts by the State in this field are necessary at this time.

Without question, the most important recommendation of the Committee is the assumption of civil jurisdiction as listed in paragraph 1 of Part III of the Committee's proposed program. In any organized society it is necessary that there be certain rules or laws by which people must govern their conduct and by which they must live. In the Committee's opinion, as a practical matter, there is something approaching a void in civil law or civil rules by which people must live or by which State and local governments function in reservation areas. The numerous advantages of the provision of civil law upon reservations are listed in paragraph 1 of Part III of the Committee's recommended program.

While there are many problems in the field of criminal law and criminal jurisdiction, the Committee developed a firm impression, in the course of its hearings on reservations and in reservation counties, that the Indian citizens of the State do not wish the State to assume any criminal jurisdiction. Numerous complaints upon the present system of criminal law enforcement were received, and resulted in many recommendations in Part I of the Committee's recommended program for improvements by action of the Federal Government and the tribes. However, it seemed to be the opinion of most Indian citizens that while they were dissatisfied with the present level and quality of criminal law enforcement and criminal laws governing reservations, they were at least accustomed to this type of law enforcement, knew what to expect from it, and believed that any change to State criminal jurisdiction would bring in an unknown factor, and there seemed to be fear of the unknown. In addition, if the State were to assume criminal jurisdiction over the reservations, it could be a very expensive proposition. The counties and other political subdivisions containing reservations probably could not afford to provide the number of trained law enforcement personnel that would be required without

material assistance from the State. In view of the pressures upon State funds through existing obligations, it is doubtful that the State could afford to assume a substantial undertaking of this type. These two factors—the cost to the State and the desire of Indian citizens that the State refrain from assuming criminal jurisdiction—have resulted in the recommendation of the Committee that criminal jurisdiction be left in the hands of the Federal Government and the tribes.

In the course of the Committee's hearings, there appeared to be little opposition to the assumption of civil jurisdiction. In fact, when the various advantages as listed in the Committee's recommended program were discussed, it was generally agreed that they were advantages that should be sought. In addition, it would cost the State and the political subdivisions very little to make services of State courts available for civil matters since the courts are already in existence, and the increase in their workloads should not be too great. In addition to providing benefits to individual citizens, the assumption of civil jurisdiction by the State can have material benefit to the State and counties in their attempts to administer the welfare programs.

In order to participate under Federal law and receive Federal reimbursement in our welfare programs, the State and its political subdivisions must offer the categorical programs such as Old Age Assistance, Aid to the Totally and Permanently Disabled, Aid to the Blind, Aid to Dependent Children, et cetera, to all citizens of the State, which, of course, includes reservation residents. Yet, without civil jurisdiction, the State and counties really have no right to send their welfare personnel to the reservations to police the welfare programs. This results in many abuses of welfare programs over which the State has no control. For instance, under the Aid to Dependent Children program, the State is required to provide payments in proper cases to the mother of illegitimate children. Normally, it would be possible for the State to insist that actions be brought to determine the parentage of the children and possibly require support from the father if he is able to support them. On the reservation there is no court in which the State can be the moving party to have such parentage determined or to enforce the obligations of a father to support his children. Under such a program, in the event the mother does not properly care for her children but uses the money for other purposes, with the children being left neglected or destitute, the welfare agencies of the State can take little action. It is very doubtful that they can legally place the children in foster homes or arrange for their adoption since the courts of the State probably have no jurisdiction to handle these cases. Abuses in other programs can also be cited. It is simply impossible to properly operate a welfare program when the State has no civil jurisdiction on the reservation. It appears that the only thing welfare personnel may do when administering welfare programs on a reservation is to open up the public treasury and distribute funds without regard to the use of the funds or to the abuses that may occur.

In considering the question of recommending the assumption of civil jurisdiction, the Committee expressed concern lest such action be interpreted as a basis for the U. S. Bureau of Indian Affairs to decrease services presently given to residents on the reservations, with the assumption that the State would then assume the obligation to provide them. Since it is clearly the recommendation of the Committee that there be no decrease in Federal services presently offered, but rather that the State supplement existing efforts, inquiries were made upon this subject of a number of States which have assumed civil jurisdiction, and in some cases both civil and criminal jurisdiction.

These States reported that there had been no tendency upon the part of the United States Government or the Bureau of Indian Affairs to shift responsibility for education, health, law enforcement, welfare general assistance, or other services to the States as a result of the assumption of jurisdiction. They could note no failure upon the part of the United States Government and the Bureau of Indian Affairs to improve services within their States in the same proportion that they are improved in other States that had not assumed civil jurisdiction. In addition, the Committee posed this same question to the United States Commissioner of Indian Affairs and he, in writing, gave assurance that the assumption of civil jurisdiction by the State will not result in any efforts by the United States Government or the Bureau of Indian Affairs to lessen or decrease services presently being offered on the reservations, nor will it result in their failure to further improve such services on the same basis as improvements are made in other States which may not have assumed civil jurisdiction.

Although it is the firm belief of the Committee that the assumption of civil jurisdiction is in the best interests of the State, its political

subdivisions, and its Indian citizens alike, the Committee has inserted a provision in the bill which would provide for the automatic expiration of civil jurisdiction four years after the passage of the Act, unless renewed by action of the Legislative Assembly. Consequently, if it should prove that the assumption of civil jurisdiction should not be in the mutual best interests of the State, its political subdivisions, and the Indian citizens, the Act would expire of its own limitation and could even be repealed in two years should the Legislative Assembly so desire. The Committee believes this is an adequate safeguard to protect the best interests of the State and its Indian citizens in the unlikely event that the State or its Indian citizens should be dissatisfied with the jurisdictional arrangement.

While no bill has been prepared, the Committee does recommend in paragraph 3 of Part III of the Committee's recommended program that the office of Attorney General designate a Special Assistant Attorney General who would become a specialist in Indian law and jurisdictional questions affecting reservations. The specialized assistance of this Special Assistant Attorney General to local state's attorneys and law enforcement officers would be of material benefit to state's attorneys and local officers and would also promote a more uniform approach to criminal law enforcement in reservation counties by all State and local agencies. In addition, such Special Assistant Attorney General could be of real assistance to Tribal Councils in revising their Constitutions and bylaws to more nearly parallel State law so far as such similarity is practical.

OTHER JURISDICTIONAL QUESTIONS

Since the Committee does not recommend the assumption of criminal jurisdiction over Indian reservations because of the objection by substantial numbers of Indian citizens and because of the costs involved, the present morass of complex legal questions in the criminal field will continue to plague the Federal Government, the U. S. Bureau of Indian Affairs, the State of North Dakota and its political subdivisions, tribal governments, reservation residents, and citizens at large. In this regard, the Committee wishes to refer the reader to a very excellent article entitled "Jurisdiction over Indian Country in North Dakota," written by Mr. Melvin E. Koons, Jr., and Mr. Hans C. Walker, Jr. The article was recently revised and brought up to date at the request of the Committee by Mr. Hans C. Walker, Jr., presently the Executive Director of the North Dakota Indian Affairs Commission. It follows this portion of the report as Appendix "A". While it is impossible for the author, in his effort to keep the article reasonably brief, to cover the thousands of many complex situations that can arise in the matter of jurisdiction over Indian country and the many uncertainties or even vacuums that exist, the article is without question the most useful writing in this field that has been prepared in North Dakota.

MEETINGS WITH U. S. COMMISSIONER OF INDIAN AFFAIRS

The Committee was most pleased that, with the assistance of the office of the Governor, arrangements were made for the United States Commissioner of Indian Affairs to visit the State, to meet with the Committee in regard to its program, and to visit all the reservations in the State. Representatives of the Committee also accompanied the Commissioner in the course of his reservation visits. The Commissioner, in general, endorsed the program recommended by the Committee, although he indicated that the timetable for some of the improvements dependent upon action by the Congress, the Secretary of the Interior, or the tribes may take a greater period of time than may be desired. It is hoped, however, that the Committee's efforts in developing and identifying the principal problems of North Dakota Indians and presenting them to the commissioner and other officials of the Bureau of Indian Affairs will accelerate action on the part of the Congress and the Bureau in the areas listed in the Committee's recommended program.

CONCLUSION

The Committee is of the firm opinion that the provision of adequate employment opportunities on reservations and elsewhere through the State for Indian citizens would have a greater impact than any other factor in improving the status of North Dakota Indians. The clarification of civil and criminal jurisdictional matters in regard to reservations would be a matter of almost equal importance.

As noted at the beginning of this report, there is no one level of government that has responsibility for, or even could, solve all of the many problems that plague Indian reservations and North Dakota Indian citizens, nor is there any one solution to the problems. However, if a program such as that recommended by the Committee could be implemented by the United States

Government through acts of Congress and action by the Secretary of the Interior, by the State of North Dakota through action of its Legislative Assembly and activities by its political subdivisions, and by action of the tribal governments upon the various reservations, a giant step would be made toward improving the status of North Dakota Indian citizens.

The Committee wishes to express its appreciation to the members of the North Dakota Indian Affairs Commission for their cooperation in meeting with the Committee on several occasions during the course of this study and wishes to especially thank the commission's Executive Director, Mr. Hans C. Walker, Jr., for his material contributions to the Committee's work.

Appendix "A"

LAW AND ORDER IN NORTH DAKOTA'S INDIAN COUNTRY

by

Hans C. Walker, Jr., Executive Director, North Dakota Indian Affairs Commission

The law governing Indians, like common law, has grown until it has become a hodgepodge of treaties, rules, regulations, statutory and case law. It involves special rules calculated to protect a people, who because of cultural and educational differences were, and perhaps still are, unable to deal with the complexities of the legal and business world. It seems, though, that the law which has been created for their protection—the law relating specifically and only to Indians—has in many cases become more complex than the complexity it was intended to protect against. It seems, also, that there have resulted in this system some serious deficiencies with regard to legal remedies available to Indians in Indian country.

It is the purpose of this treatise to survey the law in regard to Indians in North Dakota and to point out what seem to be areas where corrective legislation is needed. There will be a discussion of the people and the areas involved, of some principles of Indian law, and jurisdiction of state, federal, and tribal courts over Indians.

Indians

The decisions on the question of who is an Indian have been so diverse that on occasion a white man has been considered an Indian, [1] and an Indian not an Indian, [2] for legal purposes. There is no definition of an Indian applicable to all situations; consequently, each jurisdiction has its own definition for its own purposes. The federal government has defined who is an Indian by legislation [3] for various purposes and there have been judicial definitions by the United States Supreme Court. [4] These definitions by the federal government have not been consistent and perhaps necessarily so, because of treaty obligations [5] and policy reasons. [6]

The North Dakota Supreme Court in State v. Kuntz [7] held that one who is of the half-blood, a member of an Indian tribe, lives on the tribal reservation, and is treated by the Bureau of Indian Affairs of the United States Government as an Indian is an Indian. Of the criteria stated it would seem that most persuasive and decisive would be whether or not that person is regarded and treated as an Indian by the federal government since if he were treated as an Indian his real property and some of his personal property would be held in trust by the federal government [8] and would not be amenable to the jurisdiction of the state. The question then becomes "Who does the federal government regard as an Indian?" Here again there seems to be no hard and fast definition; the treatment would differ from tribe to tribe and reservation depending on treaties, degree of assimilation, et cetera. The various tribes maintain rolls of members which are approved by the federal government, so it would be safe to assume that all those on the tribal rolls are Indians for all purposes. These rolls, however, are not always kept up to date and there may be many who have applied and are awaiting enrollment.

Regardless of the degree of Indian blood required before a person is considered an Indian for legal purposes, one thing is certain: that person must have some Indian blood. [9] Presumptively, a person apparently of mixed blood residing on a reservation and claiming to be an Indian is an Indian. [10] It should be kept in mind, however, that even an Indian of the full blood would not be an Indian for all legal purposes if he chose to terminate and abandon his tribal membership. [11]

Indian Country

The terms "reservation" and "Indian country"

are not synonymous.[12] For the purposes of criminal jurisdiction Congress has defined Indian country as "... (a) all the land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within... or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."[13] Subsection (a) of the foregoing was recently construed by the United States Supreme Court in Seymour v. Superintendent of Washington State Penitentiary.[14] The Court held that an area within the boundaries of the reservation which was opened for settlement by Congress was still Indian country since the statute opening the area for settlement did not expressly remove the area from the reservation but "did no more than open the way for non-Indian settlers to own land on the reservation in a manner which the federal government, acting as guardian and trustee for the Indians, regarded as beneficial to the development of its wards." It is clear, therefore, that unless the area is removed by Congress, the status of title to the real property within reservation boundaries does not affect jurisdiction. It should be noted that subsection (c) above applies to those isolated tracts and lots in townsites outside recognized boundaries or reservations in North Dakota. For purposes of application of the Indian liquor laws the term "Indian country" does not include fee-patented lands in non-Indian communities or rights-of-way through Indian reservations.

Principles of Indian Law

The whole course of judicial decisions on the nature of Indian tribal powers, said Felix S. Cohen, an acknowledged expert in Indian law, is marked by these principles:[15]

(1) An Indian tribe possesses, in the first instance, all the powers of a sovereign state.[16]

(2) Conquest renders the tribe subject to the legislative powers of the United States and, in substance, terminates the external powers of sovereignty in the tribe—its powers to enter into treaties with foreign nations—but does not by itself affect the internal sovereignty of the tribe.[17]

(3) These powers are subject to qualification by treaties and by legislation of Congress, but legislation does not apply to Indians unless so expressed as to clearly manifest an intention to include them.[18]

(4) Doubtful expressions in acts of Congress relating to Indians are to be resolved in favor of the Indians.[19]

The foundation of all law regarding Indians is the principle—the first stated above— of sovereignty of the Indian tribes. It was laid down in 1832 in the case of Worchester v. George, 6 Pet. 515, 8 L.Ed. 483, and has been cited and followed by the courts more than any other case regarding Indians.

A further elaboration of this principle has been that Indian tribes have a status higher than that of states, that tribes are subordinate and dependent nations possessed of all powers as such, only to the extent that they have expressly been required to surrender them by the United States, and the United States Constitution is binding upon Indian nations only where it expressly binds them or is made binding by treaty or by some act of Congress.[20]

Jurisdiction

Keeping these principles in mind we shall proceed to examine jurisdiction over Indians in North Dakota.

The earliest jurisdictional question involving Indians in this area was the case of Ex Parte Crow Dog.[21] Crow Dog, a Sioux Indian, in Indian country, Dakota Territory, murdered another Sioux Indian. The United States Supreme Court in that case held that a crime committed by one Indian against another Indian in Indian country was not within the criminal jurisdiction of any court of the United States, only the Indian tribe could punish the offense.

Although the right of an Indian tribe to inflict the death penalty had been recognized by Congress,[22] so much consternation was created by the decision in Ex Parte Crow Dog that Congress enacted the Seven Major Crimes Act.[23] This Act prohibited murder, manslaughter, rape, assult with intent to kill, arson, burglary, and larceny. Congress later added the crimes of robbery, incest, and assault with a dangerous weapon.[24] Thus there are, presently, ten major offenses for which federal jurisdiction has displaced tribal jurisdiction.[25] Although the statute covering the ten major crimes does not expressly

terminate tribal jurisdiction over the enumerated crimes there is dicta to that effect.[26] Also in support of the proposition that tribal jurisdiction has been terminated as to these crimes is the decision of United States v. Whaley.[27] In that case, four tribal executioners of a medicine man believed to have poisoned 21 persons were found guilty of manslaughter.

Federal courts also have jurisdiction over the general laws applicable throughout the United States.[28] These would include, for example, counterfeiting,[29] smuggling,[30] and offenses relative to the mails.[31] The federal courts have jurisdiction over offenses committed by an Indian against a non-Indian or by a non-Indian against an Indian which are within the offenses covered by the Assimilative Crimes Act.[32] This Act was passed in 1909 and declared that when one is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the state, would likewise be guilty of a like offense and subject to a like punishment in the federal courts. The courts apparently had not applied this Act to Indian reservations because of the doctrine laid down in 1884 in Elk v. Wilkins,[33] which held that it was a principle of federal statutory construction that the general laws of Congress did not apply to Indians unless so expressed as to clearly manifest an intention to include them. It was not until 1946, in William v. U. S.,[34] that the Assimilative Crimes Act was applied to Indian reservations. The Act incorporates Title 12 of the North Dakota Century Code into the federal laws covering Indian country in North Dakota. So even though North Dakota does not have criminal jurisdiction over the Indian reservations, it can exercise at least an indirect legislative authority over the Indians by its power to amend or enact new criminal laws and punishment. North Dakota has always recognized the exclusive federal criminal jurisdiction over the Indian reservations. There has been no conflict.[35]

However, the status of civil jurisdiction over Indians and Indian country in North Dakota is not so clear.

The first of a line of civil cases concerning civil rights of the Indian was State ex rel Tompton v. Denoyer.[36] This case was heard in 1897 and the Court held that reservation Indians were qualified electors of the state of North Dakota under the North Dakota statutes governing the rights of suffrage, which were asserted to be applicable on the reservations.

The second of these cases, tried in 1914, was State ex rel Baker v. Mountrail County,[37] which involved the question of whether a part of an Indian reservation should be included in the county for the purpose of voting. Here, again, the Supreme Court of North Dakota held that the statutes of the state were applicable so as to permit the incorporation of the reservation within the boundaries of the county.

By implication, at least, it appears that the North Dakota Supreme Court is assuming civil jurisdiction over the Indians. It would seem that this is in conflict with the federal government's jurisdiction over all Indian matters arising on the reservation; however, the North Dakota case of Swift v. Leach,[38] held that the government policy of protection extends both to the property and the person of the Indian and it may exist and be continued even though the Indian has become not only an elector, but also a citizen of the United States and the State. Therefore, the State in extending the right of suffrage to Indians is not in conflict with the federal policy of wardship but is simply acting consonant with the established policy of the federal government to assist the Indian.

The last in the line of civil cases involving Indians in North Dakota was Vermillion v. Spotted Elk,[39] wherein the Supreme Court of North Dakota held that the state had jurisdiction over civil matters arising between two Indians where the action sounded in tort and the tort occurred on an Indian reservation. The reasoning of the Court involved the application of Public Law 280,[40] the Enabling Act,[41] and the disclaimer of jurisdiction over Indians in the state Constitution.[42] The Enabling Act and the disclaimer are worded as follows:

> "The people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within the limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall remain under the absolute jurisdiction and control of the United States."

Public Law 280 provides that:

"Notwithstanding the provisions of any En-

abling Act for the admission of a State, the consent of the United States is hereby given to the people of any state to amend, where necessary, their state Constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: Provided that the provisions of this act shall not become effective with respect to such assumption of jurisdiction by any such state until the people thereof have appropriately amended their state Constitution or statutes as the case may be."

Among the states which this enactment was intended to cover was North Dakota.[43]

At the time the decision in the Vermillion case was handed down the North Dakota Constitution had not been amended as required by Public Law 280. In the light of the disclaimer, the Enabling Act and the language used in Swift v. Leach, the Court in the Vermillion case reasoned as follows:

> "The Act (Public Law 280) can have no application in states where the courts have exercised such jurisdiction under their constitution and laws without adverse appearance by the United States. We do not believe that the Enabling Act and the disclaimer in Section 203 of the Constitution can be held to have reserved to the United States jurisdiction in civil actions between Indians on Indian reservations within the state not involving Indian lands."[44]

This reasoning clearly goes contrary to the previous holding in our state court,[45] other state courts,[46] and the federal government as well.[47]

The Supreme Court of Montana[48] in dealing with this question said:[49]

> "It seems to us that the attorney general and the court below have placed too much emphasis on the ownership of land, and have not given due weight to the fact that the jurisdiction of the federal government over the Indian and tribes rests, not upon the ownership of and sovereignty of certain tracts of land, but upon the fact that, as wards of the general government, they are the subjects of federal authority within the state when the mentioned offense is committed as herein stipulated."

And in a Federal District Court case, the Court said:

> "When we speak of the right to govern certain lands, we not only mean the right to do something with the land itself, but to legislate for and control the people upon the lands. . . When we say Congress has the right to legislate for a place within its exclusive jurisdiction, we mean for the people who are there, as well as concerning the land itself."

The holding of the North Dakota Supreme Court seems to extend the jurisdiction of the state courts to all civil causes of action arising in Indian country. It has long been recognized that an Indian may sue in state courts,[50] but it would seem that if the defendant is an Indian and he refused to appear he would be beyond the authority of the state to force his appearance since service of process in Indian country is a nullity.[51] The judgment of the court if obtained by default could not be enforced so as to collect if funds are held in trust for that person by the federal government.[52] If the suit were brought in tribal court those funds would be subject to such a judgment.[53] If the court sought to cite the Indian for criminal contempt for non-appearance the citation would be beyond the scope of the state's authority since crimes are within the exclusive jurisdiction of the federal government or the Indian tribal courts.

A more persuasive reason for the contention that state jurisdiction does not extend to civil actions arising on a reservation is the 1959 decision of the United States Supreme Court in Williams v. Lee.[54] The Court there said:

> "No federal act has given the state courts jurisdiction over such controversies. In a general statute Congress did express its willingness to have any state assume jurisdiction over reservation Indians if the state legislature or the people vote affirmatively to accept such responsibility. To date, Arizona has not accepted jurisdiction, possibly because the people of the state anticipate that the burdens accompanying such power might be considerable. There can be no doubt that to allow the exercise of state jurisdiction here would undermine the authority of the tribal courts over Reservation affairs and hence would infringe on the right of the Indians to govern themselves. It is immaterial that respondent is not an Indian. He was on the reservation and the transaction with an

Indian took place there. . . The cases in this court have consistently guarded the authority of Indian governments over their reservations."

It is to be noted that Arizona has a disclaimer in their Constitution similar to the one in this state. [55]

An unequivocal acceptance of the jurisdiction offered by Public Law 280 [56] would definitely establish the jurisdiction of state courts over Indians and Indian reservations. In 1958, North Dakota amended its Constitution to read as follows: [57]

"The people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and that said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States, **provided however, that the Legislative Assembly of the State of North Dakota may, upon such terms and conditions as it shall adopt, provide for the acceptance of such jurisdiction as may be delegated to the state by act of Congress;** that the lands belonging to citizens of the United States residing without this state shall never be taxed at a higher rate than the lands belonging to residents of this state, that no taxes shall be imposed by this state on lands or property therein, belonging to, or which may hereafter be purchased from the United States or reserved for its use. But nothing in this article shall preclude this state from taxing as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto, by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any acts of Congress containing a provision exempting the lands thus granted from taxation, which last mentioned lands shall be exempt from taxation so long, and to such an extent, as is or may be provided in the act of Congress granting the same. "(Emphasis supplied)."

The amendment appears to comply with Section 6 of Public Law 280 which reads as follows:

" . . . Provided, that the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such state until the people thereof have appropriately amended their state constitution or statutes as the case may be." (Emphasis supplied).

By so amending the Constitution did the state comply with Public Law 280 and therefore assume civil and criminal jurisdiction? The amendment itself does not accept jurisdiction but merely paves the way for legislative action "for the acceptance of such jurisdiction as may be delegated to the state by act of Congress. . . " In other words it did not accept the jurisdiction, it merely provided a means of acceptance, heretofore lacking. Since the state does not now come under the provisions of Section 6 it would necessarily have to come under Section 7, which reads as follows: [58]

"The consent of the United States is hereby given . . . to assume jurisdiction at such time and in such manner as the people of the state shall, by affirmative legislative action, obligate and bind the state of assumption thereof."

The Legislative Assembly of North Dakota has thus far enacted no legislation implementing this potential grant of jurisdiction although in 1959 they took a long hard look at the possibilities. It is possible that the Legislature failed to enact laws assuming jurisdiction because it would mean an additional tax burden on the people of the state.

Tribal Courts

Before going into the matter of the jurisdiction perhaps it would be well to discuss briefly the nature of the Indian courts.

Generally, there are two types of courts either of which may have jurisdiction within Indian country. The first is the court which is established by the Indian tribe through its inherent powers as a sovereign. [59] The other is the Court of Indian Offenses, [60] which may be established in Indian country by the Bureau of Indian Affairs pursuant to the powers delegated to the Commis-

sioner of Indian Affairs to "have the management of all Indian affairs and of all matters arising out of Indian relations."[61] In view of the constitutional provision giving only Congress power to establish courts, it would seem that such general authority would be insufficient to establish courts, however, the legality of the Court of Indian Offenses was upheld in United States v. Clapox [62] on the grounds that these were not courts but "mere educational and disciplinary instrumentalities."

The tribal courts are not restricted in their actions by the due process clause of the United States Constitution.[63] None of the four North Dakota Indian tribes includes a bill of rights in its Constitution, consequently, an accused before these courts is theoretically subject to the abuses ordinarily prevented in other jurisdictions by a due process clause or a bill of rights.

It has been held that decisions of tribal courts are entitled to full faith and credit in state courts.[53a]

There is nothing, however, which requires one tribal court to accord the same treatment to the decisions of another tribal court or a state court. It does not seem consistent that a tribal court would not be bound by the Bill of Rights yet would be entitled to the benefit of the full faith and credit clause in absence of legislation.

Tribal courts differ from other courts also, in that professional attorneys are not admitted to practice unless the tribal council elects to admit attorneys and prescribes rules for admission and practice. The Fort Berthold Tribal Council has prescribed rules for admission of professional attorneys to practice in the Fort Berthold Tribal Court. Professional attorneys, formerly barred, have been admitted to practice in Courts of Indian Offenses; the Code of Federal Regulations, however, has not been changed in conformance with the ruling.[64]

The judges in the tribal courts or the Courts of Indian Offenses are not trained in law. The judges of the Courts of Indian Offenses are chosen by the federal government from the membership of the tribe with the approval of three-fourths of the tribal council. The judges of the tribal courts are chosen by the tribal council with the approval of the federal government.

It should be noted, however, that although these courts are generally regarded as either tribal courts or Courts of Indian Offenses, it is difficult at times to determine in which category a court belongs, since what is regarded as a tribal court is sometimes operated by federally appropriated funds and what is regarded as a Court of Indian Offenses does not operate entirely under the Code of Federal Regulations but under a code adopted by the tribe.

Both types of courts are in operation in North Dakota. The Court of Indian Offenses has been established on the Turtle Mountain, Fort Totten, and Standing Rock reservations. The Three Affiliated Tribes of Fort Berthold reservation has established its own court system.

Jurisdiction of Tribal Courts

In order that an Indian court may have criminal jurisdiction of the person of the offender, such offender must be an Indian, and the one against whom the offense is committed must also be an Indian.[65] However, in civil actions the Court of Indian Offenses may have jurisdiction where one of the parties is a non-Indian if the dispute is brought before the court by stipulation of both parties.[66]

The implication of the Williams v. Lee case is that the tribal court has jurisdiction over all civil cases arising in Indian country where one of the parties is an Indian. The holding was that the non-Indian should have brought the action against the Indian in the tribal court. Here then is a distinction between the tribal court and the Court of Indian Offenses, for while the non-Indian can bring an action in a Court of Indian Offenses by stipulation of the parties it might be brought in the tribal court without such stipulation.

The tribal court and the Courts of Indian Offenses have not as a matter of practice handled civil cases where one party was a non-Indian. This is perhaps due to the fact that they do not distinguish between civil and criminal cases where they do not have jurisdiction over non-Indians. Also the reason for this may be that professional attorneys have not in the past been permitted to practice in these courts and there has been no attempt to have civil cases between Indians and non-Indians heard in these courts.

The Indian tribal courts have inherent jurisdiction over all matters not taken over by the federal government.[67] Originally, and until shortly after the decision in the case of Ex Parte Crow Dog in 1883, the jurisdiction of Indian courts was unlimited.[68]

The tribal court jurisdiction is limited by the Ten Major Crimes Act in that the federal government has exclusive jurisdiction.[69] The notable exception is larceny, which is one of the ten major crimes, but jurisdiction is exercised under the Code of Federal Regulations.[70]

The general laws of the United States and the Assimilative Crimes Act does not limit tribal jurisdiction since these do not include the offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes.[71]

In civil matters of the tribal court, jurisdiction is limited only by those matters in which the federal government **has assumed exclusive** jurisdiction.[72] The federal government has assumed exclusive jurisdiction over the descent and distribution of restricted real property.[73] No other instance of such jurisdictional assumption was found. The federal government department which handles the descent and distribution of restricted or trust property has refused to handle the descent and distribution of unrestricted personal property. In view of the holding in Williams v. Lee the state courts do not have jurisdiction; consequently there is no forum in which the rights of heirs and claimants as to unrestricted personal property can be determined. This may not be a problem with the small estates but there may be some difficulty where a large estate is involved.

Though these tribal courts or Courts of Indian Offenses, in their respective jurisdictions, have the same standing as the state district courts or the supreme court there is not provided such remedies as attachment, garnishment, quo warranto, mandamus, or injunction. The tribes, of course, have the inherent sovereign power to provide these remedies but so far they have not done so. It may seem to some that these remedies are not important but it seems that the situation where such remedies are not available should not continue indefinitely.

The Code of Federal Regulations includes a provision for sentencing juvenile delinquents[74] and the federal government has provided for the establishment of a reform school for Indian delinquents.[75] It would seem, therefore, that unless the state of North Dakota accepted the jurisdiction offered under Public Law 280, the state would have no jurisdiction over juveniles living in tribal relationship.[76] Also, it is evident that either federal, state or tribal legislation is necessary to provide for those legal remedies and services that are not available under the present system.

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Commission

FOOTNOTES

1. Nofire v. United States, 164 U. S. 657 (1897).
2. United States ex rel. Standing Bear v. Crook, 25 Fed. Cas. 695, No. 14891 (C. C. Neb. 1879).
3. 48 Stat. 988 (1934), 25 U. S. C. 479 (1958); 40 Stat. 564 (1918), 25 U. S. C. 297 (1928).
4. United States v. Higgins, 103 Fed. 348 (1900); see Sully v. United States, 195 Fed. 113, 129 (1912) where one-eighth bloods were "of sufficient Indian blood to substantially handicap them in the struggle for existence" and therefore Indians.
5. See treaty obligations recognizing mixed-bloods listed in Cohen, Handbook of Federal Indian Law, 3, n. 14 (1945).
6. 68 Stat. 868 (1954), 25 U. S. C. 677-677aa (1958) (termination of federal supervision over the property of mixed-bloods).
7. 66 N.W. 2d 531, 533 (N. D. 1954).
8. See Hickey v. United States, 64 F.2d 628 (10th Cir. 1933); United States v. Waller, 243 U. S. 452 (1917); 34 Stat. 327 (1906), 25 U. S. C. 410 (1928).
9. 7 Ops. Atty. Gen. 174, 184, 185 (1940); cf. 25 Stat. 392 (1888), 25 U. S. C. 181 (1928).
10. State v. Phelps, 19 P. 2d 319, 321 (Mont. 1933).
11. United States ex rel. Standing Bear v. Crook, 25 Fed. Cas. 695, No. 14891 (C. C. Neb. 1879); see Dred Scott v. Sandford, 60 U. S. (19 How.) 393, 404 (1856) ". . . if an individual should leave his nation or tribe, and take up his abode among the white population, he would be entitled to all the rights and privileges which would belong to an emigrant from any other foreign people;" cf. United States v. Earl, 17 Fed. 75 (C. C. Ore. 1883) wherein the court said that an Indian who absented himself from the reservation to obtain liquor, did not expatriate himself.
12. United States v. Celestine, 215 U. S. 278, 285, 285.

13. 62 Stat. 757 (1948), am'd 63 Stat. 94 (1949), 18 U .S. C. 1151 (1950).

14. 368 U. S. 351 (1962).

15. Handbook of Federal Indian Law, 123 (1945).

16. Worcester v. Georgia, 31 U. S. (6 Pet.) 515, 559 (1832).

17. United States v. Kagama, 118 U. S. 375, 381-82 (1886); cf. Wall v. Williamson, 8 Ala. 48, 52 (1845).

18. Elk v. Wilkins, 112 U. S. 94, 100 (1884).

19. Carpenter v. Shaw, 280 U. S. 363 (1930); Squire v. Capoeman, 351 U. S. 1 (1956); Haley v. Seaton, 281 F. 2d 620 (1961).

20. Native American Church of North America v. Navajo Tribal Council, 272 F. 2d 131 (1960).

21. 109 U. S. 556 (1883).

22. Cohen, Handbook of Federal Indian Law, 125 (1945).

23. 62 Stat. 758 (1948), am'd 63 Stat. 94 (1949), 18 U. S. C. 1153 (1952).

24. Ibid.

25. In 1956 Congress apparently intended to add an eleventh crime of embezzlement, 70 Stat. 79 (1956), 18 U. S. C. 1163 (Supp. V 1958).

26. United States v. LaPlant, 156 F. Supp. 660 (D. C. Mont. 1957).

27. 37 Fed. 145 (C. C. S. D. Cal. 1888).

28. 62 Stat. 757 (1948), 18 U. S. C. 1152 (1950).

29. 64 Stat. 94 (1949), 18 U. S. C. 1158 (1950).

30. Bailey v. United States, 47 F.2d 702 (9th Cir. 1931).

31. 63 Stat. 95 (1949), 18 U. S. C. 1708 (1951).

32. 62 Stat. 686 (1948), 18 U. S. C. 13 (1950).

33. 112 U. S. 94, 100 (1884).

34. 327 U. S. 711 (1946).

35. State v. Lohnes, 69 N.W.2d 508, 513 (N. D. 1955); State v. Kuntz, 66 N.W.2d 531 (N. D. 1954).

36. 6 N. D. 586, 72 N.W. 1014 (1897).

37. 28 N. D. 389, 149 N.W. 120 (1914).

38. 45 N. D. 447, 178 N.W. 441 (1920).

39. 85 N.W.2d 432 (N. D. 1957).

40. 67 Stat. 589 (1953), 28 U. S. C. 1360 (1959).

41. 25 Stat. 676 (1889).

42. N. D. Const., art. XVI, section 203.

43. Report of Committee on Interior and Insular Affairs on H.R. 1063; 2 U. S. Code Cong. & Ad. News 2409, 2412 (1953).

44. 85 N.W.2d 432, 435-36 (N. D. 1957).

45. Swift v. Leach, 45 N. D. 447, 178 N.W. 441 (1920).

46. State v. District Court, 125 Mont. 398, 239 P.2d 272, 276 (1951).

47. United States v. Partello, 48 Fed. 670, 676 (C. C. D. Mont. 1891).

48. State v. District Court, 125 Mont. 398, 239 P.2d 272, 276 (1951).

49. United States v. Partello, 48 Fed. 670, 676 (C. C. D. Mont. 1891).

50. Felix v. Patrick, 145 U. S. 317, 332 (1892).

51. Harknes v. Hyde, 98 U. S. 476 (1878).

52. 34 Stat. 327 (1906), 25 U. S. C. 410 (1958).

53. 25 C. F. R. 11.26 (1958).

54. 79 Sup. Ct. 269, 272 (Ariz. 1959). See also Valdez v. Johnson, 362 P.2d 1004 where the Court discusses the Vermillion and Lee cases.

55. Ariz. Const., art. 20, fourth.

56. 25 Stat. 676 (1889).

57. N. D. S. L. 1957, c. 403.

58. 67 Stat. 589 (1953), 28 U. S. C. 1360 (1959).

59. Iron Crow v. Oglala Sioux Tribe of Pine Ridge Reservation, 231 F.2d 89, 96 (1956).

60. 25 C. F. R. 11 (1958).

61. 4 Stat. 564 (1932), 25 U. S. C. 2 (1928); see Worcester v. Georgia, 31 U. S. (6 Pet.) 515 (1832), wherein the court limits this management. See also Cohen, The Erosion of Indian Rights: A Case Study in Bureaucracy, 62 Yale L. J. 348, 352 (1953); "But Indians for some decades have had neither armies nor lawyers to oppose increasingly broad interpretations of the power of the Commissioner of Indian Affairs, and so little by little 'the management of all Indian affairs (of the federal government)' has come to be read as 'the management of all the affairs of Indians'."

62. 35 Fed. 575, 577 (1888). "These courts of Indian Offenses" are not the constitutional courts provided for in section 1, art. 3, Const. which Congress only has the power to "ordain and establish," but mere educational and disciplinary instrumentalities, by which the government of the United States is endeavoring to improve and elevate the condition of these dependent tribes to whom it sustains the relation of guardian. In fact, the reservation itself is in the nature of a

school, and the Indians are gathered there, under the charge of an agent, for the purpose of acquiring the habits, ideas, and aspirations which distinguish the civilized from the uncivilized man."

63. Talton v. Mayes, 163 U. S. 376, 382 (1896); cf. United States v. Seneca Nation of New York Indians, 274 Fed. 946 (D. C. W. D. N. Y. 1921).

63a. Raymond v. Raymond, 83 Fed. 721 (8th Cir. 1897); Begay v. Miller, 70 Ariz. 380, 222 P.2d 624 (1950).

64. 25 C. F. R. 11.9 (1958).

65. Ex Parte Kenyon, 14 Fed. Cas. 353 No. 7720 (C. C. W. D. Ark. 1887); Ex Parte Morgan, 20 Fed. 298 (C. C. W. D. Ark. 1883).

66. 25 C. F. R. 11.22 (1958).

67. Iron Crow v. Oglala Sioux Tribe of Pine Ridge, 231 F.2d 89 (8th Cir. 1956).

68. Ibid.

69. United States v. LaPlant, 156 F. Supp. 660 (D. C. Mont. 1957).

70. 25 C. F. R. 11.42 (1958).

71. 62 Stat. 757 (1948), 18 U. S. C. 1152 (1950).

72. Cf. 25 C. F. R. 11.22

73. 37 Stat. 678 (1913), 25 U. S. C. 373 (1928).

74. 25 C. F. R. 11.36 (1958).

75. 34 Stat. 328 (1906), 25 U. S. C. 302 (1959).

76. State v. Superior Court, 356 P.2d 985 (1960).

Legislative Post Audit and Fiscal Review

The Governmental Reorganization Act passed in 1959 centered the responsibility of the post audit of all State agencies and institutions in the office of the State Auditor. The law required the State Auditor to report upon his audits to the Governor and to the Legislative Assembly. It was intended that the Legislative Assembly would provide a committee to receive the reports and process them. The Governmental Reorganization Act became efective July 1, 1961, but through oversight the 1961 Legislative Assembly did not provide for a committee to receive and process these reports.

In order to permit the State Auditor to comply with the law, the Legislative Research Committee agreed that it would accept the audit reports from the State Auditor, file them, and hold them for presentation to the Legislative Assembly when it convened.

It might be well to first describe what is meant by the terms "post audit" and "fiscal review". Post audit is a final review or examination of State financial transactions after they have been completed. It is undertaken to assure that revenues have been collected in compliance with the laws, that the funds have been expended within the scope of legislative intent and sound financial practice, that the executive branch is carrying out only the activities and programs authorized by the Legislature, and that the assets of the State are safeguarded and utilized properly. The purpose of this service from the legislative viewpoint is to provide the Legislature with formal, objective information on revenues that have been collected and the expenditure of funds appropriated by the Legislative Assembly, and to provide a basis for legislative action to improve the fiscal structure and transactions of the State.

The term "fiscal review" could no doubt include all of the functions normally thought of as being in the post audit field and, in addition, would have a broader meaning. It would include a review of current financial practices and transactions as well as anticipated future transactions and programs. It might involve a review of whether a given function of government should be carried on at all, whether it should be carried out by the agency presently delegated that responsibility, whether the State is actually getting a dollar of value for each dollar expended, and whether the function could be better handled in another manner to provide better service at a lesser cost.

Practices in Other States

There is a substantial variation among the States in the way in which their respective legislative branches of government participate in auditing and fiscal review functions, but it is clearly a field of increasing legislative action. This can be illustrated by quoting from the 1962-63 "Book of the States":

> "Recent developments among the States sustain the view that legislatures are guarding with greater care their powers of appropriating money and reviewing expenditures. These powers are close to the heart of legislative independence. Increasing numbers of legislatures are taking steps to improve their exercise of these powers, which, in a number of States have become largely perfunctory. Since the early 1940's, and especially the 1950's, more and more States have created specialized staffs under legislative control to provide one or both of two related services in this field—continuous review of state revenues and expenditures, and pre-session review and analysis of the budget. Post audit of State expenditures on a systematic and comprehensive basis is another fiscal control field which, in recent years, has come increasingly to be regarded as suitable for legislative control and supervision. A number of states secure independence from the Executive Branch for the post audit official by having him popularly elected (this is the case in North Dakota). Some states still provide for his appointment by the Governor although this practice is on the decline . . . More than half the states have created new facilities or designated older ones to carry on the twin functions of continuous fiscal review and budget analysis. One or both of these tasks have been assigned by 13 states to the Legislative Council (Legislative Research Committee), a committe of the Council, or the Council staff, the most recent additions to this group being Alaska and Wyoming. In contrast, 15 states (10 of which have Councils) have lodged this authority in separate legislative bodies. At the close of 1961, 21 states and Puerto Rico had created post audit agencies which were under legis-

lative jurisdiction. In addition to the Alaska and Wyoming action mentioned above, Kansas, Maine, and Nebraska, during the past biennium added fiscal analysts to the staffs of the respective Legislative Councils. In Iowa, a Legislative Fiscal Director was provided for the budget and financial control committee."

It is interesting to note that these fiscal responsibilities are of strong current concern in many States. The interest is so widespread that the National Legislative Conference, through The Council of State Governments, appointed a special committee which studied and reported upon these services. In the post audit field, this committee recommended that:

"1. There should be a post audit of state fiscal operations in each state, organized and controlled so that the Legislature will obtain information of the kind and at the times that it or its audit committee specifies;

2. The position of post auditor should be made subject to legislative control and supervision, uness the following results can be obtained through some other method of selection, such as popular election:

   a. Independence of the executive branch,

   b. Assurance that the Legislature and its post audit committee are provided in detail and at the time desired with the information which they specify, as an assistance in future appropriation policies.

3. The Legislature should establish a continuing audit committee to receive and act upon the reports of the post auditor, and to prepare audit specifications for his guidance. This committee should regularly call in the responsible executive officers of the departments and hold them accountable for any failure to comply with state laws and legislative intent, improper use of public funds, failure to maintain adequate accounting records, or unsound financial practices."

The North Dakota Situation

Early in the current biennium the State Auditor, by letter, requested the Legislative Research Committee to appoint a special Subcommittee on Audits and Fiscal Review. He noted in his letter that the field of action of the Legislative Research Committee was extremely broad and expressed the opinion that it would be well within the powers of the Committee to create a special subcommittee upon this subject and to perform this function. Members of the State Auditing Board (the board that pre-audits or approves expenditures prior to making State payments) have also suggested that a legislative committee should exist with whom they could confer in regard to problems involving current expenditures and programs, and to whom they can make recommendations for legislative improvements in handling State financial transactions and programs. These suggestions were considered by the Legislative Research Committee, but in view of the Committee's policy of assuming responsibilities in fields only when specifically directed to do so by resolution of the Legislative Assembly, the Committee declined to enter this field during the present biennium but agreed to review methods of meeting this problem and make recommendations to the Legislative Assembly.

Available Alternatives

One alternative in carrying out these functions is that of simply presenting the several hundred audit reports to the Legislative Assembly when it convenes, with the thought that the Legislative Assembly might appoint a special committee which would attempt to study them in detail, develop recommendations, hear the interested public officials, and draft any legislation in fields needing correction. In the Committee's opinion, this alternative would accomplish almost nothing, since it is almost impossible for the legislators serving upon such a special committee to review and study the several hundred audit reports in addition to all their other legislative responsibilities and committee work, much less have the time to discuss the audit reports with the affected public officials, develop recommendations and policies, and draft bills to make legislative corrections or change laws and policies.

The second alternative would be the creation of a special and separate Legislative Audit and Fiscal Review Committee to operate during the interim between sessions, or to assign this function to the Legislative Research Committee with the directive that it appoint a special subcommittee upon this subject. It would be the responsibility of this committee or subcommittee to meet as often as needed during the interim, probably about every other month, to review and study the audit reports submitted by the State Auditor as they are completed. The State Auditor, or the

Deputy Auditor who participated in the audit would be in attendance to give further explanation in regard to them and answer the committee's questions. This committee could also invite the head of the agency being audited to be present, participate in discussion, and give his views in regard to audit criticisms and recommendations. An adequate opportunty would exist for him to explain and justify any matters viewed critically in the report and to discuss corrective action necessary to meet the criticisms. Those matters that can be corrected by administrative action could be agreed to. In the event that proper corrective administrative action was not or could not be taken as recommended by the Auditor and the committee, this could also be made the subject of legislative action.

This committee could periodically meet with the Auditing Board in order to discuss current financial and fiscal transactions and problems as they arise. From such consultation, it would be possible to develop improved and perhaps more uniform policies and laws governing the fiscal transactions of the State. It would also give the committee and its members a much better understanding of the programs carried on by the State. The reports in this field would be very useful to the Legislative Assembly in general in viewing governmental programs and to the Appropriations Committees in particular in appropriating funds to finance them. It is the opinion of present members of the Auditing Board that substantial savings in State funds could result from improvement in the financial practices of the State and through a greater degree of legislative review of current expenditures. It is the view of the State Auditor that legislative review of the post audit carried on by his department would result in much greater efforts to correct deficiencies that are found, and would result in a more careful scrutiny of the need for expenditures by the respective heads of executive branch agencies.

Recommendations

The Committee recommends that the Legislative Assembly provide by legislation for a committee to handle the functions of post audit and fiscal review during the interim between sessions.

It is believed that the Audit and Fiscal Review Committee should be a bipartisan committee and use as much of a nonpolitical approach to its duties as possible. Time did not permit the drafting of a bill prior to the November meeting of the Legislative Research Committee or a full discussion of final recommendations. The Committee will, however, meet in regard to final recommendations in this field during the early days of the session and recommendations in bill form will be presented to the Legislative Assembly.

Conclusion

It is difficult to calculate in dollars and cents the value of legislative fiscal review and post audit functions. Who can measure the funds that will remain unspent because it is known that a legislative committee may review them in detail and find that their expenditure was not entirely justified? Who can measure the funds that will remain unappropriated because of information provided to the Appropriations Committees that some expenditures are unnecessary or need not be made at the level requested? Who can measure and estimate the savings to the State through the development of more uniform, simple, and practical policies and laws governing fiscal transactions? Who can measure in dollars and cents the value of more informed decisions of the Legislative Assembly as a result of information and recommendations that can be made available to them through this process?

It has obviously been the opinion in the greater number of States that have studied this matter that the savings can be substantial and can many times exceed the cost of providing the service, since such a large number of States have entered this field within the past 20 years. There is little question but that the provision of a legislative Post Audit and Fiscal Review Committee would result in improved and more efficient State government in North Dakota and provide substantial savings to the State.

Natural Resources

House Concurrent Resolution "H" of the Thirty-seventh Legislative Assembly directed the Legislative Research Committee to study the water conservation laws of the State. This study was assigned to the Subcommittee on Natural Resources, consisting of Senators C. G. Kee, Chairman, Kenneth L. Morgan, Jerome Nesvig, George Saumur, Grant Trenbeath, Aloys Wartner, Jr., and John E. Yunker; Representatives Ole Breum, Lee Christensen, Ed. N. Davis, L. C. Mueller, Kenneth Tweten, R. W. Wheeler, Gerhart Wilkie, and Ralph M. Winge.

BASIC WATER LAWS

Noting that the field of water law was complex, technical and highly important, and that water law comprises almost one-half of Volume 12 of the North Dakota Century Code, the Committee realized that it would be impossible to completely study and revise all the water laws in a single biennium. It was therefore forced to select those areas for study that were of the most importance and of the greatest urgency. Thereafter, it was the Committee's plan to work on other matters to the extent that time would permit.

The Committee first focused its attention on the removal of all conflicts between the basic water laws and the property laws in regard to ownership of water and gave the reconciliation of such conflicts the highest priority in its study.

The "conflicts" referred to are occasioned by the existence within North Dakota law of two basic and diametrically opposed theories relating to water rights of individuals. These two basic theories are the common law doctrine of riparian rights and the statutory doctrine of prior appropriation - or the riparian doctrine and the appropriation doctrine.

Briefly, under the riparian doctrine the owner of land which lies contiguous to or over a body of water is vested with certain rights to the use and flow of the water by virtue of such land ownership, while under the appropriation doctrine the party who first diverts and applies to a beneficial use the waters of any body of water acquires a priority right to continued use, contiguity of land to such body of water notwithstanding.

Under the riparian doctrine the right to the use of water is inseparably attached to and passes with the soil that comes into contact with it. Such a right arises automatically by operation of law and requires no act other than the ownership of land. Use does not create the right and non-use alone does not destroy it. A riparian user may, if necessary, use all of the water needed from a body of water for domestic and stock-watering purposes and is not required to leave any for lower riparian proprietors. A riparian proprietor may also use the water for irrigation and other purposes but such use must be reasonable in relation to the needs of lower riparian proprietors and he may not use all the water if such lower riparian proprietors wish to use their reasonable share.

Under the appropriation doctrine the right to the use of public waters is not necessarily connected to the ownership of land and the acquiring of such right requires an act of actual appropriation or use for a beneficial purpose. An appropriator has a prior right to a quantity and quality of water, insofar as later appropriators are concerned, only to the extent of the original amount of his appropriation or use. In no event may an appropriator cause unnecessary injury to either the public or subsequent appropriators and no appropriator, including appropriators for irrigation purposes, may acquire a right to any more water than is necessary for the purpose of his appropriation.

The appropriation doctrine had its beginnings in the western States. In the eastern States, where there was usually an adequate or even surplus water supply, it was not considered unduly wasteful to permit riparian owners to use only a portion of the water flowing by their lands in order to be certain that adequate water continued to flow downstream in case the lower riparian owners should choose to exercise their rights to use water, for there was usually plenty of water for all. When the theory is carried out to its logical conclusion, substantial water will flow out to the sea. In theory, under this doctrine, water is generally required to be returned to the source in the same quantity and quality as it was when taken out of it. Since this is impossible in the

case of most uses, this portion of the riparian doctrine is a fiction.

This type of water law theory, although perhaps somewhat workable in the eastern States, was completely inadequate in the arid and semi-arid areas in the West. Water was far too precious a commodity to let it roll downstream to the sea just for the purpose of protecting theoretical downstream riparian rights. The availability of water was truly the economic life blood of the mining, cattle, and irrigation industries in many areas and required a much more practical and workable theory of law. In addition, the citizens of the West could not risk the substantial financial investments that were required in the development of this area of the country unless a more reliable water right than that obtainable under the riparian doctrine was developed. Under these conditions it is not surprising that 17 of the 19 Western States have turned to the appropriation doctrine of water law. The appropriation theory permits the maximum beneficial use of water, and at the same time can give a relatively firm water right to those investing money in reliance on it, or at least can make it possible to intelligently evaluate the chances of obtaining water during periods of shortage. It, in effect, can give a comparatively firm and orderly system of water rights.

As previously stated, North Dakota's water laws, insofar as these two basic theories are concerned, purport to serve two masters. As a result our courts may be confronted with the task of arriving at a legally logical solution to a statutory riddle. The Committee is definitely of the opinion that this codified contradiction should not be allowed to continue. In view of North Dakota's extended periods of drought, especially in the western half of the State, it is the Committee's opinion that the appropriation doctrine is by far the better of the two theories. This doctrine regards water as belonging to the public and anybody may obtain a water right to use it, providing it is used for beneficial purposes. The Legislative Research Committee strongly urges the revision of our water laws in order that they may be in close harmony with the basic philosophies of the appropriation doctrine.

The first decision with which the Committee was faced was the question of priorities as between classes of water users. A study of the other western States was undertaken and it was determined that each State, although giving "domestic use" the highest priority, differed as to the succeeding priorities. Some listed "municipal use" second, while others placed it on the same level as "domestic use". "Livestock use" or "water for domestic animals" is ordinarily secondary to "domestic use" and "municipal use", although in two States all three are on the same level. In most States "irrigation use" follows the three previously mentioned, but in some it is equal with "livestock use". It is therefore a matter which is entirely dependent upon each State's individual circumstances.

The Committee feels that human and animal consumption should definitely be given first priority and recommends that only these two uses be given priority. In the proposed bill "domestic use" would include all uses for personal needs, household purposes, domestic animals kept for pets or household sustenance and irrigation of land, not in excess of one acre, for noncommercial purposes. This includes urban as well as rural users. "Livestock use" would include all domestic animals and birds.

All other users shall be treated on an equal basis with priority in time of appropriation giving a better or superior right. This will not preclude a later user from purchasing the water right from a prior user. Also, in the event a municipality finds itself without sufficient water it may condemn and purchase the water rights of private parties.

However, a water permit would not be required of a landowner or his lessee for domestic and livestock watering purposes. In addition, any water user who would be required to have a permit and who has used or attempted to appropriate water for a period of at least twenty years would not be required to secure a new water permit but would have to file with the State Engineer sufficient proof that he has used or attempted to use such amount of water for the specified period in order to protect his water right, which would then date from the time such amount of water was first used. If such water user fails to file within two years after this proposed bill becomes law, his water right shall be declared abandoned and forfeited and he would be required to file for a new water right which would have a priority in time only from the date of the issuance of his new permit.

Drainage and Water Management District Laws

Also considered of importance by the Committee is the duplication and overlapping of au-

thority that exists in North Dakota's laws relating to water conservation and flood control districts and drainage districts. After considerable research and in light of testimony received in meetings held in various parts of the State, it is the Committee's opinion that drainage districts should be encouraged to reorganize under our water management district laws. Amendments to the drainage district laws are therefore recommended to permit this. It is further recommended that the name "Water Conservation and Flood Control District" be changed to "Water Management District".

The following are samplings of the numerous problems which exist under present drainage district and water management district laws and their recommended solutions:

1. Unused funds collected for cleanout, repair and maintenance of drains are not returnable to the owner of the assessed property in the event the water management district or drainage district is dissolved.

The Committee recommends the county board of commissioners be given authority to return such unused assessments in the event such districts are dissolved.

2. A contract in excess of $1,000 to clean a drain must be let on bids. This amount is too small and results in wasted time and a possible loss of money to the landowner.

The Committee suggests this amount be raised to $2,000.

3. The board of a water management district has no way of assessing land presently benefited by the drain that was not benefited or assessed at the time of the district's organization.

The Committee recommends that the boards of such districts be given authority to reassess benefits.

4. There are no drainage projects being carried on by townships.

It is recommended that chapter 61-22 of the North Dakota Century Code, relating to township drainage projects, be repealed.

5. It is difficult to distinguish between drain extensions and new construction. This results in much confusion as a 51% favorable vote is required for extensions, while 60% is the minimum needed for new construction.

It is recommended that the board of drainage commissioners be given the authority to make the final determination as to whether a project is a new drain or an extension of an existing drain.

6. If one party is responsible for a drainage obstruction there is little that a drainage or water management district board can do to require such party to remove the obstruction before serious damage is caused.

It is suggested that the board be given the authority to remove any obstruction, to bill the responsible party, and to seek injunctive relief in the event of an emergency.

7. Water management districts are allowed to contract but no procedure for contracting is specified.

The Committee recommends that the boards of the districts be specifically allowed to follow the contracting procedures as set forth in the laws pertaining to drainage districts.

8. There is no provision authorizing two or more water management districts to consolidate. This can result at times in inefficient and costly operations.

It is suggested that water management districts be allowed to consolidate and that drainage districts also be allowed to consolidate with water management districts.

9. A drainage district while having authority to condemn property for right-of-way purposes is unable to condemn other property which may be necessary for construction, operation, and maintenance of a drain.

A section of the recommended bill will authorize use of condemnation procedures for such purposes by drainage districts.

Irrigation District Laws

It was noted by the Committee that North

Dakota's irrigation districts are faced with certain organizational and operating problems as a result of discrepancies within our law. Under the present law only a "landowner" may be an elector in an irrigation district and the definition of "landowner" does not include the most basic type of landowner—an owner in fee simple; the board of directors of an irrigation district must give notice of any pending election but nothing is said regarding the publication of notice in a newspaper; the name of any person filed with the secretary of the board is placed on the ballot as a candidate at a district election even if the nominated party is unaware of his nomination; only four regular meetings per year are scheduled for the board while the district treasurer must make monthly reports to the board; landowners holding less than 50% of the land subject to assessment for construction or other costs may petition the board for specific orders or changes in the method of operating the canal; and the district has no efficient way of determining the amount of unpaid assessments owed upon each tract of land within the district. The bill offered by the Committee will correct the above-mentioned problems presently contained in our irrigation laws.

Garrison Conservancy District Laws

It was brought to the attention of the Committee that under the present law any county not directly benefited by the establishment of the Garrison Diversion Conservancy District may withdraw from the district and thereby be relieved of all liability for its share of the district's obligations incurred after such withdrawal. In effect, this could eliminate any county that is not directly benefited at any given moment from ever being included for assessment purposes. Some counties may be benefited in the early stages of the project and others not until the project is completed. However, it is the Committee's feeling that counties that will not realize any benefit until the later stages of the project should participate in its early costs since they will later benefit substantially. It is the thought of the Committee that indirect monetary benefits may, and often do, equal or exceed the direct benefits. It is also realized that in the initial phases of the project only a portion of the counties that are presently members of the district will be benefited. If those member counties that are not now being benefited but who will realize future benefits should be allowed to drop out, the financial difficulties of the district will be great and possibly insurmountable. Therefore, it is the Committee's recommendation that only those counties that are not now and which will not be benefited in any way, either directly or indirectly, be allowed to exclude themselves from the Garrison Conservancy District.

It is also recommended by the Committee that the Garrison Conservancy District board of directors be specifically authorized to elect the officers of the board, which provision has been overlooked by the present law; to establish more adequate reserve funds if necessary; and to expend or obligate more than ten percent of the maximum one mill levy.

State Watermaster

The Committee noted that in some areas of the State water permits have been issued for a greater amount of water than has been actually available. Though the State Water Conservation Commission has attempted to prohibit irrigation from streams when the water flow is less than three cubic feet per second, the commission does not act as a police agency in regard to violations of water rights. It is the individual's responsibility to file complaints with the courts, which, because of the time element, may not be an adequate remedy.

The Committee, therefore, recommends that the State Engineer be given authority to appoint one or more watermasters whose duties it shall be to check those areas that will be affected by the ownership and use of water and to aid in the settling of disputes in regard to such ownership and use. This is the practice in many western States. It is further recommended that the State Engineer be allowed to determine the areas over which the watermaster would have jurisdiction, thereby not requiring the State Engineer to assume the responsibility of policing federal water rights or allocations.

Small Dams and Impoundments

North Dakota presently has a law which prohibits the construction of a dam that is over 10 feet in height or which will impound more than 30 acre-feet of water without a permit from the State Water Conservation Commission. It is noted by the Committee that the construction of small dams has been encouraged in order to prevent downstream flooding and to provide water for stock watering and personal use. In view of North Dakota's recent dry years it now appears more desirable than ever that deeper impoundments be encouraged in order to minimize water evaporation, maintain water quality, and provide for sufficient carryover for dry years.

It is the Committee's thought that, within reasonable limits, the most important factor in regard to such dams is the amount of water impounded, not the height of such dams. The law presently allows the impounding of 30 acre-feet of water, or substantially in excess of ten and one-half million gallons. It is the opinion of the Committee that the 10-foot height restriction is unrealistic and it therefore recommends that the only restriction that should be placed on the construction of small stock-watering dams is the amount of water which may be impounded. It is further recommended that this amount be limited to 10 acre-feet unless an appropriation permit is obtained. Few stock-watering dams would ever exceed this capacity.

Acquisition of Right of Way and Easements

At the present time the State Water Conservation Commission may acquire land, water, or water rights for public use by condemnation. However, under existing condemnation laws, if the landowner and the commission are unable to arrive at a mutually agreed upon settlement, the project for which such land, water, or water rights has been sought may be indefinitely held up until the courts are able to arbitrate and finally decide the matter.

This delay may cause an increase in the cost of construction of some projects and will, in the case of most projects, inflict indirect losses upon those parties that will ultimately benefit by the completion of the project.

Therefore, the Committee recommends that the State Water Conservation Commission be given the authority to condemn, for the State, the land which is necessary for projects in the same manner as the State Highway Commissioner presently condemns land for highway construction. With this authority, the commission, in the event of a dispute over damages, may deposit the amount of damages as determined by the county commissioners of the county in which the land is located with the clerk of the district court, receive title, and proceed with construction of the project. The matter of final determination of damages is then left for later litigation. This condemnation authority and procedure would also apply to clay, gravel, sand, and rock used in the project and would not require the commission, in condemning a water right, to also condemn the land to which such right is incident.

Miscellaneous Matters

In addition to the preceding problems, ambiguities, conflicts, and actual gaps in our water laws which the Committee strived to correct, a number of miscellaneous problems were brought to its attention by the State Engineer and the Planning Coordinator of the North Dakota State Water Conservation Commission. After review of such problems the Committee recommends that:

1. In order to remove obstructions from nonnavigable streams, the agency responsible for such removal should be authorized to enter upon adjacent lands without the written consent of the occupant as presently required, but would be responsible for any resulting damages;

2. The State Water Conservation Commission be permitted to use the name "State Water Commission";

3. The compensation of the members of the Commission be raised from seven to fifteen dollars per day;

4. All political subdivisions of the State be allowed to participate with the State in conducting water surveys;

5. The State Water Conservation Commission authority to issue revenue bonds be broadened to include participation in projects with other State agencies, political subdivisions, or the Federal Government, as well as the currently authorized commission-constructed projects;

6. The State Engineer be authorized to administer oaths and issue subpoenas for the attendance of witnesses at any hearing necessitated by law;

7. The State Engineer be authorized to require operators of water storage reservoirs to maintain adequate structures and to operate them in such a manner as would prevent waste and promote the beneficial use of water and not endanger the general health and welfare of persons affected thereby;

8. The State Engineer be required to approve all assignments of water rights for irrigation purposes before such assignments are valid, whereas, at present, water rights for irrigation may not normally be severed from the land to which it is appurtenant;

9. The State Engineer be authorized to require certain water users to file with him topographic, mapping, foundation test boring, and other information as he finds practical and necessary;

10. The maximum amount of water for irrigation purposes be raised from one cubic foot per second for each eighty acres, for a specified time in each year, to two cubic feet per acre, delivered to the land, in any one irrigation season;

11. The present mandatory requirement of giving easements to the Federal Government over State-owned lands be made discretional with the managing agency;

12. Prohibit the drainage of a meandered lake without written consent of the State Engineer; and

13. The conflict in laws regarding authority of the State Geologist to supervise the waters of the State be removed.

Relinquishment of unused water appropriations by the United States

It was brought to the Committee's attention by the State Engineer and the Planning Coordinator of the North Dakota State Water Conservation Commission that the United States has a number of unused water appropriations within the State that the State has no record of. This results in confusion in granting water permits by the State Engineer in that there is no accurate record of the amount of previously granted appropriations. In order to avoid this confusion and to keep the records of the State Engineer accurate and up to date it is recommended that a concurrent resolution be sponsored by the Legislative Research Committee urging the United States to relinquish all of its unused water appropriations it holds within the State to the State.

Conclusion

The preceding report represents the work in the field of water laws carried on by the Legislative Research Committee. However, as noted earlier in this report, because of the volume and technical nature of the water laws to be reviewed and revised, the Committee was unable to completely revise all laws needing attention. While it is not the usual practice of the Legislative Research Committee to sponsor resolutions in regard to its own study projects, it is recommended that the work of completing the revision of our water laws be continued by the Legislative Research Committee during the next biennium.

Taxation

Senate Concurrent Resolution "Y" directed the Legislative Research Committee to continue the tax study begun in the previous biennium in regard to tax equity, administration and the effect of the tax structure upon economic development. Senate Concurrent Resolution "Q-Q" directed a study of methods of equalizing the tax burden; the feasibility of shifting some taxes from real and personal property to income; equalizing local tax efforts in support of schools as a requirement for participation in the Foundation Program, the portion of school costs that can be borne by local taxes and the portion that should be borne by the State; future costs of the Foundation Education Program and Transportation Aid Program, and the tax revenues necessary for their support. House Concurrent Resolution "R-1" directed a study of the feasibility of the exemption of certain classes of personal property from taxation and shifting of tax burdens from property to income on a surtax basis.

These studies were assigned to the Subcommittee on Taxation, consisting of Senators Donald C. Holand, Chairman, H. B. Baeverstad, Edwin C. Becker, Jr., Walter R. Fiedler, Gail H. Hernett, O. S. Johnson, A. W. Luick, R. E. Meidinger and Wm. R. Reichert; Representatives Gordon S. Aamoth, Emil Anderson, Richard Backes, R. Fay Brown, Chester Fossum, Leonell W. Fraase, Otto Hauf, Milo Knudsen, Arthur A. Link, A. R. Miller, and Stanley Saugstad.

It was recognized by the Committee that it would be impossible to make a complete study of all areas of the tax system of the State where problems of equity, administration, evasion or other difficulties exist, especially in view of the special consideration required by the resolutions in regard to shifting of taxes from property to income and the financing and equalizing of educational costs. Therefore, while the Committee recognized that in the field of real and personal property assessments inequities were perhaps the most widespread of any in the tax field, in view of the work carried on by the Committee in this area during the previous biennium, assessments as such would receive only secondary consideration.

As a preliminary step, the Committee directed the Committee staff, with the cooperation of the State Tax Department, to select the names of 2,700 taxpayers, balanced according to occupation, area of residence (eight different counties), and level of income. Complete income tax information upon these persons was obtained by the Tax Department, and the Committee staff obtained complete information in regard to their real and personal property taxes from the offices of the various counties of their residence. The Committee then retained the services of Dr. William E. Koenker at the University of North Dakota and of the Bureau of Business and Economic Research at the University. All the tax information in regard to the sample taxpayers was punched on IBM cards and forwarded to the University. From this sample, through the use of a computer, it was possible for Dr. Koenker and members of the Bureau of Business and Economic Research to give the Committee the results of many of the tax proposals that were considered in the course of the study. Without the availability of this sample and the assistance of personnel at the University of North Dakota in making the computer available to the subcommittee, many proposals could not even have been evaluated because of the thousands of computations involved. This same sample and the facilities of the University can no doubt also be made available to the Legislative Assembly to evaluate additional proposals in the tax field should that be necessary during the legislative session.

It is impossible to report upon all of the many fields, problems and proposals considered by the Committee. If even the matters that were made the subject of motions were included, they would total over 46 items. Some of these were rejected by the Committee after study determined them to be unworkable, inequitable, or impossible of accomplishment. Others were discarded simply because there was not suffficient time to properly evaluate them.

From this point, the report will discuss in greater detail the status of the State Equalization Fund and specific proposals by the Committee upon which affirmative recommendations are made.

STATUS OF STATE EQUALIZATION FUND

According to the best estimates of the Committee, there will be insufficient funds in the State Equalization Fund to meet the appropria-

tions made for Foundation and Transportation payments during the current biennium. It is estimated that $2,500,000 in the form of an emergency deficiency appropriation will be required if the State is to meet its commitments to the school districts during the balance of the biennium. Since changes in the program or the taxes supporting it could not possibly affect the current commitment, this emergency appropriation will have to be made from the General Fund or a special fund.

It is probable that the Foundation Program enacted in 1959 has not resulted in greater costs to the State than would have occurred under the previous program. Even under the previous program the outgo of the State Equalization Fund exceeded its income. The Transportation Aid Program was an additional burden, however, and the completely unexpected rate of increase in transportation in the State has resulted in costs far above original estimates, thereby causing an accelerated drain of the Equalization Fund balance. In addition, the balance was further reduced by the poor crop of 1961, which caused a drop of over $1,000,000 in sales tax revenues.

Even after the deficiency appropriation discussed above is made, there will be no balance in the Equalization Fund at the beginning of the next biennium. If no changes in the program or revenue sources of the fund are made by the Legislative Assembly a shortage of $11,600,000 will exist even if the Legislature allows almost no increase in appropriations for the miscellaneous programs financed from this fund. If the recommendations of the Committee in regard to a more equitable formula for the distribution of Transportation Aid is adopted, the obligation and, consequently, the revenue shortage of the fund would be reduced by $800,000.

FOUNDATION PROGRAM PAYMENTS

The Legislative Assembly has declared its intention to support elementary and secondary education from State and county funds at 60% of the educational cost per pupil per year. It has further declared 60% of such per-pupil cost to be $150. These payments to local school districts are made from the County Equalization Fund. The County Equalization Fund consists primarily of moneys raised as a result of a mandatory 21-mill levy on all taxable property within a county; it also contains payments received from the State Equalization Fund and the collections of the per capita school tax. The State Equalization Fund consists of seven-twelfths of all sales taxes collected within the State, plus any other sums appropriated by the Legislative Assembly from the General Fund and some Federal grants-in-aid. The greater proportion of the State Equalization Fund is derived from the sales tax revenue. Briefly, the County Equalization Fund is supported primarily by county taxes, while the State Equalization Fund is supported by statewide taxes.

The per-pupil payments to each school district are statutory charges upon the County Equalization Fund in each county. However, since the revenue resulting from the 21-mill levy on all taxable property in any county does not bring in sufficient money to make the statutory per-pupil payments, the counties then request from the State the amount of money necessary to make up the shortage in their respective County Equalization Funds. In other words, the total cost of all per-pupil payments to school districts in each county is determined, the anticipated proceeds from the 21-mill county levy is subtracted, and the difference is the amount the State must pay from the State Equalization Fund appropriation.

The purpose of the 21-mill county levy is to require a minimum amount of effort at the county level in the support of schools as a part of the equalization process. In theory, those counties having a large amount of property valuation per student will obtain more local revenue from the 21-mill county levy and require less assistance from the State. Conversely, those counties having a smaller property tax base per student will obtain a smaller return in revenue from the 21-mill levy, and will require a larger amount of aid from the State. Therefore, if the program functioned as intended, those counties having the greatest local ability to support schools would receive the least State assistance, and those counties having the least local ability to support their schools would receive the greatest amount of State aid.

There are three factors in arriving at the amount of grants-in-aid from the State Equalization Fund which all counties must use:

1. The total amount paid to all schools and school districts within the county from the County Equalization Fund;
2. The 21 mills levied against all property within the county; and
3. The assessed valuation of all property within the county.

Two of them - the total amount paid out of the County Equalization Fund, the 21 mills — are not subject to any control, as such, by the county and are constant from county to county, insofar as the existing facts are concerned. The level at which property is assessed, however, is not constant from county to county and is substantially under the control of county and local boards of equalization. Theoretically each county is supposed to assess all property within the county at 100% of its market value. However, in practice no county assesses at 100% of value and what is worse, few, if any, counties assess at the same percentage of market value. As a result, the county that assesses at 20% of market value is receiving a greater share of the State equalization dollar than it is entitled to receive, as compared with the county assessing at 30% of market value. As an added complication, the county that assesses at a lower percentage and receives a greater share of the State equalization dollar is, at times, financially more able to support its schools than is the county that assesses at a higher percentage and receives a smaller share of the State equalization dollar. A county that contains more taxable property is often able to lower the assessed valuation of its property and still obtain sufficient taxes with which to conduct local government. This has resulted in competition between the counties to under-assess as much as possible since it is to their advantage to do so.

The Committee proposes a bill which would substantially correct this unfair situation by requiring the State Tax Commissioner to certify to the Department of Public Instruction the countywide average percentage of market value at which property is assessed in each county, and the statewide average percentage of market value at which property is assessed.

Among the duties of the Supervisor of Assessments in the Tax Department is that of preparing sales-assessment ratio studies in all counties to determine the percentage of true value at which they are assessing. From this he can calculate the State average level of assessments. If this information, together with a limited number of actual appraisals where the number of sales are inadequate, were given to the Department of Public Instruction as required by the bill, it could determine the amount each of the under-assessed counties would have received from their 21-mill levy if they had assessed at the same level as the statewide average. Each under-assessed county would then receive from the State only the difference between the amount they would have received if they had assessed at the statewide average level and the amount necessary to make their statutory per-pupil and transportation payments. The under-assessed counties would be required to compensate for their under-assessment by a higher county mill levy. For instance, if a county chooses to assess its property at 20% of market value, while the statewide average level of assessment was 30% of market value, they would be assessing at only two-thirds of the statewide average. The State would then in effect say: "You may assess at 20% of value if you wish, but in this case your mill levy for county equalization purposes must be raised by 50% to 30.5 mills so that you still make the same required local effort that other counties are making and not drain the Equalization Fund of money to which you are not entitled." Minnesota and Colorado use a system something like this.

It is impossible to accurately calculate the amount of savings to the State Equalization Fund through such a change, but it would seem probable that about one-third of the counties are under-assessed in relation to the true State average, and that the savings to the State would be in the neighborhood of $1 million per year. Since it will take time to prepare the necessary sales-assessment information, it is unlikely the change could take effect until July 1, 1964, and so the savings during the next biennium would probably be about $1 million, and perhaps $2 million thereafter.

The enactment of this bill would require all counties to make a "minimum financial effort" to pay for the operation of their schools and, by taking some of the profit out of under-assessing, would also tend to gradually equalize the assessments of property between counties.

SALES AND USE TAXATION

The sales tax is by far the principal source of revenue for the State and County Equalization Funds. As such it plays a major role in the support of elementary and high school education in the State. With increasing enrollments, expanded transportation programs, and generally rising costs in all areas of school activity, revenue needs for the support of education cannot help but rise. Thus, if the State is to continue aid to school districts at about the present level, increased revenue from the sales tax appears necessary. In addition, the basic idea of a general sales tax, as distinguished from a selective sales tax, is to include as many items as is reasonably possi-

ble in order that no one item nor type of business activity shall secure an unwarranted advantage through being excluded from the coverage of the sales tax.

The Committee noted that there are at least three basic means of increasing the yield of revenue from the sales and use tax. They are:

1. Increasing the rate
2. Broadening the base
3. Improving enforcement

While the first of these alternatives is the most obvious and perhaps the simplest to implement, the Committee at an early point in its study decided that no increase in the sales tax rate was desirable at this time. This decision was reached principally because of the probable adverse effect any increase would have upon merchants and business operations in areas near the borders of North Dakota — principally the Red River Valley. Having disposed of this possibility, the Committee next turned its attention to the areas of the sales tax base and the enforcement of collections.

The Sales and Use Tax Base

In this area the Committee is of the opinion that some changes were appropriate and, thus, is recommending legislation which would somewhat broaden the base of the sales and use taxes.

The Committee noted that gasoline upon which the 6c per gallon State excise tax is refundable is not subject to either the sales or use tax. This gasoline is principally that used in farm machines. It was observed that special fuels upon which the special fuels tax is refundable are subject to a 2% excise tax. Such fuels are principally those used in heating, by railroads, and in farm machines. This leads to the rather anomalous situation whereby a farmer using diesel equipment pays the 2% excise tax, whereas the farmer using gasoline-powered equipment pays no excise, sales, or use tax.

To equalize this situation the Committee has prepared and recommends approval of a bill which would impose a 2% use tax upon gasoline upon which the State excise tax is refunded. Because of the present "anti-diversion" clause contained in article 56 of the Amendments to the North Dakota Constitution, moneys collected from this source must be used for highway purposes. Thus the bill provides that the proceeds shall be distributed among the counties in the same manner as the 2% excise tax on special fuels is currently distributed, for use on county farm-to-market roads. It is estimated that the biennial revenue yield as a result of this bill will be in the neighborhood of $1.4 million.

The Committee considered, but rejected, a proposal to expand the sales tax base to include receipts from the rental of hotel and motel accommodations. Principal reasons for such rejection were the possible adverse effect on these businesses in border areas and an unwillingness to expand the tax base further into the area of services as distinguished from tangible goods.

It was brought to the attention of the Committee that the State Tax Commissioner's office had experienced considerable difficulty in the collection of the retail sales tax upon cigars, tobacco products, and, in general, items sold to licensed beverage dealers which are suitable for use as a component of mixed drinks. This difficulty appears to be mainly due to a popular misconception that these items — particularly cigars and tobacco products — are exempt from the retail sales tax, and to a rather widespread lack of proper records on the part of many retail beverage dealers, making audits almost impossible.

In an attempt to remedy this situation, the Committee has prepared and recommends approval of a bill which would make the wholesale distributor responsible for collecting and remitting an excise tax on all sales of cigars and tobacco products, and on all sales to licensed beverage dealers of items suitable for use in mixed drinks. The tax would be imposed at a rate of 3% on the wholesale price, which is calculated to be about equal to 2% at retail, and would exempt these items from the retail sales tax. Such exemption would in most cases result in doing away with the need for a licensed beverage dealer to secure a retail sales tax permit. In the opinion of the Committee, this change will represent a substantial step toward clearing up a problem area and will probably result in a slight amount of increased revenue.

Auditing and Enforcement

A proper program of auditing and enforcement is a basic requirement of any taxation system. To expand tax bases or raise rates without providing a proper auditing and enforcement program will merely result in compounding the

inequities in any tax. A comparison of sales and use tax collections in North Dakota with such collections in the State of Wyoming was brought to the attention of the Committee. The comparison indicated that, as a percentage of sales, sales and use tax collections were much lower in North Dakota than in Wyoming. While the Committee is aware of the dangers involved in only one or at most a few such comparisons, it was nevertheless of the opinion that the field of sales and use tax administration was one at which a closer look should be taken.

It was pointed out to the Committee that the law presently provides a 15-year statute of limitations on actions to collect sales and use taxes. Any audit going back this far meets great difficulties because of the destruction of many essential records, is of questionable value, and is extremely time consuming. The Committee has prepared and recommends approval of a bill which would lower this period to six years. This would be in general accord with many of our statutes in other fields. In cases involving fraud or willful failure to remit, the statute would not bar a claim as the law does at present. It is the opinion of the Committee that approval of such bill would be very beneficial to the auditing staff of the Tax Commissioner's office since it will enable them to do a more thorough job on a greater number of sales and use tax returns than is presently the case.

In regard to sales tax permits, the Committee observed that it is much easier to obtain a permit than it is to lose it. The commissioner has no discretion in this regard, but must issue a permit to anyone who applies and tenders the 50c fee, while he can only revoke a permit for violation of law or a regulation, such as failure to file a quarterly report when due. There are outstanding today a large number of permits upon which the holders, while filing the quarterly reports, have shown no tax due for periods of a year or longer. The Committee is of the opinion that any bona fide retailer should have some amount of taxable sales during at least one quarter of a year. Thus it has prepared and recommends approval of a bill which would give the Tax Commissioner authority to revoke a permit, after notice and opportunity for hearing, whenever quarterly returns are filed which show no tax due for four consecutive quarters. Approval of this bill should aid materially in clearing the records of the Tax Commissioner, in decreasing the number of field auditing contacts that must be made, and in eliminating a number of permits that no doubt should not be outstanding.

Also, for the purpose of improving sales tax collections, the Committee considered means of securing information regarding purchases by retailers for the purpose of serving as a cross check on retail sales reported. The most likely possibility in this area is a plan somewhat similar in nature to the present information-at-the-source provisions in the income tax law.

The Committee has prepared and recommends approval of a bill which would require every wholesaler doing business in the State to secure a permit from the Tax Commissioner. On all records of sales to retailers for resale or processing, the wholesaler would be required to note the retailer's sales tax permit number. The wholesaler would be required to keep such records of sales as required by the Commissioner and to submit such reports in regard thereto as the Commissioner shall require. In the Committee's opinion, such a reporting process would serve as a very valuable enforcement aid. It should be noted that the passage of this bill would not involve the wholesaler in the process of collecting the sales tax.

Representatives of the Associated General Contractors of North Dakota appeared before the Committee in regard to the matter of licensing and bonding of contractors, in particular as it relates to payment of the use tax. Concern was expressed over the out-of-State suppliers who may either not collect the use tax on sales to contractors or may even collect the tax and then fail to remit collections to the Tax Commissioner. This could represent a considerable revenue loss because the quantities of building materials purchased out of State is relatively large.

Representatives of the Associated General Contractors have prepared a bill which the Committee recommends in modified form. The bill would require the licensing of all contractors performing contracts in excess of $500. Present law requires licensing of public contractors only. Bonding provisions would be expanded to require the bonding of all contractors in an amount of $1,000, and in the amount of $2,000 for those contractors accepting contracts of over $125,000. The bond would stand as security for the payment of all taxes which may come due to the State or its political subdivisions, including income taxes withheld from employees and workmen's compensation premiums. All contractors would be required to obtain a use tax account number and, upon purchasing supplies from an out-of-State dealer, would be required to supply the account number. The contractor would then not be re-

quired to pay the use tax to the out-of-State supplier, but rather would remit such amount to the Tax Commissioner. Sales taxes on materials purchased from in-State suppliers would not be affected by the bill, but would continue to be handled in the same manner as at present, with the contractor paying the sales tax to the supplier.

A final item considered by the Committee in the field of sales and use taxation was that of possible future steps toward the improvement of our sales and use tax administration. The Committee noted with approval that the Tax Commissioner's office had been successful in hiring the additional sales and use tax auditors as authorized by the 1961 Legislative Assembly. The impact of these additional auditors is expected to make itself felt soon in the field of increased collections. While realizing that a perfect tax administration program is impossible to achieve, the Committee nevertheless is of the opinion that continued steps in this direction are highly desirable, both from the standpoint of the revenue needs of the State and from that of tax equity among its citizens.

In view of the seemingly great potential for improvement in tax laws and enforcement efforts which exists in North Dakota as well, perhaps, as in many other States, the Committee recommends an appropriation of $15,000 for the 1963-1965 biennium to be used for the purpose of conducting a study of State laws, policies, and procedures in regard to the collection of sales and use taxes. The study would be made under the direction of the Legislative Research Committee with the consultation of the Tax Department. Realizing that neither the Committee nor its staff are expert in the field of sales and use taxation, the resolution contemplates the employment of a professionally trained or experienced person from within Government or without. It would be his responsibility to look into the entire field of sales and use tax administration, including laws and regulations, field and office auditing, personnel requirements, and authority and responsibilities of the sales tax division. His detailed findings and recommendations would then serve as a guide to the Committee in making its recommendations to the Legislative Assembly, and to the State Tax Department in making administrative changes.

It is the Committee's opinion, and one which has been borne out many times in many States, that money spent in this type of study will return benefits to the State many times its cost in the form of increased revenue, employee morale, and taxpayer satisfaction.

INCOME TAX

It is the opinion of the Committee that North Dakota's income tax rate is not as truly progressive as it purports to be. North Dakota's current rates are 1% on the first $3,000 of taxable income, 2% on the $3,000 to $4,000 bracket, 3% on the $4,000 to $5,000 bracket, 5% on the $5,000 to $6,000 bracket, 7½% on the $6.000 to $8.000 bracket, 10% on the $8,000 to $15,000 bracket, and 11% on everything over $15.000. Neither the rate nor the amount of income subject to the rate is progressive. The rate jumps from 1%, 2%, and 3% to 5%, 7½%, 10 %, and 11%. The amount of income subject to these erratic rates begins with a flat $3,000 bracket, then in a truly progressive climb of $1,000 brackets increases to $6,000 where it then skips to $8,000. From $8,000 it jumps to $15,000 and, finally, it assesses a flat rate on all amounts in excess of $15,000.

This tax, in actual practice, tends to be progressive only insofar as those taxpayers in the upper middle income groups are concerned. In addition, a head of a family or a married individual living with spouse is granted a personal exemption of $1,500 while single individuals are given only $600 personal exemptions, the same amount granted a dependent. It is the opinion of the Committee that this $600 personal exemption in the case of a single person is highly unrealistic and unfair in view of his married brethren's exemption.

In view of this apparent inequity of personal exemptions and the lack of progression in our progressive income tax, the Committee recommends that the personal exemption of a head of a family, or married person living with spouse, be raised from $1,500 to $2,000; the exemption of a single person from $600 to $1.000; dependent's exemptions from $600 to $750, and the rate of tax on taxable income be changed so as to provide for ten brackets beginning with 1% on the first $1,000 and increasing 1% for each additional $1,000 until the maximum rate of 10% on everything in excess of $9,000 is reached.

Under this tax a married couple earning $4,-500, and having three children, would not pay any tax as compared to the $7.76 they now pay; the same couple earning $6,000 would pay $9.94 as compared to the present $19.94; upon net earnings of $10,000 they would pay $103.60 as compared to the present $81.10; and on a $15,000 income they would pay $353.60 as compared to $367.00 under present rates and brackets. The foregoing

illustrations are approximations using the standard 10% deduction in computing the Federal tax and the standard 5% deduction in computing the State tax.

As illustrated, the proposed bill would tend to tax the lower income groups less than they are presently taxed because of the larger personal exemptions, and would also tend to tax the upper middle income group ($8,000 - $12,000) more than it is presently taxed because of the more uniform progressivity of the proposed rates as compared to the present rates. A small reduction in tax would result in the higher income tax groups because of the reduction of 1% in the maximum rate although the actual reduction is less than might be anticipated because of the new progressivity of the rates.

In addition to improving the progressivity of the tax and lowering the tax liability on lower income groups who have the least ability to pay, the lowering of the maximum rate from 11% to 10% will make North Dakota appear in a better light in its competitive struggle with other States for economic development. The dropping from the tax list of those citizens with low income and who presently pay little tax should also have the effect of reducing costs of compliance to these taxpayers since their returns, when required, will be very simple. Some reduction in costs of administration to the State should also occur, thus permitting greater concentration of effort on the more productive tax returns.

Although increased revenue is not the objective of the proposed bill, it is estimated by the office of the Tax Commissioner that it would increase North Dakota's revenue by approximately $400,000 during the biennium.

Withholding Tax

In 1948 only 1 State employed a withholding system for the collection of State income taxes. By 1961 a total of 24 States had withholding systems of some kind. As a result of its apparent ever-increasing popularity, a study of the withholding of State income taxes was undertaken by the Committee. It was estimated by comparing the number of tax returns filed with the State with the number of Federal returns filed with the district office of the Bureau of Internal Revenue in Fargo that approximately 8% of all State taxpayers meeting filing requirements failed to file State income tax returns. Since many nonresidents are employed only seasonally or temporarily in North Dakota and file their Federal tax returns in district offices in other States, the total of those failing to file would be substantially higher. It is estimated that this results in a revenue loss to the State of about $1 million biennially.

Two types of withholding systems were considered - a withholding tax that would apply to all wage earners, and a withholding tax that would apply to nonresidents only. A great amount of time was devoted to the study of the pros and cons of both systems. It was finally decided that a major share of the benefits of a general withholding system could be realized under a withholding system applicable to nonresidents, providing a "nonresident" was defined as "any person who did not file an individual income tax return with the State Tax Commissioner for the preceding year and who has not continuously maintained a domicile in North Dakota for a period of one full calendar year from January first to December thirty-first". This, in effect, would require the withholding of taxes from the income of not only nonresidents but also from anyone who failed to file a return the previous year, regardless of how long he has lived in the State. Wages of less than $200 in amount and employment of less than 20 days in duration would be exempt from withholding. It should recover the estimated $1 million of biennial revenue which the State is now losing, without the inconvenience and higher costs of compliance to employers and the greater State costs of administration of a general withholding system.

Adjusted Tax on Income

As discussed earlier in this report, the State Equalization Fund will require a deficiency appropriation of about $2,500,000 in order to meet its obligations during the balance of the current biennium. In addition, if no substantial changes are made in either the programs which the Fund supports or its sources of revenue, it will be short about $11,600,000 in meeting its obligations during the next biennium even if appropriations for miscellaneous educational activities are held to an absolute minimum.

A cut in the percentage of State support is unrealistic in view of the ever-increasing costs of education and would simply result in transferring additional costs to local districts resulting in higher property taxes. In the opinion of the Committee, we are beginning to reach the saturation point in property taxes in financing education.

The State Equalization Fund, as previously mentioned, is dependent primarily upon its seven-twelfths share of the sales tax revenue. The remaining five-twelfths of the sales tax revenue is allocated to the State's public welfare program. An increase in the State Equalization Fund's share of the sales tax revenue would merely require the State to look to another source of income in order to adequately finance the public welfare program. It thus appears necessary for the State Equalization Fund to look to a new source of revenue. This, apparently, was also the opinion of the 37th Legislative Assembly since its resolution to the Legislative Research Committee directed the Committee to study the feasibility of shifting a portion of the tax burden from property to income through use of a surtax.

It has long been the opinion of many citizens that property owners were bearing an unfair share of the rising educational costs. It is often pointed out that the ownership of property does not always indicate the presence of an income with which to pay taxes. Many citizens also have substantial incomes but do not own substantial amounts of property. These citizens receive the benefits from the educational services of the school districts, but do not directly make a substantial contribution to their support. Further arguments exist in favor of looking to income as compared to property for additional educational revenues in an agricultural State such as North Dakota. In years when a crop failure occurs and there is no income with which to pay property taxes, a property tax lien carries over to the next year to be paid when the owner does have income. In the case of taxes based upon income, there is no tax liability in years when there is no income and no carryover of a tax lien to future years.

The Committee has studied and recommends a bill which would provide a tax upon all individuals, estates, and trusts of 1.2% of their net income after deduction of personal exemptions but prior to nonbusiness deductions. A credit for 25% of all real and personal property taxes paid to the State or its political subdivisions would be allowed as a deduction against the tax due. This bill, if enacted, would increase the State's income tax revenue by approximately $4,500,000 during the biennium.

The Committee believes that the property tax credit contained in the bill should have a beneficial effect upon delinquent property tax collections since such taxes will have to be paid in order to give the taxpayer the benefit of the credit. In addition, this credit should provide some incentive for city residents to remain in the city rather than moving just outside the city limits to escape higher property taxes and thus reducing the tax base within the city.

Income Taxation of Business Organizations

The Committee noted that in this field a wide variety of tax laws exists under which similar types of business are taxed by completely different methods. Thus, business corporations in general pay a corporation income tax; banks, trust companies, and building and loan associations pay a franchise tax; foreign insurance companies pay a gross premiums tax; rural telephone cooperatives pay a per-phone tax; and rural electric cooperatives pay a gross receipts tax. To the extent that income and the ownership of personal property may be related, banks, trust companies, building and loan associations, REA's, and RTA's generally bear a significantly lesser tax burden than other types of corporations through the exemption of their personal property from taxation.

The Committee considered, but rejected, a proposal to impose a franchise tax upon all corporations except REA's, RTA's, foreign insurance companies and civic and charitable corporations, at a flat rate of 4%. The Committee also disapproved a proposal which would have taxed domestic insurance companies under the gross premiums tax in the same manner as foreign insurance companies are presently taxed.

Taxation of Telephone Companies

The Committee gave considerable attention to the task of establishing equity in the field of telephone taxation. It was noted that the present method of taxing mutual and cooperative telephone companies, which primarily serve rural areas, was established in 1931 and is found in chapter 57-34 of the North Dakota Century Code. These companies are taxed at the flat rate of 50c per phone and such tax is in lieu of all real and personal property taxes, as well as sales and use taxes. Two reasons for the present method of taxing mutual and cooperative telephone companies were pointed out: first, in 1931 the 50c-per-phone tax system was deemed the only efficient method of taxation available because such a great number of mutual telephone companies then existed and such a system was administratively more feasible than attempting to assess and tax their property under the property tax; and the sec-

ond purpose may have been to encourage cooperative efforts to provide rural telephone service. It appears that the 50c-per-phone tax may have been equitable under the conditions as they stood at the time such legislation was passed.

The property of commercial telephone companies is taxed under the provisions of chapter 57-06 of the North Dakota Century Code. This chapter provides for the assessment and taxation of the property of all telephone companies, except mutuals and cooperatives, in the same manner as other real and personal property is taxed in North Dakota. In addition to the real and personal property taxes, commercial companies are subject to the corporation income tax, sales tax, and use tax. Mutual companies are for practical purposes exempt from the payment of income taxes and, as previously stated, the 50c-per-phone tax is in lieu of all property taxes, sales taxes, use taxes, and other excise taxes.

The inequities of our tax systems for the taxation of telephone companies in North Dakota became very apparent upon examination of the operations of the Inter-Community Telephone Company, a small commercial telephone corporation located in the southeastern section of the State. This company is engaged in providing the same type of service as mutual and cooperative companies, yet its tax burden is many times that of mutual and cooperative companies of comparable size. Large telephone companies, such as Northwestern Bell Telephone Company, were also considered since a substantial amount of their operations is also devoted to providing similar service to rural customers, but this portion of their business receives no tax advantage.

Representatives of rural cooperative telephone companies were in attendance at meetings of the Committee when telephone taxation was discussed and were called upon to give their opinions as to the tax situation which now exists in North Dakota. The operators of rural cooperative telephone companies shared the view that an inequitable tax situation does exist, especially in regard to small commercial companies which serve rural areas and small cities and villages. These small companies are faced with the same operational problems as mutuals and cooperatives in providing service to sparsely populated areas involving a high investment per telephone. Most of the cooperative company representatives stated that they felt the solution to the tax problems of rural telephone companies could best be achieved by aiding those companies which are now heavily taxed but not changing the tax system affecting mutual and cooperative companies. It was pointed out that the tax advantages which mutual and cooperative companies now receive have not in all cases resulted in making them profitable ventures, since some of these companies have lost small to substantial amounts of money year after year. Some mutual and cooperative telephone companies have had to use funds placed in reserve for depreciation in order to pay off RTA loans and cover their losses. It is only recently that other companies have started to operate without sustaining a loss, but these companies feel that any substantial tax increase would have the effect of placing them in their former financial position or of requiring rate increases. In some instances it was claimed that material rate increases would result in a loss of customers. It was obvious that any change in the tax system for mutual and cooperative companies would have to have some relationship to ability to pay in order not to injure those companies which already have high telephone rates for subscribers.

When asked what effect a tax on net income would have on their companies, the cooperative and mutual company representatives replied that such a tax would probably not have a harmful effect, but as a matter of principle they would object to such a tax since they do not view the margin of a cooperative as profit but rather as funds to be returned each year to the subscribers.

Information received from Northwestern Bell Telephone Company revealed that its rural operations are as costly as those of many of the smaller commercial and mutual companies, but when both rural and urban costs are combined the average investment per phone of Bell is much less than companies exclusively engaged in serving rural areas and small cities and villages. It was stated by a representative of Bell Telephone that Bell does not complain in regard to the cooperative company tax rates, but believes that equity requires that Bell be taxed on their rural operations in a manner comparable to the mutual and cooperative companies.

Mr. John Nilsen, representing the Inter-Community Telephone Company of Nome, North Dakota, presented evidence showing that his company, as an REA borrower, provides the same service as the REA-financed cooperatives. Inter-Community has the same responsibilities, serves the same type of subscriber, and pays the same rate of interest on loans as cooperative companies, but the tax burden is many times that of mutuals.

The Committee could not but agree that companies offering the same type of service under similar operating conditions should be taxed in the same manner.

In an attempt to find an equitable tax system under which all telephone companies could be taxed, the Committee reviewed the taxing methods of the State of Minnesota. The Minnesota system imposes a gross earnings tax, in lieu of all property taxes, sales taxes, and use taxes on all telephone companies, including mutual and cooperative companies. It provides for the computation of a tax imposed according to the population of the community from which the gross revenue is derived, and prescribes a progressive rate at which such gross revenues are to be taxed. These rates, which ran from 4% to 7%, were considered too high by the Committee, and this type of tax system was determined not to be practical in North Dakota, due principally to the difference in the population densities between the two States.

The Committee turned to other alternatives in an attempt to establish tax equity in the field of telephone taxation. The first alternative considered was a proposal providing for a gross earnings tax which would be imposed on all mutual and cooperative telephone companies and those commercial companies exclusively serving rural areas and cities and villages with a population of 500 persons or less. This tax would also be in lieu of all property taxes, sales taxes, and use taxes with the rate to be imposed on the gross earnings in inverse proportion to the investment per station of the company paying the tax. For instance if the investment per phone of a company was $900 or over, the tax imposed would be 1% of the gross earnings; an investment of $700 to $900 would call for a tax of 2% of the gross earnings; an investment of $500 to $700 would call for a tax of 3%; and an investment per phone under $500 would call for a tax of 4% of the gross earnings. The Committee, after due consideration, felt that this proposal was inadequate, for all telephone property devoted to rural service was still not being taxed equally, in that the rural and small town telephone property of large companies such as Northwestern Bell was not included in the bill under consideration. The Committee then directed the staff to prepare a bill for discussion purposes which would provide the same tax on all rural telephone property performing like services in a like situation, regardless of the type of telephone company involved. The system contemplated was, again, a gross earnings tax with a rate in inverse proportion to the investment per station. This bill provided for the inclusion of all telephone companies which provide rural service, in whole or in part. One change in the rate structure was also added to this bill. This change provided for a tax of .5% on the gross earnings of any telephone company with an investment per phone of $1100 or over. In all other respects this bill contained provisions similar to the other bill providing for a gross earnings tax with a rate in inverse proportion to the investment per station. Information in regard to the revenue that would be produced under this bill was also presented to the Committee for its consideration.

A great deal of testimony in reference to a gross earnings tax was received from representatives of mutual and cooperative telephone companies, small commercial companies, and Northwestern Bell officials. It was the consensus of the Committee that in spite of all the testimony and the study of the report of the estimated revenue that would be derived from the proposals under consideration, such a gross earnings tax would require further study before a firm recommendation could be made.

The Committee recommends a bill for the consideration of the Legislative Assembly which provides for the taxing of small, private telephone companies under the same system as mutual and cooperative companies. The effect of this bill would be that the small commercial telephone companies would be subject to the same 50c-per-phone tax as is applied to the mutual and cooperative companies, such tax being in lieu of all property taxes, sales taxes, and use taxes.

While the Committee has done substantial work in the field of taxation of telephone companies in an attempt to promote tax equity among the various types of companies, it is not satisfied that the work to date is sufficiently extensive to warrant a complete change in the system. There has not been sufficient time to fully explore the possibilities of developing a more equitable tax system. Therefore, the Committee recommends a resolution providing for a study of the equities of telephone company taxation during the next biennium by the Legislative Research Committee.

The bill that the Committee recommends to the Legislative Assembly is not intended to be of a permanent nature, but only to provide immediate relief to those small commercial companies which are similar in size and provide the same type of services as the mutual and cooperative companies. The temporary relief to be pro-

vided to small companies will not remove inequities in regard to large telephone companies such as Northwestern Bell which provide a substantial amount of rural service. The Committee's ultimate objective is to tax like services and property in a like manner under a tax system which is fair when compared to the type of taxes imposed upon other types of property and business. The two main obstacles to a firm recommendation in regard to the gross earnings proposals were the fear that some mutuals and cooperatives might have been subjected to a substantial increase in taxes which they might not be able to afford, and large companies such as Northwestern Bell were not able at this time to satisfactorily break down their operations into rural and urban segments to provide the Committee with needed information. It is the hope of the Committee that through further study these problems can be overcome and ultimately a tax system can be formulated which will be equitable to every type of telephone company engaged in providing similar services and will be fair when compared to the taxes upon other types of property and business.

Spot Checks of Assessments by Boards of County Commissioners

The Committee, cognizant of the fact that uniformity of real and personal property assessments often is not present between taxpayers and between assessment districts within individual counties as well as between the counties, considered a proposal providing for spot checks of real and personal property assessment listings by the board of county commissioners prior to the meeting of the county board of equalization. The Committee recommends this proposal for the consideration of the Legislative Assembly, recognizing that if the various local assessors and local boards of equalization are aware that at least 1% of the property assessments and listings are to be reviewed, a greater effort to include all property and to assess it at a uniform percentage of true and full value would be made by assessors and local boards of equalization. The proposed bill provides for a spot check of not less than 1% of the total separately-owned personal property listings and for the same percentage of checks on separately-owned tracts of real estate, but such check in the latter instance would be made only in the year of assessment. The bill further empowers the board of county commissioners to direct the boards of equalization of townships, cities, or villages to make any necessary corrections or changes where omissions or errors in assessment have been found, and requires the board of county commissioners to give notice to the local boards of equalization prior to the meeting at which such assessments and listings are to be reviewed. This provision will allow the local boards of equalization to be present when the results of the spot checks are reviewed and to explain or defend their methods of assessing and listing or their equalization procedures.

The Assessment of Real and Personal Property at a Definite Percentage of Market Value

North Dakota law requires all real and personal property to be assessed at its true and full market value; that is, at 100% of its market value. This requirement is not, and probably never has been, complied with but has resulted in a state of affairs whereby most counties, cities, villages, and various other assessment districts are assessing property at a different percentage of its actual value. To attempt to compel every assessor to assess at 100% of market value as now required by law would be unrealistic and would almost result in a taxpayers' revolt. Therefore, the Committee has attempted to approach the problem in a realistic manner by recommending a bill that would require all assessors to assess property at the same fraction or percentage of its market value.

The bill recommended by the Committee would require the State Board of Equalization to set a definite percentage at not less than 25% or more than 40% of value, at which all property must be assessed.

A survey conducted by Dr. Glenn W. Fisher, former Associate Professor of Economics at the North Dakota State University of Agriculture and Applied Science, for the Legislative Research Committee, a summary of which is contained in the 1961 report of the North Dakota Legislative Research Committee, reveals many of the basic inequities which now result in the assessment of property. Dr. Fisher reports that variances in assessments of like property in the same county are substantial. It is not uncommon for some land to be assessed four times higher in relation to its true value than other land in the same county. The same is true as to assessments of buildings in cities and variation of assessments of the same type of property between counties is even greater. The Committee anticipates that the recommended bill would alleviate some of the basic inequities presently existing in assessment procedures. It is not contemplated that this bill would be a panacea for all the ills presently

existing in our property assessment system, but at least a common starting point for the assessment of property would be available to the individual assessors.

Another problem which it is hoped this bill will eventually lessen is that of distributing State equalization funds to the counties for elementary and secondary education. Those counties which assess at a lower percentage of market value receive a larger share of the equalization funds than does a county which assesses its property at a higher percentage of market value. If all property in all counties were assessed at the same percentage of market value, then, under the mandatory 21-mill county levy for county equalization fund purposes, all counties would in fact make the proper minimum county contribution toward education and would not receive State Equalization Fund payments to which they are not entitled.

Miscellaneous Items

In addition to the major fields of the tax structure considered above, the Committee also considered a number of problems not falling directly into any one field, but nevertheless closely allied with the subject of taxation.

Transfer of Special Funds

The subject of special funds was last before the Legislative Research Committee during the 1957-1959 biennium following the passage by the 1957 Legislative Assembly of Senate Concurrent Resolution "Z", which directed the Committee to "study all special funds and nonreverting appropriations to determine which funds are no longer active or needed, and what balances in these special funds or nonreverting appropriations, if any, can be returned to the general fund of this state". As a result of this study a number of special funds were done away with by the 1959 Legislative Assembly.

The Committee observed from the State Treasurer's report that there are still some 100 special funds of which the State Treasurer is custodian, in addition to 14 permanent and 14 interest and income funds of the Board of University and School Lands, which are constitutional funds. This takes no account of funds which may exist within the Bank of North Dakota and may not be included within the State Treasurer's report.

The primary difficulties involved in the existence of so many special funds are that it deprives the Legislative Assembly of effective control over the greater portion of State revenue, and that it makes it extremely difficult at any one time to determine the actual financial position of the State. In addition, the Committee felt that with a given amount of money in any special fund, the department or agency administering such fund under continuing appropriations will have a strong tendency to spend such amount. It is recognized that the Legislative Assembly does not scrutinize appropriations from special funds as carefully as general fund appropriations, since the special funds cannot in any event be spent for other purposes. Thus, there can occur many instances of overspending for programs of lesser importance while, on the other hand, meritorious and essential programs can suffer from a lack of revenue. This can result in forcing the Legislature to raise taxes for one purpose while having a surplus in special funds, and in permitting continued spending for less important programs.

The Committee realizes that, in a few instances, special funds are justified as being the practical, if not the only, method of financing certain phases of governmental activity. In legislation recommended by the Committee, therefore, many special funds are left as they now exist, with only those whose necessity is questionable being recommended for transfer.

The fact that many special funds would not exist would not necessarily mean that the appropriation of certain tax revenues for specific purposes might not continue, since the Legislative Assembly would no doubt in most cases gauge the appropriations for the functions of government presently supported by special or earmarked funds by the amount of revenue that resulted from special taxes or fees from that field. It would mean, however, that the Legislative Assembly could view all expenditure requirements of all programs and then balance the total revenue available against these total needs, and in the event of extreme revenue shortages, authority would exist to finance essential functions of State Government from any moneys available, even if it meant holding the line or possibly cutting back some of the less important State services or programs.

Essentially, the proposal follows the philosophy that tax laws are imposed by the Legislative Assembly representing all the people of the State

and that revenue extracted from the citizens by State laws should be available for expenditure by the Legislative Assembly for the best interests of all the citizens regardless of its source.

The Committee recommends approval of a bill which would do away with the retail sales tax fund, state equalization fund and public welfare fund and transfer the balances in such funds to the general fund. Retail sales tax collections would, under the proposed bill, be placed into the general fund and the costs of operating the equalization program and the public welfare program would be appropriated out of the general fund.

Also recommended by the Committee is a bill which would eliminate some 11 special funds which have been established by statute rather than by the Constitution, and would transfer the balances in such funds to the general fund. These funds are: the game and fish bounty fund, World War II bonus sinking fund, closed bank fund, guarantee fund, nonresident heirs fund, penitentiary miscellaneous earnings fund, twine plant operating fund, penitentiary tag and sign plant fund, predatory animal control fund, quarantine livestock feedlot fund, and the livestock auction market fund.

The Committee is of the opinion that legislative control over the financing of State governmental functions is essential, particularly in times such as at the present when rising costs, plus new programs in many fields, place increasing financial demands on a tax system which is simply not flexible enough to meet all of such demands. The approval of the above-mentioned bills will, in the opinion of the Committee, be a considerable step toward easing some of the problems of State governmental finance in North Dakota.

Cancellation of Unexpended Appropriations

It was brought to the attention of the Committee that, under present law, unexpended balances in appropriations cannot be canceled until the expiration of two years after the biennium for which they were appropriated. Thus a biennial appropriation actually remains available for expenditure for a total period of four years, provided that it is obligated prior to the end of the biennium for which it was appropriated. The Department of Accounts and Purchases, which is charged with the duty of canceling unexpended appropriations, thus has no way of knowing what portion of these unexpended appropriations will revert until the end of the two-year period. This makes it very difficult to estimate balances in funds and to determine the current financial position of the State, and also can in effect provide funds for biennial operations not contemplated by the Legislative Assembly.

To remedy this situation, the Committee has prepared and recommends approval of a bill which would require the Department of Accounts and Purchases to cancel all unexpended appropriations, or balances thereof, thirty days after the end of each biennium.

Appropriations for new construction, or major repairs or improvements only, could be continued in force for not more than two years after the end of the biennium, on approval of the Governor, the Attorney General, and the Secretary of State. Approval of this bill should enable State officials to make a much more realistic estimate of the State financial position at any given time.

Secrecy of Income Tax Returns

It was brought to the attention of the Committee that the present income tax law is very strict in the matter of secrecy of income tax returns. Some employers, notably the Federal Government, have policies which call for the discharge of an employee for failure to pay State income taxes when due, yet under our present law there is no way of informing an employer of the delinquency of one of his employees. The Committee thus recommends approval of a bill which would amend our present secrecy laws in the income tax field to permit the Tax Commissioner to disclose to an employer of a delinquent employee the fact and amount of such delinquency. In the opinion of the Committee, such amendment should have a very salutary effect on income tax compliance in a number of instances.

Adjustments in Individual Property Assessments

It was brought to the attention of the Committee that law requires common carriers to demand production of a personal property tax receipt before accepting certain goods, mainly household goods and livestock, for shipment. In theory, this requirement could be a valuable enforcement device, but in practice it loses its effectiveness, principally because no penalty is currently provided for any carrier failing to comply. The Committee thus recommends approval of an amendment which would provide a fine of not more than $100 for noncompliance.

Also recommended is an amendment to the county board of equalization law which would permit such board to raise or lower an individual taxpayer's property assessments in townships, cities, and villages. Since these political subdivisions presently have their own boards of equalization, the county board can only raise or lower assessments on classes of property, but can do nothing about severe inequities which exist between the assessments of the property of individual taxpayers. This amendment would grant the county board power, after notice to the taxpayer and the local board, to raise individual assessments or, upon complaint of an individual taxpayer and after notice to the local board, to lower an individual assessment. In the opinion of the Committee, approval of this amendment will prove to be of substantial benefit in achieving tax equity.

Conclusions

It is believed that all of the recommendations of the Committee will aid in the promotion of tax equity and improved administration, and some will have the effect of promoting economic development. In addition, some new revenue will result from the proposals which can be of material assistance to the State in meeting obligations in the field of elementary and secondary education. The new revenue from the proposals if they are adopted and the effect of other proposals in regard to the Foundation and Transportation Programs is estimated as follows:

Item	1963-1965 Biennial Revenue Resulting	
1.2% surtax	$4,500,000	
Sales tax on cigars and tobacco products at wholesale	140,000	
Sales tax on bar supplies at wholesale, new contractor bonding and use tax law, full biennium auditing by new auditors, plus any additional authorized audits, impact or sales tax permit revocation authority plus wholesale license and information, etc.	600,000	
New progressive income tax schedule	400,000	
Withholding tax system for nonresidents	1,000,000	
TOTAL NEW REVENUE RESULTING FROM RECOMMENDATIONS		$6,640,000
Plus saving to State through equalizing the tax base of the counties as basis for distributing State Equalization Fund payments during 2nd year of biennium	1,000,000	
Plus savings to State Equalization Fund through new formula for State Aid to Transportation	800,000	
TOTAL SAVINGS TO STATE EQUALIZATION FUND		1,800,000
TOTAL NEW REVENUE AND STATE EQUALIZATION FUND SAVINGS		$8,440,000
Estimated shortage in Equalization Fund, 1963-1965 biennium		$11,600,000
Shortage of Equalization Fund if all proposals are adopted		$3,160,000

Explanation of Legislative Research Committee Bills

Senate Bills

Senate Bill No. 30—Civil Jurisdiction on Reservations. This bill would provide for the assumption of civil jurisdiction over Indians by the State of North Dakota. See the report of the Committee on Indian Affairs.

Senate Bill No. 31—Transfer of Truck Regulatory Division. This bill provides for the transfer of the Truck Regulatory Division of the Highway Department to the Highway Patrol and the consolidation of the duties of the two departments. See the report of the Committee on General Affairs.

Senate Bill No. 32—Basic Water Law Priorities. This bill would remove all reference to the riparian doctrine from North Dakota water law and would place our water laws under the appropriation doctrine only. In addition it would give priority to only two classes of water use—"domestic use" and "livestock use." See the report of the Committee on Natural Resources.

Senate Bill No. 33—State Watermaster. This bill would authorize the State Engineer to appoint one or more watermasters whose duties it would be to check those areas of the State affected by the ownership and use of water and to aid in the settling of any disputes regarding such ownership and use. See the report of the Committee on Natural Resources.

Senate Bill No. 34—Equalization of Foundation Program Payments. This bill would require the State Tax Commissioner to report counties under-assessing real and personal property, when compared with the statewide average based upon sales-assessment ratio studies, to the Superintendent of Public Instruction who would then reduce per-pupil payments to such counties until such counties either raise assessments or increase their mill levy correspondingly. See report of the Committee on Taxation.

Senate Bill No. 35—Excise Tax on Nonalcoholic Components of Mixed Drinks. This bill would impose a 3% excise tax upon sales of nonalcoholic components of mixed drinks sold to licensed beverage dealers, at the wholesale level, and exempt such commodities from the retail sales tax law. See the report of the Committee on Taxation.

Senate Bill No. 36—Wholesalers' Permits and Records. This bill would require every wholesaler to secure a wholesale permit from the State Tax Commissioner and to keep such records and make such reports of sales to retail sales tax permit holders as the commissioner shall require. See the report of the Committee on Taxation.

Senate Bill No. 37—Contractors' Bonding and Licensing. This bill would require a license of all contractors and a bond of $1,000 to $2,000 conditioned upon payment of all State and local taxes, and would make the contractor responsible for remitting the use tax on all materials purchased from out-of-State suppliers. See the report of the Committee on Taxation.

Senate Bill No. 38—Sales and Use Tax Study Appropriation. This bill would appropriate $15,000 for the purpose of employing experienced professional personnel to conduct a study of sales and use tax collection procedures in the Tax Commissioner's office, under the direction of the Legislative Research Committee. See the report of the Committee on Taxation.

Senate Bill No. 39—Nonresident Withholding. This bill would institute a system of withholding of income taxes on nonresidents and others who have not filed a State income tax return for the preceding year on all wages or compensation exceeding $200 in amount or 20 days in duration. See the report of the Committee on Taxation.

Senate Bill No. 40—County Superintendent's Deputies. This bill would authorize at least a part-time office deputy in all counties or a full-time deputy in counties in which 50 or more teachers are employed in public schools, with additional

deputies to be at discretion of county commissioners. See Committee report on Education.

Senate Bill No. 41—Changes in Reorganization Plan. This bill would permit the electorate of a reorganized district to make changes in the reorganization plan by vote, without approval of the State committee, except for boundary changes, and would also permit the school board in a reorganized district to exercise all normal powers after the expiration of 5 years, regardless of provisions in the reorganization plan, again subject to certain exceptions. See Committee report on Education.

Senate Bill No. 42—Duty of County Commissioners in Annexation Proceedings. This bill would relieve the county commissioners of all duties in respect to school district annexation proceedings, placing their present duties on the county board of school district reorganization. See Committee report on Education.

Senate Bill No. 43—Membership of State Board of Public School Education. This bill would realign membership on the board by relieving the Governor, Attorney General, North Dakota Education Association, and School Officers' representatives of membership on the board and substituting a board consisting of the Superintendent of Public Instruction and one elector from each judicial district, appointed by the Governor. See Committee report on Education.

Senate Bill No. 44—Proportionate Tax Rate Repeal. This bill would repeal the authority for differentials in tax rates between agricultural property and non-agricultural property within a school district. See Committee report on Education.

Senate Bill No. 45—Annexation of Districts not Operating High School. This bill would require the county superintendent to report to the county committee on school district reorganization on July 1, 1967, any school district not operating an accredited high school, whereupon the county committee would be required to provide for the dissolution of such district and its annexation to a district or districts operating an accredited high school. See Committee report on Education.

Senate Bill No. 46—Standards for School District Reorganization. This bill would require the State Board of Public School Education to promulgate rules and regulations to govern State and county school district reorganization committees in the development and approval of reorganization plans, and states the legislative intent as to points to be covered in such rules and regulations. See Committee report on Education.

Senate Bill No. 47—Legal Advice for County Committee. This bill requires the state's attorney to advise and represent the county committee, except in cases where a conflict of duties would arise, and also requires members of the county committee to be domiciled within the county they represent. See Committee report on Education.

Senate Bill No. 48—Transportation Payments Formula. This bill would change the present ½c per-pupil-mile payment formula to one which would reimburse school districts at rates of 7c per bus mile for vehicles with capacities of 19 or less and 10c per bus mile for vehicles with capacities of 20 or more, provide that the reduction in state payments to any district as a result be spread over a 3-year period, and give districts thus receiving a lesser amount authority to levy a tax sufficient to make up any deficit. See Committee report on Education.

Senate Bill No. 49—Levy for Transportation or Maintenance. This bill would authorize a school district to levy up to 5 mills above mill levy limitations for transportation or maintenance of pupils rather than only for transportation or maintenance of pupils attending school in another district, as is presently the case. See Committee report on Education.

Senate Bill No. 50—Additional Tax on Income. This bill would impose an additional income tax upon individuals, estates, and trusts of 1.2% of their net income after personal exemptions and prior to nonbusiness deductions, with a credit against the tax of 25% of all personal property and real estate taxes paid. See the report of the Committee on Taxation.

Senate Bill No. 51—Spot Check and Changes in Individual Assessments. This bill would require the board of county commissioners to spot check at least 1% of the personal property and real estate listings in order to verify their accuracy and to direct the local board of equalization to make necessary corrections and changes, and would also permit the county board of equalization to raise or lower individual assessments. See report of the Committee on Taxation.

Senate Bill No. 52—Assessment of Property at Percentage of Market Value. This bill would require the State Board of Equalization to set a definite percentage at not less than 25% nor more than 40% of value, at which all property must be assessed. See the report of the Committee on Taxation.

Senate Bill No. 53—Disposition of Sales Tax Revenue. This bill would do away with the Retail Sales Tax, Equalization, and Public Welfare Funds, transfer existing balances to the General Fund, and place sales tax collections into the General Fund to be expended pursuant to legislative appropriation. See the report of the Committee on Taxation.

Senate Bill No. 54—Transfer of Special Funds. This bill would eliminate some 11 special funds and transfer existing balances to the General Fund. See the report of the Committee on Taxation.

Senate Concurrent Resolution "A"—Office of County Superintendent. This resolution would present to the electors of the State a constitutional amendment to authorize the Legislative Assembly to establish the office of county superintendent on a regional basis serving two or more counties. See Committee report on Education.

Senate Concurrent Resolution "B"—Water Law Study Continuation. This resolution would direct the Legislative Research Committee to continue its study and revision of the State's water laws as authorized by the 37th Legislative Assembly. See Committee report on Natural Resources.

Senate Concurrent Resolution "C"—Relinquishment of Unused Water Appropriations. This resolution would urge the United States to relinquish to the State of North Dakota all unused water appropriations which it holds in the State. See Committee report on Natural Resources.

House Bills

House Bill No. 527—Welfare Payments to Indians. This bill would provide for a method whereby welfare payments could be made to Indian residents of a reservation or reservation county, living off the reservation and out of the reservation county. See report of Committee on Indian Affairs.

House Bill No. 528—Indian Employment Appropriation. This bill would provide for an appropriation to the State Employment Service in order to provide for an intensive job placement program for Indians. See report of Committee on Indian affairs.

House Bill No. 529—Motor Vehicle Equipment. This bill provides for the regulation of equipment on motor vehicles with special emphasis placed on lighting equipment. In addition the bill contains provisions relating to such subjects as visibility distance of lights and brake requirements. See report of Committee on General Affairs.

House Bill No. 530—Speed Limitations. This bill establishes four basic speed limits in the State, instead of specific limitations under our present system, and gives the Highway Commissioner, Superintendent of the Highway Patrol, and local authorities, within their jurisdictions, authority to post higher or lower limits in all instances, except that the limits on the interstate highways would not be subject to alteration. See Committee report on General Affairs.

House Bill No. 531—Operators' Licenses. This bill provides for certain administrative changes in the handling of operators' licenses and clarifies the time when nonresidents must acquire North Dakota operators' licenses. See Committee report on General Affairs.

House Bill No. 532—Transfer of Public Safety Division. This bill provides for the transfer of the Public Safety Division of the Highway Department to the Highway Patrol and the consolidation of the duties of the two departments. See Committee report on General Affairs.

House Bill No. 533—State Farm Commitments. This bill would prohibit the sentencing to the State Farm of any person who has served a sentence in a penitentiary upon conviction of a felony or who has a history of moral or sexual degeneration and would raise the cost of confinement therein chargeable to the county from one to three dollars per day. See Committee report on General Affairs.

House Bill No. 534—State Parole Board. This bill would divest the State Pardon Board of all its present duties relating to probation and parole and would give such powers to a newly created State Parole Board consisting of three members appointed by the Governor. The State Pardon Board would concern itself with pardons only. See Committee report on General Affairs.

House Bill No. 535—Drainage and Water Management District Laws. This bill would eliminate duplication and overlapping of authority between North Dakota's Water Conservation and Flood Control Districts and Drainage Districts and would encourage the drainage districts to organize under the water management district laws. See Committee report on Natural Resources.

House Bill No. 536—Irrigation District Laws. This bill would include an owner in fee simple in the definition of "elector" for district election purposes, provide for publication of election notices, allow the board to schedule as many meetings as necessary, raise the compensation of a board member, allow only the electors who own a majority of the land subject to assessment to petition the board for specific orders or changes in canals, and provide an efficient means of determining the amount of unpaid assessments owed upon each tract of land within the district. See Committee report on Natural Resources.

House Bill No. 537—Exclusion of Counties from Garrison Conservancy District. This bill would prohibit any county that has realized or will realize any benefits, either directly or indirectly, from the Garrison Conservancy District from excluding themselves from such district for assessment purposes. See Committee report on Natural Resources.

House Bill No. 538—Officers and Mill Levy of Garrison Conservancy District. This bill would specifically authorize the District's board of directors to elect officers, to establish more adequate reserve funds if necessary, and to expand or obligate more than 10% of the maximum one

mill levy. See Committee report on Natural Resources.

House Bill No. 539—Stock Watering Dam Restrictions. This bill would remove the restriction of 10 feet in regard to the height of dams constructed without the written approval of the State Water Conservation Commission and would restrict the construction of such dams only in regard to the amount of water impounded. See Committee report on Natural Resources.

House Bill No. 540—Miscellaneous Water Laws. This bill, in addition to correction of numerous problems, ambiguities, and conflicts within North Dakota's water laws would also allow political subdivisions of the State to participate with the State in conducting water surveys, authorize the State Engineer to administer oaths and issue subpoenas, and prohibit the drainage of meandered lakes without the State Engineer's written permission. See Committee report on Natural Resources.

House Bill No. 541—Use Tax on Tax-exempt Gasoline. This bill would impose a 2% use tax upon sales of gasoline upon which the State excise tax is refunded, with the proceeds to be distributed among the counties for use on farm-to-market roads. See the report of the Committee on Taxation.

House Bill No. 542—Excise Tax on Cigars and Tobacco. This bill would impose a 3% excise tax upon sales of cigars and tobacco products, other than cigarettes and snuff, at the wholesale level, and exempt such commodities from the retail sales tax law. See the report of the Committee on Taxation.

House Bill No. 543—Statute of Limitations on Sales and Use Tax Actions. This bill would lower from fifteen to six the number of years in which an action to collect sales or use taxes may be brought, except in cases of fraud or willful failure to remit. See the report of the Committee on Taxation.

House Bill No. 544—Revocation of Unused Sales Tax Permits. This bill would give the State Tax Commissioner authority to revoke a retail sales tax permit when returns are filed showing no tax due for four consecutive quarters. See the report of the Committee on Taxation.

House Bill No. 545—Income Tax Rates and Exemptions. This bill would establish a new straight line, graduated income tax schedule ranging from 1% on the first $1,000 to 10% on everything over $9,000 in ten even $1,000 increments, and would increase personal exemptions to $2,000 for a married couple, $1,000 for a single taxpayer, and $750 for each dependent. See the report of the Committee on Taxation.

House Bill No. 546—Taxation of Certain Telephone Companies. This bill would place privately-owned telephone companies serving exclusively rural areas on the same tax basis as are mutual and rural telephone companies, at a rate of 50c per telephone per year. See the report of the Committee on Taxation.

House Bill No. 547—Cancellation of Unexpended Appropriations. This bill would require the Department of Accounts and Purchases to cancel all unexpended appropriations or balances thereof, thirty days after the end of each biennium. See the report of the Committee on Taxation.

House Bill No. 548—Secrecy of Income Tax Returns. This bill would authorize the State Tax Commissioner to disclose to an employer of an employee who is delinquent in his income tax payment, the fact and amount of such delinquency, in order to stimulate the collection of taxes due. See the report of the Committee on Taxation.

House Bill No. 549—Corporation Farming. This bill would allow domestic corporations to carry on farming or ranching operations within the State providing all shareholders are related to each other shareholder within specified relationships. See the report of the Committee on General Affairs.

House Bill No. 550—Eminent Domain by Water Commission. This bill would allow the State Water Conservation Commission, in the event of a dispute over damages in condemning land for State purposes, to deposit the amount of damages, as determined by the county commissioners of the county in which the land is located with the clerk of the district court, receive title, and proceed with the construction of the project. The matter of final determination of such damages would then be left to later litigation. See Committee report on Natural Resources.

House Concurrent Resolution "A"—Telephone Company Taxation Study. This resolution would direct the Legislative Research Committee

to conduct a study during the next biennium of methods of taxing telephone companies, and is the outgrowth of the discovery by the Committee of the serious inequities in this field that exist in our present law. See the report of the Committee on Taxation.