

STATE AID TO PRIVATE HIGHER EDUCATION
IN NORTH CAROLINA: A HISTORICAL DESCRIPTION

by

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DEDICATED

In Loving Memory

To my parents and my sister;

To my daughter Ashley; To my unborn God Child

and

To the Feminist Movement

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It is just as well for us that the past does not die. It is just as well that despite the altruistic note of one of our adages we are not able to let bygones be bygones. It is our good fortune that we remember, and that we have perfected techniques to prop naked memory with the written record and to make it more durable and accurate. Our custom of taking records and previewing them is the main barrier that separates us from the scatter-brained races of monkey. For it is this extension of memory that permits us to draw upon experience and which allows us to establish a common proof of wisdom. Apart from the power to create, this power to store up creations and observations is man's most significant advantage over other creatures. Knowledge of things said and done--notice the past tense--is a knowledge which not merely sees us through the trivial decisions of the moment, but also stands by in the far more important times of personal or public crisis. And 'knowledge of things said and done' is Carl Becker's all inclusive definition of history.

Sherman Kent
Writing History, 1967

Chapter 1

INTRODUCTION

National inflation, declining enrollments, prohibitive energy costs, and government mandated provisions for greater equal educational opportunities imposed considerable legal and fiscal constraints on higher education institutions in the 1970's. The "Reagan Revolutionaries" with their leitmotif--the "New Federalism" (less government support and less government intrusion)--definitely promise a different set of restrictions in the 1980's. "His [Reagan's] Administration has not yet proposed to wipe out federal education spending but its actions and recommendations to date adhere to the revolutionary pattern" (Finn, 1981, p. 48). Succinctly summarized, the reduced federal education spending has affected programs ranging from remedial education for the poor to the Pell Grants and the Guaranteed Student Loan Program ("College Students Could Be Denied Government Loans," 1981, p. 9). According to Charles Saunders, Vice President of the American Council on Education, the changes in the Guaranteed Student Loan Program "would knock one-third of the current three million borrowers out of the loan program altogether" ("College Students," p. 9). Of the Pell Grants, Representative Paul Simon, D-Ill., states "for every \$100 million saved, 100,000 students will be denied a grant" ("College Students," p. 9). Perhaps Walden's truth -- "Simplify! Simplify! Simplify!"-- will by necessity be the "in" motto for the 1980's if higher

education is to survive. "Of course, the question for the 1990's will be whether survival in the 1980's is all it was cracked up to be" (Baar, 1981, p. 56).

Just how the "American institution" of higher education untangles itself from its web of complexities involving massive public aid, increased litigation, and governmental intrusion in this transitional period will be the "stuff literature is made of." However, as Leslie Fiedler (1971) so aptly put it, "Precisely the uncompromising optimism of Americans makes every inevitable failure to accomplish what can only be dreamed an unredeemable torment. Among us, nothing is winked at or shrugged away We are forever feeling our own pulses, collecting statistics . . . because we feel, we know that a little while ago it was in our power, new men in a new world (and even yet there is hope), to make all perfect" (p.362). The contemporary American (Educational) Adam, in a "celebration of belief," will ultimately, somehow, find a solution. Although the solution could involve the federal government, it is more likely to be the responsibility of state governments.

Although both public and private education have felt the impact of inflationary trends, the private sector perceives itself to be experiencing a more severe financial distress. Whether or not this "financial exigency" exists for the private sector as a whole has been a topic of debate for some time. Bowen and Minter (1975) commented: "The main stream of private higher education is far from defunct. Reports of the demise of the private sector are,

like Mark Twain's death, greatly exaggerated. However . . . there are signs of strain, and there are no guarantees against future casualties" (p. 101). [Yet, according to the National Institute of Independent Colleges and Universities, although 76 independent colleges were founded from 1970 to 1979, during this time 141 independent colleges closed, 45 independent colleges merged with other institutions, and 19 independent colleges shifted to public control (Fadil and Carter, 1980, p. 1)]. Moreover, in recent years private colleges and universities have sought (as evidenced by the plethora of studies conducted in several states showing the significance of private education and the need for support) and received a considerable amount of public support (e.g., according to the Education Commission of the States, Michigan appropriated \$14.5 million for needy students attending private institutions in 1979-80; Kansas appropriated over \$3.8 million for low and middle income students at Kansas private colleges in 1979-80; etc.).

State aid to private institutions, a controversial topic which ". . . seethes with emotion and has strong religious, philosophical and political overtones. . ." (Swanson & Igoe, 1967, preface) involves educators, economists, legislators, and an informed citizenry. "Supporters of private higher education have not generally advanced sophisticated economic arguments to bolster their case, but have instead maintained that private institutions contribute in important and unique ways to diversity, independence, quality, efficiency, and innovation within U. S. higher education"

(Breneman & Finn, 1978, p. 6). Opponents of aid to private higher education institutions cite questionable financial distress, loss of independence, and competition for legislative favor. However, since higher education has ". . . changed from an elite to a mass phenomenon, and . . . access for the low-income individual [has become] an explicit goal of public policy in many states, legislatures [have] authorized programs of scholarships, loans, and other forms of need-based student aid" (Breneman & Finn, 1978, p. 45). In fact, as of January 1, 1980, according to the Education Commission of the States, 48 of the states--the exceptions being Wyoming and Nevada--and the District of Columbia provide some type of aid to private institutions running the gamut from direct institutional contracts to direct student assistance. Twenty-one of the states--Alabama, Alaska, Connecticut, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, New York, Minnesota, Montana, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, and Wisconsin--provide direct institutional aid in various forms. All of the states except Wyoming and Nevada provide student assistance. (Utah only has guaranteed student loans and Nebraska's state scholarship program is currently involved in litigation to determine constitutionality.) (See Appendix A for a breakdown of state student assistance programs for private higher education, 1979-80.) Obviously, ". . . there is a strong public interest in the future well-being of private higher education (over half the 3,000 colleges and universities in the

United States are private institutions) . . ." (Breneman & Finn, 1978, p. 413), therefore,

State support of a pluralistic system (i.e., a coordinating public/private system in which some public funds are made available to assist the private sector) of higher education has thus emerged as a new issue of public policy in the history of higher education in America. Its increasing prominence has re-resurrected some fundamental political and legal problems inherent in the American tradition of governmental relationships with private enterprise. The appropriation of public monies for the benefit of private education agencies--particularly church-related ones--stirs political sensibilities in most states and is frequently susceptible to constitutional challenge at both the federal and state levels. (McFarlane, Chronister, & Howard, 1973, p. 594).

One state, North Carolina, began its efforts to provide state assistance to private higher education in 1971 and by 1981 had provided approximately 86 million dollars to its now 38 private colleges and universities. Although the primary objective of this study was to describe the current status of state aid to private higher education in North Carolina and the evolution of this aid, an ancillary objective was to find those who successfully fought for the establishment of state aid to private higher education in the "legislative arena" in North Carolina. Why such a study? Perhaps excerpts from George Angell's essay "Entering the Legislative Arena" (Kemerer & Satryb, 1977, p. 99) will provide background information for a rationale:

In a sense state legislatures have become the great new American melting pot that slowly sifts and sorts the dreams of people, measures them by the yardstick of public opinion, reduces them to the minimal necessities of human need, and funds only those that

will help win reelections. If this sounds negative it is not meant to be. It is an ordinary response of reasonable people to a long period of public over-assurance, overspending, underplanning, and unreasonable expectations. Such a period was 1945 to 1975 in America. It took Vietnam, Sputnik, inflation, unemployment, an oil shortage, and Watergate to raise doubts and initiate more realistic thoughts. More than anything else the specter of another Great Depression struck fear in the hearts of America, and fear can change the political scene. For the first time in thirty years, legislators in the seventies cut existing social welfare programs and generally refused to consider any new programs that cost money, no matter how humane, decent, and essential they may have seemed to their partisans.

In turn, the natural reaction to legislative intransigence is the organization of power blocs capable of overriding the fears and sometimes the sound judgment of legislators. Strong environmental groups have sprung up throughout the nation. State and national student lobbies have . . . gained . . . legislative influence. . . . Chambers of Commerce and tax reform groups have redoubled their efforts to cut public expenditures. Confederations of city, village, and county governments have become especially effective in fighting for more state aid to local governments and school districts.

But who is fighting in the state legislatures for higher education? The answer is, almost no one. At least no one with political clout. College presidents and trustees for the most part are unwilling to be drawn into power struggles and prefer to remain aloof from the tough political in-fighting that today characterizes the passage of every piece of significant legislation. There are . . . exceptions, of course, to whom higher education owes its existence and residual vitality.

The researcher, like the "some" in Robert Penn Warren's poem, "History," ". . . grope[d] toward time's cold womb . . ." and discovered those exceptions who fought for private higher education in North Carolina. Chapter 4 of this study is a description of the "exceptions" and their roles. Such a study should interest

not only North Carolinians concerned with this topic but also (1) those persons interested in similar legislation in other states, and (2) legal scholars interested in the historical evolution of state financial assistance.

Background Information for the Study

Although North Carolina's State Board of Higher Education publicly advocated co-existence of strong private and public institutions in 1961 (Planning for Higher Education, 1968), it was not until 1971 that the State enacted any policy regarding state aid to its 38 private institutions of higher education. On July 5, 1971, the 1971 North Carolina General Assembly enacted H.B. 780: AN ACT TO UTILIZE THE RESOURCES OF PRIVATE COLLEGES AND UNIVERSITIES IN EDUCATING NORTH CAROLINA STUDENTS. The Act, which recognized the State's need to keep private colleges financially healthy and open to North Carolina residents, was predicated upon the findings of four major research efforts: Planning for Higher Education in North Carolina, 1968; The Preliminary Report of the Legislative Study Commission on Student Financial Aid, Part 1 (1970); Private Higher Education in North Carolina: Conditions and Prospects (1971); and The Report and Recommendations of the North Carolina Legislative Study Commission on Student Financial Aid, Part 11 (1971) (Legislative Research Commission Report to the 1979 General Assembly of North Carolina, p. E-2). There were two types of assistance authorized by the Act: (1) a fixed sum of money to be paid to private

institutions for each North Carolina undergraduate student enrolled full-time in the fall session beginning with the fall term of 1972 (Section 1), and (2) a fixed sum to be awarded each private institution for each full-time North Carolina resident undergraduate enrolled above the number enrolled in October 1970 (Section 2). Both types of assistance, to be reallocated in scholarship funds to needy North Carolina students, had a fixed sum of \$200 per year per North Carolina resident undergraduate student (Young, 1977, pp. 13-14).

With a reformation of the North Carolina System of State Institutions in 1971 came a recodification of the North Carolina statutes regarding higher education. In October 1971, Chapter 744 of the 1971 Session Laws was incorporated into the North Carolina statutes. Section 1 of the original chapter now appears as N.C.G.S. § 116-30 (Young, 1979, p. 17).

Since the 1971 program of assistance was limited to needy students, in 1975 S.B. 45, AN ACT TO MAKE APPROPRIATIONS FOR CURRENT OPERATION OF STATE DEPARTMENT, INSTITUTIONS AND AGENCIES, AND FOR OTHER PURPOSES, was enacted thereby authorizing the State Education Assistance Authority to grant \$200 credit each academic year on the bill of every North Carolina resident undergraduate full-time student attending an approved institution. An approved institution was one ". . . accredited by the Southern Association of Colleges and Schools . . . not . . . a seminary, Bible school, Bible college or similar religious institution" [G.S. 116-22 (1)]. These awards,

not based on need, were increased to \$550 per student for the academic year 1980-81. (The 1981 General Assembly increased this amount to \$600 for 1981 and to \$650 for '82.) This assistance is known as the North Carolina Legislative Tuition Grant (NCLTG) Program.

Also, in 1975, the General Assembly appropriated the first matching funds to enable the State to participate in the federal program of "Grants to States for State Student Incentives." Designed for needy North Carolinians and designed to work in combination with other forms of student aid, particularly the Basic Educational Opportunity Grant (now known as the Pell Grants), the North Carolina Student Incentive Grant (NCSIG) Program assists those undergraduate students enrolled full-time at any approved North Carolina institution (private and public) of higher education (1978-79 Report on North Carolina Student Incentive Grants).

However, since the NCSIG Program depends on federal programs of financial aid, this study will only be concerned with a description of the program and not with the North Carolina legislation authorizing the matching funds.

Chapter 3 of this study includes a more definitive description of (1) the legislation authorizing North Carolina State aid for private higher education, (2) the financial assistance programs, and (3) the yearly appropriations of the programs.

PURPOSE OF THE STUDY

Mutual experiences, while often shared through accident or design by varying numbers of individuals, are not universal among all people, nor do individual perceptions of similar experiences evoke the same body of knowledge. If, therefore, one is to expand his cognitive potential, and if experience is the best method of achieving this end, then it often becomes necessary to study the experiences of others through the events that have shaped them--thus one is able to observe the causes of both successes and failures. This study of history further enables one to profitably apply these lessons to his own activities by avoiding pitfalls and adapting historical success formulas. This vicarious method of gaining experience provides objectivity without which, one becomes a victim, rather than a beneficiary, of the past.

With the above thought in mind, the researcher proposed this study, the purpose of which was to examine for its social importance a significant fragment of North Carolina's past. This was accomplished by meeting the following objectives: (1) describing the current status and political evolution of state aid to private higher education in North Carolina; (2) identifying and describing the roles and interests of the significant actors involved in the legislation and subsequent litigation concerning state aid; and (3) describing the issue of state aid to private higher education in a national context.

ORGANIZATION OF THE STUDY

Included in Chapter 1 is an introduction, a statement of the purpose of the research, the outline of the study, and the methodology. Chapter 2 is a description of the issue of state aid to private higher education in a national context. Chapter 3 is a description of the current status of state aid to private higher education in North Carolina and includes a description of (1) the legislation authorizing state aid, (2) the financial assistance programs, and (3) the yearly appropriations of the programs. Chapter 4 is an identification and description of the roles and interests of the significant actors involved in the legislation and subsequent litigation concerning state aid to private higher education in North Carolina. Chapter 4 also includes a description of the conflict surrounding state aid to private higher education in North Carolina. Chapter 5, a summary, includes conclusions and recommendations.

"Only events already gone by can disclose the prevailing state of things."

Jacques Barzun and Henry F. Graff
The Modern Researcher, 1977

METHODOLOGY

This is a descriptive/historical study of (1) the current status of state aid to private higher education in North Carolina; (2) the political evolution of this aid; (3) the several different interest groups and individuals involved with (a) the legislation authorizing state aid and (b) the subsequent litigation contesting the legislation; and (4) the issue of state aid to private higher education in a national context.

The researcher utilized "a kind of methodological eclecticism, making use of any available materials that enrich [ed] insight into the events of processes studied" (Williamson, John B., Karp, David A., and Dolphin, John R., 1977, p. 279). These materials included newspaper files, official reports, legal documents, letters, memoranda, related literature, House and Senate Journals, and Session Laws.

Utilizing the concept of "triangulation": testing one source against another to come up with a valid interpretation of events, the researcher also conducted interviews with significant actors involved with the issue of state aid to private higher education in North Carolina.

Specifically, the researcher

(1) reviewed the literature (books, periodicals,

newspapers, court cases, etc.) related to the national issue of state aid to private higher education;

(2) used the steps of legal research as defined by Cohen in How to Find the Law (1976) in chapters four ("Statutes and Related Materials"), six ("Legislative History"), and seven ("Administrative and Executive Publications") in locating statutes and legal/historical documents;

(3) used Statsky's Legislative Analysis: How To Use Statutes and Regulations (1975) in analyzing the North Carolina Statutes concerned with state aid to private higher education;

(4) interviewed selected key actors involved with and affected by the North Carolina legislation authorizing state aid; and

(5) interviewed selected key actors involved in the litigation contesting state aid to private higher education in North Carolina.

(See Appendix B for list of interviewees.)

Using Kerlinger's concept of the unstructured or unstandardized interview ("the research purposes govern the questions asked but their content, their sequence, and their wording are entirely in the hands of the interviewer") (1973, p. 48), the researcher constructed an interview guide or list of open-end

questions. Open-end questions were used because they

are flexible; they have possibilities of depth; they enable the interviewer to clear up misunderstanding (through probing); they enable the interviewer to ascertain a respondent's lack of knowledge, to detect ambiguity, to encourage cooperation and achieve rapport, and to make better estimates of respondents' true intentions, beliefs, and attitudes. Their use also has another advantage: the responses to open-end questions can suggest possibilities of relations and hypotheses. Respondents will sometimes give unexpected answers that may indicate the existence of relations not originally anticipated.

(Kerlinger, 1973, p. 484)

(See Appendices C, D, and E for interview guides.)

America is in transition... . There are some major risks in any transition. Good intentions often get lost in pragmatic interests. The noble is blurred and the ideal gets blunted in the wave of vested interests... . In searching for a better tomorrow, we must not lose our clear concept of the heritage that makes our nation what it is today. Let us read history accurately, interpret it correctly and apply it with wisdom.

R. G. Puckett

"Renewing America in Religious Liberty"
Church & State, Vol. 34, No. 4,
April 1981

The difficult question is, 'What is Caesar's and what is God's?' or 'What is secular not protected by the First Amendment freedom of religion and what is sectarian protected by the First Amendment freedom of religion?'

Joseph E. Bryson

"Current Church - State Issues"
November 21, 1981

Chapter 2

PAROCHIAID: THE NATIONAL SCENE

Edd Doerr of Americans United for Separation of Church and State defines "parochiaid" as "any form of direct or indirect tax aid for sectarian private schools from any level of government" ("The People Speak: Parochiaid and the Voters"). Although parochiaid does exist for all levels of education, the existence of that aid is an issue of debate focusing primarily on the interpretation of the Establishment Clause of the First Amendment to the United States Constitution (Swanson and Igoe, 1967, p. 65). Obviously, an understanding of this debate demands more than a cursory examination of state practices regarding private higher education: 48 of the states, in some cases circumventing state constitutional restrictions, provide some form of state aid to private and/or sectarian higher education. In order to provide a historical perspective, the debate demands a review of (1) the American tradition of parochiaid; (2) federal tuition tax credits, the latest proposed form of parochiaid; and (3) legal and political issues of state level subsidies to private higher education.

The American Tradition of Parochiaid

Throughout America's history, religious schools have flourished and made significant contributions to American education history (Bryson, 1980, p. 35). And throughout America's history, these

religious schools have been supported (albeit sporadically and controversially) by public funds. In fact, prior to the American Revolution, the early schools, usually operated by, or closely affiliated with, an established church (which church being contingent upon which colony) were supported by the colonial tax structures (Swanson and Igoe, 1967, p. 64).

However, after the American Revolution, with its exaltation of the "common" man, the concept of "common" or public schools emerged. Soon state monies were supporting exclusively these "common" schools which were patterned after Horace Mann's non-sectarian principles (Warshaw, 1979, p. 15). Although these early schools were under secular control, the curricula reflected the dominant Protestant ethic which was distasteful to Catholic and other denominational immigrants. This distaste for the Protestant ethic, coupled with the belief that educational and religious instruction should not be separated, led to the establishment of parochial schools which were dependent upon the church and tuition for financial support (Swanson and Igoe, 1967, p. 66). (At that time the majority of such schools were Roman Catholic; at present, Protestant Christian Academies, which Bryson (1980) calls "the most recent national education phenomenon" (p. 35) may be competing for that designation if their growth continues at its current pace.)

The Catholic complaint against the public schools was double-edged: the schools were not only illegally sectarian (Protestant),

but they were also secular. Even attempts at nonsectarian religious education failed to satisfy the Catholics (Warshaw, 1979, p. 15). (Ironically enough, early proponents of parochial aid argued that because public schools were secular, only sectarian schools could provide the need for moral education and should therefore be subsidized by the state. Contemporary proponents, however, argue that since sectarian schools perform a secular educational function for the state, they should be subsidized by the state.)

When Congress in 1897 adopted the policy that the federal government "shall make no appropriation whatever for education in any sectarian schools," several states, by amendments, included a similar prohibition in their constitutions (Warshaw, 1979, p. 16). Although today nearly every state has some form of constitutional provision prohibiting public subsidies for sectarian education, the ultimate question is, "What is considered constitutional?" or in the words of Bryson (1980, p. 36), "What is secular not protected by the First Amendment freedom of religion and what is sectarian protected by the First Amendment freedom of religion?"

The more active separationist groups--such as Americans United for Separation of Church and State, The American Jewish Congress, The American Civil Liberties Union, and public education groups--believe unequivocally that such aid is unconstitutional. However, supporters of parochial aid--such as The National Association of Independent Colleges and Universities, similar state groups, and certain religious groups, e.g., Catholics--believe otherwise.

Senator Daniel Patrick Moynihan (1979), author of a federal tuition tax credit plan, writes: "The First Amendment has nothing to do with schools. It says that there shall be no established national church. Nothing more, nothing less. Nothing, certainly, to prohibit public aid to the only kind of schools which existed at the time the First Amendment was adopted" (p. 964).

However, such a simplistic interpretation of the First Amendment Establishment Clause does not exist. In fact, there is no universally accepted interpretation of the clause, although the Supreme Court has provided parameters through its decisions. These Supreme Court decisions and their relationships to state level subsidies to private higher education are discussed in the last section of this chapter. One way of analyzing this relationship is to review other relationships, i.e., the First Amendment and the religion clauses, the First Amendment and the concept of separation of church and state, and the First Amendment and private higher education litigation. Another way of approaching the relationship is to review the controversy engendered by the latest proposed form of parochial aid, federal tuition tax credits. A combination of both approaches begins with a discussion of the First Amendment itself.

The First Amendment and the Religion Clauses. The First Amendment to the United States Constitution (adopted in December 1791) guaranteed not only religious liberty but also freedom of speech, the press, assembly, and petition. However, unlike the

last four areas of protection, religion had two "clauses":

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" (Warshaw, 1979, p. 5). James Madison, author of the First Amendment, originally proposed: "The civil rights of none shall be abridged on account of religious belief or worship nor shall any national religion be established nor shall the full and equal rights of conscience be in any manner or on any pretext, abridged" (Smith, 1972, p. 248). The House of Representatives, however, abbreviated the article: "No religion shall be established by law, nor shall the equal rights of conscience be infringed" (Smith, 1972, p. 248). Then more changes were made. Livermore of New Hampshire proposed: "Congress shall make no laws touching religion, or infringing the rights of conscience," but the House adopted the substitute proposal of Fisher Ames of Massachusetts: "Congress shall make no law establishing religion, or to prevent the free exercise thereof, or to infringe the rights of conscience" (Smith, 1972, p. 248). The article then went to the Senate where its revision provided that Congress should "make no law establishing articles of faith, or a mode of worship, or prohibiting the free exercise of religion" (Smith, 1972, p. 249). Madison and two other conferees, appointed to reconcile the House and Senate versions of the Amendment, recovered the allusion to religion (but not to conscience) and proposed the present text: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise

thereof" (Smith, 1972, p. 249).

Although Madison, a deist, strongly supported the second phase of the Amendment (free exercise), his main concern was to keep religion out of politics. Warshaw (1979, p. 6) substantiates this theory by pointing out that in "A Memorial and Remonstrance Against Religious Assessments" (1784) Madison had written:

We maintain, therefore, that in matters of religion no man's right is abridged by the institution of civil society; and that religion is wholly exempt from its cognizance. . . . It is proper to take alarm at the first experiment on our liberties. . . . The same authority that can force a citizen to contribute three pence only of his property for the support of any one establishment may force him to conform to any other establishment in all cases whatsoever.

As a secular separationist, Madison wished to protect the state from religion.

There were also those, of course, who, as religious separationists, wanted to protect religion from the state. The Baptists, religiously conservative, were just as adamant about church-state separation. It was to this group (the 1802 Danbury Baptist Association) that President Thomas Jefferson, Madison's ally and fellow secular separationist, used his now famous and oft-quoted "wall of separation" metaphor: "I contemplate with sovereign reverence that act of the whole American people which declared their legislature should 'Make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between church and state" (Warshaw, 1979, p.6).

Although Jefferson objected primarily to the establishment of religion, the Baptists' main concern was to worship as they pleased. Thus, the two religion clauses, representing these two interests, provide freedom of religion (free exercise) and freedom from religion (no establishment) (Warshaw, 1979, p.6).

However, historic perspective demands cognizance of the fact that the provisions of the Bill of Rights were designed to limit the powers of the federal government but not of the state governments (Marnell, 1966, p. 100). Affirms Warshaw (1979), "In matters of religion, the states were autonomous. In fact, one of the reasons for including the word 'respecting' in the Establishment Clause may have been to prevent Congress from dis-establishing churches that were privileged at the time" (p.8). For example, the Supreme Court refused to hear the 1833 Barron v. Baltimore case (which challenged an established state religion) because as Justice Marshall pointed out: "The First Amendment applied to the federal government but not to the states" (Warshaw, 1979, p. 8). Similarly, the Court also dismissed the 1845 Permoli v. New Orleans appeal which was concerned with free exercise of religion under state law (Warshaw, 1979, p. 8).

Although most states had incorporated the principles of the First Amendment into their constitutions or statutes by the early 1900's, it was the 1940 Cantwell v. Connecticut ruling that extended by way of the Fourteenth Amendment the religion clauses of the First

Amendment to the states. Section 1 of the Fourteenth Amendment, which became law in 1868, reads:

All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Court in Cantwell v. Connecticut ruled that the religion clauses of the First Amendment were applicable to the states under the Fourteenth. As a result of this ruling, the states are now prohibited by the United States Constitution from abridging their citizens' freedom of religion and freedom from religion (Warshaw, 1979, p. 8).

The First Amendment and The Separation of Church and State.

Although the original intentions of the separation clauses were not meant to interfere with state laws or inhibit governmental interests, neither were they meant to interfere with the many practices that tied religion and state together (Warshaw, 1979, p. 9). Marnell (1966) says, "There never was a time in American history when a National 'wall of separation' was erected between church and state by legislative fiat. The wall was slowly erected stone by stone, in some states earlier than in others, in some states more completely than in others" (p. 101).

The first appearance of Jefferson's metaphor 'wall of separation

of church and state" in the Supreme Court's opinions was in the 1879 Reynolds v. United States case when his letter to the Baptists of Danbury was quoted. States Smith (1972): "Ninety years after the adoption of the First Amendment, the court declared that the 'wall of separation between Church and State' may be accepted almost as an authoritative declaration of the scope and effect of the amendment" (pp. 253-254).

However, the concept of the separation of church and state is not simple nor is it easily understood, for as Warshaw (1979) noted,

. . . the barrier that separates church and state has come to be recognized more as a penetrable hedge than a solid wall. Church and State in America are not in fact absolutely separate, nor can they be. . . . They interact in many ways. . . . This interaction between government and religion is responsible for a devisive polarity which some people have called separationism versus accommodationism. The debate over whether the government should preserve, reduce, or expand its accommodation to religion has a long and continuing history. Unfortunately, these differences become more intense because many people take their separationist or accommodationist position according to their personal religious commitment. Division along sectarian lines promotes the kind of public religious controversy that the religion clauses were designed to alleviate. For example, on most "no establishment" issues Roman Catholics are generally accommodationist whereas certain Protestant and Jewish groups regularly support the separationist positions. On "free exercise" issues, the sectarian alignments may shift. (pp. 6-7)

The one case which exemplifies this "devisive polarity" is Everson v. Board of Education (1947). Although the specific ruling of Everson was accommodationist (i.e., the use of public funds for

bus transportation of sectarian school pupils was approved), the precedent setting definition of the Establishment Clause was separationist (Warshaw, 1979, p. 12). Cochran (1975, p. 33) quotes Justice Black:

The "establishment of religion" clause of the First Amendment means at least this: neither a state nor the Federal Government can set up a church. Neither can pass laws which aid any religion, aid all religions, or prefer one religion over another. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever this may be called, or whatever form they may adopt to teach or practice religion.

As Smith (1972) proclaimed, "With the dicta of Everson we enter the golden age of the doctrine of separation of church and state [as] Roger Williams' celebrated metaphor has never been more loudly saluted nor more unjustly burdened with so much" (p. 299). The irony of the Court approving the statute while affirming the doctrine of separation of church and state can best be seen in Mr. Justice Jackson's dissent when he compared the Court's decision to "that of Julia, who according to Byron's report 'whispering 'I will ne'er consent,' consented'" (Cochran, 1975, p. 33). Since Everson, the Court has often followed this ambivalence of declaring separationist but often ruling accommodationist.

The First Amendment, the Supreme Court, and Private Higher Education. The Supreme Court provides the "parameters of permissible and nonpermissible parochialism" (Salmon and Camp, 1975, p. 11). Decisions concerning parochialism to private higher education

institutions, although relying somewhat on decisions made concerning private elementary and secondary education, have considerations unique to private higher education. The Court, much more receptive to state and federal aid to private sectarian higher education than to private elementary and secondary education, cites these distinctions: (1) college students, less impressionable, are not as susceptible to religious indoctrination; (2) college students, coming from different localities, have more diversified backgrounds and are less likely to be involved in divisive, religiously partisan battles; (3) sectarian influence is limited in the college setting of academic freedom; and (4) the nonideological character of most of the aid prohibits the danger of long-term administrative entanglement.

Which forms of parochial aid are considered constitutional depends on the Court "doctrine" which has been stated and developed through landmark cases (educational and non-educational), specifically those in the last 30 years. That "doctrine" is simply this: "there must be (a) a clear 'purpose'; (b) a 'direct and immediate' (formerly 'primary') 'effect' of neither advancing nor inhibiting religion (sometimes referred to as 'neutrality'); and (c) avoidance of undue 'entanglement' of religion and government" (Michaelsen, 1978, p. 33). To these restrictions can be added another: the institution benefiting from the aid cannot be considered "pervasively sectarian."

This "doctrine" can be seen in the decisions of four higher education cases: Horace Mann League v. Board of Public Works (1966);

Tilton v. Richardson (1972); Hunt v. McNair (1973); and Roemer v. Maryland Board of Public Works (1976).

The 1966 Horace Mann League v. Board of Public Works (not argued before the Supreme Court) decision upheld a Maryland ruling allowing grants of State monies to a formerly church-related college but prohibiting grants to three other colleges that were "determined" to be sectarian. They were "determined" to be sectarian because of (1) the sectarian or religious statements in school catalogs, (2) religious group affiliation, (3) compulsory chapel attendance and religion courses, (4) "outcome" of graduates, and (5) community reputation (Wamble, 1975, p. 53). The Court, citing the decisions in McGowan v. Maryland (1961) and Abington v. Schempp (1963), decided that the primary operative effect would be to advance religion, since the schools were identified as being "sectarian" (Howard, 1977, p. 392).

In Tilton v. Richardson (1971), the plaintiffs questioned the constitutionality of Title 1 funds of the 1963 Higher Education Facilities Act awarded to "sectarian" colleges and universities. Title 1 authorized grants for construction of undergraduate academic facilities to both public and private colleges and universities. The defendant colleges were four Catholic Colleges and Universities in Connecticut. By a 5 to 4 vote, the Court, upholding the constitutionality of the Higher Education Facilities Act, ruled that the four defendant colleges were constitutionally eligible to receive federal funds under that statute (Wilson, 1971, p. 3).

The Court did, however, strike down the provision of the act which allowed a building, after twenty years, to be used for any purpose, secular or religious. The Court reasoned that if the buildings were then converted to religious use, the original Federal grant would have had the effect of advancing religion (Warshaw, 1979, p. 60).

Chief Justice Burger, rejecting the "simplistic argument that every form of financial assistance to church-sponsored activity violates the Religion Clauses," further elaborated that excessive entanglement between government and religion did not exist in this case (Cochran, 1975, p. 33). Warshaw (1979, p. 60) quotes Burger: "We consider four questions: First does the Act reflect a secular legislative purpose? Second, is the primary effect of the Act to advance or inhibit religion? Third, does the administration of the Act foster an excessive entanglement with religion? Fourth, does the implementation of the Act inhibit free exercise of religion?"

Accepting at face value the Congressional statement that federal assistance was needed for the expansion of college facilities, the Court had no difficulty with the first question. Primary secular effect and excessive entanglement, however, were analyzed carefully (Wilson, 1971, p. 29). Rejecting the separationist contention that "religion so permeates the secular education provided by church-related colleges and universities that their religious

and secular educational functions are in fact inseparable," the Court found that the four colleges in question had as their predominant higher education mission to provide their students with a secular education (Cochran, 1975, p. 35). Chief Justice Burger specified the criteria necessary for sectarian colleges to be eligible for government aid: "(1) no religious test for faculty or students, (2) no required attendance at religious services, (3) no required religious courses that tend to indoctrinate, and (4) commitment to academic freedom and professional standards" (Warshaw, 1979, p. 61).

In concluding the entanglement analysis for the Court, Burger differentiated between church-related institutions of higher learning and parochial elementary and secondary schools. Believing that religious indoctrination and "sectarian influences" play a lesser role at the college level of church-related education, Burger felt that "College students are less impressionable and less susceptible to religious indoctrination" (Warshaw, 1979, p. 60). Also, because the aid was of a "nonideological character," the danger of entanglement was lessened (Wilson, 1971, p. 33). Since this was a one-time single purpose construction grant, inspection as to use would involve minimal contact (Warshaw, 1979, p. 60).

The 1973 Hunt v. McNair decision upheld a South Carolina statute authorizing state bond issues to aid private colleges and universities building nonreligious facilities. Although some of

the institutions were controlled by religious sects, the Court, using criteria from Lemon v. Kurtzman (1971), determined that "the purpose was secular . . . the primary effect neither advanced nor inhibited religion . . . and the law did not foster excessive state entanglement with religion" (Warshaw, 1979, p. 71). Citing the similarity to Tilton v. Richardson (1971), the Court was satisfied that in the church-related colleges the education program was not sectarian (Warshaw, 1979, p. 71).

The Court refined the three-pronged test of Lemon v. Kurtzman in Hunt v. McNair when it "said 'when it [aid] flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission or when it funds a specifically religious activity in an otherwise substantially secular setting' then a constitutional violation may be present" (Hunt, 1981, p. 81). Religion in the colleges in Hunt v. McNair was, of course, not "so pervasive."

In Roemer v. Maryland Board of Public Works (1976), the defendants were four Catholic colleges who were given "non-categorical" institutional grants for general secular purposes. A Methodist college, originally challenged, was eliminated from this suit by becoming secular. Maryland's plan, applying to all private colleges and universities (sectarian and nonsectarian), called for annual payments and reports. To be a recipient, sectarian institutions could not use the money for non-secular purposes and their programs had to include more than only

theological degrees. The colleges passed the threefold test of Lemon v. Kurtzman (1971) and the criteria test for government aid in Tilton v. Richardson (1971). Howard (1977) cites the Court's explanation:

A classroom building, for example, is only as ideologically neutral as what goes on inside it. If the entanglement risks were minimal in periodically inspecting the uses to which the buildings in Tilton v. Richardson were put, then the risks must be equally minimal in inspecting the manner in which teachers use those same buildings in that same academic environment. . . . The mere fact that public monies may be paid in the form of annual operating expense grants rather than one-time construction grants does not necessarily increase the degree of entanglement. Indeed, a one-time construction grant program contains the seeds for even greater entanglement since every dollar paid requires long-term scrutiny of the use to which the building is put. Annual operating expense grants, on the other hand, do not require any such long-term scrutiny. (p. 398)

Federal Tuition Tax Credits

A recent Associated Press news article entitled "Tuition Tax Credits Concern Reagan" (1981, p. 18) stated that the Reagan administration for the first time is publicly voicing concern that private school tuition tax credits may be unconstitutional. In an interview with the Associated Press, R. Tim McNamar, deputy secretary of the Treasury, said: "We don't want to do anything disingenuous like pushing a bill and then seeing it declared unconstitutional. That's silly." However, presidential aides say Reagan remains committed to wholeheartedly support the enactment of a tuition tax credit plan.

Although Congress may not take up the issue again until the spring of 1982, controversy surrounding the issue is very much alive today. Although the idea of tax credits has won the new support of middle-class and low-income parents who are dissatisfied with public education, it also has mobilized the strong opposition of such groups as: the American Federation of Teachers, the League of Women Voters, the American Civil Liberties Union, and the National Education Association (Rosenblatt and Gimlin, 1981, p. 4).

Opposition of tuition tax credits has been, at times, intensely espoused as evidenced by Noel Epstein and Marshall S. Smith ("Violating the Reagan Creed," The Washington Post, Outlook Section, April 12, 1981), two of the opposition's more vociferous members:

It's just the kind of proposal to appeal to Ronald Reagan. First you create a big new federal responsibility to drain billions from the Treasury. Never mind all that talk about a balanced budget . . . finally reigning in Washington. What you want is a new, uncontrollable revenue loss that doesn't address any national problem. Then you want to make sure that this initiative intrudes deeply into state authority, that it doesn't chiefly benefit the 'truly needy,' and that it raises the prospective threat of more regulation of the private sector. But, above all, you want to make Washington responsible for something long considered none of its affair: subsidizing attachments to religious and ethnic groups. The question is not only why a federal tuition credit wouldn't be struck down by the Supreme Court . . . but why Washington should stretch its hand into this area at all. Carolyn Warner, education chief of Arizona, puts the matter bluntly: "It is either hypocrisy or ignorance or the greatest con job of the century for Washington to think that tax benefits for private school students are any of its business." . . . In short, perhaps

the most remarkable thing about the tuition tax credit plan is that conservatives can manage to keep a straight face while supporting it.

The concept of tuition tax credits is not new. In the last 30 years, Congress and the American public have supported various proposals providing tax breaks for middle income families. However, the "battle for tuition tax credits" (Salmon and Camp, 1979, p. 1) did not occur until 1978 for it wasn't until that year that the House of Representatives had ever directly voted on the issue of federal educational tax credits (Milliken, 1981, p. 1). From several amended bills of the 1978 Congress evolved the Packwood-Moynihan proposal which would have allowed the taxpayer to claim as a refund, or to subtract as a credit from federal income taxes, an amount equal to one-half of tuition and fee expenses for education. The proposal, allowing credits for expenses at post-secondary schools or undergraduate colleges, would have been limited to \$250 per student. However, after two years the limit would have been \$500 and elementary and secondary students would have been included (Catterall, 1980, p. 2). Nonpublic elementary and secondary students would have been the beneficiaries of such a bill since they are the ones who usually pay tuition (Salmon and Camp, 1979, p. 2).

Although the 1978 proposal passed the full Senate (after deletion of the provision for elementary and secondary schools), the House passed a different version (one-fourth of tuition expenses up to \$100 for nonpublic schools and up to \$250 for post

secondary education/training). The final tax bill of the 1978 session was to have included a compromise of the two bills but because of the controversy surrounding aid to elementary and secondary education the tax credit section was deleted (Catterall, 1980, p. 2). Subsequent proposals, including the 1981 Packwood-Moynihan bill (providing a refundable tax credit for half of the tuition up to \$250, rising to \$500 a year later, at any "tax-exempt" private elementary or secondary school or college and extending to graduate students and half-time enrollees in post secondary schools by 1984) have met strong opposition ("Tuition Credits Opposed," 1981, p. 22).

The arguments concerning tuition tax credit plans (exemplified by the Packwood-Moynihan plan) primarily revolve around three central issues: (1) cost; (2) beneficiaries; and (3) constitutionality.

Cost. Estimates for a federal tuition tax credit plan generally range from \$1.5 to \$2.5 billion annually for private elementary and secondary schools (Epstein and Smith; Morilly, 1981, p. 6) and up to \$500 per student per year for college and other postsecondary tuition ("Packwood-Moynihan Parochial Aid Bill Introduced," 1981, p. 3). Senator Robert Packwood (1981), of the Packwood-Moynihan Plan, estimating the cost to be about \$4 billion per year says, "That, I think, is not too big a price to pay to support the diversity and competitiveness represented by private education" (p. 70). Senator Ernest Hollings (1978), an outspoken opponent, counters with "Can it really be in the public interest to . . . double the aid of

those attending public schools to those attending private schools" (p. 277)? Senator Moynihan (1978), citing two decades of federal provisions and substantial expenditures for public education, declares:

Let there be no mistake about it. The public schools come first. . . . Let there be no mistake about this either: In the field of education, the public sector is slowly but steadily vanquishing the private. . . . Is the national government . . . to feign neutrality, all the while providing significant amounts of aid only to public schools as the schools of the nongovernment sector decline and crumble? (pp. 274-275)

Senator Hollings (1978) notes that tuition tax credits and federal assistance to public schools are "radically different" for:

Federal assistance to public schools consists primarily of special education programs for individual students -- compensatory education, help for the handicapped, the language deficient, and the poor. . . . This is targeted, special-purpose aid that goes to the needy in both the public and private schools. But the tax credit for private education translates into general assistance -- a windfall for an institution rather than a helping hand for a deserving child. (p. 277)

Proponents, claiming that private schools save the taxpayer approximately \$14 billion annually and that some of the losses of revenue would be offset by a reduction of expenditures for public schools (Salmon and Camp, 1979, p. 8), question what they consider the "paying double" of private school children's parents. Parents of private school children not only support public schools (including the afore mentioned federal assistance) through their tax dollars,

they also must pay tuition. Too, the parents feel that the absence of their children in the public schools provides a certain amount of financial relief (Morrilly, 1981, p. 7). Senator Hollings (1981) remarks, "Look: We also have public and private swimming pools. If you use that argument, we ought to send a check to everyone with a private pool because they're relieving the burden on the public pools, where their children don't have to go to swim" (p. 69).

Senator Hollings (1978) sums up the cost problem: "Packwood-Moynihan means money and bureaucracy. Claiming a tax credit means authenticating the tax return; authenticating the return means commandeering the records of both the citizen and the school; commandeering records means another new bureaucracy; and bureaucracy means intrusion and soaring expenditure" (p. 278).

Beneficiaries. Opponents perceive tuition tax credit plans as benefiting "the few at the expense of many. . . . Packwood-Moynihan confers its benefits on 4.5 million private school students at the expense of 44.5 million public school children. Most of our private school student population is middle or upper class. . . . Clearly, those with the greatest ability to pay would reap the benefits" (Hollings, 1978, p. 278). Retaliates Senator Moynihan (1978): "that our proposal would benefit only the middle class . . . is untrue. No less an authority than Thomas Sowell, the distinguished black economist, has said: 'Few groups have so much at stake in the fate of this bill as ghetto blacks.' Four hundred

thousand black and other minority-group members now attend non-government schools" (p. 275).

Opponents also feel that such plans would "proliferate sub-standard segregation academies" (Hollings, 1978, p. 277). Senator Moynihan (1978) responds: "In order to believe . . . that our proposal would result in support for segregated schools--one must believe that the Internal Revenue Service is not willing to enforce the tax code or is not competent to do so. For under our proposal no elementary or secondary student may receive a tax credit unless the IRS has certified that the school the student attends is non-discriminatory" (p. 275).

Opponents also claim that many public school students, given a \$500 incentive, will leave the system. If so, the result could be the evolution of a parallel system of education, one supported from private/public funds and benefiting the middle and upper income families, the other supported from public funds and benefiting the lower income families (Salmon and Camp, 1979, p. 8). However, whether or not there will be a mass exodus of public school students to private schools remains to be seen. According to an Associated Press--NBC News telephone poll (October 25-26, 1981), only 26 percent of the 1,598 adult respondents said they would be more likely to enroll their children in private schools ("Tuition Credits Opposed," 1981, p. 22). (Although 44 percent of the respondents favored a tax break for private school tuition, 52 percent did not favor a tax break, and 4 percent were not sure.)

However, the results of this one poll are not conclusive evidence that tuition tax credits would not make a difference in the determination of private schools over public schools.

Constitutionality. Senator Moynihan (1978) states: "It has been said that our proposal would be struck down by the Supreme Court. If so, that will be the end of it. We seek only our day in court and think of it as a matter of right that we should be given such a hearing. It is, after all, the task of the U. S. Supreme Court to make such determinations" (p. 275).

Certain forms of parochial aid to private elementary and secondary schools have been upheld by the Court. They are the following:

(1) bus transportation (Everson v. Board of Education, 1947); (2) "secular" textbook loans (Board of Education v. Allen, 1968; Meek v. Pittinger, 1975; and Wolman v. Walter, 1977); (3) the finance of state-supplied tests, diagnostic testing, and therapeutic services (Wolman v. Walter, 1977); and (4) reimbursement for state mandated practices such as testing, reporting, and recordkeeping (Committee for Public Education and Religious Liberty et al. v. Regan, 1980). On the other hand, the Court has struck down such parochial aid plans as: (1) the "purchase of services" from parochial schools, i.e., reimbursing church-operated elementary and secondary schools for (a) textbooks and instructional materials (Lemon v. Kurtzman, 1971; Earley v. Dicenso, 1971; and Robinson v. Dicenso, 1971); (b) salaries of parochial teachers of "secular" courses (Lemon v. Kurtzman, 1971); and (c) supplemental salaries of

parochial teachers of "secular" courses (Earley v. Dicenso, 1971 and Robinson v. Dicenso, 1971); (2) tuition reimbursement/tax credits to parents of students attending parochial schools (Essex v. Wolman, 1972; Committee for Public Education and Religious Liberty v. Nyquist, 1973; and Sloan v. Lemon, 1973); (3) reimbursement for teacher-prepared tests and state mandated practices such as reporting and recordkeeping at parochial schools (Levitt v. PEARL, 1973); (4) maintenance grants to parochial schools (Committee for Public Education and Religious Liberty v. Nyquist, 1973); (5) the loan of instructional materials and A-V equipment (Meek v. Pittinger, 1975); (6) the provision of auxiliary services (counseling, testing, and remedial classes) (Meek v. Pittinger, 1975); and (7) the finance of field trips (Wolman v. Walter, 1977).

According to Salmon and Camp (1979), the "controlling case in regard to tuition tax credits for elementary and secondary education is Nyquist" (p. 20). In Committee for Public Education and Religious Liberty v. Nyquist (1973), the Court invalidated New York's direct maintenance grants to nonpublic schools (most of them sectarian) and tuition reimbursements to parents of sectarian school students. Nyquist also held unconstitutional the substitution of tax relief for tuition reimbursements. Salmon and Camp (1979) further state that "tuition tax credits for elementary and secondary private education would not stand constitutional challenge . . . if Nyquist continues as precedent" (p. 20).

In higher education cases, the Court has upheld (1) state grants to private colleges not considered "sectarian" (Horace Mann League v. Board of Public Works, 1966); (2) federal grants for construction of undergraduate academic facilities even at "sectarian" colleges (Tilton v. Richardson, 1971); (3) state bond issues to aid private, even "sectarian," colleges and universities building nonreligious facilities (Hunt v. McNair, 1973); and (4) state "noncategorical" institutional grants for general secular purposes to private (sectarian and nonsectarian) colleges (Roemer v. Maryland Board of Public Works, 1976).

Although lower federal courts and district courts have upheld state tuition grants and scholarships (e.g., the 1977 Smith v. Board of Governors of the University of North Carolina case discussed in chapter 4), there has been no Supreme Court litigation concerning higher education tuition tax credit per se. "However," state Salmon and Camp (1979), "it would appear that from an analysis of lower federal court and district court decisions, that if a federal or state statute for tuition tax credits for private higher education were properly drafted, it would withstand federal constitutional challenge" (p. 25).

Legal and Political Issues of State Level Subsidies to Private Higher Education

Although the Supreme Court often permits parochial aid, those states with more stringent constitutional constraints than the

degree of separation required by the First Amendment may forbid it. "Permission is not a mandate," states Warshaw (1979, p. 16). For example, in the 1972 Brusca v. State Board of Education case, the Court ruled that "Missouri's strong and specific constitutional provisions" prohibiting public subsidies for sectarian education was not unconstitutional (Warshaw, 1979, p. 62). Subsequent district court decisions for Missouri and other states have been upheld by the Court which considered established state policies to be "a more compelling state interest than public welfare benefits to the children" (Warshaw, 1979, p. 63).

On the other hand, Supreme Court decisions have had a favorable effect on the private higher education/state relationship in that state court guidelines are generally compatible with Supreme Court guidelines (McFarlane and Wheeler, 1971, p. 25). (Cases discussed under The First Amendment, the Supreme Court, and Private Higher Education section of this chapter.) With all but two of the states providing some form of parochial aid to private higher education it is apparent that constitutional restrictions have either been amended or relaxed. Also, the political climate of the state makes a difference. For example, a strong belief in the concept of separation of church and state and/or activities of interest groups inclined to legal action (such as Americans United for Separation of Church and State) support a strong possibility of litigation, whereas in over half of the states, aid

to private higher education has simply not been the subject of judicial concerns (Howard, 1977, pp. 19-22).

Since constitutional provisions vary from state to state, any attempt at generalizing guidelines is indeed difficult. However, McFarlane and Wheeler (1971, p. 25) provide a summation of significant points that is quite helpful:

1. In the absence of explicit constraints, the general rule of law is that States may extend aid to private education, subject to the strictures of the establishment clause. . . .
2. Legal interpretations of the term (sectarian) are probably crucial in determining the limits of state support in . . . states whose constitutions contain explicit reference to church-state relationships.
3. There is a pronounced similarity between the 'conduit doctrine' which has emerged as a legal guideline at the state level, and the 'secular legislative purpose' doctrine of establishment clause interpretations.
4. Other potentially valid church-state relationships are implied by such developments as the 'child benefit theory,' financial support already afforded by various forms of tax exemption, and the 'state authority' mechanism which is used by a number of states to finance capital construction at private colleges, to underwrite revenue bonds, or to guarantee student loans.

Certain concepts mentioned by McFarlane and Wheeler in their summation of points need to be clarified: (1) "sectarian"; (2) the "conduit doctrine"; (3) "the child benefit theory"; (4) tax exemptions; and (5) "state authority" agencies.

Interpretation of Sectarian. Definitions of "sectarian,"

often obscure and equivocal, vary from state to state. McFarlane and Wheeler (1971, p. 29) cite examples:

The term 'sectarian,' when used as an adjective, means denominational; devoted to, peculiar to, pertaining to, or promotive of, the interest of a sect, or sects; especially marked by attachment to a sect or denomination; and the term, in a broader sense, is used to describe the activities of the followers of one faith as related to those of adherents of another. The term is most comprehensive in scope.

A 'sectarian school' is a school affiliated with a particular religious sect or denomination or under the control or governing influence of such sect or denomination.

A 'sectarian institution' is an institution affiliated with a particular religious sect or denomination, or under the control or governing influence of such sect or denomination; one whose purpose as expressed in its charter, and whose acts, done pursuant to powers conferred, are promotive of tenets or interests of a denomination or sect.

Such definitions have given the courts flexibility in construing a legal meaning of "sectarian." Whether or not an institution will be considered "sectarian" by the courts depends upon its "degree of religiousity." A determination of "pervasively religious" prohibits aid (e.g., Horace Mann League v. Board of Public Works, 1969) whereas a determination of "not entirely permeated by religion" (e.g., Tilton v. Richardson, 1971) sanctions aid. The criteria produced at the Horace Mann trial have been influential in determining the "sectarianism" of an institution. Colleges which have (1) mandatory sectarian theology courses; (2) standards of religious

belief and practice for their governing boards, faculty, and students; and (3) religious affiliation requirements for faculty appointment and student entrance are considered "pervasively religious" or "sectarian" (Warshaw, 1979, p. 60).

The Conduit or Pipeline Doctrine. McFarlane and Wheeler (1971) cite Kentucky Building Commission v. Effron (Kentucky Court of Appeals, 1949) as having a clear statement of the conduit or pipeline doctrine: "It is well settled that a private agency may be utilized as the pipeline through which a public expenditure is made, the test being not who receives the money, but the character of the use for which it is expended" (p. 30).

The conduit doctrine is similar to the "secular purpose and neutral primary effect doctrine" which evolved from decisions beginning with the purpose and primary effect test of the 1963 Abington v. Schempp case. State courts, using the conduit doctrine and the "secular purpose" doctrine, have justified the use of public monies for private higher education by emphasizing the public benefits and deemphasizing the incidental benefits to religion.

The Child Benefit Theory. Although the child benefit theory (certain kinds of aid benefit the child rather than the institutions which are incidental beneficiaries) is most often used in arguments for parochial aid to private elementary and secondary schools, the theory, nonetheless, says Howard (1977, p. 31), is relevant to private higher education in two ways:

First, in states whose courts have accepted the theory in any context, the chances are that the state's courts are less strict in general in applying state constitutional church-and-state provisions that would be the courts of a state which rejects the child benefit theory.

Second, regardless of the specific legal applications of the doctrine, the reasoning which led so stout a champion of the separation of church and state as Justice Black to uphold New Jersey's bus transportation program in Everson is useful both in fashioning and in defending aid to students in private colleges and universities.

Tax Exemptions. McFarlane and Wheeler (1971) note that the property tax exemption, a form of state aid, is not usually considered in discussions concerning parochial aid to private higher education (p. 34). Yet most state constitutions have tax exemption provisions for property used for educational purposes. If not, exemptions are granted legislatively. McFarlane and Wheeler (1971) further comment that property tax exemption, in essence, amounts to a subsidy for private school students since a higher tuition would be necessary if the property did not have tax exempt status (p. 35).

State Authorities. State authorities are legislatively created agencies responsible for different functions, depending upon the state, but typically for (1) the issuance of revenue bonds to provide financing for facilities at both public and private higher education institutions; and (2) the administration of funds for student loans and grants.

Parochial aid to private higher education takes many forms: contracts, property tax exemptions, direct appropriations, revenue bonds, tuition grants, student loans, etc. However, the most popular form is any type of student aid since this form of aid is legally sanctioned (child benefit theory; "secular purpose" theory) and generally politically expedient. According to Howard (1977), "Such programs are often the first that a state enacts when as a policy matter the legislature decides to deal with the needs of the private sector of higher education" (p. 32). North Carolina, whose programs of state aid to private higher education are examined in the following chapter, is a classic example: the initial legislation involving state aid to private higher education authorized contracts to qualified institutions which converted the monies received into scholarship funds for "needy" (defined in chapter 3) North Carolina undergraduate students.

Chapter 3

THE CURRENT STATUS OF STATE AID TO PRIVATE HIGHER EDUCATION IN NORTH CAROLINA

North Carolina has three general programs of state aid to private higher education: (1) the North Carolina State Contractual Scholarship Fund (SCSF), (2) the North Carolina Legislative Tuition Grant (NCLTG) Program, and (3) the North Carolina Student Incentive Grant (NCSIC) Program.

The North Carolina State Contractual Scholarship Fund

The North Carolina State Contractual Scholarship Fund, established in 1972, is the result of July 1971's H.B. 780: AN ACT TO UTILIZE THE RESOURCES OF PRIVATE COLLEGES AND UNIVERSITIES IN EDUCATING NORTH CAROLINA STUDENTS, the first North Carolina statute supporting private higher education, which reasoned that:

Whereas, the private institutions of higher education in this State are currently educating approximately 25,000 North Carolinians each year; and

Whereas, if these 25,000 students were all enrolled at publicly-owned colleges and universities rather than at private institutions, the cost to the State, in current operating expenses alone, would be approximately \$1,283 a year for each student at a senior college or university and approximately \$750.00 for each student in the Community College System; and

Whereas, the private institutions have the facilities and personnel to provide education for additional numbers of North Carolinians; and

Whereas, many of the private institutions have, in recent years, found it increasingly difficult to meet operating expenses; and

Whereas, it is in the interest of the State that the private institutions continue to educate at least as many North Carolinians as are currently enrolled, and, if possible, a larger number the State should encourage and assist them to do so.
(See Appendix G.)

When H. B. 780 (Chapter 744 of the 1971 Sessions Laws) was incorporated in October 1971 into the North Carolina statutes regarding higher education, Section 1, which authorized institutional contracts, became North Carolina General Statute § 116-19. N.C. G.S. § 116-119, "Contracts with private institutions to aid North Carolina students," reads:

In order to encourage and assist private institutions to continue to educate North Carolina students, the Board of Governors of the University of North Carolina is hereby authorized to enter into contracts with the institutions under the terms of which an institution receiving any funds that may be appropriated pursuant to this section would agree that, during any fiscal year in which such funds were received, the institution would provide and administer scholarship funds for needy North Carolina students in an amount at least equal to the amount paid to the institution, pursuant to this section, during the fiscal year. Under the terms of the contracts the Board of Governors of the University of North Carolina would agree to pay to the institutions, subject to the availability of funds, a fixed sum of money for each North Carolina student enrolled at the institutions for the regular academic year, said sum to be determined by appropriations that might be made from time to time by the General Assembly pursuant to this section. Funds appropriated pursuant to this section shall be paid by the Department of Administration to an institution upon recommendation of the Board of Governors of the University of North Carolina and on certification of the institution showing the number of North Carolina students enrolled at the institution as of October 1 of any year for which funds may be appropriated.
(See Appendix H.)

Approved institutions receive \$200 per year per FTE (Full-time Equivalent) North Carolina student from the North Carolina Contractual Scholarship Fund. "'Institution' shall mean an educational institution located in this State that is not owned or operated by the State of North Carolina or by an agency or political subdivision of the State or by any combination thereof; that is accredited by the Southern Association of Colleges and Schools under the standards of the College Delegate Assembly of said Association and that is not a seminary, Bible school, Bible college or similar religious institution"[N.C.G.S. § 116-22 (1)]. (See Appendix 1.) "'Student' shall mean a resident of North Carolina in accordance with definitions of residency that may from time to time be adopted by the Board of Governors of the University of North Carolina and published in the residency manual of said Board; and a person who has not received a bachelor's degree, or qualified therefor, and who is otherwise classified as an undergraduate under such regulations as the Board of Governors of the University may promulgate. The enrollment figures required by G.S. § 116-19 through 116-22 shall be the number of full-time-equivalent students as computed under regulations prescribed by the Board of Governors of the University of North Carolina"[N.C.G.S. § 116-22 (2)]. (See Appendix 1.) This assistance is reallocated in scholarship funds to "needy" (as determined by the institutions) N. C. students. "The determination of need is based on the Parent's Confidential Financial Statement, a national instrument administered by the

Educational Testing Service (ETS) of Princeton, New Jersey. Family Financial levels below which a student may be classified as 'needy' are established by ETS and may vary from year to year" (Young, 1977, p. 24). Since the institutions determine the amount of the grants, grants may range from a small sum to the full cost of attendance (Legislative Research Commission Report to the 1979 General Assembly, p. E-6).

N.C.G.S. § 116-21 authorized the Board of Governors of the University of North Carolina "to prescribe the form of the contract to be executed under G.S. 116-19 and 116-20, to require of the institutions such reports, statements, and audits as the Board may deem necessary or desirable in carrying out the purposes of G.S. § 116-19 through 116-22 and to make any rules or regulations that will, in the opinion of the Board, help to achieve the purposes of G.S. § 116-19 through 116-22." (See Appendix I.) S.B. 45 (1975 Session Laws Chapter 875, § 30) added this restriction: "Expenditures . . . shall be used for secular purposes only." (See Appendix J:1.) S.B. 594 (1975 Sessions Laws Chapter 983, § 56) imposed this limitation: "funds for private colleges shall be placed in a separate, identifiable account in each eligible institution's budget/chart of accounts. All funds in this account shall be provided as scholarship funds for needy North Carolina students during the fiscal year, with any remaining funds to revert to the General Fund. Each student awarded a scholarship from this account shall be notified of the source of the funds and of

the amount of the award."

Table 1 (Full-time Undergraduate North Carolina Resident "Needy" Students Assisted by State Contractual Scholarship Fund for North Carolina Private Colleges and Universities) is an abbreviated summary of the monies appropriated and allocated to the institutions, the funds used by the institutions, and the number of students aided each year from 1972-73 to 1980-81. The undergraduate full-time equivalency enrollment count for those years is also included. Although insufficient data precludes an accurate analysis of the students assisted and the funds used (prior to 1976, scholarship money awarded from the State was not kept in a separate account), one observation can be made: the difference between the full-time equivalency enrollment in 1972-73 (22,800) and 1979-80 (23,999) was a total of 1199 or an increase of 5.2% while the difference in allocations for those years (\$1,016,851 in 1972-73; \$4,799,766 in 1979-80) was a total of \$3,782,915 or an increase of 372%. The explanation for such a discrepancy is this: the initial appropriation of \$26.59 per full-time equivalent North Carolina undergraduate resident student in 1972-73 was raised to \$200 by the 1973 General Assembly for 1973-74 and has remained \$200 since then (Legislative Research Commission Report to the 1979 General Assembly, p. E-5).

The North Carolina Legislative Tuition Grant Program

The second assistance program, the North Carolina Legislative Tuition Grant (NCLTG) Program, was established by the 1975 North

Table 1
FULL-TIME UNDERGRADUATE NORTH CAROLINA RESIDENT "NEEDY" STUDENTS
ASSISTED BY THE
STATE CONTRACTUAL SCHOLARSHIP FUND
NORTH CAROLINA PRIVATE COLLEGES AND UNIVERSITIES

YEAR	AMOUNT APPROPRIATED BY LEGISLATURE	AMOUNT ALLOCATED TO INSTITUTIONS	FUNDS USED BY INSTITUTIONS	ACTUAL NUMBER OF STUDENTS AIDED	N.C. UNDERGRADUATE FTE (Fall)
1972-73	\$1,025,000	\$1,016,851	\$ *	*	22,800
1973-74	4,600,000	4,384,032	*	*	21,923
1974-75	4,600,000	4,436,200	*	*	22,182
1975-76	4,600,000	4,369,566	*	*	21,848
1976-77	4,600,000	4,539,750	4,502,793	8,327	22,694* *
1977-78	4,700,000	4,643,984	4,632,457	7,734	23,196* *
1978-79	4,800,000	4,664,566	4,644,671	7,626	23,302
1979-80	4,800,000	4,799,766	4,699,807	8,068	23,999
1980-81		4,933,616			

* These figures are not available because prior to 1976 institutions were not required to award scholarships from the State money that they received. They were requested to award scholarships for needy students from all sources (their own scholarship funds and the funds received from the State), in an amount at least equal to the money that they received from the State.

** After adjustments.

(Information obtained from Dr. A. K. King, Assistant to the President, General Administration, The University of North Carolina)

Carolina General Assembly to provide assistance to North Carolina residents attending eligible private higher education institutions in North Carolina. Section 30 of S.B. 45: AN ACT TO MAKE APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENT, INSTITUTIONS, AND AGENCIES, AND FOR OTHER PURPOSES states "there is hereby granted to each full-time North Carolina undergraduate student attending an approved institution as defined in G.S. 116-22 (1) [previously defined in this chapter in The North Carolina State Contractual Scholarship Fund section], the sum of two hundred dollars (\$200.00) per academic year, which shall be distributed to the student as hereinafter provided" (See Appendix J:2). Not based on need, the NCLTG "pays a portion of the tuition charges of every North Carolinian enrolled full-time at one of the approved institutions in the form of a capitation grant" (North Carolina Legislative Grant Program Annual Report 1979-80, p. 1).

Each eligible or approved institution enters into a Participation Agreement with the statute designated administering agency, the North Carolina State Education Assistance Authority. The chief executive officer of each participating institution designates a campus official to serve as "liaison between the institution and the Authority (to be) responsible for all matters relating to the administration of NCLTG awards on the respective campuses" (North Carolina Legislative Tuition Grant Program Annual Report, 1979-80, p. 2).

In order to receive a NCLTG award, students complete a

special application at the designated office on campus and must:

- (1) be a resident of North Carolina for the purposes of tuition payment under the terms and conditions of The Residency Manual of the University of North Carolina, and
- (2) be enrolled full-time as an undergraduate student in a North Carolina private college or university as defined in G.S. 116-22 (1), and
- (3) be certified to the Authority by an approved institution as to eligibility and enrollment as defined in the Regulations of the program, and
- (4) not be enrolled in a program of study designed primarily for career preparation in a religious vocation.
(North Carolina Legislative Tuition Grant Program Annual Report, 1979-80, p. 2.)

The NCLTG designated official at the participating institution determines eligibility of students.

The program's funds depend each year on the appropriations made by the North Carolina General Assembly. The authorized maximum NCLTG award for 1980-81 was \$550 (North Carolina Legislative Tuition Grant Program Annual Report, 1980-81, p.3). The 1981 General Assembly increased this amount to \$600 in 1981 and \$650 in 1982.

Table 2 is a summary of the amount of grants and number of students assisted by the NCLTG Program for the years 1975-81. In 1975-76, 22,234 students were assisted by grants (of \$200 per student) totaling \$4,028,465; in 1976-77, 23,142 students were assisted by grants (of \$200 per student) totaling \$4,183,669; in 1977-78, 23,673 students were assisted by grants (of \$300 per student)

Table 2

FULL-TIME UNDERGRADUATE NORTH CAROLINA RESIDENT STUDENTS
ASSISTED BY THE NORTH CAROLINA LEGISLATIVE TUITION GRANT (NCLTG) PROGRAM

1975-76 - 1980-81

Appropriations from General Assembly	\$4,200,00 1975-76		\$4,600,000 1976-77		\$6,500,000 1977-78		\$9,000,000 1978-79		\$10,687,500 1979-80		\$12,870,000 1980-81	
	Students	Total	Students	Total	Students	Total	Students	Total	Students	Total	Students	Total
Net Total	Assisted	Grants	Assisted	Grants	Assisted	Grants	Assisted	Grants	Assisted	Grants	Assisted	Grants
All Institutions	22,234	\$4,028,465	23,142	\$4,183,669	23,673	\$6,418,932	23,888	\$8,641,512	24,696	\$10,606,910	25,578	\$12,677,224
Private Senior Institutions												
Atlantic Christian	1,226	\$ 217,700	1,255	\$ 227,200	1,239	333,922	1,238	442,800	1,299	555,503	1,267	619,300
Barber-Scotia	295	52,000	329	58,800	288	78,000	272	95,000	277	96,652	185	92,125
Belmont Abbey	235	40,300	222	40,400	200	54,300	235	82,600	266	109,015	319	157,025
Bennett	215	41,100	251	46,400	251	70,650	287	107,600	306	134,180	296	150,975
Campbell	1,437	285,200	1,497	265,700	1,488	402,450	1,325	480,600	1,382	589,487	1,569	779,900
Catawba	468	82,868	462	82,870	478	124,700	478	173,000	526	225,607	551	274,450
Davidson	410	79,594	437	84,728	416	121,100	410	156,930	426	197,438	440	234,849
Duke	874	161,100	824	151,900	808	227,130	871	332,040	875	386,930	875	454,850
Elon	1,301	230,500	1,325	236,400	1,424	381,900	1,411	504,462	1,351	565,012	1,387	680,900
Gardner-Webb	946	173,200	902	162,600	925	253,500	1,049	367,200	1,069	452,646	1,161	554,400
Greensboro	333	60,556	398	72,000	433	120,150	416	151,000	409	180,964	385	199,650
Guilford	849	143,047	793	138,561	805	208,212	791	269,840	744	308,969	765	366,025
High Point	612	113,200	577	106,100	538	147,300	595	209,600	711	301,373	874	418,275
Johnson C. Smith	358	63,400	651	115,100	681	183,450	676	237,400	639	271,680	657	322,025
Lenoir-Rhyne	900	166,500	882	161,600	873	239,325	862	322,100	866	377,848	906	440,275
Livingstone	466	89,000	441	82,400	479	135,300	471	171,200	445	193,790	464	226,050
Mars Hill	1,028	177,500	1,002	176,400	1,088	280,950	1,135	399,000	1,193	498,970	1,191	575,850
Meredith	1,001	189,400	1,054	198,460	1,081	305,940	1,109	419,400	1,145	507,854	1,171	597,300
Methodist	530	91,200	632	108,200	659	168,150	653	220,800	599	242,943	610	283,800
N. C. Wesleyan	279	46,400	321	52,800	331	80,640	386	127,040	461	181,034	493	226,325
Pfeiffer	636	114,800	656	114,400	631	170,100	560	201,400	499	218,714	532	267,025
Queens	199	36,100	206	36,800	177	47,700	179	62,200	181	77,897	210	104,775
Sacred Heart	114	19,700	151	27,800	174	46,050	173	59,200	329	123,489	274	127,325
St. Andrews	233	43,400	248	45,800	271	75,000	295	107,000	341	149,149	406	205,700
St. Augustine's	796	144,900	865	152,200	989	262,200	1,019	372,400	1,090	461,951	1,066	529,100
Salem	297	56,800	290	54,800	271	77,100	295	112,800	287	132,049	304	157,850
Shaw	788	137,000	769	128,300	723	183,000	656	229,200	699	275,995	802	370,975
Wake Forest	1,308	242,800	1,350	255,200	1,369	387,300	1,404	532,800	1,451	658,087	1,442	749,925
Warren Wilson	120	21,900	157	28,150	164	44,053	163	57,700	167	70,891	173	87,450
Wingate*	-	-	-	-	1,152	312,600	1,204	440,800	1,328	583,255	1,352	689,425
Private Senior Total	18,254	\$3,294,165	18,947	\$3,412,069	20,406	\$5,522,172	20,618	\$7,445,112	21,311	\$9,128,372	22,127	\$10,943,899

*Wingate College became a senior institution in the 1977-78 academic year.

Table 2 (continued)

	1975-76		1976-77		1977-78		1978-79		1979-80		1980-81	
	Students Assisted	Total Grants	Students Assisted	Total Grants	Students Assisted	Total Grants	Students Assisted	Total Grants	Students Assisted	Total Grants	Students Assisted	Total Grants
<u>Private Junior Institutions</u>												
Brevard	296	\$ 55,500	338	\$ 63,400	384	\$108,450	388	\$138,600	414	\$181,673	418	\$209,275
Chowan	460	81,300	405	72,800	417	111,510	491	174,400	509	214,873	483	237,875
Lees-McRae	521	94,000	591	106,800	585	156,150	556	201,400	567	242,474	587	281,050
Louisburg	516	94,400	574	104,300	589	154,650	617	223,000	654	284,745	692	351,450
Montreat-Anderson	245	44,100	251	44,500	251	68,400	233	86,200	224	97,364	231	114,675
Mount Olive	290	52,700	289	52,300	329	89,250	306	109,200	337	144,868	374	187,275
Peace	472	92,200	495	95,900	472	137,850	456	176,400	439	201,395	457	241,175
St. Mary's	226	44,500	212	41,600	240	70,500	223	87,200	241	111,146	209	110,550
Wingate*	954	175,600	1,040	190,000	-	-	-	-	-	-	-	-
Private Junior Total	3,980	\$734,300	4,195	\$ 771,600	3,267	\$ 896,760	3,270	\$ 1,196,000	3,385	\$ 1,478,538	3,451	\$ 1,733,325
GRAND TOTAL												
Senior & Junior Institutions	22,234	\$ 4,028,465	23,142	\$ 4,183,669	23,673	\$ 6,418,932	23,888	\$ 8,641,512	24,696	\$10,606,910	25,578	\$12,677,224

NOTES:

* Wingate College became a senior institution in the 1977-78 academic year.

(1) Maximum per year grant

1975-76 \$200
 1976-77 200
 1977-78 300
 1978-79 400
 1979-80 475
 1980-81 550

(2) Data for 1975-80 reflect adjustment for cancellations and partial awards.

(3) Data obtained from the North Carolina State Education Assistance Authority.

totaling \$6,418,932; in 1978-79, 23,888 students were assisted by grants (of \$400 per student) totaling \$8,641,512; in 1979-80, 24,696 students were assisted by grants (of \$475 per student) totaling \$10,606,910; and in 1980-81, 25,578 students were assisted by grants (of \$550 per student) totaling \$12,677,224. The difference in the total amount of grants for those years is \$8,648,759 or an increase of 214 percent. Although the State was assisting only approximately 3,000 more students in 1980-81 than it was in 1975-76, it cost the State approximately \$8,000,000 more to do so. With an increase of \$50 in 1981 (making the grant \$600 per student), the State is paying an additional \$1,000,000.

The North Carolina Student Incentive Grant Program

The purpose of the third program, the North Carolina Student Incentive Grant (NCSIG) Program, "is to assist in removing economic barriers for North Carolinians who demonstrate the presence of 'substantial financial need' in meeting the costs of enrolling full-time in a program of undergraduate education in a North Carolina college, university, or community college/technical institute. NCSIG is designed to work in combination with other forms of student aid, particularly Basic Educational Opportunity Grants (BEOG), as part of a 'package' of assistance" (1979-80 Report on North Carolina Student Incentive Grants, p. 1). Authorized by North Carolina General Statutes 116-201 to 116-201.23, the program provides matching funds to a Federal grant allocated to North Carolina under

Title IV, Part A, of the Higher Education Act of 1965 as amended.

"The Federal grant requires the State match on a 1:1 ratio and encourages that the grant programs be available to residents attending as broad a range of educational institutions as is represented in the respective States" (1979-80 Report on North Carolina Student Incentive Grants, p. 2).

The North Carolina State Education Assistance Authority, the recipient of the Federal grant, has College Foundation, Inc., a private nonprofit corporation established in 1962 by the Governor and Council of State, to administer the need-based comprehensive grant program to students who demonstrate "substantial financial need." In determining "substantial financial need," the Authority utilizes either the College Scholarship Service (CSS) or the American College Testing (ACT) program. "NCSIG Regulations restrict eligibility to those families with an expected family contribution (EFC) of \$600 or less" (1979-80 Report on North Carolina Student Incentive Grants, p. 2).

Table 3 is a summary of the number of students assisted by the North Carolina Student Incentive Grant Program and the combined federal and state dollars awarded (no breakdown of state aid only was available) for the years 1975-80. A total of 5,022 students were assisted by the program which awarded over 3 million dollars, approximately 2 million of which were state funds.

Table 3

FULL-TIME UNDERGRADUATE NORTH CAROLINA RESIDENT STUDENTS
ASSISTED BY THE NORTH CAROLINA STUDENT INCENTIVE GRANT PROGRAM

Year	1975 - 1980		Combined Federal & State Dollars Awarded*
	Private Institutions	Number of Students	
1975-76	2 year	41	\$ 23,344
1975-76	4 year	309	239,632
1976-77	2 year	181	101,750
1976-77	4 year	856	659,048
1977-78	2 year	144	89,790
1977-78	4 year	1,009	833,850
1978-79	2 year	115	60,685
1978-79	4 year	1,076	835,511.99
1979-80	2 year	103	53,901
1979-80	4 year	<u>1,188</u>	<u>841,593.50</u>
TOTAL		5,022	\$3,738,835.49

* There was no breakdown information available on state funds only. However, approximately \$2,000,000 total were State funds.

(Information obtained from the 1975-80 annual reports on the North Carolina Student Incentive Grant Program which were provided by the State Education Authority)

Summary

From 1972 to 1981, the Board of Governors of the University of North Carolina (administering agency for the State Contractual Scholarship Fund) has administered approximately \$38,000,000 to approved private institutions (information obtained from A. K. King, Assistant to the President, General Administration, the University of North Carolina). From 1975 to 1981, the North Carolina State Education Assistance Authority (administering agency for the North Carolina Legislative Tuition Grant and North Carolina Student Incentive Grant programs) has administered approximately \$46,000,000 for the North Carolina Legislative Tuition Grant program and a little over \$2,000,000 for the North Carolina Student Incentive Grant program (information obtained from annual reports of the agency, courtesy of Stan Broadway, Executive Director of the agency). Hence North Carolina has allocated approximately \$86,000,000 for students attending private institutions of higher education in North Carolina from 1972 to 1981. (See Table 4 for an abbreviated summary of the State Contractual Scholarship Fund and North Carolina Legislative Grant programs from 1972 to 1981.)

Table 4

NORTH CAROLINA STATE FUNDS RECEIVED BY THE STATE'S PRIVATE UNIVERSITIES AND COLLEGES
1972-73 through 1980-81

	STATE CONTRACTUAL SCHOLARSHIP FUND (SCSF)	NORTH CAROLINA LEGISLATIVE TUITION GRANTS (NCLTG)	Total
1972-73	\$ 1,016,851	-	\$ 1,016,851
1973-74	4,384,032	-	4,384,032
1974-75	4,436,200	-	4,436,200
1975-76	4,369,566	\$ 4,014,665	8,384,231
1976-77	4,539,750	4,167,149	8,706,899
1977-78	4,643,984	6,415,905	11,059,889
1978-79	4,664,566	8,639,712	13,304,278
1979-80	4,799,766	10,606,910	15,406,676
1980-81	4,933,616	12,870,000 ^a	17,803,616
	\$37,788,331 ^b	\$46,714,341	\$84,502,672 ^c

^aThis is the 1980-81 appropriation from the General Assembly. The amount spent during the 1980 fall semester was \$6,432,473, and it is expected that the remaining \$6,437,527 will be spent during the 1981 spring semester.

^bThis includes \$137,943 awarded to Kittrell College from 1972 through 1974 and \$11,047 awarded to Mitchell College in 1972-73.

^cThe total amount appropriated by the General Assembly was \$84,808,557.

Sources: SCSF DATA was compiled from vouchers certified by private institutional presidents.
NCLTG DATA was provided by the North Carolina State Education Assistance Authority.

(Information obtained from Dr. A. K. King, Assistant to the President, General Administration,
The University of North Carolina.)

When man came down out of the trees and walked out of the jungle and first recognized the necessity for working together for the good of the individual and the community at large, he committed himself to a system of rules which we now refer to as law.

Without the law, the masses of men are mobs.

Without the law, the weak are helpless.

Without the law, might makes right.

Governor Terry Sanford
April 30, 1963

We believe that North Carolina is well served by its independent colleges and universities because the State can come out a lot better financially by subsidizing North Carolina students in private colleges rather than paying full cost at state supported institutions. The diversity we have with the state university system, the community college system, and the private higher education system makes for a good mix, a richer system

Governor James B. Hunt, Jr.
June 25, 1981

"The play's the thing."
William Shakespeare
1600

Chapter 4

THE HISTORY OF STATE AID TO PRIVATE HIGHER EDUCATION IN NORTH CAROLINA

North Carolina's participation in programs of financial assistance to private higher education can be traced as far back as 1841. That year the State provided a loan of \$10,000 to Wake Forest University. Then in 1859, the State provided another loan in the amount of \$10,000 to Trinity College (Planning for Higher Education in North Carolina, 1968, p. 252). Further assistance has only been given in the last 30 years (Legislative Research Commission Report to the 1979 General Assembly of North Carolina, p. E-1).

Prior to the 1971 and 1975 legislation which authorized the current North Carolina programs of state aid to private higher education, assistance existed in the form of indirect aid: special income tax exemptions for parents (\$600 for a dependent enrolled full-time at either a public or private college), different types of categorical student scholarships (medical, dental, nursing, and teaching), and loan programs (the low-interest guaranteed student loan program and the prospective teacher scholarship-loan program) (Higher Education in North Carolina, 1969-71, 1972, pp. 157-158). (This on-going indirect assistance is provided to students attending either public or private institutions.) However, there were no general fund appropriations for the private sector as there was

no policy. The 1971 legislation, reflecting a national trend, was a major change in state policy (Legislative Research Commission Report to the 1979 General Assembly of North Carolina, p. E-1).

The drama surrounding this change in state policy actually began in the 1960's. Produced by the "zeitgeist" and directed by a chain of events covering a 20-year period, the state policy "drama" features several protagonists: Terry Sanford (President of Duke University); Cameron West (President of Pfeiffer College); Ben Fisher (former Executive Secretary for the Council on Christian Higher Education of the Baptist State Convention of North Carolina); Stan Broadway (Executive Director of the North Carolina State Education Assistance Authority); David Frazier (President of Peace College); Norman Wiggins (President of Campbell College); Virgil McBride (former Executive Director of the North Carolina Association of Independent Colleges and Universities); John Henley (current President of the North Carolina Association of Independent Colleges and Universities); James Olliver (former Director of Research for the North Carolina Association of Independent Colleges and Universities; author of The Legal Status of State Aid to Private Higher Education, 1975; and current Vice President of Administration at Pfeiffer College); Michael Smith (plaintiff in the 1977 Smith v. Board of Governors of the University of North Carolina case); John Sanders (Director of the Institute of Government, the University of North Carolina at Chapel Hill); Roy Carroll (Vice President of Planning at the University of North Carolina at Chapel Hill); and

R. D. McMillan (legislative liaison for the North Carolina University System) -- to name only a few. Also involved is a supporting cast of hundreds including Governors Scott, Moore, Holshouser, and Hunt; legislators in favor of state aid (who readily admit their private college affiliations); legislators who aren't in favor of state aid; private citizens; and representatives of various organizations for and against the programs of aid.

What controversy exists could more aptly be described as "dramatic tension," a necessary ingredient in any good play, although there is no unfolding drama as such. Held together by the threads provided by the dramatic tension and the cast of characters, the "drama" actually consists of a collection of scenes which utilize dramatic events, historical documents, legal documents, public correspondences, and legislative enactments. However, a look at these "scenes," beginning in 1961 and ending in 1981, provides a framework for conceptualizing the drama inherent in this slice of North Carolina history.

1961

"In 1961 the North Carolina Board of Higher Education [created by the General Assembly of 1955] adopted a resolution [initiated by William C. Archie, Director of the North Carolina Board of Higher Education] including these sentences: 'The State of North Carolina could not provide an education for its people at the same quality level were it not for the tremendous contributions made

by . . . private institutions The magnitude of the job to be done, . . . persuading more qualified high-school graduates to enter college will . . . demand the cooperative efforts of both public and private institutions'" (Private Higher Education in North Carolina: Conditions and Prospects (1971), p. 1). In March 1961, not long after he became Governor of North Carolina, Terry Sanford (1961-65), made a speech in Buie's Creek on behalf of a fund-raising drive for Campbell College. Then Chairman of the Board of Trustees of the University of North Carolina, Sanford, now President of Duke University, "sensed a public responsibility for the health of the private college . . . and saw the role of the State as promoting both public and private higher education" (Sanford, Beyond the Straw Men). As Governor that year Sanford proposed "that the State pay a small 'tuition equalization grant' to students choosing to save the State money by going to a private college in North Carolina" (Sanford, Beyond the Straw Men). That proposal, however, was not pressed through, and it was not until 10 years later (after Sanford became President of Duke) that the legislators enacted the statute authorizing state monies for private higher education.

1962

In September 1961, Governor Terry Sanford established "The Governor's Commission on Education Beyond the High School" (Sanford, 1966, p. 82). To this commission he appointed the following

people: Clifton Blue, Irving Carlyle (Chairman), F. Stuart Chapin, Bonnie E. Cone, William C. Friday, Alfonso Elder, Deryl Hart, Mrs. Samuel Hair, W. Dallas Herring, Leo W. Jenkins, John R. Jordan, Calvin Leonard, Alex McMahon, L. P. McLendon, H. A. Mattox, Thomas J. Pearsall, Mrs. L. Richardson Preyer, Samuel Proctor, Mrs. Harry B. Stein, James Stickleleather, Shelton Wicker, Thomas Woodard, and Thomas White (Mitchell, 1966, pp. 741-742). These appointees were representatives of the University, of private colleges, of industrial education centers, of state colleges, of the legislature, and of the public at large (Sanford, 1966, p. 82). Working with a staff headed by John Sanders (currently the Director of the Institute of Government at Chapel Hill), the commission had the responsibility of (1) identifying and defining the state's needs in higher education, and (2) developing a plan of growth looking at least 20 years into the future (Sanford, 1966, p. 82).

The commission's 1962 report became North Carolina's master plan for education beyond the high school (Sanford, 1966, p. 89). And by enacting the Higher Education Act of 1963, the 1963 North Carolina General Assembly translated this master plan into state policy (Mitchell, 1966, p. 741).

How private higher education fit into the master plan was revealed by Governor Sanford in his Fayetteville (N. C.) speech, November 15, 1962. Speaking at the Founder's Day Celebration at Fayetteville's Methodist College, Governor Sanford commented:

The Commission Report is careful to point out

that "nothing we are proposing is calculated to impair the ability of the private institutions to serve the purposes for which they exist. We want to see the private institutions flourish and increase their capacity to provide their own unique contribution to see the task of educating the people of North Carolina."

Indeed it is the sound policy of the state of North Carolina to encourage private institutions in every way. . . . We need the influence of these private colleges and we need their advice. (Mitchell, 1966, p. 295)

Governor Sanford continued: "I was asked to create the mechanics whereby the private colleges could work together with the state, to give the benefit of their ideas to the Governor and the Board of Higher Education, as to how we might improve the total of education and how we might assist in proper ways the development and operation of the private colleges" (Mitchell, 1966, p. 296). (In 1968 the North Carolina Association of Independent Colleges and Universities was formed largely as a result of Governor Sanford's efforts.)

1963

In 1963 H.B. 500 (A BILL TO BE ENTITLED AN ACT TO ENCOURAGE ATTENDANCE IN INSTITUTIONS OF HIGHER LEARNING BY PROVIDING A SCHOLAR INCENTIVE PROGRAM FOR RESIDENTS OF NORTH CAROLINA) was introduced to the General Assembly by Representative Gordon Greenwood, et al. The same bill was introduced as S.B. 264 by Senator Humber, et al. In Section 1, the bill states:

As a guide to the interpretation and application of this article it is declared to be the public

policy of the State to comply with the mandate of the Constitution of the State wherein it is said: "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." The number of students who bring to an end their formal education prior to or upon completion of high school in this State is too great and there are too many so-called drop-outs. The State needs a society alive to its possibilities, capable of charting its own course, providing its own incentives to action, and competent to deal with the persisting issues which the State must face. To this end it is necessary that financial incentives be furnished by the State to students as a means of encouragement looking to the completion of college courses and the attainment of academic degrees, as well a proficiency in the art of teaching. The General Assembly, therefore, declares that in its considered judgment the public good, the public and general welfare, and the encouragement of education as enjoined by the State Constitution make advisable the enactment of this article to provide a system or plan of scholar incentives to assist full-time college students in their pursuit of undergraduate studies.

The bill, favorably reported out of the House and Senate Committees on higher education and referred to the Committee on Appropriations, would have provided grants to qualified North Carolina full-time undergraduates of up to \$100 (depending upon family income) per semester at any accredited university or college granting a baccalaureate degree. However, the bill received an unfavorable report from the Committee on Appropriations and was defeated. In a personal interview June 25, 1981, Representative Gordon Greenwood gave these reasons for the bill's defeat: (1) co-sponsors of the bill withdrew saying that monies going to students

attending private colleges would destroy the theory of separation of church and state; (2) the Community College System was introduced thus requiring future state monies; and (3) the re-organization of the university system demanded the attention of the legislators.

1965

By providing for educational opportunity grants, work-study employment and guaranteed student loans, Title IV of the (federal) Higher Education Act of 1965 (Higher Education in North Carolina, 1967-71, 1972, p. 173) was an act of serendipity to North Carolina's institutions of higher learning, especially its private institutions. A "package of assistance" to qualified students enabled many students, otherwise financially prohibited, to attend college.

Shortly after the passage of the Higher Education Act of 1965, the 1965 North Carolina General Assembly, through a bill introduced by Senator Russell Kirby, established the North Carolina State Education Assistance Authority "to insure loans under the provisions of Title IV-B of the Higher Education Act of 1965" (Higher Education in North Carolina, 1969-71, 1972, p. 176).

The North Carolina State Education Assistance Authority officially began in 1966 with Stan Broadway as the Executive Director. Currently, the State Education Assistance Authority is not only responsible for administering the insured loan program but also the North Carolina Legislative Tuition Grant program and the North

Carolina Student Incentive Grant program, two of the State's general programs of state aid to private higher education.

1968

In Planning for Higher Education in North Carolina, 1968, the State Board of Higher Education [whose Director at this time was Cameron West] included an excerpt from Governor Dan K. Moore's (1965-69) Chowan College speech:

Without a strong system of private higher education the demands might become prohibitive to the State. And, of at least equal importance, a vital check and balance against the dangers of a State higher educational monopoly would be lost. . . . The role which the State might play in providing financial assistance to the private colleges or to their students is one of the key national questions in higher education today . . . we must plan so as to encourage--not discourage the continued contributions of private and church-related institutions. We realize our future is entwined with the success of such institutions. (p. 260)

The Board further stated: "We agree that the maintenance of strong dual systems of private and public higher education is in the State's best interest. In addition to other reasons for the preservation of a dual system, we recognize that to the extent that private institutions educate citizens of the State, the State itself is saved expense" (p. 160).

The Board also recommended:

in light of all these factors, that consideration be given to providing state assistance to private higher education in North Carolina. To this end the Board of Higher Education, with the cooperation and assistance of the private institutions of higher

education, will undertake a study of how best to implement such a program and will submit a recommendation to the Governor and the General Assembly for consideration during the 1971 Legislative Session. This study will be coordinated with the study of the need to establish a statewide student assistance program. (p. 261)

* * * * *

On November 7, 1968, the North Carolina Association of Independent Colleges and Universities was formed to represent the interests of the private colleges and universities in North Carolina (Higher Education in North Carolina, 1969-71, p. 168). The Association included the then 41 (now 38) senior and private junior colleges and universities in the State. Ralph Scales, who was president of Wake Forest University, served as the first president of the association, and Virgil L. McBride served as executive director of the association. According to Virgil McBride (telephone interview, November 1, 1981), Terry Sanford and Ben Fisher were the primary forces behind the founding of the association.

The constitution of the nonprofit organization states the following as purposes of the organization:

- (1) to promote and advance the interests of higher education in North Carolina, including both public and independent colleges and universities, with special concern for the dual nature of the system, its quality, freedom and responsibility to serve the educational and cultural needs of the state, nation, and world,
- (2) to speak for the member independent colleges and universities as they serve and promote the purposes of higher education in North

Carolina and accept responsibility for their share of the education function,

- (3) to represent the interests and protect and promote the general welfare of the nonprofit tax-exempt independent colleges and universities in North Carolina,
- (4) to interpret to the general public the role and contributions in the State, and to be a source of information for the State Legislature, the Congress, and other appropriate public and private agencies,
- (5) to cooperate with public and other private boards and bodies in continued planning for higher education throughout North Carolina, recognizing the importance of the contributions to be made by the public and private institutions in the State, and
- (6) to cooperate with public and private agencies in supporting agencies for consultation and coordination between the independent and public institutions of the State in planning for new and enlarged campuses, developing new curricula, research, and community service.
(Higher Education in North Carolina, 1969-71, 1972, pp. 168-170)

The Association, a major voice for the private higher education sector during the 1971 legislative session, was most influential in the passage of H.B. 780, the first statute authorizing state aid for private higher education (Higher Education in North Carolina, 1969-71, 1972, p. 170).

1969

In 1969, the General Assembly authorized a 21-member Legislative Study Commission on Student Financial Aid. Charged with the responsibility of considering the advisability of the creation of a statewide

student assistance program for North Carolina residents attending public and private colleges in the State, the Commission was to make recommendations to the 1971 General Assembly (Joint Resolution 56, 1969 North Carolina General Assembly). Appointed by Governor Bob Scott (1969-73), the membership included five Senators and five Representatives from the 1969 General Assembly, a representative from the State Board of Higher Education, a representative from the State Board of Education, a public university president, a private college president, and seven members-at-large (Higher Education in North Carolina, 1969-71, 1972, p. 186). Representative Charles W. Phillips served as chairman of the Commission which included: James A Adams, Senator Philip J. Baugh, Representative Hugh Beam, Senator Claude Currie, Dr. Earl Danieleley [President of (private) Elon College], Mrs. Jane Downing, Senator Martha W. Evans, Merrill Evans, Dallas Herring [representing the Board of Higher Education], Watts Hill, Jr., Ashley Hogewood, Representative James Holshouser [who became Governor in 1973], Dr. Leo Jenkins, Senator Charles H. Larkins, Jr., Representative Clarence Leatherman, James Millis, Hilda Patterson, Addison Reese, Representative Donald Stanford, and Senator George M. Wood (Higher Education in North Carolina, 1969-71, 1972, p. 187).

The first part of the study, Preliminary Report of the Legislative Study Commission on Student Financial Aid, Part 1, completed in September 1970 and endorsed by the Board of Higher Education in October 1970, resulted in the unanimous adoption of

seven recommendations for public policy in the State (Higher Education in North Carolina, 1969-71, 1972, p. 187).

According to the Commission, a state supported system of student financial aid should:

- (1) be available to North Carolina students attending both public and private post high school educational institutions in North Carolina,
- (2) make aid available to North Carolina students attending approved post high school institutions, public and private in North Carolina, through the baccalaureate level,
- (3) include aid to students attending accredited proprietary institutions in North Carolina,
- (4) be administered by a centralized agency which makes awards directly to North Carolina students,
- (5) seek to eliminate aid gaps among institutions and compensate for differences in institutional resources that exist,
- (6) make aid available only on the basis of need, and
- (7) take into consideration variations in costs between different types of institutions; provided, however, that aid to a North Carolina student attending a North Carolina private institution should not exceed the true cost which would have been paid by the State (aid and tuition subsidy) if he had elected to attend a comparable public institution in North Carolina.
(Higher Education in North Carolina, 1969-71, 1972, p. 189)

Part II of the study, The Report and Recommendations of the North Carolina Legislative Study Commission on Student Financial Aid, estimating present and future needs for additional student

aid resources from the State, was presented to the General Assembly on March 2, 1971. The study, approved without a dissenting vote, contained a most important recommendation: that the 1971 General Assembly enact legislation authorizing the creation of a state student financial assistance program to be implemented by the fall of 1972. (Higher Education in North Carolina, 1969-71, 1972, pp. 190-192).

The Commission recommended the consideration of four student aid plans (one to be adopted) for "students in public or private, two-year or senior, proprietary or non-profit institutions, on the basis of need alone" (Higher Education in North Carolina, 1969-71, 1972, p. 195).

The four plans proposed were the following:

- (A) Needy students in Program A would require a total of \$30.8 million in self-help resources. Since federal, private and institutional sources are now furnishing \$20.9 million, new self-help funds (loans through expansion of the existing Guaranteed Loan Program) amounting to \$9.9 million would be required. Since the State can provide reserves and administration for approximately 10 percent of the total, the cost to the State of providing these additional self-help resources is only \$1.0 million.

Total grants needed under Program A amount to \$34.3 million. Since \$15.0 million in grant resources is now available, \$19.3 million in new grants would be required. Adding \$1.0 million to cover the cost of administering the grant program would raise the cost of providing new grant funds to \$20.3 million.

The total cost of Program A includes the State's

cost of providing new loans (\$1.0 million) plus the cost of providing new grants (\$20.3 million), a total of \$21.3 million.

To meet part of this cost in the four proposed programs the Commission would recommend that out-of-state tuition at all public institutions be raised \$300 per year. Its effect would be to generate \$3.5 million to reduce the net cost of Program A to the State to \$17.8 million. Thus, Program A would require an additional General Fund appropriation of \$17.8 million per year.

- (B) By requiring students to meet the first \$650 of need (instead of \$450 used in Program A) with a loan or job, the cost of the program would be reduced by \$10.7 million. Thus, Program B, which differs from Program A only in this one respect, would require an additional \$7.1 million per annual appropriation from the General Fund.
- (C) This program is identical to Program B, except that it assumes an increase in in-state tuition at the public senior and two-year institutions of \$100 and \$50, respectively. New tuition revenue of \$6.9 million (to be used exclusively for student aid) would more than offset the \$3.8 million increase in program costs reducing the required additional General Fund appropriation to \$4.0 million per annum.
- (D) By increasing in-state tuition rates at public senior and two-year institutions by \$200 and \$75, respectively, Program D would reduce the required additional General Fund appropriation still further, to \$1.2 million per annum.
(Higher Education in North Carolina, 1969-71, 1972, pp. 192-194)

The four programs had the same criteria for eligibility for financial assistance: (1) the student would have to be a North Carolina resident, (2) the student would have to demonstrate need, and (3) the student would have to be accepted for admission at an

accredited or approved North Carolina post-high school institution. The needs of these eligible students would be determined by a central administering state agency in cooperation with institutional student aid officers by means of a standard need analysis process (Higher Education in North Carolina, 1969-71, 1972, pp. 194-195).

The Commission, in recommending the four plans, was careful about giving preference to any one plan (Higher Education in North Carolina, 1969-71, 1972, p. 158). The 1971 General Assembly was to make the selection.

1970

A study on private higher education, conducted by the staff of the State Board of Higher Education in 1970 at the request of Governor Robert W. Scott (1969-73), was approved and published by the Board in 1971 under the title Private Higher Education in North Carolina: Conditions and Prospects (1971).

According to the study:

The private institutions in North Carolina are poor in endowment (only three of the 41 have more than \$5,000,000). Income from endowment is too small to solve their problems. Their other traditional sources of income are: tuition and fees (already so high that they are noncompetitive with public institutions), auxiliary enterprises (with a ceiling established by the affluence of the student constituency and competition with other institutions), and gifts and grants including those from church denominations (rising slightly but at a much slower rate than

educational costs). Measured by national academic square-footage averages, vacancies for 5,309 students exist at private institutions in North Carolina. By using facilities more efficiently than the average American campus, North Carolina's private institutions can accommodate in current vacancies and as replacements for out-of-state students 10,398 in-state students in 1971 and 14,237 in 1980. The State in 1970-71 appropriates \$1,283 for each student enrolled at a public four-year campus and \$750 for each at a community college; these figures cover operating expenses only. To the extent that the State can help to fill the private vacancies with in-state students at less per-capita cost than their enrollment would cost at public institutions it saves scarce tax dollars and incidentally preserves the contributions of the private institutions to the quality of life in North Carolina.

The public wish shaping the public policy of North Carolina is to increase the availability and quality of higher education for its young men and women. The private institutions of higher education in the State have been an integral part of this aspiration, and it is in the public interest that they continue to be. The goal of this study is to support fulfillment of the aspiration.

The Board of Higher Education has conducted this study of private higher education in North Carolina in full support of the goal established by the Legislative Study Commission on Student Financial Aid. The Commission focused upon aid to students and recommended, if fully funded, a student-assistance program for all needy North Carolina residents who attend public and private colleges and universities in the State. The Board, although with students always in mind, has necessarily focused upon the role, contribution, and future of private institutions and their continuing service to the State and its educational needs; it believes (1) that the education of thousands of North Carolinians has been completed or is being carried on by the private institutions at no cost to the State,

(2) that vacancies or spaces currently occupied by out-of-state students in the private institutions could serve North Carolinians at a considerable saving over the cost of providing additional spaces and instruction at public universities, and (3) that in the future as in the past a dual system (public-private) of higher education is to be preserved. (p. 55)

The Board recommended the following to the Governor and the 1971 General Assembly:

PRIMARY: The Board of Higher Education endorses the recommendations of the Legislative Study Commission on Student Financial Aid, a program designed to remove financial barriers to a higher education and to recognize the cost differential (private-public) by providing greater aid to the needy student selecting a private college. The Board would support any one of the commission's four options if it is fully funded.

ALTERNATIVE, PARTS ONE AND TWO: Partial funding of the Legislative Study Commission's proposal will drive a greater proportion of students into public institutions. If partial funding occurs, the Board recommends, to be contracted for use as scholarship funds for needy North Carolina students, an award in 1972 to the private institutions of \$200 for each North Carolinian enrolled up to the number enrolled in 1970 (\$4.6 million) and \$600 contracted as a space purchase for each (up to 1,000) enrolled additional to the 1970 figure (\$600,000). The Board recommends, whatever is funded, a restudy in the fall of 1972 and each biennium thereafter to determine the effect of State actions upon enrollment distributions and to recommend indicated modifications.

SUPPLEMENTARY: Whatever the legislative action on the preceding, the Board recommends the funding of four urban consortia of private and public institutions to make stronger and more economical programs available to students in these urban areas.

If the Primary or Primary and Alternative Recommendations are unacceptable to the General Assembly, the State--if it wishes to preserve the private institutions of higher education--must adopt other procedures at greater cost to itself. The most likely procedure would be a tuition-equalization plan that to be effective would have to provide to the private institutions a minimum of \$600 for each North Carolinian enrolled, the money to be used for tuition reduction, regardless of students' needs. This minimum would necessitate appropriation of no less than \$13.8 million a year.
(p. iii)

1971

In 1971 the General Assembly enacted H.B. 780: AN ACT TO UTILIZE THE RESOURCES OF PRIVATE COLLEGES AND UNIVERSITIES IN EDUCATING NORTH CAROLINA STUDENTS. This act, predicated upon the findings in Planning for Higher Education in North Carolina, 1968; The Preliminary Report of the Legislative Study Commission on Student Financial Aid, Part 1 (1970); Private Higher Education in North Carolina: Conditions and Prospects (1971); and The Report and Recommendations of the North Carolina Legislative Study Commission on Student Financial Aid, Part 11 (1971) (discussed, respectively, in the 1968, 1969, 1970, and 1969 sections in this chapter), authorized a program of state aid which paralleled the two parts of the Alternative Recommendation made by the Board of Higher Education in its report Private Higher Education in North Carolina: Conditions and Prospects (1971). The 1971 statute had two elements, one of which is still operative and which provides the program of

assistance known as the State Contractual Scholarship Fund (discussed in chapters 1 and 3). Although the initial appropriation for this program was \$26.59 per full-time equivalent North Carolina resident undergraduate student, the 1973 General Assembly increased this amount to \$200 and this appropriation has remained constant. An institution's allocation is determined by multiplying the number of full-time equivalent North Carolina resident undergraduate students in attendance on October 1 of each year by \$200. This money is then given to "needy" students (defined in chapter 3) in the form of a scholarship which may range from a small sum to the full cost of attendance. The number of North Carolina students who are needy does not affect an institution's allocation (Private Higher Education in North Carolina, 1975, pp. 16-18).

Introduced by House Representatives Allen Barbee, Sneed High, Lane Brown, III, Lawrence Davis, Robert Wynne, Charles Taylor, Robert Q. Beard, David Bumgardner, Archie Burrus, Nancy Winbon Chase, et al., H.B. 780, the "perfect illustration of the art of compromise" (Stan Broadway, Executive Director of the North Carolina State Education Assistance Authority, personal interview, June 1, 1981), represented a "coalescence of views" (Lane Brown, III, telephone interview, June 8, 1981). This combination of ideas from both sides of the issue included the State Board of Higher Education, The North Carolina Association of Independent Colleges and Universities, alumni groups of both private and public higher education, private college trustees, private college students and their

parents, the governor and former governors of North Carolina, and legislators.

According to Virgil L. McBride (personal interview, June 3, 1981), the Executive Director of the North Carolina Association of Independent Colleges and Universities in 1971, the '71 legislation represented the hard work of a "broad-base grass roots network" (composed of trustees, staff, faculty, parents, and students of private higher education institutions) which held meetings all over the State every legislative year with legislators and legislative candidates. This "network" was championed by the North Carolina Association of Independent Colleges and Universities; Ben C. Fisher (at that time the Executive Secretary for the Council on Christian Higher Education of the Baptist State Convention of North Carolina), "a very tenacious leader with political savvy and skill and a germinal force and innovator in independent higher education" (Virgil McBride, personal interview, June 3, 1981); and private college presidents such as Ralph Scales (Wake Forest University), Norman Wiggins (Campbell College), David Frazier (Peace College), and former Governor Terry Sanford (Duke University), described as "possibly the most intellectually active Governor since Connecticut's Wilbur Cross or even Virginia's genuine genius, Thomas Jefferson" (Getlein, 1981, p. 59).

However politically active this "network" may have been, cooperation was needed from the public higher education system to

insure success of the conceptualized legislation. Cameron West (then Director of the State Board of Higher Education and now President at Pfeiffer College), who "marches to a drum beat, the cadence of which few can emulate" (Lane Brown, 111, telephone interview, June 8, 1981), was instrumental in procuring this support. West (1975) believed in "providing access and choice, promoting pluralism and strengthening the dual system of higher education" (p. 8).

Other support came from the Governor and various legislators. Governor Robert W. Scott (1969-73), in a November 3, 1971, speech to the North Carolina Association of Independent Colleges and Universities, "expressed the belief that the public-private system of higher education had to be kept strong; urging private institutions to 'do everything possible to continue fulfilling the worthy recommendation made in the private college study and other progressive aspects that will both enhance your position and better serve our State'" (Mitchell, 1974, p. 399).

When asked why they sponsored the bill, those legislators introducing the bill (some of whom are no longer in the legislature) gave various reasons: (1) "For the pure logic of it . . . it was a good economical investment" (Allen Barbee, personal interview, May 27, 1981); (2) "Other state legislatures had enacted similar legislation that was held to be constitutional" (Lane Brown, 111, telephone interview, June 8, 1981); (3) "Primarily to get more college education to North Carolinians and to get the best use of

taxpayers' money" (Lawrence Davis, telephone interview, June 5 1981); (4) "Simply stated, it was economics" (David Bumgardner, personal interview, June 5, 1981); (5) "I feel that private colleges have a place in our total education pattern. . . . If the State has the money available without penalizing the State institutions, then the private colleges should receive assistance" (Nancy Chase, telephone interview, June 4, 1981); (6) "The tax savings for the State convinced me" (formerly House Representative now Senator Robert Wynne, personal interview, May 28, 1981); (7) "Private education offers choice and diversity . . . it would cost the State millions of dollars if private education collapsed" (Charles Taulor, telephone interview, July 1, 1981); and (8) "There was an imbalance between private colleges and public colleges. . . . Parents of private college students were paying taxes and excessive tuition fees" (Sneed High, telephone interview, August 11, 1981). (Archie Burrus is deceased and attempts to reach Reverend Robert Q. Beard were unsuccessful.)

The (Raleigh) News and Observer articulated the concerns of the legislators and others in a series of articles beginning in March of 1971 and continuing through November of 1971. Many of these articles were related to "the thorny problem . . . of what to do to help the State's ailing private colleges and universities" (Marlowe, March 18, 1971, p. 9). Others include "Some Private Colleges Said 'Quite Close' to Bankruptcy" (Marlowe, March 20, 1971, p. 3); "Report: Private Colleges Must Make Changes or Die" (Marlowe,

March 21, 1971, p. 1); and an editorial entitled "Opportunity Posed in a Problem" (March 22, 1971, p. 4). "Opportunity Posed in a Problem" contained a description of the problem, i.e., "that some of the State's 41 private schools very likely will fold in bankruptcy within the next three years . . . unless an extraordinary effort is made to subsidize their tuition requirements" and a description of the opportunity, i.e., "the State's mounting need for more places in the public institution which the legislature can finance . . . more cheaply at the private schools by making private tuition more nearly comparable to public tuition." Other articles voiced different considerations: "Aid to Private Institutions May Bring State Controls" (Marlowe, March 26, 1971, p. 6); "Private Colleges Aid is Criticized" (May 28, 1971, p. 7); "Student Aid Advances" (May 29, 1971, p. 9); and "Student Aid Raises Unfounded Fears" (editorial, May 30, 1971, IV-4). In "Student Aid Advances," the Rev. Woodrow W. Robbins- president of the Central North Carolina Chapter of Americans United for Separation of Church and State and a High Point minister, is quoted as telling the legislators that "The bill before you is a violation of our federal constitution . . . it violates the constitution of North Carolina. . . . You are going to lay the foundation for the erosion of our public schools." Also in opposition to the proposal was Mrs. Lena Marley, chairman of the United Force for Education. She was quoted as saying that state aid to private colleges could lead to aid to private elementary and secondary schools which would "weaken our public schools."

On the other hand, the May 30 editorial entitled "Student Aid Raises Unfounded Fears" states: "The North Carolina Constitution contains no prohibition against state aid for public purposes to church-related institutions. And the separation of church and state doctrine in the federal constitution has long allowed. . . direct loans and grants for students in church supported colleges." The editorial continued with "Numerous states have undertaken aid programs similar to the North Carolina proposal" and "Helping needy students to attend private colleges that comply with the law would not appear to be setting a precedent for aiding pupils who attend segregated academies that can circumvent only by rejecting public funds." The editorial ends with:

The legislature must guard against weakening the public institutions. It must take care not to support, even indirectly, private institutions that do not meet minimum public higher education standards. But it has a duty to underwrite far more higher education opportunities than now are available in this State, particularly to qualified needy students. Fears of church-state conflicts and the segregation academies should not close legislators' minds to the task.

Legislators' minds weren't closed to the task: they passed the measure authorizing the aid. Although funding of the program did not start until 1972, in November 1971, an article entitled "Private Colleges Stabilize" (November 14, p. 5) appeared in The (Raleigh) News and Observer. Reporting an increase in enrollment at the private colleges and universities, the North Carolina Association of Independent Colleges and Universities attributed

the increase to "increased recruiting activity and stepped up financial assistance."

* * * * *

The 1971 legislators also enacted G.S. 116-11(11) which offers these directions:

The Board shall assess the contributions and needs of the private colleges and universities of the State and shall give advice and recommendations to the General Assembly to the end that the resources of these institutions may be utilized in the best interest of the State. All requests by private institutions of higher education for state assistance to the institutions or to students attending them shall be submitted first to the Board for review and recommendation before being presented to any other State agency or to the General Assembly.

1972

In its January 1972 report on higher education, the North Carolina Board of Higher Education, adhering to G.S. 116-11(11) (discussed in the 1971 section of this chapter), included a chapter on private higher education. The study states: "In fall 1971, 26,799 North Carolina residents were in the private institutions in the State. If these private colleges did not exist, and if the North Carolina students now enrolled in them were added to the public college enrollment, additional operating costs to the State would be in excess of \$20 million each year and many additional millions would have to be spent for the required facilities. The

private institutions in this State are therefore a tremendous resource in higher education" (Higher Education in North Carolina, 1969-71, 1972, pp. 155-156).

* * * * *

In July of 1972, the Board of Higher Education and the Board of Trustees of the University of North Carolina merged and became the Board of Governors of the University of North Carolina. Following the mandate of G.S. 116-11 (11), the Board of Governors conducts periodic studies to ascertain needs and contributions of North Carolina's private colleges and universities. Also following the mandate of G.S. 116-11 (11), the private colleges and universities submit requests for state assistance to the Board of Governors. The Board of Governors reviews the requests for private colleges and then makes recommendations to the General Assembly. More often than not, the Board of Governors does not recommend the funding level requested by the private colleges. However, after following the procedure mandated in G.S. 116-11 (11), the private colleges are then able to submit their requests directly to the General Assembly.

1973

In a letter (sent to the researcher by North Carolina Governor James B. Hunt), dated February 21, 1973, and addressed to North Carolina Attorney General Robert Morgan, the then Lt. Governor Hunt

questioned the legality of the second provision of G.S. 116-11(11), i.e., that "all requests by private institutions of higher education for state assistance to the institutions or to students attending them shall be submitted first to the Board of Governors for review and recommendation before being presented to any other State agency or to the General Assembly." Lt. Governor Hunt requested the Attorney General's ruling as to the legal effect of the provision. In his reply, dated February 28, 1973, Attorney General Morgan gave his ruling and the legal reasoning behind that ruling:

In State v. Norman, 237 N.C. 205, 74 S.E. 2d 602, the Supreme Court said that "one Legislature cannot restrict or limit by statute the right of a succeeding Legislature to exercise its constitutional power to legislate in its own way." See also Fishing Pier, Inc. v. Carolina Beach, 277 N.C. 297, 177 S.E. 2d 513; Fullam v. Brock, 271 N.C. 145, 155 S.E. 2d 737; State v. Wall, 271 N.C. 675, 157 S.E. 2d 363; Furniture Co. v. Baron, 243 N.C. 502, 91 S.E. 2d 239.

The problem of one legislature attempting to bind a succeeding legislature is also discussed in 50 Am. Jr., Statutes, § 45. There it is said:

There can in the nature of things, be no vested right in an existing law which precludes its change. In this respect it has been declared that it is the function of the legislature, and of the legislature alone, to change rules of law, that each subsequent legislature has power to

legislate upon the same subject, and that one legislature cannot abridge the power of a succeeding legislature. It is a well-established principle that legislative power includes that power to amend existing law, as well as the power to enact laws, subject, of course to constitutional restrictions and inhibitions, such as the prohibition against the extinguishment of vested rights which have been acquired under the former law, or the impairment of the obligation of contract, or the denial of due process of law. Indeed, subject to such restrictions, the power to amend a statute is no less broad and universal than the power to create or repeal it.

Thus, as one legislature cannot bind a succeeding legislature, it would appear that legislation dealing with state assistance to private institutions of higher learning may be introduced at this session of the legislature without it having first been reviewed by the Board of Governors and that the enactment of any such legislation would impliedly repeal the ineffective provisions of G.S. 116-11 (11) in so far as that particular legislation is concerned.

Although it may not be a legal necessity for a Board review, the private colleges do indeed follow this procedure. Perhaps Virgil McBride (McBride interview, June 3, 1981) was right when he said that "It's all a matter of protocol!"

1975

Following the directive espoused in G.S. 116-11 (11), on November 15, 1974, the Board of Governors of the University of North Carolina adopted a resolution to conduct a study of private higher education in North Carolina. This Board action followed a request that the North Carolina Association of Independent Colleges and Universities

had made on September 4, 1974. The private institutions had asked the Board to recommend the following to the General Assembly: (1) continuation of the contract program; and (2) the provision of a tuition grant for every full-time undergraduate North Carolinian, regardless of need, in the amount of \$400 in 1975-76 and \$600 in 1976-77. The private institutions had also asked for provision of aid for students at private institutions up to 50% of the average per capita cost to the State for each FTE undergraduate enrolled at any branch of the University of North Carolina (Private Higher Education in North Carolina, 1975, pp. 1-3). However, the Board of Governors did not recommend the proposal of the private institutions. Instead, the Board directed its staff to conduct a study of private higher education. After the study was completed, a report entitled Private Higher Education in North Carolina and dated March 16, 1975, was submitted to the 1975 North Carolina General Assembly. Reaching the conclusion "that State policy toward private higher education should be a program of State tuition assistance grants, based on student need, to the individual students who wish to attend private institutions but who are deterred from doing so because of the tuition differential," the Board of Governors recommended a North Carolina Tuition Assistance Grant program to the General Assembly (Private Higher Education in North Carolina, 1975, p. 56). The Board also recommended the revocation of G.S. 116-19 through -22, which had authorized the existing program of state aid to private higher education (Private Higher Education in North

Carolina, 1975, p. i). Since the existing program of state aid also involved "needy" students, the Board wished to substitute its proposed program for the existing program.

Included in Chapter VII of Private Higher Education in North Carolina was a description of the Board's proposed Tuition Assistance Grant Program. This description included major characteristics of the proposed program, student eligibility requirements, administrative procedures, suggested funding procedures, and evaluation procedures.

The following excerpts pertaining to characteristics of the program and student eligibility requirements show how the Board's proposed program differs from the existing program:

1. The Tuition Assistance Grant Program would be funded through the Board of Governors and administered by an agency under contract with the Board. Under such an arrangement:
 - a. Individual students would make application.
 - b. The grants would be made to freshman students only, except that any student who meets the needs requirement and who is already enrolled would be eligible, provided the student was a North Carolina resident at the time he first enrolled in a North Carolina college or university.
 - c. The student would reapply each year.

- d. In determining parental income, any change in status of a student with regard to the persons responsible for his support occurring after the application deadline would not be considered in determining the amount of the tuition grant award for the immediately ensuing academic year.
- e. Maximum awards would be based on average tuition differentials between comparable institutions in the public and private sectors and maximum awards would be defined as follows:
 - (1) For students attending private two-year institutions: \$1,100
 - (2) For students attending private senior institutions: \$1,300
 - (3) Minimum award level: \$100
- f. Tuition grants would be awarded on the basis of the most needy first, and first-come, first-served, with a specified application deadline; except that, beginning in the second year of the program and thereafter, a student who had received a grant in the previous year, who makes timely application for renewal, and who continues to qualify, would have priority.
- g. The tuition grant would not exceed the tuition charged by the institution.

- h. The administering agency would notify each recipient of the North Carolina Assistance Grant award, and the funds would be paid to the institution which the student is attending.

2. Eligibility for participation in the Tuition Assistance Grant program would be determined as follows:

- a. The student must have applied for participation in the federal Basic Educational Opportunity Grant or comparable program.
- b. The student must be a North Carolina resident under uniformly established tuition residency regulations.
- c. The student must be enrolled in a private college or university in North Carolina which is accredited by the Southern Association of Colleges and Schools.
- d. The student must be an undergraduate enrolled full-time as a degree candidate in a college parallel program, in good standing in the institution. No student shall be eligible for more than 8 semesters (or equivalent).
- e. The student must be determined in need of financial assistance by application of a common policy established by the Board of Governors.

5. Under the proposed North Carolina Tuition Assistance Grant

program, grantees would receive aid in inverse relation to family gross income. That is, grantees from low income families would receive a larger percentage of the tuition differential than those from higher income families.

Above a certain family income level, grants would not be made.

(Private Higher Education in North Carolina, 1975, pp. 57-63)

In essence, the Board of Governors had recommended to the 1975 General Assembly "that student eligibility for a North Carolina Tuition Assistance Grant be based on need" (Private Higher Education in North Carolina, 1975, p. i).

The General Assembly, instead, authorized funds for a non-need tuition grant program. In January of 1975, Senator Ralph H. Scott had proposed S.B. 45: AN ACT TO MAKE APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES AND FOR OTHER PURPOSES. Section 21 of that bill set forth the authorization of a tuition grant of \$400 per North Carolina undergraduate student, the amount asked for by the North Carolina Association of Independent Colleges and Universities. Referred to the Committee on Appropriations, S.B. 45 was not ratified until a substitute bill was introduced. The substitute bill deleted Section 21 and added Section 30 which changed the award from \$400 to \$200 per student. Introduced by Senators Ralph Scott, William Mills, John Henley, I. C. Crawford, Harold Hardison, Livingston Stallings, Cy N. Bahakel,

et al., the new bill was ratified June 26, 1975.

The aid program initiated by S.B. 45 Section 30 is known as the North Carolina Legislative Tuition Grant Program, which is discussed in Chapter 2. (The initial funding of \$200 per student has steadily increased: in 1977-78 the appropriation was \$300 per student; in 1978-79 the appropriation was \$400 per student; in 1979-80 the appropriation was \$475 per student; in 1980-81 the appropriation was \$550 per student; and in 1981 the appropriation was \$600 per student.)

Although there are no cash refunds, each eligible student, i.e., a full-time resident undergraduate, who applies for the grant receives a credit on his bill. Participating institutions in the program must:

- (1) certify the eligibility of each applying student, whereupon the authority disburses to each approved institution the authorized maximum award multiplied by the number of eligible students in that institution.
- (2) give the student notice of the tuition reduction, and
- (3) use the funds for secular purposes only.

(Legislative Research Commission Report to the 1979 General Assembly, p. E-7)

The State Auditor is authorized to examine institutional records to determine if indeed the institutions are meeting these three requirements (Legislative Research Commission Report, p. E-7).

Since the North Carolina Legislative Tuition Grant Program

relies on the yearly appropriations of the General Assembly, there could be a reduction in the authorized maximum award if the amount in a given year is inadequate for the number of eligible students applying for aid.

Although Cameron West (at this time President of the North Carolina Association of Independent Colleges and Universities) and others were involved in intense lobbying for the tuition off-set grant, not much public opposition existed. The Board of Governors had nixed the Association's proposal and had suggested one of their own, but a "public outcry" was not heard, at least not in any historical documents found by the researcher. With the tuition off-set grant, according to West (1975), "Public policy has been formulated which recognizes the private college as a vital public resource. In a time of scarcity only through maximum utilization of all our institutions of higher education, public and private, can the taxpayer's dollars be used most efficiently and effectively" (p. 8).

1977

On December 1, 1976, a statutory three-judge court (composed of Chief Circuit Judge Clement F. Haynsworth, Jr., Chief District Judge Woodrow W. Jones, and District Judge James B. McMillan) heard a constitutional challenge to North Carolina's statutes authorizing state aid, i.e., student tuition grants and scholarships, to church related colleges, specifically Belmont Abbey and Pfeiffer College.

Michael Smith, Americans United for Separation of Church and State, et al., had brought suit against the Board of Governors of the University of North Carolina, Belmont Abbey College, and Pfeiffer College. (The suit was filed in early 1976 before the Roemer v. Maryland Board of Public Works decision.) In a letter to the researcher dated October 9, 1981, Michael R. Smith says:

I have been asked to comment on my reasons for having attacked in court State tax-support for private and church-affiliated colleges and universities. At that time, I believed the practice violated strictures imposed by the First Amendment of the United States Constitution (there has been no challenge under the various sections of Article IX of the North Carolina Constitution). I was opposed on historical grounds, as well. I thought history had aptly shown the folly of intertwining government and religion. Part of my rationale was philosophically founded. I championed the concept of a single, public, school system; but supported diversity offered by private schools, their integrity unblemished by government restrictions. Economically, it seemed to me that private schools would pursue parity-funding with their public counterparts from a limited pool of tax dollars, which necessarily meant less financial support for public schools. As a matter of logic it appeared fallacious to extend tax money to private schools when student enrollment was declining in all schools at all levels, schools were competing for students and many of the facilities of our existing public colleges were not being used. And exacting citizens' money to finance private choices seemed immoral.

Walter H. Bennett, Jr. and James W. Respass represented the plaintiffs. Rufus L. Edmiston, Attorney General for North Carolina, and James Wallace, Jr., Assistant Attorney General, represented the Board of Governors of the University of North Carolina. William L. Rikard, Jr., Joseph W. Grier, and Basil L. Whitener represented Belmont Abbey, and Henry C. Doby, Jr. represented Pfeiffer. Decided March 30, 1977, the statutes were upheld by the Court. Stated Judge

Jones in his March 25, 1977, letter of concurrence to Judge Haynsworth: "I was of the personal opinion that the North Carolina statutes violate the establishment clause but in view of the recent Supreme Court decisions of Hunt v. McNair and particularly Romer [sic] v. Board of Public Works of Maryland, we have no choice other than to hold the statutes valid." William L. Rikard, Jr., lawyer for Belmont Abbey, commented: "Preparation for the defense was minimal as Roemer criteria made it unnecessary" (telephone interview, January 15, 1981).

A brief look at the two schools discloses why the question of constitutionality was raised.

Belmont Abbey College. Founded by the Benedictine Monks of Belmont Abbey Monastery, Belmont Abbey College is operated by Belmont Abbey College, Inc., which was organized in 1960 by the Southern Benedictine Society, Inc., the owners of the complete campus. The self-sustaining Board of Trustees, composed of the Abbot and at least four other members of the Monastery (Benedictine members not to exceed 50% of the members of the Board of Trustees), govern the college. There are several salaried members of the Abbey (whose academic qualifications are comparable to non-members) who serve as administrators, faculty, and staff. Their salaries, the same as other staff members with similar academic qualifications, are paid to the Southern Benedictine Society which, after totaling income and expenses, remits any unused funds (constituting unrestricted contributions) to the college. Although the majority of

the Board members, faculty, administration, and staff are Catholic, there are many in those positions with other religious affiliations or no affiliation at all (Smith v. Board of Governors of the University of North Carolina, 429, F. Supp. 871, 1977, p. 874).

Although faculty members are not required to reveal any religious preference or affiliation, student applicants are asked their religious preferences. Some 14 denominations, other than Catholic, represent more than 30% of the enrollment, and nearly half of the scholarship recipients have been non-Catholics (Smith v. Board of Governors, p. 874).

There is ample evidence of the Christian affiliation other than the nearby Monastery and cathedral. Religious symbols, e.g., crucifixes and religious art, exist in several buildings, and the Benedictine college staff wear clerical garb. The fourth stated purpose of the College, found in the charter, "speaks of Christian inspiration, fidelity to the Christian message and of reflection upon the growing treasury of human knowledge in the light of the Catholic faith" (Smith v. Board of Governors, p. 875). (However, in the faculty handbook and College catalog, this fourth stated purpose is expressed in humanistic terms, which is of utmost importance in the consideration of public funds for financial assistance.)

Although each student is required to take two courses in the Theology Department, those courses (selected from several) don't necessarily concern the Christian religion. Moreover, courses

concerned with Christianity are taught as academic courses and are not used to proselytize. Blemont Abbey, offering a broad liberal arts undergraduate program, fosters intellectual excellence as well as "compassionate concern for the human race" (Smith v. Board of Governors, p. 875).

In summary, an over-all atmosphere of academic freedom exists in the College. Faculty members select their own textbooks; students do not have to attend religious services; and classroom discourse relates to the "human community" (Smith v. Board of Governors, p. 875).

Pfeiffer College. Pfeiffer, a four-year liberal arts college affiliated with the United Methodist Church, is governed by a self-sustaining Board of Trustees, with 75% of the members being Methodist. However, there are no indications of attempted influence on governors by any Methodist agency. No reports are made to the United Methodist Church or any subsidiaries and the Church does not interfere with administrative decisions of the College (Smith v. Board of Governors, p. 876).

There are several indicators of the College's religious affiliation: (1) approximately 40% of the administration, faculty, and student body are Methodist; (2) approximately 6% of the College's revenues are derived from divisions of the United Methodist Church; (3) Methodist ministers are utilized in the campaign drives for private donations for the college; (4) the facilities of the College

are used for diverse activities by Methodist church groups; (5) honorary degrees are granted to Methodists in disproportionate number; and (6) references to God and the Church appear in Pfeiffer's charter (Smith v. Board of Governors, p. 876).

Furthermore, each student planning to graduate has to take at least two courses in religion. However, these two religious courses, constituting part of the humanities' requirement, are taught as academic subjects. Although chapel services are offered, attendance is not required and, generally speaking, is not very good (Smith v. Board of Governors, p. 876).

Although Pfeiffer offers majors in religion, Christian education, and church music, there are at least 13 other academic fields. Also, there are numerous "secular" campus organizations and secular activities. Over-all, there appears to be an atmosphere of academic freedom and inquiry (Smith v. Board of Governors, pp. 876-877).

The Court's findings. Citing criteria found in Lemon v. Kurtzman (1971) (i.e., secular legislative purpose, principal or primary effect, and government entanglement) and Roemer v. Board of Public Works of Maryland (1976) (i.e., the "pervasively sectarian" test first mentioned in the 1973 Hunt v. McNair case), Judge Haynsworth, in speaking for the Court, concluded that "Belmont Abbey and Pfeiffer are not pervasively sectarian, . . . the state's purpose in providing the assistance is a secular one and the use of

funds is secular, . . . there is no excessive entanglement of the state with religious activities, . . . and these programs are unassailable under the First Amendment of the Federal Constitution" (Smith v. Board of Governors, p. 879).

Both Chief District Judge Woodrow Jones and District Judge James McMillan concurred in the opinion. However, both expressed personal doubt: Jones in his letter of concurrence and McMillan in his concurring opinion statement. To provide the taste and not just the flavor of this doubt, it is pertinent to quote McMillan's concurring opinion, dated March 30, 1977, in its entirety:

If we were writing on a clean slate, I would hold the challenged programs to be invalid as contrary to the First Amendment requirement that government "make no law respecting an establishment of religion or prohibiting the free exercise thereof" Providing tax money to church supported schools to distribute for tuition is bound to have some effect upon the attitudes and practices of those schools in respect of religion. State subsidies started small but are increasing, and can before long, in furtherance of education, a perfectly legitimate state interest, become so large that the power to withdraw them will be the power to control the private schools they benefit.

Whether state aid tends to establish or disestablish religion is not material. The far-sighted framers of the First Amendment were fresh witnesses to the dangers of dominion of church over state or of state over church, and wanted America to have none of either.

Unfortunately, the Roemer decision requires lower courts to make judgments as to how much religion a school actually practices; if the school atmosphere is essentially secular, i.e., not "pervasively sectarian" the state can subsidize its students at will.

Judged by the Roemer standard, Pfeiffer and Belmont Abbey are eligible for the state programs in question.

The evidence at the hearing demonstrates that despite their many trappings and insignia of religious orientation these schools are not "pervasively" religious in profession or practice; religion there is described as an "intellectual discipline" with humanistic overtones; and these private schools do little if any more to promote religion than do the state supported schools whose public sources of funds they avidly seek to tap.

On further reflection perhaps this is the only way church schools can survive; youth today does not appear to take to formal religious indoctrination any more readily than it did in former centuries. It is, however, disquieting to one who attended one church school, Presbyterian Junior College, helped organize another, St. Andrews, and, in a small way has helped support church schools for many decades, and who has long thought and still believes that their offerings to a busy world are worth preserving.

I agree completely with the Court's thorough, clear and accurate analysis of the facts and with the legal conclusions drawn from those facts, and with the view that the Belmont Abbey and Pfeiffer situations can not be distinguished meaningfully from the situations dealt with in the Roemer case; and I agree that we are bound by that decision today.

Solely, therefore, in deference to what I consider to be controlling authority, but with tremendous reluctance in principle, I concur in the decision. (Smith v. Board of Governors, pp. 879-880)

In 1977 James Hilliard Young submitted a thesis entitled State Aid to Private Higher Education in North Carolina: A Distributional Impact Analysis to his committee members at North Carolina State University as part of his doctoral requirements. According to the abstract, "The purpose of this study was to examine North Carolina's policy concerning public financial

assistance to the private sector of higher education in an attempt to analyze its true current effects and to establish an objective, rational, and empirical base of information upon which future policy determinations on this issue might be predicated."

Young's findings were these:

1. The three specific groups (current and prospective resident undergraduates at private institutions in North Carolina, the 38 private postsecondary educational institutions in the State, and the State itself, via its taxpayers) benefited to some measurable extent from the State's current policy on aid to the private sector of higher education.
2. Access to postsecondary education was enhanced for North Carolina residents as a result of the policy.
3. It was less costly for the State when a resident undergraduate elected to attend a private rather than a public institution of higher education.
4. Cost to the student was a very significant factor bearing on choice of educational institution; thus, tuition differential between types of institutions was closely related to the proportion of students who elected to attend each type of institution.
5. The North Carolina State aid policy had a positive effect on increasing enrollments of resident undergraduates in private postsecondary educational institutions within the State.
6. The cost to support the State aid policy was primarily borne by middle-income and upper-income North Carolina taxpayers.
7. Leaders in the public sector of North Carolina higher education legitimately perceived those institutions as the burdened or deprived group in order for the State to make funds available to students in the private sector.

(Abstract)

Young made the following recommendations:

1. The General Assembly should take a formal long-range position on whether or not North Carolina is going to continue to contribute public funds to the private sector of higher education.
2. North Carolina policy-makers should use the empirical data analyzed in this study and other such hard data as one input into their process of making policy decisions concerning State aid to private higher education in the State.
3. The State of North Carolina should provide the necessary funds to retrieve and analyze available information regarding patterns of attendance at the State's public and private institutions of higher education by persons of different income categories.
4. The State of North Carolina, if it continues to provide public aid to private higher education, should amend its current policy in such a manner as will establish a linear relationship between increases in State funds appropriated for across-the-board tuition grants and reductions in tuition differentials between the public and private sectors of higher education in the State.
5. The General Assembly should investigate additional potential ways of assisting North Carolina's private postsecondary institutions and, consequently, benefiting all of North Carolina higher education. Two areas of potential investigation include allowing private educational institutions to purchase supplies, materials, and equipment on State Contract and revising State income tax laws to permit higher levels of tax exemption for college tuition and academic fees expenditures.
(pp. 148-149)

However, the 1977 General Assembly and subsequent ones (including the 1981 General Assembly) have continued to support the past policy of previous legislatures: reviewing biennially fund requests not based on an operating formula.

1979

The 1977 General Assembly, through Senate Resolution 641, directed the Legislative Research Commission (created by Article 6 B of Chapter 120 of the General Statutes) to (1) study North Carolina's policy of state aid to undergraduate North Carolina students attending private institutions; (2) review the effectiveness of existent programs of aid; (3) explore the concept of an operating principle or formula by which appropriations would be made; and (4) submit a full report with recommendations to the 1979 General Assembly.

This report, entitled Legislative Research Commission Report to the 1979 General Assembly of North Carolina, was submitted by the Legislative Research Committee to the 1979 General Assembly on January 9, 1979. Senator John T. Henley (now President of the North Carolina Association of Independent Colleges and Universities) and Carl J. Stewart, Jr. were co-chairmen of the commission which included public members as well as legislators. Co-chairmen of the commission's committee which conducted the study of private college assistance were Representative J. T. Pugh, Jr. and Senator Robert W. Wynne. Others on the committee included Representative A. J. Howard Clement, III, Representative George W. Miller, Jr., Representative Lura S. Tally, Senator Joe H. Palmer, Senator Katherine H. Sebo, Senator Vernon White, and the chairman of the committee, Representative Parks Helms.

The committee's findings were these: (1) the current state financial assistance programs for North Carolina undergraduates attending in-state private institutions of higher education have been effective in stabilizing enrollment; (2) the current state financial assistance programs have had a positive effect on stabilizing private institutions; and (3) the concept of student aid as opposed to institutional aid is endorsed by the committee (Legislative Research Commission Report, pp. 11-12).

The following recommendations were made by the committee: (1) the continuation of the past policy of the General Assembly in regard to state funding requests of private institutions, i.e., continuing the current practice of biennial review without establishing an operating formula; (2) the appropriation of any additional funds to the North Carolina Legislative Tuition Grant Program since such aid would benefit both the student and the private institution; and (3) the establishment of an independent study commission to explore and recommend an operating principle for state financial assistance programs for undergraduate North Carolinians attending private institutions of higher education (Legislative Research Commission Report, pp. 13-15).

The 1979 General Assembly did not establish an independent study commission; therefore, there is no operating principle at the present time. However, as a result of the commission's report, an ad hoc committee composed of representatives from the

University System and the Association of Independent Colleges and Universities was formed to encourage better communication between the two groups (Senator Wynne, telephone interview, November 2, 1981).

1981

On May 13, 1981, House Representative Jeff Enloe introduced House Bill 1010: A BILL TO BE ENTITLED AN ACT TO INCREASE THE LEGISLATIVE SUPPLEMENTAL TUITION GRANT (one of several bills in 1981 initiated by the North Carolina Association of Independent Colleges and Universities). Section 1 of H.B. 1010 states:

In addition to any funds appropriated pursuant to G.S. 116-19 or appropriated by the 1981 General Assembly and in addition to all other financial assistance made available to private educational institutions located within the State, or to students attending such institutions, there is hereby granted to each full-time North Carolina undergraduate student attending an approved institution as defined in G.S. 116-22, the sum of fifty dollars (\$50.00) per academic year in 1981-82 and the sum of one hundred dollars (\$100.00) per academic year in 1982-83 which shall be distributed to the student as hereinafter provided.

Because there were two major errors in the bill, the bill was revised and the corrected version was introduced by Enloe on May 29, 1981. The corrected version read \$650 instead of \$50 in 1981-82 and \$750 instead of \$100 in 1982-83. H.B. 1010 (sponsored by House Representatives Enloe, Sam Bundy, Ralph Edwards, Richard Grady, Byron Haworth, Robert Hunter, Martin Lancaster, Robert

McAlister, Timothy McDowell, James Morgan, David Parnell, George Robinson, Mary Seymour, Ned Smith, Ron Taylor, and Dennis Wicker) was then referred to the appropriations committee for consideration in the special October legislative session. According to House Representative Enloe (personal interview, May 28, 1981), a decision would be made after it was determined what the federal administration was going to do. If state funds were available, the bill most likely would be ratified. However, at the special session in October, 1981, "Insufficient revenue prevented the ratification of H.B. 1010. . . . Although the bill will again be considered in June 1982, only an improved economy will save it" (House Representative Enloe, telephone interview, October 10, 1981).

On July 2, 1981, the General Assembly ratified Senate Bill 569: AN ACT CREATING THE NORTH CAROLINA EDUCATIONAL FACILITIES FINANCE AGENCY AND AUTHORIZING SAID AGENCY TO FINANCE, REFINANCE, CONSTRUCT, PROVIDE AND ACQUIRE AND OTHERWISE UNDERTAKE HIGHER EDUCATION FACILITIES. (Sponsors of the bill were Senators James Clarke, Ollie Harris, Kenneth Royall, Gilbert Boger, James Garrison, Julian Allsbrook, Paul Smith, and Harold Hardison.) Section 2 of S.B. 569 provides a rationale for the "Higher Education Facilities Finance Act":

It is hereby declared that for the benefit of the people of the State of North Carolina, the increase

of their commerce, welfare and prosperity and the improvement of their health and living conditions, it is essential that they be given the fullest opportunity to learn and to develop their intellectual capacities; that it is essential for institutions of higher education within the State to be able to construct and renovate facilities to assist its citizens in achieving the fullest development of their intellectual capacities; and that it is the purpose of this Chapter to provide a measure of assistance and an alternative method to enable private institutions of higher education in the State to provide the facilities and the structures which are needed to accomplish the purposes of this Chapter, all to the public benefit and good, to the extent and in the manner provided herein.

There are three sections of S.B. 569 which require notation. Section 5 of the bill defines "institution for higher education" as "a nonprofit private educational institution within the State of North Carolina authorized by law to provide a program of education beyond the high school level." Section 21 sets forth the tax exemption status of the agency. Section 27 states: "This act shall become effective upon certification by the State Board of Elections that an amendment to the North Carolina Constitution authorizing the enactment of general laws dealing with transactions of the type contemplated by this act has been approved by the people of the State."

* * * * *

On July 8, 1981, Senate Bill 568: AN ACT TO AMEND, SUBJECT TO THE APPROVAL OF THE ELECTORATE, ARTICLE V OF THE CONSTITUTION OF NORTH CAROLINA TO AUTHORIZE THE ISSUANCE OF REVENUE BONDS TO

FINANCE AND REFINANCE HIGHER EDUCATION FACILITIES OWNED BY NON-PROFIT CORPORATIONS was ratified. (Sponsors of the bill were Senators James Clarke, Ollie Harris, Kenneth Royall, Gilbert Boger, Vernon White, James Garrison, Julian Allsbrook, Paul Smith, and Harold Hardison.) Excerpts from sections 1, 2, and 3 briefly explain the Act. Section 1 of the S.B. 568 reads:

Article V of the Constitution of North Carolina is hereby amended by adding a new section, to read as follows:

"Sec. 11. Higher Education Facilities. Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to authorize the State or any State entity to issue revenue bonds to finance and refinance the cost of acquiring, constructing, and financing higher education facilities to be operated to serve and benefit the public for any non-profit private corporation, regardless of any church or religious relationship; provided, no cost incurred earlier than five years prior to the effective date of this section shall be refinanced. Such bonds shall be payable from any revenues or assets of any such non-profit private corporation pledged therefor, shall not be secured by a pledge of the full faith and credit of the State or such State entity or deemed to create an indebtedness requiring voter approval of the State or such entity, and, where the title to such facilities is vested in the State or any State entity, may be secured by an agreement which may provide for the conveyance of title to, with or without consideration such facilities to the non-profit private corporation. The power of eminent domain shall not be used pursuant hereto."

Section 2 states the following:

The amendment set forth in Section 1 of this act shall be submitted to the qualified voters of the State at the next statewide primary election or statewide general election or the next statewide election, whichever is earlier, which shall be conducted under the laws then governing elections in the State.

Section 3 reads:

If a majority of votes cast thereon are in favor of the amendment, the State Board of Elections shall certify the amendment to the Secretary of State, who shall enroll the amendment so certified among the permanent records of his office, and the amendment shall become effective upon such certification.

* * * * *

Also, on July 8, 1981, the General Assembly ratified Senate Bill 29: AN ACT TO MAKE APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES, AND FOR OTHER PURPOSES. Sections 37 - 39.1 pertains to aid to private colleges. Section 37 sets forth the terms for the contract program for "needy" students, i.e., the \$200 appropriation for each full-time equivalent North Carolina undergraduate student enrolled at a private institution, and section 38 authorizes an increase in the tuition grant program, i.e., the sum of \$600 in 1981-82 and the sum of \$650 in 1982-83 to each full-time North Carolina undergraduate student attending an approved private institution. Section 39 reads: "Expenditures made pursuant to Sections 37 and 38 of this act shall be used for secular educational purposes only." Section 39.1, a special provision in the appropriations bill, reads: "By the end of fiscal year 1986-87, the General Assembly intends to provide for the private student assistance programs within North Carolina, a reasonable per-student funding level compared to the per-student State appropriation during the preceding fiscal

year for the institutions under the Board of Governors of the University of North Carolina." This special provision is a revised version of the one presented by House Representative Gordon Greenwood et al. to the Appropriations Sub-Committee in June 1981. The original provision offered a per-student funding level of fifty percent. There was considerable opposition and the provision was "flagged." A motion made to delete the special provision failed but the leadership agreed to amend it to read "reasonable amount" instead of fifty percent. According to House Representative Ruth Cook (telephone interview, July 7, 1981), there was opposition for several reasons: (1) "This was not a proposal studied by any committee in the 1981 General Assembly; (2) It is inappropriate to commit the General Assembly to a level of funding which basically amounts to an index; and (3) The issue of state aid to private institutions and the amount of such aid should be discussed each General Assembly." The amended provision, however, apparently was acceptable.

The "scenes" in North Carolina history relating to state aid to private higher education have not involved heavy conflict as public-private relations in higher education have been fairly cordial. However, a series of severely restricted state budget years could alter that situation. In fact, one legislator has stated, "It's different this year because money is so tight and we're hearing from the constituents more and more. It's not like we've

got a lot to play around with" (Jenkins, 1981, p. D-1).

What conflict there is in North Carolina revolves around four major issues: (1) access to and choice of higher education; (2) student aid versus institutional aid; (3) accountability and institutional autonomy; and (4) the "50 percent principle."

Access to and Choice of Higher Education. Proponents of state aid cite the existing programs of state assistance as addressing the twin problem of access and choice. The North Carolina Contract Scholarship Fund program, designed to assist "needy" students, i.e., those not financially able to attend college, was an attempt to alleviate the problem of access. According to the 1981 Annual Report of the North Carolina Association of Independent Colleges and Universities, the North Carolina Legislative Tuition Grant program was an attempt to rectify the problem of choice by providing "offset" grants to students precluded financially from attending private colleges and universities of their choice (p. 15). The Association's report continues with:

To the extent that tuition grants promote enrollment in the independent sector, everyone wins. The students are able to attend the institutions which best match their personalities, needs, and aspirations. The taxpayers save the difference between the amount of tuition grant assistance and the higher per-student appropriation at the comparable public universities (last year \$675 v. over \$3,000). Indeed, all the citizens of North Carolina are benefited by a strong and vigorous private sector -- 38 private colleges and universities providing jobs, stimulating the state's economy through the purchasing power of faculty, staff, students and visitors (over 22,000 private college students are from out-of-

state), and enhancing the social, cultural and spiritual environment in the communities where they are located. (p. 15)

Senator Helen Rhyne Marvin's (personal interview, September 8, 1981) comment is representative of the legislators opposed to state aid: "I believe strongly in a pluralistic educational system. I think that maintaining such a system is a necessary ingredient in a democratic society because we must keep the options open. However, I feel that there is a point beyond which financial support will defeat the whole purpose for which it is originally intended." Opposition is not to private higher education or to the concept of choice. The opposition is to the financing of these choices by the State. "If 'choice' is a good thing, how many choices is the State obliged to provide?" questions Roy Carroll (Vice-President of Planning, the University of North Carolina, Chapel Hill) (personal interview, June 1, 1981). He continues, "Should the State subsidize an infinite number of choices?"

According to Terry Sanford (President of Duke University) (Gunter letter, May 8, 1981), these assistance programs "constitute an excellent, and necessary, collateral policy to that of low tuition in the public sector" (p. 2). "The wider the (tuition) gap, the less likely the choice can be made to go to a smaller institution," says Sanford (Bond, 1981, p. G-6). Information submitted by John Henley (President of the North Carolina Association of Independent Colleges and Universities) on April 3, 1981, to members of the Appropriations Committee of the 1981 North Carolina General

Assembly shows that tuition gap to be over a thousand dollars a year. Sanford (Gunter letter, p. 2) states that the gap for 1981 is \$1,556.

Table 5 provides additional information on the tuition gap. In 1971, before the start of the assistance programs, the tuition gap between private senior institutions and state university branches was \$1,031. In 1980, 9 years of assistance later, that tuition gap had increased to \$1,509, an increase of 46.3 percent. In 1971, the tuition gap between private junior colleges and state community colleges was \$858. In 1980, that tuition gap had increased to \$1,260, an increase of 46.8 percent. More help is needed say the proponents of state assistance, if private colleges are to be considered feasible student options. However, those in the public sector dispute the idea that private colleges need state assistance in order to exist. Remarks University of North Carolina President William C. Friday; "There were 20,000 students in the private institutions before there was any funding program (and) there will always be a large number of North Carolina residents choosing private institutions and having the means to do it" (Bond, 1981, p. G-6).

The opponents of state assistance readily point out the cost of this "choice" to the taxpayer. Table 6, obtained from A. K. King (Assistant to the President, General Administration, the University of North Carolina) shows the difference in full-time equivalent undergraduate enrollment of North Carolina residents

Table 5

THE TUITION GAP
NORTH CAROLINA INDEPENDENT SENIOR COLLEGES AND UNIVERSITIES
AND
STATE UNIVERSITIES

<u>Fall</u>	<u>Senior Institution*</u>	<u>State Grants</u>	<u>State University*</u>	<u>Tuition Gap</u>
1971	\$ 1467	\$ -0-	\$ 436	\$ 1031
1972	1555	46	466	1043
1973	1626	200	454	972
1974	1726	200	474	1052
1975	1874	400	493	981
1976	2003	400	501	1102
1977	2151	500	540	1111
1978	2311	600	546	1165
1979	2555	675	558	1322
1980	2842	750	583	1509

THE TUITION GAP
NORTH CAROLINA INDEPENDENT JUNIOR COLLEGES
AND
STATE COMMUNITY COLLEGES

<u>Fall</u>	<u>Indep. Jr. Coll. *</u>	<u>State Grants</u>	<u>State Comm. Coll.*</u>	<u>Tuition Gap</u>
1971	\$ 1,005	-0-	\$ 147	\$ 858
1972	1,080	46	147	887
1973	1,154	200	148	806
1974	1,223	200	147	876
1975	1,346	400	120	826
1976	1,446	400	119	927
1977	1,571	500	137	934
1978	1,725	600	137	988
1979	1,916	675	137	1,104
1980	2,150	750	145	1,260

*Tuition and Required Fees.

(Information obtained from John Henley, President of the North Carolina Association of Independent Colleges and Universities)

Table 6

CHANGE IN FULL-TIME EQUIVALENT UNDERGRADUATE ENROLLMENT OF NORTH CAROLINA RESIDENTS IN NORTH CAROLINA PRIVATE COLLEGES AND UNIVERSITIES BETWEEN OCTOBER 1, 1972 AND OCTOBER 1, 1980 AND TOTAL STATE FUNDS ALLOCATED TO EACH OF THESE INSTITUTIONS OR TO STUDENTS REGISTERED THEREIN

Private Senior Institution	FTE Enrollment Oct. 1, 1972	FTE Enrollment Oct. 1, 1980	Diff.	State Funds Allocated 1972-73 - 80-81 ^a
Atlantic Christian Col.	1,290.25	1,207.00	-83	\$ 4,053,604
Barber-Scotia Col.	283.00	172.75	-110	839,616
Belmont Abbey College	149.75	302.50	+152	802,639
Bennett College	236.75	282.50	+45	887,949
Campbell University	1,613.75	1,501.00	-113	4,745,871
Catawba College	482.33	523.00	+42	1,602,644
Davidson College	350.25	428.00	+78	1,314,520
Duke University	904.00	852.75	-51	2,870,936
Elon College	972.00	1,395.75	+424	4,354,381
Gardner-Webb College	1,018.00	1,052.50	+34	3,298,661
Greensboro College	401.60	388.00	-13	1,312,579
Guilford College	804.00	785.75	-18	2,592,955
High Point College	567.75	906.25	+339	2,123,610
J. C. Smith University	357.25	612.00	+256	1,908,353
Lenoir Rhyne College	946.00	811.25	-134	2,888,699
Livingstone College	407.50	431.00	+24	1,541,849
Mars Hill College	881.50	1,147.25	+266	3,469,977
Meredith College	1,023.50	1,137.00	+114	3,137,423
Methodist College	478.00	562.00	+84	1,658,577
N. C. Wesleyan College	305.00	494.50	+189	1,597,912
Pfeiffer College	676.00	536.00	-140	1,572,305
Queens College	210.25	296.25	+86	598,695
Sacred Heart College	105.25	239.25	+134	763,459
St. Andrews College	337.66	387.33	+50	1,623,245
St. Augustine's College	768.00	997.00	+229	2,546,659
Salem College	290.50	296.00	+5	1,390,576
Shaw University	453.00	750.00	+297	2,962,535
Wake Forest University	1,395.00	1,410.50	+16	4,731,027
Warren Wilson College	73.25	157.00	+84	483,103
Wingate College ^b	1,276.00	1,324.50	+49	3,898,180
Subtotal	19,057.09	21,386.58	+2,329	\$ 67,572,539
Private Junior Institution				
Brevard College	272.00	405.00	+133	1,217,130
Chowan College	542.00	454.25	-88	1,515,520
Lees-McRae College	458.00	526.25	+68	1,808,816
Louisburg College	569.00	656.75	+88	1,983,073
Montreat-Anderson Col.	173.75	216.00	+42	758,725
Mount Olive College	276.00	368.25	+92	1,039,231
Peace College	441.00	448.25	+7	1,550,895
St. Mary's College	218.50	206.75	-12	776,001
Subtotal	3,739.25 ^c	3,281.50	-458	\$10,649,391
GRAND TOTAL	22,796.34	24,668.08	+1,872 ^d	\$78,221,930 ^a

^a Includes funds allocated from the Needy Student Contract Program since 1972 and the Legislative Tuition Program since 1975, except for an estimated \$6,437,527 in Legislative Tuition grants awarded for the second term of 1980-81.

^b Became a four-year college in 1977.

^c Enrollment for the private junior institutions includes 373 students at Kittrell College, which closed during the 1974-74 academic year, and 416 students at Mitchell College while it was still a private institution.

^d Rounded off to the nearest decimal.

(Information obtained from Dr. A. K. King, Assistant to the President, General Administration, The University of North Carolina)

in private North Carolina colleges between October 1, 1972, the beginning of the assistance programs, and October 1, 1980. It also shows the state allocations from 1972-73 to 1980-81 to these institutions. An increase of only 1,872 full-time equivalent enrollment is the difference between 1972 and 1980. This statistic lends credence to the private sector's concern for a stabilized enrollment. Moreover, this increase, if construed to be a result of the state assistance program, has cost the State \$78,331,930 over an eight year period.

Proponents of state assistance, however, note that this cost is approximately one-fourth of what it would have cost the State if these students had attended public institutions, assuming, of course, that these students would have attended public institutions if assistance had not been available. Summing up the opposition's viewpoint, Roy Carroll (personal interview, June 1, 1981) comments: "The belief that students unable to afford [without state assistance] private colleges are going to appear on the steps of public universities is a 'straw man'."

Unanswerable questions appear to be these: (1) How many students would have attended private colleges if state aid had not been available?; (2) How many students would have attended public institutions if tuition at private colleges without the "offset" grant had precluded attendance there?; and (3) How much money does the State actually save, if any? An answerable question is this:

How much is the State willing to invest to make sure that "choice" does exist? (See Appendices L and M for a breakdown of student costs at the private colleges in North Carolina.)

Student Aid versus Institutional Aid. "There is no state aid to private colleges in North Carolina," says Terry Sanford (Gunter letter, p. 1), "and so far as I know, no one proposes such aid. Our private colleges have been built and supported by generous citizens who believed in education, and are supported by generous friends who understand the importance of our diverse private sector of higher education. The State does provide assistance to North Carolina students who choose to attend private colleges within the State, but the State could and should do more." "It is not aid to private colleges. . . . It is aid to North Carolina students and I wish to emphasize that," says John Henley (personal interview, May 28, 1981). Henley, Sanford and other proponents of state assistance to private higher education are adamant about their belief that the assistance is to students and not to private institutions. That allocations for both the contract program and the tuition grant program are placed in student accounts is a salient point of theirs. The aid "is a form of scholarship, a much more modest scholarship from the taxpayer than that enjoyed by a student at a public college. It is a 'tuition (sic) equalization payment' to the student. It is a matter of fairness to the students" (Sanford, Beyond the Straw Men). Opponents, on the other hand, "certainly not opposed to

the philosophical concept of student aid" (Senator Robert Jordan, personal interview, May 28, 1981), note that the money is given directly to the institution, not to the student. Although students pay less tuition or none at all, the state money allocated for them, say the proponents, is used the way any tuition money is used and "frees up" any money the institution may have had in scholarship funds.

Termed "a food stamp system for private colleges" by one legislator (who wished not to be identified) and an "annual fix" by another source, the present program of state assistance is considered by some members of the opposition to be a lifeline for the institutions. There is actually no ceiling for the aid. A "needy" student, automatically receiving the \$600 tuition grant, could also get the rest of his tuition and costs, if needed, from the contract scholarship program. Director John Sanders of the Institute of Government (University of North Carolina at Chapel Hill) (personal interview, June 23, 1981) remarks: "The present assistance program is based on a political plea by the private institutions and not on demonstrated need. Legislators don't see the political dangers because there is not organized opposition. The real political charm is the untaxed benefit to a constituency the legislators don't often have a way of benefiting. However, the programs of aid have created a level of dependency that institutions would have difficulty withdrawing from if the aid were discontinued."

University of North Carolina President William C. Friday says, "I think the aid program ought to be more student-oriented. The grants should go directly to the students and be based on need. Then the student would have the fundamental choices of which of the private institutions he wants to attend" (Bond, 1981, p. G-6).

A. K. King provides a summary for the student versus institutional aid issue in a letter dated April 15, 1981, and addressed to President S. Bruce Petteway of North Carolina Wesleyan College. President Petteway, in a memorandum dated March 18, 1981, had asked the Board of Governors of the University of North Carolina to "urge (Representatives and Senators) to increase the appropriation for private college students by at least \$100 each year of the biennium." He elaborates: "The State could easily finance this with a slight increase in tuition at UNC system institutions. Private college tuitions normally average about four to six times the amounts charged by public universities in North Carolina. This State saves almost \$3,000 each time a student enrolls in a private college instead of a public university. It makes sense doesn't (sic) it?" King's reply:

The Board of Governors, despite rumors to the contrary, has never opposed aid to students in the private sector. Indeed the Board recommended a rather generous program to the Governor and the General Assembly in 1975. That program would have been a need-based program, an approach recommended and preferred, by every major study of student financial aid. The General Assembly chose, instead, to establish the non-need-based tuition grant program. The Board still maintains that a need-based program would allow limited tax dollars

to address clearly identifiable student needs more directly. Nevertheless, the Board has never sought to reduce or eliminate the Legislative Tuition Grant program and, although it always receives less appropriations than it requests, has never suggested that the General Assembly could and should increase the university budget by cutting the amount of aid going to private higher education. . . . What you have suggested is both negative and destructive and is to be deplored.

Accountability and Institutional Autonomy. Accountability and institutional autonomy, two sides of the same coin, is an issue that bothers the opponents of state assistance. Senator Charles Vickery cites "no control or accounting of funds" as one major reason for opposing the state aid program (personal interview, June 4, 1981). "The first thing is to establish some kind of accountability," says UNC Board of Governors Chairman John Jordan. "Now there is absolutely no accountability whatsoever" (Bond, 1981, p. G-6).

"But 'accountability' means different things in different situations," says Terry Sanford (Beyond the Straw Men). He continues: "To a State college or university that receives virtually all of its money from the State, it means that it should account as a State agency--not an unreasonable proposition. However, it does not follow that private schools, indirectly receiving state money as a part of student tuition--admittedly only a fraction of their total receipts--should be required to go through the same elaborate budget and reporting procedures regarding salaries,

fees, and instructional programs." That private colleges do not go through the same procedures as public colleges gives rise to the criticism of some opponents who say that "private colleges don't appear to have to prove they are economical in their total operations" (Bond, 1981, p. G-6).

John Henley refutes the idea that private colleges aren't accountable. According to Henley (personal interview, May 28, 1981), "The State Auditor audits the private colleges every three years at least." The North Carolina Association of Independent Colleges and Universities states the following on page 16 of its 1981 report:

The independent colleges and universities are fully accountable for their role in administering the student aid funds. The institutions are subject to the same post-expenditure audits as the public institutions in that they must assure the State that funds are expended for the purpose appropriated. In neither sector is a performance audit conducted.

Under the contract or need-based aid program the UNC Board of Governors, which dispenses the funds on behalf of the State, is authorized in G.S. 116-21 to require of the institutions such reports, statements and audits as the Board may deem necessary or desirable in carrying out the purposes of . . . (the statutes which established the aid programs) and to make any rules or regulations that will, in the opinion of the Board, help to achieve the purposes of . . . (the statutes which established the aid programs). Each college which has administered these state aid funds submits numerous reports each year concerning every aspect of the aid program. These reports include a list of every student receiving the tuition grants by name and amount. The State Auditor has conducted an audit of the

North Carolina Legislative Tuition Grant Program on each of the 38 campuses over the past three years.

The private institutions are anxious to be responsive to the State's concerns. Through the HEGIS report, a comprehensive report required each year of all colleges, the private institutions supply a veritable mountain of data on their admissions, enrollments, faculty, finances, libraries, etc. These reports are on file at the offices of the General Administration of The University and available to the Board of Governors at any time.

All these colleges and universities are accountable to the marketplace. They cannot sustain an old program, much less begin a new one, if there is not sufficient student demand. Educational decisions are tempered by economic realities to an even greater extent than in the public sector, where heavily subsidized programs can be sustained without commensurate public-interest/student-demand.

Those who oppose increased aid to private college students carry on about "accountability," but what they are really talking about is "control." Legislative control (of academic programs, for example) is neither wise nor likely. The legislature vests control for the public sector in the institutions themselves and, to some extent, in the Board of Governors. Control at the independent colleges rests with their individual Boards of Trustees. The private colleges and universities are governed by North Carolina's most prominent civic, educational, religious and business leaders. These board members understand the need to establish sound management practices in the operation of their institutions.

While each of the private institutions has its own distinctive character, together they provide a diversity and richness to the system of collegiate institutions. Our American system of higher education is renowned and has succeeded so well because of its decentralized governance. Aid to students attending private colleges requires accountability, but not central control. Those

who shout accountability the loudest would do well to relish and protect their own considerable freedoms, rather than suggesting an inappropriate clamp on the autonomy of others.

Institutional autonomy or independence, the other side of accountability, is threatened at the private colleges, say the opponents of state assistance. "The traditional role of private higher education is distorted," says Senator Charles Vickery (personal interview, June 4, 1981). However, counters Terry Sanford (Beyond the Straw Men), "The question of State interference in private higher education has never been even a remote danger in North Carolina. In providing funds to enable students to attend private colleges, the State Legislature recognizes their value as they are, and the last thing they want to do is to try to turn them into State institutions, directly or indirectly. Our legislature is too wise to provide funds to preserve private colleges and then destroy their independence at the same time."

Nonetheless, North Carolinians, especially legislators, might heed this warning:

The point is that when such institutions obtain their subsistence from the same source as the public colleges do, it appears only logical that the outcome of education in the two sectors will be the same. All of higher education will be the lesser for not having maintained the pluralism that has been a point of strength for American higher education (Chapman, 1981, p. 56).

The 50 Percent Principle. The "50 percent principle" is what

The North Carolina Association of Independent Colleges and Universities wishes the General Assembly would establish. "This would tie appropriations for tuition assistance to North Carolina students in private colleges to fifty percent of the average appropriation for undergraduates in the public university system (at this year's cost, that would be half of \$3,000) -- a reasonable, understandable, straight forward approach," states Terry Sanford (Gunter letter, p. 2). Sharon Bond (1981, p. G-6) quotes William Friday: "The idea that some funding principle should be established is foreign to the state budget process in higher education. I have never understood that one General Assembly could commit succeeding General Assemblies to line-item requirements." However, the 1981 General Assembly, in ratifying Senate Bill 29, did just that. Section 39.1 of Senate Bill 29 sets forth the intent of the General Assembly to provide "a reasonable per-student funding level" by the end of fiscal year 1986-87. (See discussion of Senate Bill 29 in the 1981 section of this chapter.) Although former Attorney General Robert Morgan has stated that "one legislature cannot bind a succeeding legislature" (see the 1971 section of this chapter for discussion), the 1981 General Assembly has at least adopted a "legislative principle" intending to do so. Not only did the 1981 General Assembly adopt this principle, they also approved a \$50 increase in the legislative tuition grant program thereby costing the State 1.17 million dollars in 1981 ("Pause on Student Aid," 1981, p. 5). This, of course, has created

dissension between the private sector and the public sector which received only a 5 percent increase for state employees beginning in January 1982.

Those in the public university system are naturally concerned. The legislative principle establishing a set amount (whatever "reasonable" may turn out to be) means that private universities will not have to appear before the legislature at budget time. Their "reasonable amount" will constitute a free ride for the private institutions at the expense of the public institutions, who, in essence, will be requesting monies for both the public and private sectors.

Those in the private sector perceive the legislative principle as a means of easing tension between the public and private sectors at budget time. President Fred Young of Elon College comments: "It would be a statesmanlike way to resolve the issue and a proper way to finance education in this state over the long term in the best interest of all concerned and in the best economic interest" (Bond, 1981, p. G-6).

Although the private colleges' wish for the "50 percent principle" did not come true, they do have the "reasonable amount" principle as a substitute, which, if funded, might alleviate what President John Weems of Meredith (personal interview, May 27, 1981) calls "an adversarial situation created by a support program that encourages competition."

Chapter 5

CONCLUSIONS AND RECOMMENDATIONS

A new issue of public policy in America's higher education history is the state support of private higher education. As of January 1, 1980, all of the states except Wyoming and Nevada provide some type of aid to private higher education institutions.

One state, North Carolina, began its efforts to provide state assistance to private higher education in 1971 and by 1981 had provided approximately 86 million dollars to its now 38 private colleges and universities. This study is an indepth description of (1) the current status of that aid; (2) the political evolution of that aid; (3) the several different interest groups and individuals involved with (a) the legislation authorizing the aid and (b) the subsequent litigation contesting the legislation; and (4) the issue of state aid to private higher education in a national context.

Currently, there are three general programs of state aid to private higher education in North Carolina: (1) the North Carolina State Contractual Scholarship Fund, (2) the North Carolina Legislative Tuition Grant Program, and (3) the North Carolina Student Incentive Grant Program.

The North Carolina State Contractual Scholarship Fund, established in 1972, is the result of July 1971's House Bill 780: AN ACT TO UTILIZE THE RESOURCES OF PRIVATE COLLEGES AND

UNIVERSITIES IN EDUCATING NORTH CAROLINA STUDENTS, the first North Carolina statute supporting private higher education. Ostensibly a program of aid to North Carolina undergraduate "needy" students, the North Carolina State Contractual Scholarship Fund provides direct aid to the private institutions. Each approved institution (nonprofit; nongovernmental; non pervasively sectarian) receives \$200 per year per Full-time Equivalent North Carolina undergraduate student, which in turn must be re-allocated to resident undergraduate "needy" students. The Parents' Confidential Financial Statement, a national instrument administered by the Educational Testing Service (ETS) of Princeton, New Jersey, is utilized by the approved institution to determine need. Since the institutions determine the amount of need, grants may range from a small sum to the full cost of attendance. Hence, there is no ceiling for the aid and the number of needy students does not affect the amount of money allocated to the institutions. However, the money is kept in a separate identifiable account for the qualified students. From 1972 to 1981, the Board of Governors of the University of North Carolina (the agency responsible for the administration of the program) has administered approximately 38 million dollars to approved private institutions.

The second assistance program, the North Carolina Legislative Tuition Grant Program, was established in 1975 as a direct result of Section 30 of Senate Bill 45: AN ACT TO MAKE APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENT, INSTITUTIONS, AND

AGENCIES, AND FOR OTHER PURPOSES. Not based on need, the North Carolina Legislative Tuition Grant Program awards every applying North Carolina full-time undergraduate a portion of the tuition charges at approved institutions (nonprofit; nongovernmental; non pervasively sectarian). The program's funds, allocated directly to the institutions, depend each year on the appropriations made by the North Carolina General Assembly. The authorized maximum award for 1980-81 was \$550. The 1981 General Assembly increased this amount to \$600 in 1981 and \$650 in 1982. From 1975 to 1981, the North Carolina State Education Assistance Authority (administering agency for the program) has administered approximately 46 million dollars to approved private institutions for North Carolina full-time undergraduate students attending those institutions.

The third assistance program, the North Carolina Student Incentive Grant Program, is authorized by North Carolina General Statutes 116-201 to 116-201.23. The program provides matching funds to a Federal Grant allocated to North Carolina under Title IV, Part A, of the (Federal) Higher Education Act of 1965 as amended. The North Carolina Student Incentive Grant is designed to work in combination with other forms of student aid, particularly Pell Grants, as part of a package of assistance to substantially needy North Carolina full-time undergraduate students at any North Carolina college, university, or community college/technical institute. The North Carolina State Education Assistance Authority,

the recipient of the Federal grant, has College Foundation, Inc., a private nonprofit corporation, to administer the need-based comprehensive grant programs to substantially needy students, i.e., those with an expected family contribution of \$600 or less. From 1975 to 1981, the North Carolina State Education Assistance Authority via College Foundation, Inc. has administered a little over 2 million dollars to private institutions for substantially needy North Carolina undergraduate students.

The North Carolina statutes authorizing these programs of state aid to private higher education, held to be constitutional under the Establishment Clause of the First Amendment to the United States Constitution in Smith v. Board of Governors of the University of North Carolina (1977), have been reinforced by 1981 legislation. The 1981 North Carolina General Assembly ratified three important bills designed to aid private higher education: Senate Bill 568 (AN ACT TO AMEND, SUBJECT TO THE APPROVAL OF THE ELECTORATE, ARTICLE V OF THE CONSTITUTION OF NORTH CAROLINA TO AUTHORIZE THE ISSUANCE OF REVENUE BONDS TO FINANCE AND REFINANCE HIGHER EDUCATION FACILITIES OWNED BY NON-PROFIT CORPORATIONS); Senate Bill 569 (AN ACT CREATING THE NORTH CAROLINA EDUCATIONAL FACILITIES FINANCE AGENCY AND AUTHORIZING SAID AGENCY TO FINANCE, REFINANCE, CONSTRUCT, PROVIDE AND ACQUIRE AND OTHERWISE UNDERTAKE HIGHER EDUCATION FACILITIES); and Senate Bill 29 (AN ACT TO MAKE APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS,

INSTITUTIONS, AND AGENCIES, AND FOR OTHER PURPOSES), Senate Bill 569, designed to aid nonprofit private higher educational institutions, will become effective only if Senate Bill 568 is approved by qualified voters in the State at the next statewide primary election or statewide general election, whichever is earlier. Sections 37-39.1 of Senate Bill 29 are concerned with aid to private colleges. Section 37 sets forth the terms for the contract program for needy students, i.e., the \$200 appropriation for each full-time equivalent North Carolina undergraduate student enrolled at a private institution, and section 38 authorizes an increase in the tuition grant program, i.e., the sum of \$600 in 1981-82 and the sum of \$650 in 1982-83 to each full-time North Carolina undergraduate student attending an approved private institution. Section 39.1, a special provision in the appropriations bill, reads: "By the end of fiscal year 1986-87, the General Assembly intends to provide for the private student assistance programs within North Carolina, a reasonable per-student funding level compared to the per-student State appropriation during the preceding fiscal year for the institutions under the Board of Governors of the University of North Carolina." This reasonable amount principle is an attempt by the 1981 General Assembly to establish an operating formula for state assistance to private higher education.

Those actors responsible for the legislation authorizing state aid to private higher education in North Carolina include

former Governors Bob Scott, Dan Moore, and Jim Holshouser; Governor Jim Hunt; former and present legislators favoring state aid; the trustees, staff, faculty, and students of private higher education institutions; parents of students attending private higher education institutions; representatives of the (now defunct) State Board of Higher Education; and representatives of the North Carolina Association of Independent Colleges and Universities. The primary actors responsible for the legislation are Duke University President Terry Sanford (former North Carolina Governor), Pfeiffer College President Cameron West (former Director of the State Board of Higher Education), Ben Fisher (former Executive Secretary for the Council on Christian Higher Education of the Baptist State Convention of North Carolina), Virgil McBride (former Executive Director of the North Carolina Association of Independent Colleges and Universities), and John Henley (current President of the North Carolina Association of Independent Colleges and Universities).

Proponents of state aid to private higher education, including those legislators sponsoring the statutes authorizing the aid, postulate that such aid is economical, i.e., the State saves money by utilizing available space at private institutions. They also posit that the aid provides access to and choice of higher education for North Carolina students. They are quite adamant in their belief that the aid is student aid, not institutional aid, although the funds are allocated directly to the institutions.

Although public-private relations in North Carolina's higher education system have been quite cordial, economic uncertainties are apt to alter that situation. Those in opposition to the existing aid, specifically William C. Friday (President of the University of North Carolina), Roy Carroll (Vice-President of Planning at the University of North Carolina), and John Sanders (Director of the Institute of Government), claim that such aid is institutional aid since the money goes directly to the institution and is used for tuition purposes. They also object to state subsidies of choices provided by the North Carolina Legislative Tuition Grant Program for students attending private higher education institutions. In fact, the Board of Governors of the University of North Carolina proposed its own need-based student aid program to the 1975 General Assembly which enacted the legislation authorizing the North Carolina Legislative Tuition Grant Program. Their proposed program would have provided access to needy students wishing to attend private higher education institutions, but, unlike the contract program, would have established a ceiling for the aid.

CONCLUSIONS

This indepth, descriptive study of state aid to private higher education in North Carolina has convinced the researcher that the issue has not created much controversy. Originally entitled "The Battle for State Aid to Private Higher Education in North Carolina,"

the dissertation was retitled when the researcher discovered that there was no battle. The programs of aid are a direct result of the cohesive efforts of some politically influential individuals-- Duke President Terry Sanford, Pfeiffer President Cameron West, President John Henley of the North Carolina Association of Independent Colleges and Universities--and the lack of a politically organized opposition. The researcher found that those in opposition--primarily public higher education personnel and a few legislators--were acquiescent in their approach to the issue. Opposing legislators demonstrated a reticence to openly challenge a policy endorsed by the majority of the legislators and promulgated by all of the North Carolina Governors since Terry Sanford (1961-65). Public higher education personnel articulated a fear of reprisal from these same legislators. However, a depressed economy is likely to change this picture. Public higher education institutions, already experiencing severe financial cut-backs, are more apt to voice their distress.

The researcher also found that despite an absence of empirical evidence, proponents of the aid hypothesize that the aid saves the State money by utilizing existing space at the private colleges and universities. In reality, the State is subsidizing some private institutions which might have difficulty surviving if the aid were withdrawn. Nevertheless, legislators support the aid since it is politically expedient. It allows them to serve a constituency not often served, i.e., the higher level socio-economic

groups, since it has been historically true that the majority of private higher education students are from higher level income families.

Taking the preceding information into consideration, the researcher believes that state aid to private higher education in North Carolina will remain a commitment of the State unless those in opposition alter that situation by becoming as equally political and vocal as those supporting the aid.

RECOMMENDATIONS

Cognizant of the favorable political attitudes toward state aid to private higher education in North Carolina, the researcher has made several recommendations she considers to be feasible.

Recommendation Number 1

It is recommended that the 1983 North Carolina General Assembly consider enacting legislation setting forth a common policy for the North Carolina State Contractual Scholarship Fund. This policy should establish (a) a universal definition of "need" based on expected family contribution of a set amount which reflects substantial need (e.g., \$1,000 or less); (b) a cut-off income level for the parents or guardians of the student; and (c) a ceiling for the aid. A recommended stipulation would be that any qualified student's scholarship not exceed the costs to the State had that student attended a comparable state supported institution--community/technical college, college, or university. Presently, "need" is determined

by each institution which utilizes the Parents' Confidential Financial Statement, a national instrument which varies its definition of "needy" from year to year. Since there is no ceiling for the aid, a "needy" student as determined by the institution may receive the full cost of attendance.

Recommendation Number 2

It is recommended that the 1983 General Assembly consider enacting legislation that would (a) repeal General Statute 116-11 which designated the Board of Governors of the University of North Carolina as the administering agency for the North Carolina State Contractual Scholarship Fund, and (b) designate the North Carolina State Education Assistance Authority as the administering agency for the program. The North Carolina State Education Assistance Authority, the statute-designated agency responsible for the administration of the North Carolina Legislative Tuition Grant Program and the North Carolina Student Incentive Grant Program, keeps comprehensive annual reports and well documented files that are available to the public upon request. It is suggested that one central administering agency be responsible for all the general programs of aid so that accountability procedures will be universal. It is also suggested that this agency be the North Carolina State Education Assistance Authority since its records are complete and available to the public. Such records were not available from the Board of Governors of the University of North Carolina.

Recommendation Number 3

It is recommended that the 1983 North Carolina General Assembly consider refusing any requests of the North Carolina Association of Independent Colleges and Universities for any increases in the North Carolina Legislative Tuition Grant Program. The North Carolina Legislative Tuition Grant Program, a non-need based program, has cost the State approximately 46 million dollars since its inception in 1975. Any restrictions of funds for private higher education students should especially exist for this program since it is non-need based.

Recommendation Number 4

It is recommended that opposing forces of state aid to private higher education in North Carolina--legislators, educators, Americans United for Separation of Church and State--form an alliance, confront the issue directly and openly, and come up with a plan of attack if they wish to alter North Carolina's present policy concerning state aid to private higher education.

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APPENDIX A

STATE SUPPORT OF PRIVATE HIGHER
EDUCATION: STUDENT ASSISTANCE PROGRAMS
IN OPERATION OR APPROVED IN THE 50 STATES
AND D. C. AS OF JANUARY 1, 1980

STATE SUPPORT OF PRIVATE HIGHER EDUCATION: STUDENT ASSISTANCE PROGRAMS
IN OPERATION OR APPROVED IN THE 50 STATES AND D.C. AS OF JANUARY 1, 1980

STATE	STUDENT ASSISTANCE
ALABAMA	(a) State Student Assistance Program (SSIG) initiated in 1976. <u>Funding:</u> 1979-80, \$1,188,867 <u>Distribution:</u> 1979-80, \$300 per award. <u>Restrictions:</u> State residents at in-state institutions with substantial financial need. (b) State Student Grant Program initiated in 1978. <u>Funding:</u> 1979-80, \$3 million. <u>Distribution:</u> 1979-80, \$564 per award. <u>Restrictions:</u> State residents attending in-state accredited independent non-profit postsecondary institutions.
ALASKA	(a) Scholarship loans; for use at accredited in-state or out-of-state institutions. <u>Funding:</u> 1979-80, \$9.6 million. <u>Distribution:</u> Amount based on need; limit \$3,000 a year for undergraduates, \$5,000 a year for graduates. <u>Restrictions:</u> Limited to 2-year Alaskan residents; forgivable percent rate dependent on residence and employment in state after graduation; 10 percent forgiven for 2 years; up to 40 percent for 5 years, must complete degree.
ARIZONA	(a) State Student Assistance Program, initiated in 1978, for state residents attending full time at an accredited institution in-state. <u>Funding:</u> 1979-80, \$3,632. <u>Distribution:</u> \$100 to \$1,500 per year based on need.

ARKANSAS

- (a) State scholarship program based on need and academic ability. Student may attend any eligible in-state public or private institution. Administered in conjunction with the SSIG funds program.

Funding: 1979-80, state \$884,632, SSIG \$473,617, total \$1,358,249.

Distribution: Maximum for each student \$300/annually.

- (b) Arkansas Rural Endowment Loan Program. Loans to resident rural students to attend schools within the state with priority to undergraduate students. Priorities for 1979-80 are continuing students.

Distribution: May borrow up to \$2,500/year.

Restrictions: Bound by the same restrictions as guaranteed loan program.

- (c) State Student Loan Authority. Purchases student loans from lending institutions and makes last resort direct loans to resident students attending any in- or out-of-state college or university or in-state vocational school. Also makes loans to non-residents attending Arkansas institutions.

Funding: Funded by proceeds from revenue bonds not to exceed \$15 million.

Restrictions: Bound by the same restrictions as guaranteed loan program. Students must qualify for federal interest benefits.

CALIFORNIA

- (a) State Scholarship Program. About one-half of awards go to students in private institutions.

Funding: 1979-80, \$58,190,138.

Distribution: Maximum \$2,900 per student; 82 percent of funds used in private colleges. (cont'd)

CALIFORNIA (cont'd)

Restrictions: For residents' use in the state only.

(b) Fellowship programs for graduate and professional students.

Funding: 1979-80, \$2,823,371.

Distribution: Competitive awards based on need and merit; maximum award is tuition and fees or need, whichever is less. 52% of awards, 84% of funds used by students at independent colleges.

Restrictions: Tuition and fees only.

(c) Awards for two-year occupational education in public or private institutions.

Funding: 1979-80, \$2,664,564.

Distribution: Competitive awards based on need; up to \$2,000 tuition and up to \$500 for training-related costs.

(d) Disadvantaged -- College Opportunity Grant Program.

Funding: 1979-80, \$19,459,960.

Distribution: Tuition plus subsistence up to \$1,100 maximum for freshmen.

Maximum of \$2,700 per year tuition and \$1,100 per year subsistence for sophomores, juniors and seniors. Maximum increases to \$2,900 and \$1,100 for new recipients in 1979-80 and thereafter. 24% of funds, 11% of awards used in private colleges.

Restrictions: Total 6,825 new recipients per year plus renewals; 51% must be used in community colleges in first year.

First-year students are eligible for subsistence grants only.

COLORADO

(a) State Student Incentive Grants, valued at \$109,877 (\$54,938 in state funds), were available to students attending private and proprietary institutions in 1979-80. The statute authorizing the program is under judicial review. Statute was found to be Constitutional in early '81

(cont'd)

COLORADO (cont'd)

- (b) Colorado Guaranteed Student Loan Program for residents and non-residents attending any eligible Colorado institution. Fiscal 1980, \$54 million guaranteed in loans.
Distribution: Maximum of \$2,500 for dependent undergraduate students and \$5,000 for graduate students; respective aggregate maximums of \$7,500 and \$15,000.

CONNECTICUT

- (a) State Scholarship Program available to Connecticut students accepted at any postsecondary institution in- or out-of-state.
Funding: 1979-80, \$1,905,000 state funds.
Distribution: Maximum \$1,000 per student per year.
Restrictions: State residents only.
- (b) Scholarships for children of deceased/disabled veterans.
Funding: 1979-80, \$59,000.
- (c) Supplemental grants program for use in public and private in-state institutions.
Funding: 1979-80, \$1 million.
- (d) Work-Study Program, for use in public and private in-state institutions.
Funding: 1979-80, \$500,000.
- (e) State guaranteed student loan program operated by Connecticut Student Loan Foundation.
Funding: \$100 million in new guarantees were made in fiscal year ending June 1979.
- (f) Higher education grants to in- or out-of-state public or private institutions to provide student aid.
 (Program being phased out).
Funding: 1979-80, \$75,000

DELAWARE

- (a) Postsecondary Scholarship Program grants available to full-time (cont'd)

DELAWARE (cont'd)

students at both public and private colleges for (1) in-state undergraduates, (2) undergraduates in reciprocity states, or (3) undergraduates or professional students at out-of-state institutions when programs of study are not offered by Delaware state-supported institutions.

Funding: 1979-80, \$550,000.

Distribution: Maximum \$1,000 grant.

Restrictions: Student must be state resident and enrolled full-time in a degree program.

- (b) Scholarships for veterans' surviving dependents; for use at public or private institutions.

Funding: 1979-80, \$18,000.

Distribution: \$525 or tuition, whichever is greater.

DISTRICT OF COLUMBIA

- (a) State Student Incentive Grant Program for D. C. residents at public or private institutions in or outside D. C.

Funding: 1979-80, \$1,073,354 (half D. C., half federal funds).

Distribution: \$400 - \$1,500 according to need, first-come, first-served basis.

Restrictions: Student must be a D. C. resident for at least 15 months prior to application.

FLORIDA

- (a) State tuition vouchers for full-time students at accredited private post-secondary institutions in Florida.

Funding: 1979-80, \$2.4 million; 1980-81, \$4.1 million.

Distribution: \$750 per full-time student.

- (b) Florida Guaranteed Student Loan Program for students to attend accredited public or private post-secondary institutions in Florida:
(cont'd)

FLORIDA (cont'd)

a student may borrow up to \$2,500 per academic year for undergraduate study and \$5,000 for graduate study.

Restrictions: The aggregate amount of loans to an individual cannot exceed \$7,500 for undergraduate study and \$15,000 for graduate study.

(c) Florida Student Assistance Grant Program for students at accredited public or private institutions.

Funding: 1979-80, \$8 million; 1980-81, \$9 million.

Distribution: Received in the amount of need not to exceed \$1,200 or less than \$200 per academic year; payment to students in nonpublic institutions for 1978-79 was approximately 54.4% of the funds appropriated or \$4,352,000.

Restrictions: Recipients must be U.S. citizens and have been state residents for 1 year.

(d) Exceptional Child Grant Program for teacher training.

Funding: 1979-80, \$75,000 each year.

(e) Seminole and Miccosukee Indian Scholarships.

Funding: 1979-80, \$4,800 each year.

Distribution: Eight awards of \$600 to qualified Indians in public or private Florida institutions.

(f) College Level Examination Program (CLEP) fee waivers for Florida residents in public or private secondary and postsecondary institutions.

Funding: 1979-80, \$100,000 each year.

GEORGIA

(a) Tuition grants for state residents attending private accredited institutions.

Funding: 1979-80, \$8,619,100.

Distribution: \$600 per student per academic year. (cont'd)

GEORGIA (cont'd)

Restrictions: Prohibited for primarily sectarian institutions; excludes institutions receiving state funds under 1970 Junior College Act; must take 12 hours of course work.

- (b) State Incentive Scholarships for residents for first-time full-time students in in-state public or private institutions.

Funding: 1979-80, \$3,364,872, including \$1,349,672 federal SSIG.

Distribution: Up to \$450 per student.

HAWAII

- (a) Participation in State Student Incentive Grant Program, through the Postsecondary Education Commission, using alternate matching dollars for federal funds.

Funding: 1979-80 estimated, \$196,246 state; \$38,869 private.

IDAHO

- (a) State Merit Scholarship Program for high school graduates to attend Idaho public or private postsecondary institutions.

Funding: 1979-80, \$143,000.

Distribution: Up to \$1,500 or educational costs, whichever is less.

- (b) State Student Incentive Grant Program for financially needy students to attend Idaho postsecondary institutions, including public, private and proprietary.

Funding: 1979-80, total \$502,766; state, \$140,000; federal \$251,383; institutions, \$111,383.

Distribution: To institutions according to full-time enrollment; maximum to students \$1,500/year.

ILLINOIS

- (a) State grant program based on financial need for state residents attending public or private institutions.

Funding: 1979-80, \$96.2 million of which about \$53.7 million is allocated to private sector students.

Distribution: Maximum of \$1,800 per student for tuition and fees.

INDIANA

- (a) State scholarship program, based on academic ability and financial need.

Funding: 1979-80, \$13,391,636.

Distribution: Stipend limited to cost of tuition/fees, financial need of student or \$1,400, whichever is less.

Restrictions: State residents for use in accredited in-state colleges and universities.

- (b) Educational grant program, based on admission to an accredited in-state institution and financial need of student.

Funding: 1979-80, \$4,869,090.

Distribution: Stipend limited to cost of tuition/fees, financial need of student, or \$1,400, whichever is less.

Restrictions: For state residents to be used in accredited in-state colleges and universities.

- (c) Freedom of Choice Grant Program based on tuition/fees or financial need of student.

Funding: 1979-80, \$4,366,215.

Distribution: Stipend limited to financial need of student, tuition/fees or \$800, whichever is less.

IOWA

- (a) State scholarships based on ability and financial need and usable at any approved public or private
(cont'd)

IOWA (cont'd)

institutions in state by residents.
Funding: 1979-80, \$350,000; \$314,460 SSIG.
Distribution: \$100 - \$600 depending on need and tuition.
Restrictions: Used only for tuition and mandatory fees for full-time students.

- (b) Iowa Tuition Grant Program for residents demonstrating need at Iowa independent postsecondary institutions of their choice.

Funding: 1979-80, \$13.75 million; up to \$101,127 SSIG. Recipients must be enrolled at least half-time.

Distribution: Maximum of \$1,600 per year based on family financial need for full-time students; half-time students one-half of full-time amount.

Restrictions: Cannot exceed tuition and mandatory fees minus average amount that would be paid at state institution.

- (c) National Guard education benefits for Iowa residents enlisted in the guard and enrolled as undergraduates at Iowa public or private postsecondary institutions.

Funding: 1979-80, \$40,000.

Distribution: Maximum of \$250 per year for full-time students; half-time students one-half of full amount.

- (d) Iowa Guaranteed Student Loan Program for residents attending any eligible school and nonresidents attending Iowa eligible schools.

Funding: 1979-80, \$42 million in guaranteed loans.

Distribution: Maximum of \$2,500 for undergraduate and \$5,000 for graduate students to respective aggregates of \$7,500 and \$15,000.

Restrictions: Correspondence schools not eligible.

KANSAS

- (a) Limited competitive scholarship program. (cont'd)

KANSAS (cont'd)

Funding: 1979-80 total \$850,254 including SSIG.

Distribution: \$500 or financial need.

Restrictions: Instate use for Kansas residents.

- (b) Tuition grants for low- and middle-income students at Kansas private colleges.

Funding: 1979-80, \$3.8 million.

Distribution: Tuition fees or financial need based on family contributions, whichever is less; maximum, \$1,200.

Restrictions: Student must pay \$450 before grant is calculated against total cost.

KENTUCKY

- (a) Tuition grants for students at private nonprofit colleges and universities.

Funding: 1979-80, \$1.9 million

- (b) Comprehensive grant program for undergraduate state residents, based on need, for use at in-state public, private or proprietary institutions.

Funding: 1979-80, \$3 million.

- (c) State insured student loan program for use at public, proprietary or private institutions.

Funding: No amount specified.

Distribution: Loans annual limit \$2,500/undergraduate; \$5,000/graduate and professional.

Restrictions: Student must first apply and be denied a loan from commercial sources before receiving direct loan.

- (d) Summer Work Study Program initiated summer 1975; employed 305 during the summer of 1979.

Funding: Net payroll, 1979, \$264,200.

Distribution: Intended to support 500 students on a minimum wage scale for 12 weeks during the summer of 1979.

(cont'd)

KENTUCKY (continued)

Restrictions: Residence certified by Kentucky institution as eligible for college work study program.

LOUISIANA

(a) State Loan Program.

Distribution: Undergraduate, \$2,500 year maximum; graduate/professional, \$2,500 year maximum.

Restrictions: \$15,000 accumulative maximum per graduate student, \$7,500 maximum undergraduate.

(b) State Student Incentive Grants.

Funding: 1979-80, \$822,675 total (\$411,388 federal, \$400,000 state, \$11,337 private). \$93,207 in state funds to private institutions.

MAINE

(a) Program of financial aid to residents attending private or public schools.

Funding: 1979-80, \$1,026,827.

Distribution: Based on need; minimum of \$200 per year up to \$1,500.

(b) Scholarships for orphans and widows of deceased veterans for use in public or private institutions.

Funding: 1979-80, \$82,000.

Distribution: \$300 per student per year; also free tuition in state supported Maine institutions.

MARYLAND

(a) State Scholarship Board Programs: three major programs are (1) general state scholarships, \$200 to \$1,500 based on financial need and SAT results; 1979-80 awards to 5,370 persons totaling \$1,512,240; about 30% of dollars to private; (2) senatorial scholarships awarded on basis of quota per legislator; 7,500 awards in 1979-80 totaling \$2,676,000; about 22.5% to private; (cont'd)

MARYLAND (cont'd)

awards range from \$200 to \$1,500/year; (3) distinguished scholars program; \$500 to academically talented students; 100 awards totaling \$50,000; 44% to private.

Funding: 1979-80, total funding of board programs. \$7,104,190, including \$1,474,679 federal SSIG.

MASSACHUSETTS

(a) General state scholarships renewable for up to 4 years of undergraduate study--26,000 awards including about 10,000 new--for residents based solely on need for use at public and private institutions.

Funding: 1979-80, \$13.5 million, state; \$2.5 million, federal.

Distribution: \$900 annually in private sector. In 1979-80, approximately 75% of the \$16 million was used in the private sector.

Restrictions: Usable anywhere in United States at eligible institutions. No less than 10% and no more than 25% of scholarship funds be used in Massachusetts public sector.

(b) Consortia Scholarship Program for Massachusetts residents enrolled in private college members of three consortia.

Funding: 1979-80, \$150,000.

Restrictions: Students must be enrolled in a program not available in a consortium public college.

MICHIGAN

(a) Competitive scholarship program; applicants rated on test scores; in 1978-79, public institutions received 74.1% of the awards and 72% of the funds; 2-year public institutions received 7.8% of the awards and 4.4% of the funds;
(cont'd)

MICHIGAN (cont'd)

private institutions received 18.1% of the awards and 24% of the funds.

Funding: 1979-80, \$15.7 million, including \$3.1 million SSIG funds.

Distribution: Cash awards up to \$1,200 per year for 4 years to those with financial need; honorary awards to those without.

(b) Tuition grant program based entirely on financial need for students attending private nonprofit institutions.

Funding: 1979-80, \$14.5 million.

Distribution: Student tuition charges must exceed \$480. Theology students not eligible.

(c) Guaranteed Student Loan Program.

Distribution: Maximum undergraduate may borrow is \$2,500; graduate maximum \$5,000; accumulated maximum is \$7,500 for undergraduates, \$15,000 for graduates.

Restrictions: Enrolled in eligible school at least half-time.

(d) Tuition Differential Grant Program for residents enrolled full-time in an approved private institution in-state. No financial needs test required.

Funding: 1979-80, \$9.5 million.

Distribution: \$500 each to approximately 19,000 full-time students and \$250 to 2,300 part-time students.

Restrictions: Freshmen and sophomores in 1979-80; additional classes to be added each year.

MINNESOTA

(a) State Scholarship Program based on scholastic achievement and need, usable in public and private institutions.

Funding: Fiscal 1980, \$9,922,500.

Distribution: One-half of demonstrated need; range \$100 to \$1,100; combined with federal BEOG, cannot exceed 75% on need. (cont'd)

MINNESOTA (cont'd)

- (b) Grant-in-aid program, based on need, usable in public or private institutions.

Funding: Fiscal 1980, \$12,103,600.

Distribution: One-half of need; range \$100 to \$1,100; combined with federal BEOG, may not exceed 75% of need.

- (c) State Student Loan Program financed by up to \$125 million in revenue bonds for attendance at public or private institutions.

Distribution: Maximum of \$2,500 per year for undergraduates, \$5,000 for graduate and professional students.

- (d) Work-Study Program.

Funding: Fiscal 1980, \$2.6 million.

Distribution: Maximum is amount of student's need less all scholarship and grant dollars awarded to student.

- (e) Emergency scholarship funds awarded to in-state public or private institutions for foreign students.

Funding: 1980, total \$80,000 including \$35,000 to University of Minnesota.

- (f) Scholarship assistance for dependents of POW's and MIA's for use at public or private institutions.

Funding: 1980, \$10,000.

- (g) Grant Program for Part-Time Students, based on need, usable at public or private institutions.

Funding: Fiscal 1980, \$375,000.

Distribution: Cover tuition and fees but can't exceed cost for equivalent program at University of Minnesota.

Restrictions: Must be attending less than full time and pursuing program or course leading to degree, diploma or certificate.

MISSISSIPPI

- (a) Postsecondary Financial Assistance Board to administer guaranteed loan program.

Funding: 1979-80, \$1,718,334.

- (b) Grant program for orphans and widows of deceased firemen and policemen killed in the line of duty.

Funding: 1979-80, \$3,946; to be used at public or private institutions.

MISSOURI

- (a) Student Grant Program available to students attending eligible public and private 2- and 4-year institutions.

Funding: 1980-81, \$10,243,303 (state, \$8,543,303; federal, \$1.7 million).

Distribution: Based on need; maximum grant \$900, one-half tuition or calculated need, whichever is least.

- (b) The State Guaranteed Student Loan Program began operations in September 1979. About \$20 million guaranteed loans made by June 1980; expected total for 1980-81 over \$50 million.
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MONTANA

- (a) A state guaranteed student loan program was established in 1980.
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NEBRASKA

- (a) A state scholarship program, approved by the legislature in 1978, was ruled unconstitutional in the district court, upholding an earlier ruling by the attorney general. An appeal to the state supreme court is expected.

- (b) In 1979 the Higher Education Assistance Foundation was named the
(cont'd)

NEBRASKA (cont'd)

guarantor for the Nebraska Guaranteed Student Loan Program.

NEVADA

NONE

NEW HAMPSHIRE

(a) Incentive grant program for awards to public and private institutions.
Funding: 1979-80, \$600,000; 1980-81, \$700,000.
Distribution: 339 awards to students attending private institutions for \$223,194; 655 awards to students in public institutions for \$207,897; 72 awards to public voc/tech institutions for \$7,600.
Restrictions: State residency.

NEW JERSEY

(a) Garden State Scholarships; competitive scholarships awarded by New Jersey institutions based on state allocations and guidelines; initiated in 1978-79 for students based on above-average academic records and SAT scores.
Funding: 1979-80, \$2.6 million for 3,800 students (\$712,000 for 1,200 students in private institutions).
Distribution: \$200 - \$500/year; if students also qualify for TAG award and if need is high, up to \$1,700/year may be awarded. Awards are renewable based on grades and need.
Restrictions: Use in accredited institutions only, and for use in state only.

(b) Tuition Aid Grants based on financial need for undergraduate students; renewable based on need.
Funding: 1979-80, \$23.8 million for 40,000 students. In 1978-79 served 9,100 students at private in-state institutions; total funding \$8 million.
 (cont'd)

NEW JERSEY (cont'd)

Distribution: \$100 - \$1,200/year.
Restrictions: Tuition Aid Grants are portable to states with reciprocity; full-time students only.

- (c) New Jersey Guaranteed Student Loan Program for minimum half-time study in approved institutions, nursing schools, business, vocational or technical schools.

Funding: 1979-80, \$207.8 million for 95,500 students (\$45 million for 20,800 students enrolled in private colleges and universities).

Distribution: \$2,500 maximum/year, maximum total \$7,500 for undergraduate student; \$5,000/year for graduate. Maximum \$15,000 both undergraduate and graduate loans. State direct loans supplement total \$22,000 in designated health professional fields.

Restrictions: New Jersey residents for 6 months before application.

NEW MEXICO

- (a) State Guaranteed Loan Program for use in public or private institutions; operated by the University of New Mexico.

Funding: 1979-80, \$10 million.

Distribution: Maximum \$2,500/year.

Restrictions: State residency.

- (b) Student Incentive Grant Program for students attending public and private institutions.

Funding: 1979-80, \$360,000 state.

Distribution: In 1979, average award of \$214 per student to 989 students at public; average \$810 per student to 233 students at private.

NEW YORK

- (a) Regents Scholarship and Fellowship Programs. Competitive and non-competitive scholarships for use at in-state public or private (cont'd)

NEW YORK (cont'd)

institutions.

Funding: 1979-80, \$19.4 million.

- (b) Tuition Assistance Program (TAP)
based on need, for student grants
for use in the state. (Noncompetitive)

Funding: 1979-80, \$253.6 million.Distribution: Grants for up to \$1,800
per student, not to exceed tuition;
graduate students, \$600 maximum.

- (c) Guaranteed Loan Program. Student
may borrow up to \$7,500. In 1979-80,
estimated distribution: 250,000
loans totaling \$600 million.

NORTH CAROLINA

- (a) Student Incentive Grant Program
for state residents attending
public or private institutions;
administered centrally by College
Foundation, Inc.

Funding: 1979-80, \$3,298,886 (one-
half federal funds).Distribution: Recipients selected from
pool of eligible applicants who apply
within specified deadline.Restrictions: Awards limited to not
more than half of remaining unmet need
after family resources and BEOG con-
sidered.

- (b) State Education Assistance Authority
--North Carolina Insured Loan Pro-
gram under Title IV-B of the Higher
Education Act of 1965, as amended.

Funding: 1979-80, \$21 million.Distribution: To state residents attend-
ing public and private institutions;
administered by the College Foundation,
Inc.Restrictions: Maximum loan, \$2,500/year.
Program is self-supporting through sale
of tax-exempt revenue bonds.

- (c) State Legislative Tuition Grants.

Funding: 1979-80, \$10,687,500. (cont'd)

NORTH CAROLINA (cont'd)

Distribution: \$475 per student to each state resident enrolled in a state private institution.

Restrictions: Not based on need; students must be enrolled full time.

- (d) Contracts to allow private institutions to administer state appropriated scholarships to needy North Carolina students.

Funding: 1979-80, \$4,799,966.

Distribution: Distributed to institutions based on enrollment of North Carolina residents in fall term (October) of each year.

Restrictions: Institutions must disburse to needy North Carolina students the full amount or refund the difference.

NORTH DAKOTA

- (a) State student financial aid program, based on financial need, for attendance at any accredited post-secondary institution in state.

Funding: 1979-81 biennium, \$485,000 state, \$400,000 federal.

Distribution: About \$400 per student as determined by advisory board and Board of Higher Education.

Restrictions: For first year (freshmen) students; continuing grants to students holding grants previous year.

- (b) Tuition Assistance Grant Program for students attending private accredited four-year colleges, based on need; administered by State Board of Higher Education.

Funding: 1979-80, \$200,000.

Distribution: \$500 per year.

OHIO

- (a) Student guaranteed loan program.

Funding: State Guaranteed 55,742 loans totaling \$120,293,317 as of 12/31/79.

(cont'd)

OHIO (cont'd)

Distribution: Maximum loan of \$2,500.

- (b) Instructional grant program for Ohio residents at Ohio and Pennsylvania public, private nonprofit institutions and proprietary schools.

Funding: 1979-80, \$30,925,838 total, \$27,963,282 state, \$2,962,556 federal.

Distribution: Maximum grant \$720 for public and \$1,800 for private institutions based on family gross income and number of dependent children. Approximately \$12 million used in private sector.

Restrictions: Full-time undergraduate students only.

- (c) Academic Scholarship Program for outstanding Ohio high school graduates for use at public and private in-state institutions.

Funding: 1979-80, \$2 million.

Distribution: 2,000 4-year scholarships of \$1,000 each.

- (d) War Orphans Scholarship Program for children of deceased or disabled war veterans and children of persons declared as MIA's or POW's during Vietnam conflict.

Funding: 1979-80, \$495,000.

Distribution: Awards equal to tuition and fees at Ohio public institutions or an amount equal to average public tuition and fees if student attends an Ohio private college. Some 600 recipients enrolled in 1979-80.

- (e) National Guard Scholarship Program for persons enlisting or re-enlisting in the Ohio National Guard for 6 years on or after 9/1/77.

Funding: 1979-80, \$1 million. Some 1,400 recipients enrolled in 1979-80.

Distribution: Same as (d) above.

OKLAHOMA

- (a) Tuition aid grants for full-time Oklahoma residents at public and private accredited institutions in state based on need.

Funding: 1979-80, \$2,265,302.

Distribution: Maximum grant of \$500 per student, but not more than 50% of tuition and/or fees.

- (b) Oklahoma Guaranteed Student Loan Program, based on need, for students at public or private institutions. An ongoing program.

Funding: Funded through issuance of bonds.

OREGON

- (a) Need grant awards based on financial need, and cash awards program based both on need and academic achievement for students attending any accredited college or university in state.

Funding: 1979-80, \$6,641,000 total for need grants; \$1,128,000 of total need dollars to private; \$422,000 total for cash awards; \$158,000 to private.

Distribution: Need grants based on family income with 41,000 maximum grant.

PENNSYLVANIA

- (a) State Higher Education Grant Program for full-time undergraduates at public and private institutions, hospital nursing schools and private business and technical schools. Out-of-state portability of awards is permitted.

Funding: 1979-80, \$72.2 million

Distribution: Maximum award at in-state institution is \$1,500; \$600 maximum for out-of-state. Maximum (cont'd)

PENNSYLVANIA (cont'd)

calculated at one-third of financial need after BEOG award, not to exceed 80% of basic tuition. \$48 million of total awarded to students at private institutions.

Restrictions: In-state residency; financial need; minimum two-year programs of study.

- (b) State Guaranteed Loan Program for full- and half-time undergraduates and graduates at approved institutions of higher education.

Funding: 1979-80, \$128 million guaranteed for students attending private colleges in-state and estimated \$40 million for out-of-state private colleges.

Distribution: Maximum full-time undergraduate loans \$2,500 per grade level cumulative to \$7,500; maximum full-time graduate loans \$5,000 per grade level cumulative to \$15,000; half-time students may borrow half the maximum amounts per grade level.

Restrictions: In-state residency at time of application.

RHODE ISLAND

- (a) Tuition and fee grants, based on merit and need, for use at in- or out-of-state public or private institutions.*

Funding: 1979-80, \$3,782,825.

Distribution: Minimum \$250; maximum \$1,100. Number of awards--10% of total number of 4th year high school students as of October.

Restrictions: In-state residency.

- (b) Funds provided to Bryant College to train business teachers.

Funding: 1979-80, \$7,500.

- (c) War Orphans Scholarship Program.

Funding: 1979-80, \$1,500.

Distribution: \$125 per award.

(cont'd)

RHODE ISLAND (cont'd)

Restrictions: In-state residency.

*To date, most recipients have chosen to attend the state's public institutions.

SOUTH CAROLINA

(a) Tuition grants program, based on merit and need for students attending private institutions.

Funding: 1979-80, approximately \$10.15 million total.

Distribution: \$100 - \$2,000 range.

Restrictions: Demonstration of need; state residency; use at private institutions in state.

(b) State Education Assistance Authority (South Carolina Student Loan Corporation).

Purpose: To issue revenue bonds to make or guarantee loans of students at in- or out-of-state institutions. Disbursed about \$4 million in 1979-80 loans to state residents, including \$780,000 to students at private institutions.

SOUTH DAKOTA

(a) Tuition equalization grant program for use at North Central accredited private institutions.

Funding: 1980-81, \$100,000 state.

Distribution: \$100 - \$250, based on need.

Restrictions: State residents only.

(b) Indian student scholarships. May be used at accredited public/private institutions in-state.

Funding: 1980-81, \$15,000.

Distribution: Average grant \$600 per year.

(c) Guaranteed student loan program for use at any approved South Dakota postsecondary institution.

Distribution: \$2,500 per year, aggregate to \$7,500 for undergraduates; \$5,000 per year, aggregate to \$15,000 for graduates.

Restrictions: Limited to state residents.

TENNESSEE

(a) Student Assistance Award Program.
Funding: 1979-80, \$920,000 state, \$1,280,000 federal.
Distribution: Maximum award \$1,200 direct to student.
Restrictions: Not to exceed evident need, tuition or mandatory fees.

TEXAS

(a) Tuition Equalization Grants based on need for Texas residents attending an in-state private institution of their choice.
Funding: 1979-80, \$12,886,368.
Distribution: Grants up to \$1,136 per student.
Restrictions: For tuition only.

(b) Texas Assistance Grants Program was enacted by 1975 legislature but has not been funded. Grants up to \$1,000 authorized based on need. Matchable by SSIG up to combined total of \$1,500.

(c) Texas Public Educational-State Student Incentive Grants Program.
Funding: 1979-80, \$2.98 million.
Distribution: Awards are made to undergraduates on the basis of financial need. Maximum award is \$1,500 for an academic year.
Restrictions: Recipients must be undergraduates. Up to 10% may be used by out-of-state students.

(d) Hinson-Hazelwood College Student Loan Program.
Funding: 1979-80, Approximately \$12 million.
Distribution: Based upon need up to \$2,500 per fiscal year for undergraduates, graduate and law students (\$5,000 for medical, osteopathic, dental, veterinary, optometry or public health students).
Restrictions: Use at in-state approved nonprofit institutions only.

UTAH

- (a) 1977 legislation authorizes the State Board of Regents to issue tax exempt revenue bonds to purchase from lenders or to make guaranteed loans to students at eligible public, private and proprietary institutions. Legislation also authorizes the Higher Education Assistance Authority to guarantee student loans under federal programs.

Funding: Issuance of bonds.

VERMONT

- (a) Incentive grant program, based on need, for Vermont residents attending public, proprietary or private postsecondary institutions, in- or out-of-state.

Funding: 1979-80, \$4.4 million.

Distribution: Maximum grant \$2,250 for public or out-of-state institutions; \$3,350 for private in-state institutions; 26% of funds awarded to private, 27 % to out-of-state and 47% to public institutions.

Restrictions: Only for undergraduate students except veterinary students and University of Vermont medical students.

- (b) Vermont Guaranteed Student Loan Program.

Distribution: Maximum loans: \$2,500 per year for undergraduate; \$5,000 per year for graduate.

Restrictions: Funds available for half-time study or more; loan limit \$7,500 undergraduate; \$15,000 total during undergraduate and graduate career.

VIRGINIA

- (a) Tuition assistance grant and loan program for all Virginia students attending private institutions.

(cont'd)

VIRGINIA (cont'd)

Funding: 1980-82, \$14.7 million.

Distribution: Now a grant program exclusively. In 1980-82 all students will receive \$625 per year.

- (b) College Scholarship Assistance Program based on need; scholarship grants to students at public institutions and private institutions.

Funding: 1980-82, approximately \$7.6 million, including matching SSIG funds.

Distribution: Students in both public and private institutions are eligible to receive awards, depending on financial need.

- (c) Virginia Guaranteed Student Loan Program for residents attending in- or out-of-state public and private institutions.

Distribution: Up to \$2,500/year for undergraduates, with accumulated maximum of \$7,500; up to \$5,000/year for graduate students, with accumulated maximum of \$15,000.

Restrictions: Enrolled at least half-time in vocational school, college or university, graduate or professional school approved by the U. S. Department of Education.

WASHINGTON

- (a) State Need Grant Program - students may attend institution of their choice in state.

Funding: 1980-81, \$3,140,000 (plus \$1,683,000 SSIG funds); about 19% of funds for private college students.

- (b) Work-study program for students attending public or private institutions in state.

Funding: 1980-81, \$2,336,000; about 41% to private sector.

Restrictions: Eligible students must be enrolled at least on a half-time basis.

WEST VIRGINIA

- (a) State scholarship program for students who are residents enrolled at approved public or private institutions; based on financial need, character and academic promise.

Funding: 1979-80, \$3 million.

Distribution: Minimum of \$200 and maximum of \$1,600 per academic year; award may not surpass tuition and fees.

WISCONSIN

- (a) Tuition grant program to offset tuition differences between public and private institutions based on need.

Funding: 1980-81, \$10,782,900.

Distribution: Maximum award of \$1,800 per year.

WYOMING

None

(Information extracted from the Education Commission of the States, Volume 7, Number 6, 1980 issue, pp. 317 - 352. Copies of the complete issue may be obtained by writing the following address: State Services Division, Education Commission of the States, Suite 300, 1860 Lincoln Street, Denver, Colorado 89295.)

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APPENDIX B
PERSONS INTERVIEWED

PERSONS INTERVIEWED

DATES OF INTERVIEWS

Zeb Alley, Legislative Liaison for North Carolina Governor James B. Hunt, Raleigh, NC	June 3, 1981
Harold Baker, North Carolina Senator, Raleigh, NC	June 2, 1981
Frank J. Balz, Assistant to Virginia A. Fadil, National Institute of Independent Colleges & Universities (Research & Legal Services), Washington, DC	January 28, 1981
Allen Barbee, North Carolina House Representative, Raleigh, NC	May 27, 1981
Sharon Bond, Reporter for the <u>Greensboro Daily News</u> , Raleigh Bureau, Raleigh, NC	May 20, 1981
Stan Broadway, Executive Director of the North Carolina State Education Assistance Authority, UNC Research Triangle Park, NC	January 6, 1981 February 3, 1981 June 1, 1981 June 29, 1981 November 1, 1981
John Walter Brown, North Carolina House Representative, Raleigh, NC	June 2, 1981
Lane Brown, III, Former North Carolina House Representative, Raleigh, NC (House Representative in 1971)	June 8, 1981
Barbara Buchanon, Secretary to North Carolina Governor James B. Hunt, Raleigh, NC	June 25, 1981
David Bumgardner, North Carolina House Representative, Raleigh, NC	June 5, 1981
Roy Carroll, Vice President-Planning-The University of North Carolina at Chapel Hill	June 1, 1981

PERSONS INTERVIEWED

DATES OF INTERVIEWS

Doug Carter, Senior Fiscal Analyst (North Carolina Higher Education), Raleigh, NC	June 5, 1981
John J. Cavanaugh, Jr., North Carolina Senator, Raleigh, NC	June 5, 1981
Nancy Chase, Former North Carolina House Representative, Raleigh, NC (House Representative in 1971)	June 4, 1981
Bernie Cochran, Religion Professor, Meredith College, Raleigh, NC	May 27, 1981 June 1, 1981 June 23, 1981
Ruth Cook, North Carolina House Representative, Raleigh, NC	July 7, 1981
Lawrence Davis, Former North Carolina House Representative, Raleigh, NC (House Representative in 1971)	June 5, 1981
David Diamont, North Carolina House Representative, Raleigh, NC	June 2, 1981
Edd Doerr, Editor, <u>Church & State</u> , published by Americans United for Separation of Church and State, Silver Spring, Maryland	January 28, 1981 April 14, 1981
Jeff Enloe, North Carolina House Representative, Raleigh, NC	May 28, 1981 October 10, 1981
Ben Fisher, Executive Secretary for the Council on Christian Higher Education of the Baptist State Convention of North Carolina	June 3, 1981
David Frazier, President of Peace College, Raleigh, NC	October 10, 1981
Christine Gallaher, Secretary to North Carolina House Representative Ted Kaplan, Raleigh, NC	June 5, 1981

PERSONS INTERVIEWED

DATES OF INTERVIEWS

Gordon Greenwood,	June 25, 1981
North Carolina House Representative,	June 29, 1981
Raleigh, NC	
John Henley,	May 28, 1981
President of North Carolina Association of	
Independent Colleges and Universities	
Sneed High,	August 11, 1981
Former North Carolina House Representative,	
Raleigh, NC (House Representative in 1971)	
A. E. Dick Howard,	April 14, 1981
Author of <u>State Aid to Private Higher Education</u> , 1977	
James B. Hunt,	June 25, 1981
Governor of North Carolina, Raleigh, NC	
Glenn Jernigan,	June 5, 1981
North Carolina Senator, Raleigh, NC	
Robert Jones,	June 2, 1981
North Carolina House Representative,	June 4, 1981
Raleigh, NC	
Robert Jordan, III,	May 28, 1981
North Carolina Senator, Raleigh, NC	June 5, 1981
Ted Kaplan,	June 2, 1981
North Carolina House Representative,	June 4, 1981
Raleigh, NC	June 23, 1981
	October 10, 1981
	November 2, 1981
Margaret Keesee,	June 5, 1981
North Carolina House Representative,	
Raleigh, NC	
A. K. King,	June 1, 1981
Assistant to the President, General Administration,	
The University of North Carolina	
Daniel T. Lilley,	May 29, 1981
North Carolina House Representative, Raleigh, NC	
George W. Marion, Jr.,	May 28, 1981
North Carolina Senator, Raleigh, NC	

PERSONS INTERVIEWED

DATES OF INTERVIEWS

Helen Rhyne Marvin, North Carolina Senator, Raleigh, NC	September 8, 1981
Virgil McBride, Manager, Regional Public Affairs Southeast, R. J. Reynolds Industries, Inc. (Legislative Liaison) (Executive Director of the North Carolina Association of Independent Colleges and Universities in 1971)	June 3, 1981 June 23, 1981 November 1, 1981
R. D. McMillan, Assistant to the President, University of North Carolina at Chapel Hill (Legislative Liaison)	June 2, 1981
James Olliver, Author of <u>The Legal Status of State Aid for Nonpublic Colleges and Universities, 1975</u> ; Vice President for Administration at Pfeiffer College, Misenheimer, NC (Former Director of Research for The North Carolina Association of Independent Colleges and Universities)	May 26, 1981
William L. Rikard, Jr., Lawyer for defendant Belmont Abbey in the 1977 <u>Smith v. Board of Governors of the University of North Carolina</u> case (Charlotte, NC)	January 15, 1981
John Sanders, Director of the Institute of Government - University of North Carolina at Chapel Hill * Personal letter to the researcher	January 30, 1981 February 3, 1981 June 23, 1981
Terry Sanford, President of Duke University, Durham, NC (Governor of North Carolina, 1961-65)	December 19, 1980 June 3, 1981 November 1, 1981
Michael Smith, Plaintiff in the 1977 <u>Smith v. Board of Governors of the University of North Carolina</u> case * Personal letter to the researcher	September 27, 1981 October 4, 1981 October 9, 1981
Charles Taylor, Former North Carolina House Representative, Raleigh, NC (House Representative in 1971)	July 1, 1981

PERSONS INTERVIEWED

DATES OF INTERVIEWS

Charles Vickery, North Carolina Senator, Raleigh, NC	June 4, 1981
John Weems, President of Meredith College, Raleigh, NC	May 27, 1981
Cameron West, President of Pfeiffer College, Misenheimer, NC (Director of the State Board of Higher Education in 1971 and President of the North Carolina Association of Independent Colleges and Universities in 1975)	July 15, 1981 November 2, 1981
Robert Wynne, North Carolina Senator, Raleigh, NC (House Representative in 1971)	May 28, 1981 November 2, 1981
James Young, Author of <u>State Aid to Private Higher Education in North Carolina: A Distributional Impact Analysis</u> , 1977	January 5, 1981

APPENDIX C
INTERVIEW GUIDE
LEGISLATORS

LEAD INTERVIEW QUESTIONS

1. How did the legislature become aware of the need for state aid to private institutions of higher education in North Carolina?
2. Did you support the initial legislation? Why or why not? Did you support subsequent legislation? Why or why not? Do you support current legislation? Why or why not?
3. Why was student aid and not direct institutional aid chosen as a vehicle for helping to keep these private institutions viable?
4. Who were the individuals and interest groups against the legislation? Who were the individuals and interest groups for the legislation? Were coalitions formed? Were there confrontations between conflicting forces? Who are the individuals and interest groups against current legislation? Who are the individuals and interest groups for current legislation? Are there coalitions? Is there controversy or conflict?
5. Were you and others cognizant of long range consequences? Were these factors considered?

APPENDIX D

INTERVIEW GUIDE

PROPOSERS AND OPPOSERS OF STATE AID TO
HIGHER EDUCATION IN NORTH CAROLINA

LEAD INTERVIEW QUESTIONS

Proponents:

1. Why were you interested in the initial legislation establishing state aid to private institutions of higher education in North Carolina?
 2. What were your arguments?
 3. What did you do to influence the legislators?
 4. Who were others for state aid? Were there coalitions formed?
 5. What was your interest and contribution to subsequent legislation?
-

Opponents:

1. Why were you against the initial legislation establishing state aid to private institutions of higher education in North Carolina?
2. What were your arguments?
3. What did you do to influence the legislators?
4. Who were others against state aid? Were there coalitions formed?
5. What was your interest and reaction to subsequent legislation?

APPENDIX E

INTERVIEW GUIDE
SMITH V. BOARD OF GOVERNORS OF
THE UNIVERSITY OF NORTH CAROLINA (1977) PARTICIPANTS

LEAD INTERVIEW QUESTIONS

1. When was Smith v. Board of Governors of the University of North Carolina filed?
2. Why was the suit filed?
3. Were there participants involved who weren't identified in the Smith brief?
4. Were there difficulties encountered during the trial?
5. What was your reaction to the Court's decision?

APPENDIX F

CITATIONS OF CASES DISCUSSED IN CHAPTERS 2 AND 4

CITATIONS OF CASES DISCUSSED IN CHAPTERS 2 AND 4

- (Allen) Board of Education v. Allen, 392 US 236 (1968)
- Barron v. Baltimore, 7 Pet 243 (1833)
- Brusca v. State Board of Education, 405 US 1050 (1972)*
- Cantwell v. Connecticut, 310 US 296 (1940)
- (DiCenso) Earley v. DiCenso and Robinson v. DiCenso, 403 US 602 (1971)
- Everson v. Board of Education, 330 US 1 (1947)
- Horace Mann League v. Board of Public Works, 385 US 97 (1966)* 220 A2d 51
- Hunt v. McNair, 413 US 734 (1973)
- Lemon v. Kurtzman, 403 US 602 (1971)
- Levitt v. PEARL, 413 US 472 (1973)
- McGowan v. Maryland, 366 US 420 (1961)
- Meek v. Pittinger, 421 US 349 (1975)
- (Nyquist) PEARL v. Nyquist, 413 US 756 (1973)
- Permoli v. New Orleans, 3 How 589 (1845)
- (Regan) Committee for Public Education and Religious Liberty et al v. Regan, (1981)
- Reynolds v. U. S., 98 US 395 (1953)
- Roemer v. Maryland, 426 US 736 (1976)
- (Schempp) Abington v. Schempp, 374 US 203 (1963)
- Sloan v. Lemon, 413 US 825 (1973)
- Smith v. Board of Governors of the University of North Carolina, 429 F. Supp. 871 (1977)*
- Tilton v. Richardson, 403 US 672 (1971)

(Walter) Wolman v. Walter, 433 US 229 (1977)

(Wolman) Essex v. Wolman, 342 F. Supp. 399 (1972)*

* Not argued before the Supreme Court

APPENDIX G
HOUSE BILL 780

CHAPTER 743

Session Laws—1971

In the General Assembly read three times and ratified, this the 5th day of July, 1971.

H. B. 780

CHAPTER 744

AN ACT TO UTILIZE THE RESOURCES OF PRIVATE COLLEGES AND UNIVERSITIES IN EDUCATING NORTH CAROLINA STUDENTS.

Whereas, the private institutions of higher education in this State are currently educating approximately 25,000 North Carolinians each year; and

Whereas, if these 25,000 students were all enrolled at publicly-owned colleges and universities rather than at private institutions, the cost to the State, in current operating expenses alone, would be approximately \$1,283 a year for each student at a senior college or university and approximately \$750.00 for each student in the Community College System; and

Whereas, the private institutions have the facilities and personnel to provide education for additional numbers of North Carolinians; and

Whereas, many of the private institutions have, in recent years, found it increasingly difficult to meet operating expenses; and

Whereas, it is in the interest of the State that the private institutions continue to educate at least as many North Carolinians as are currently enrolled, and, if possible, a larger number, and the State should encourage and assist them to do so; Now, therefore.

The General Assembly of North Carolina enacts:

Section 1. In order to encourage and assist private institutions to continue to educate North Carolina students, the Board of Higher Education is hereby authorized to enter into contracts with the institutions under the terms of which an institution receiving any funds that may be appropriated pursuant to this section would agree that, during any fiscal year in which such funds were received, the institution would provide and administer scholarship funds for needy North Carolina students in an amount at least equal to the amount paid to the institution, pursuant to this section, during the fiscal year. Under the terms of the contracts the Board of Higher Education would agree to pay to the institutions, subject to the availability of funds, a fixed sum of money for each North Carolina student enrolled at the institutions for the regular academic year, said sum to be determined by appropriations that might be made from time to time by the General Assembly pursuant to this section. Funds appropriated pursuant to this section shall be paid by the Department of Administration to an institution upon recommendation of the Board of Higher Education and on certification of the institution showing the number of North Carolina students enrolled at the institution as of October 1 of any year for which funds may be appropriated.

Sec. 2. In order to encourage and assist private institutions to educate additional numbers of North Carolinians, the Board of Higher Education is hereby authorized to enter into contracts with the institutions under the terms of which an institution receiving any funds that may be appropriated pursuant to this Section would agree that, during any fiscal year in which such funds were received, the institution would provide and administer scholarship funds for needy North Carolina students in an amount at least equal to the amount paid to the institution, pursuant to this Section, during the fiscal year. Under the terms of the contracts the Board of Higher Education would agree to pay to the institutions, subject to the availability of funds, a fixed sum of money for each North Carolina student enrolled as of October 1 of any

year for which appropriated funds may be available, over and above the number of North Carolina students enrolled in that institution as of October 1, 1970, which shall be the base date for the purpose of this calculation. Funds appropriated pursuant to this Section shall be paid by the Department of Administration to an institution upon recommendation of the Board of Higher Education and on certification of the institution showing the number of North Carolina students enrolled at the institution as of October 1 of any year for which funds may be appropriated over the number enrolled on the base date. In the event funds are appropriated for expenditure pursuant to this Section and funds are also appropriated, for the same fiscal year, for expenditure pursuant to Section 1 hereof, students who are enrolled at an institution in excess of the number enrolled on the base date may be counted under this Section for the purpose of calculating the amount to be paid to the institution, but the same students may not also be counted under Section 1 hereof for the purpose of calculating payment to be made under that Section.

Sec. 3. The Board of Higher Education is authorized to prescribe the form of the contracts to be executed under Sections 1 and 2 hereof, to require of the institutions such reports, statements and audits as the Board may deem necessary or desirable in carrying out the purposes of this act and to make any rules or regulations that will, in the opinion of the Board, help to achieve the purposes of this act.

Sec. 4. As used in this act:

"Institution" shall mean an educational institution located in this State that is not owned or operated by the State of North Carolina or by an agency or political subdivision of the State or by any combination thereof; that is accredited by the Southern Association of Colleges and Schools under the standards of the College Delegate Assembly of said Association and that is not a seminary, Bible school, Bible college or similar religious institution.

"Student" shall mean a resident of North Carolina in accordance with definitions of residency that may from time to time be adopted by the North Carolina Board of Higher Education and published in the residency manual of said Board; and a person who has not received a bachelor's degree, or qualified therefor, and who is otherwise classified as an undergraduate under such regulations as the Board of Higher Education may promulgate. The enrollment figures required by this act shall be the number of full-time-equivalent students as computed under regulations prescribed by the Board of Higher Education.

Sec. 5. The Board of Higher Education is directed to conduct a study of the private institutions of higher education in North Carolina during the fall of 1972 in order to assess their prospects and needs as of that time and to evaluate the assistance afforded to them under this act. The Board is further directed to report its findings to the Governor and to the General Assembly of 1973 and to make such recommendations as it may deem appropriate, including recommendations as to whether the program inaugurated under this act should be continued, discontinued or modified.

Sec. 6. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 5th day of July, 1971.

APPENDIX H
NORTH CAROLINA GENERAL STATUTES
§ § 116 - 19 AND 116 - 20

GENERAL STATUTES OF NORTH CAROLINA

12

§ 116-19. Contracts with private institutions to aid North Carolina students.—In order to encourage and assist private institutions to continue to educate North Carolina students, the Board of Governors of the University of North Carolina is hereby authorized to enter into contracts with the institutions under the terms of which an institution receiving any funds that may be appropriated pursuant to this section would agree that, during any fiscal year in which such funds were received, the institution would provide and administer scholarship funds for needy North Carolina students in an amount at least equal to the amount paid to the institution, pursuant to this section, during the fiscal year. Under the terms of the contracts the Board of Governors of the University of North Carolina would agree to pay to the institutions, subject to the availability of funds, a fixed sum of money for each North Carolina student enrolled at the institutions for the regular academic year, said sum to be determined by appropriations that might be made from time to time by the General Assembly pursuant to this section. Funds appropriated pursuant to this section shall be paid by the Department of Administration to an institution upon recommendation of the Board of Governors of the University of North Carolina and on certification of the institution showing the number of North Carolina students enrolled at the institution as of October 1 of any year for which funds may be appropriated. (1971, c. 744, s. 1; c. 1244, s. 5.)

Editor's Note.—This section was enacted by Session Laws 1971, c. 744, s. 1, and codified as § 116-158.1. It was transferred to its present position by Session Laws 1971, c. 1244, s. 5, effective July 1, 1972. Chapter

1244 also substituted "Board of Governors of the University of North Carolina" for "Board of Higher Education" in three places in the section. For the section formerly numbered § 116-19, see § 116-16.

§ 116-20. Scholarship and contract terms; base period.—In order to encourage and assist private institutions to educate additional numbers of North Carolinians, the Board of Governors of the University of North Carolina is hereby authorized to enter into contracts with the institutions under the terms of which an institution receiving any funds that may be appropriated pursuant to this section would agree that, during any fiscal year in which such funds were received, the institution would provide and administer scholarship funds for needy North Carolina students in an amount at least equal to the amount paid to the institution, pursuant to this section, during the fiscal year. Under the terms of the contracts the Board of Governors of the University of North Carolina would agree to pay to the institutions, subject to the availability of funds, a fixed sum of money for each North Carolina student enrolled as of October 1 of any year for which appropriated funds may be available, over and above the number of North Carolina students enrolled in that institution as of October 1, 1970, which shall be the base date for the purpose of this calculation. Funds appropriated pursuant to this section shall be paid by the Department of Administration to an institution upon recommendation of the Board of Governors of the University of North Carolina and on certification of the institution showing the number of North Carolina students enrolled at the institution as of October 1 of any year for which funds may be appropriated over the number enrolled on the base date. In the event funds are appropriated for expenditure pursuant to this section and funds are also appropriated, for the same fiscal year, for expenditure pursuant to G.S. 116-19, students who are enrolled at an institution in excess of the number enrolled on the base date may be counted under this section for the purpose of calculating the amount to be paid to the institution, but the same students may not also be counted under G.S. 116-19, for the purpose of calculating payment to be made under that section. (1971, c. 744, s. 2; c. 1244, s. 5.)

Editor's Note.—This section was enacted by Session Laws 1971, c. 744, § 2, and codified as § 116-158.2. It was transferred to its present position by Session Laws 1971, c. 1244, s. 5, effective July 1, 1972. Chapter 1244 also substituted "Board of Governors of the University of North Carolina" for

"Board of Higher Education" in three places and "116-19" for "116-158.1" in two places in the section.

Former § 116-20 was transferred to § 116A-1 by Session Laws 1971, c. 1135, s. 2, effective July 1, 1971.

APPENDIX I

NORTH CAROLINA GENERAL STATUTES
§ § 116 - 21 AND 116 - 22

§ 116-21. Contract forms; reports; audits; regulations. — The Board of Governors of the University of North Carolina is authorized to prescribe the form of the contracts to be executed under G.S. 116-19 and 116-20, to require of the institutions such reports, statements and audits as the Board may deem necessary or desirable in carrying out the purposes of G.S. 116-19 through 116-22 and to make any rules or regulations that will, in the opinion of the Board, help to achieve the purposes of G.S. 116-19 through 116-22. (1971, c. 744, s. 3; c. 1244, s. 5.)

Editor's Note.—This section was enacted by Session Laws 1971, c. 744, s. 3, and codified as § 116-158.3. It was transferred to its present position by Session Laws 1971, c. 1244, s. 5, effective July 1, 1972. Chapter 1244 also substituted "Board of Governors of the University of North Carolina" for "Board of Higher Education" and substi-

tuted "116-19 and 116-20" for "116-158.1 and 116-158.2" and, in two places, "116-19 through 116-22" for "116-158.1 through 116-158.4."

Former § 116-21 was transferred to § 116A-2 by Session Laws 1971, c. 1135, s. 2, effective July 1, 1971.

§ 116-22. Definitions applicable to §§ 116-19 to 116-21.—As used in G.S. 116-19 through 116-22:

- (1) "Institution" shall mean an educational institution located in this State that is not owned or operated by the State of North Carolina or by an agency or political subdivision of the State or by any combination thereof; that is accredited by the Southern Association of Colleges and Schools under the standards of the College Delegate Assembly of said Association and that is not a seminary, Bible school, Bible college or similar religious institution.
- (2) "Student" shall mean a resident of North Carolina in accordance with definitions of residency that may from time to time be adopted by the Board of Governors of the University of North Carolina and published in the residency manual of said Board; and a person who has not received a bachelor's degree, or qualified therefor, and who is otherwise classified as an undergraduate under such regulations as the Board of Governors of the University of North Carolina may promulgate. The enrollment figures required by G.S. 116-19 through 116-22 shall be the number of full-time-equivalent students as computed under regulations prescribed by the Board of Governors of the University of North Carolina. (1971, c. 744, s. 4; c. 1244, s. 5.)

Editor's Note.—This section was enacted by Session Laws 1971, c. 744, s. 4, and codified as § 116-158.4. It was transferred to its present position by Session Laws 1971, c. 1244, s. 5, effective July 1, 1972. Chapter 1244 also substituted "116-19 through 116-22" for "116-158.1 through 116-158.4" in the opening paragraph and in the second sentence of subdivision (2) and substituted

"Board of Governors of the University of North Carolina" for "North Carolina Board of Higher Education" in the first sentence of subdivision (2) and for "Board of Higher Education" in the first and second sentences of subdivision (2).

Former § 116-22 was transferred to § 116A-3 by Session Laws 1971, c. 1135, s. 2, effective July 1, 1971.

§ 116-26: Transferred to § 116-43 by Session Laws 1971, c. 1244, s. 17, effective July 1, 1972.

§ 116-27: Repealed by Session Laws 1971, c. 1244, s. 1, effective July 1, 1972.

§ 116-30: Transferred to § 116-40 by Session Laws 1971, c. 1244, s. 9, effective July 1, 1972.

APPENDIX J

SENATE BILL 45
SECTION 30

Session Laws—1975 CHAPTER 875

The Board of Governors shall establish the criteria for determining the eligibility for financial aid of needy North Carolina students who are enrolled in the schools and shall review the grants or awards to said eligible students. The Board of Governors shall promulgate regulations for determining which students are residents of North Carolina for the purposes of these programs. The Board shall also make such regulations as it may deem desirable to insure that these funds are used directly for instruction in the medical programs of the schools and not for religious or other nonpublic purposes. The Board shall encourage the two schools to orient students towards personal health care in North Carolina giving special emphasis to family and community medicine.

Sec. 30. Funds appropriated in this act to the Board of Governors of The University of North Carolina for aid to private colleges shall be disbursed in accordance with the provisions of G.S. 116-19, G.S. 116-21, and G.S. 116-22. These funds are intended to provide up to two hundred dollars (\$200.00) per full-time equivalent North Carolina undergraduate student enrolled at a private institution as of October 1 each year.

In addition to any funds appropriated pursuant to G.S. 116-19 and in addition to all other financial assistance made available to private educational institutions located within the State, or to students attending such institutions, there is hereby granted to each full-time North Carolina undergraduate student attending an approved institution, as defined in G.S. 116-22, the sum of two hundred dollars (\$200.00) per academic year, which shall be distributed to the student as hereinafter provided. J:2

The tuition grants provided for herein shall be administered by the State Education Assistance Authority pursuant to rules and regulations promulgated by the State Education Assistance Authority not inconsistent with this act. The State Education Assistance Authority shall not approve any grant until there has been received from an appropriate officer of the approved institution a certification that the student applying for said grant is an eligible student. Upon receipt of such certification, in proper form, the State Education Assistance Authority shall remit, at such times as it shall prescribe, said grant to the approved institution on behalf and to the credit of such student.

In the event a student on whose behalf a grant has been paid shall not be enrolled and carrying a minimum academic load as of the tenth classroom day following the beginning of the school term for which such grant was paid, the institution shall refund to the State Education Assistance Authority the amount of grant paid on behalf of such student for such term. Each approved institution shall be subject to examination by the State Auditor for the purpose of determining whether such institution has properly certified eligibility and enrollment of students and credited grants paid in the behalf of such students.

In the event there are not sufficient funds to provide each eligible student with a full grant, each eligible student shall receive a reduced but equal share of funds then available for the remainder of the academic year within the fiscal period covered by the current appropriation.

Expenditures made pursuant to this section shall be used for secular educational purposes only. If any provision of this section or the application thereof to any person or circumstances be held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable. J:1

APPENDIX K

RELEVANT PROVISIONS OF THE CONSTITUTION OF THE
STATE OF NORTH CAROLINA

RELEVANT PROVISIONS
of the
CONSTITUTION
of the
STATE OF NORTH CAROLINA

PREAMBLE

We, the people of the State of North Carolina, grateful to Almighty God, the Sovereign Ruler of Nations, for the preservation of the American Union and the existence of our civil, political and religious liberties, and acknowledging our dependence upon Him for the continuance of those blessings to us and our posterity, do for the more certain security thereof and for the better government of this State, ordain and establish this Constitution.

ARTICLE I

Declaration of Rights

Section 13. Religious liberty. All persons have a natural and inalienable right to worship Almighty God according to the desires of their own consciences, and no human authority shall, in any case whatever control or interfere with the rights of conscience.

Section 15. Education. The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

ARTICLE IX

Education

Section 1. Education encouraged. Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.

ARTICLE XIII

Conventions; Constitutional Amendment and Revision

Section 4. Revision or amendment by legislative initiation.

A proposal of a new or revised Constitution or an amendment or amendments to this Constitution may be initiated by the General Assembly but only if three-fifths of all the members of each house shall adopt an act submitting the proposal to the qualified voters of the State for their ratification or rejection. The proposal shall be submitted at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast thereon are in favor of the proposed new or revised Constitution or constitutional amendment or amendments, it or they shall become effective January first next after ratification by the voters unless a different effective date is prescribed in the act submitting the proposals to the qualified voters.

APPENDIX L
STUDENT COSTS, 1980-81
THE INDEPENDENTS

STUDENT COSTS, 1980-81

SENIOR COLLEGES	<u>The Independents</u>		
	Tuition And Fees	Room And Board	Total
Atlantic Christian	\$ 2,324	\$ 1,250	\$3,574
Barber-Scotia	2,106	1,443	3,549
Belmont Abbey	2,730	1,490	4,220
Bennett.	2,150	1,180	3,330
Campbell	3,046	1,524	4,560
Catawba	3,036	1,360	4,390
Davidson	4,385	1,815	6,200
Duke	4,938	2,324	7,262
Elon	2,270	1,371	3,641
Gardner Webb	2,650	1,563	4,213
Greensboro	2,930	1,680	4,610
Guilford	3,545	1,600	5,145
High Point	2,610	1,359	3,969
Johnson C. Smith	2,074	1,326	3,400
Lenoir Rhyne	3,000	1,400	4,400
Livingstone	2,065	1,530	3,595
Mars Hill	2,865	1,243	4,108
Meredith	2,500	1,150	3,650
Methodist	2,524	1,650	4,174
N. C. Wesleyan	2,775	1,530	4,305
Pfeiffer	3,730	1,450	4,180
Queens	3,396	2,039	5,435
Sacred Heart	2,564	1,540	4,104
St. Andrews	3,350	1,770	5,120

Senior Colleges	Tuition And Fees	Room And Board	Total
St. Augustine's	\$ 2,060	\$ 1,200	\$ 3,260
Salem	3,465	2,075	5,540
Shaw	2,470	1,330	3,800
Wake Forest	3,600	1,570	5,170
Warren Wilson	3,100	1,320	4,420
Wingate	1,995	1,200	3,195

JUNIOR COLLEGES

Brevard	2,230	1,390	3,620
Chowan	1,910	1,310	3,220
Lees-McRae	2,038	1,312	3,350
Louisburg	2,116	1,375	3,491
Montreat-Anderson	2,080	1,646	3,726
Mount Olive	1,850	1,500	3,350
Peace	2,090	1,610	3,700
St. Mary's	2,885	2,198	5,083

* Averages based on double occupancy and 19-21 meals/week plan.
(Information obtained from John Henley, President of the North
Carolina Association of Independent Colleges and Universities)

APPENDIX M
STUDENT EXPENSES
NORTH CAROLINA'S INDEPENDENT COLLEGES AND UNIVERSITIES
1970-71, 1980-81

STUDENT EXPENSES *

NORTH CAROLINA'S INDEPENDENT COLLEGES AND UNIVERSITIES 1970-71, 1980-81

SENIOR COLLEGES	1970-71	AMOUNT		INCREASE			
		1979-80	1980-81	1-YEAR		10-YEAR	
				Amt.	%	Amt.	%
Atlantic Christian	1,676	3,214	3,574	360	11	1,876	112
Barber-Scotia	1,825	3,196	3,549	353	11	1,725	95
Belmont Abbey	2,038	3,798	4,220	422	11	2,182	107
Bennett	1,895	3,100	3,330	230	7	1,435	76
Campbell	1,981	4,144	4,560	416	10	2,579	130
Catawba	2,017	3,940	4,390	450	11	2,373	118
Davidson	2,830	5,540	6,200	660	12	3,370	119
Duke	3,184	6,354	7,262	908	14	4,078	128
Elon	1,872	3,282	3,641	359	11	1,769	94
Gardner Webb	1,904	3,874	4,213	339	9	2,309	121
Greensboro	2,100	4,090	4,610	520	13	2,510	120
Guilford	2,524	5,008	5,145	137	3	2,621	104
High Point	2,010	3,650	3,969	319	9	1,959	97
Johnson C. Smith	2,008	3,200	3,400	200	6	1,392	69
Lenoir-Rhyne	1,844	4,004	4,400	396	10	2,556	139
Livingstone	1,528	3,190	3,595	405	13	2,067	135
Mars Hill	1,810	3,725	4,108	455	12	2,258	127
Meredith	2,450	3,500	3,650	150	4	1,200	49
Methodist	2,100	3,664	4,174	510	14	2,074	99
N. C. Wesleyan	2,256	3,700	4,305	605	16	2,049	91
Pfeiffer	1,995	3,800	4,180	380	10	2,185	110
Queens	3,070	4,965	5,435	470	9	2,365	77
Sacred Heart	1,968	3,760	4,104	344	9	2,136	109
St. Andrews	2,647	4,405	5,120	715	16	2,473	93
St. Augustine's	2,201	3,125	3,260	135	4	1,059	48
Salem	2,962	5,061	5,540	479	9	2,578	87
Shaw	2,350	3,370	3,800	430	12	1,450	62
Wake Forest	2,585	4,750	5,170	420	9	2,585	100
Warren Wilson	2,050	4,136	4,420	284	7	2,370	116
Wingate	?	2,700	3,195	495	18	--	--
JUNIOR COLLEGES							
Brevard	1,572	3,340	3,620	280	8	2,048	130
Chowan	1,520	3,045	3,220	175	6	1,700	112
Lees-McRae	1,670	3,180	3,350	170	5	1,680	101
Louisburg	1,835	3,181	3,491	310	10	1,656	90
Montreat-Anderson	1,820	3,250	3,726	476	15	2,906	105
Mount Olive	1,700	2,940	3,350	410	14	1,650	97
Peace	2,190	3,480	3,700	220	6	1,510	69
St. Mary's	2,212	4,596	5,083	487	11	2,817	130

* Averages Based on Double Occupancy and 19/21 Meals/Week Plan.
 (Information obtained from John Henley, President of the North Carolina Association of Independent Colleges and Universities)

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STATE AID TO PRIVATE HIGHER EDUCATION IN
NORTH CAROLINA: A HISTORICAL DESCRIPTION

by

Dorothy P. McIntyre

(ABSTRACT)

A new issue of public policy in America's higher education history is the state support of private higher education. As of January 1, 1980, all of the states except Wyoming and Nevada provide some type of aid to private higher education institutions.

One state, North Carolina, began its efforts to provide state assistance to private higher education in 1971 and by 1981 had provided approximately 86 million dollars to its now 38 private colleges and universities. This study is an indepth description of (1) the current status of that aid; (2) the political evolution of that aid; (3) the several different interest groups and individuals involved with (a) the legislation authorizing the aid and (b) the subsequent litigation contesting the legislation; and (4) the issue of state aid to private higher education in a national context.

Currently, there are three general programs of state aid to private higher education in North Carolina: (1) the North Carolina State Contractual Scholarship Fund, (2) the North Carolina Legislative Tuition Grant Program and (3) the North Carolina

Student Incentive Grant Program. The North Carolina statutes authorizing these programs of aid were held to be constitutional under the Establishment Clause of the First Amendment to the United States Constitution in Smith v. Board of Governors of the University of North Carolina (1977).

Those actors responsible for the legislation authorizing the programs of aid include former Governors Bob Scott, Dan Moore, and Jim Holshouser; Governor Jim Hunt; former and present legislators favoring aid to private higher education; the trustees, staff, faculty, and students of private higher education institutions; parents of students attending those institutions; representatives of the (now defunct) State Board of Higher Education; and representatives of the North Carolina Association of Independent Colleges and Universities. Those actors who are considered the primary forces behind the legislation are Duke University President Terry Sanford (former North Carolina Governor), Pfeiffer College President Cameron West (former Director of the State Board of Higher Education), Ben Fisher (former Executive Secretary for the Council on Christian Higher Education of the Baptist State Convention of North Carolina), Virgil McBride (former Executive Director of the North Carolina Association of Independent Colleges and Universities), and John Henley (current President of the North Carolina Association of Independent Colleges and Universities).

Proponents of the aid postulate that such aid is economical,

i.e., the State saves money by utilizing available space at private institutions. They also posit that the aid provides access to and choice of higher education for North Carolina students. They are quite adamant in their belief that the aid is student aid, not institutional aid, although the funds are allocated directly to the institutions.

For this study, the researcher utilized newspaper files, official reports, legal documents, letters, memoranda, related literature, House and Senate Journals, and Session Laws. Fifty interviews with principal actors were conducted.