

# ADMINISTRATIVE MEMORANDUM

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**SUBJECT** Updating of certain mailing lists used  
by State agencies

**NUMBER** 169

**DATE** June 23, 1982

This Administrative Memorandum supersedes Administrative Memorandum Number 58 (dated March 22, 1976) and is issued coincident with the time at which each State agency is required to certify the currency of its mailing lists under the provisions of State law with respect to the closing fiscal year.

Chapter 362 of the 1975 Session Laws (codified as N.C.G.S. 143-169.1 and attached in that form hereto) directs each State agency to maintain the currency of mailing lists for the distribution of "public documents," as that term is defined in the session law. Chapter 362 was the subject of Legislative Memorandum #3, dated July 31, 1975, and was included in the 1975 legislative summary sent you under date of August 28, 1975. (You will recall that compliance with Chapter 362 as to the mailing lists of each institution was delegated by Legislative Memorandum #3 to the respective institution.) The following remarks, approved by the Office of the Attorney General, may be useful to your compliance with the statute.

1. G.S. 143-169.1(a) speaks to updating mailing lists

- of State "agencies"
- for distributing "public documents" that they issue

Public documents "issued by" State agencies are those documents prepared by or for a State agency with State-appropriated funds and are mailed or to be mailed with State-appropriated funds.

2. G.S. 143-169.1(b) defines "public document" as

- "any annual, biennial, regular or special report or publication"
- produced in a quantity "of which at least 500 copies are printed for distribution by mail to the general public."

"Printing" means reproduction by any repetitive process, including movable-type press, photocopying, engraving, and memory typewriter. The statute specifies categories of printed matter contemplated for legislative coverage, but the language effectively covers anything from a pocket calendar to a curricular study. Though the substance of printed matter covered by the statute is expansive, the range of document distribution is limited. Excluded from legislative coverage by inference are hand-distributed or State courier-distributed publications in any quantity (not to be distributed by mail). Excluded by inference are publications irrespective of quantity addressed to alumni only or to members of the booster club (contemplated recipients are not the general public).

3. Subsection (c) defines "agency" (of the State) in a way that places the burden of statutory compliance on the smallest element of State government that may be said to have issued the publication. This could be either an individual or an entire State department. The issuer would, of course, be created by State law or acting pursuant to powers or duties created by State law to function as an instrumentality

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of the State. Such agencies, then, would include University officers, administrative offices, academic departments, and the Board of Trustees, for example, but not separately incorporated and privately supported agencies like the athletics booster clubs, alumni associations, and foundations at some of our institutions.

Because each issuing office is a separate State agency for purposes of the statute, one document might be the subject of more than one mailing list. Therefore, if one publication is centrally prepared by or for an institution but distributed intra-campus, in lots, to several offices, each office would need to examine its use of a publication with regard to scope and nature of issuance and should respond to the statute with reference only to that office's use of the publication. For example, assume that an institutional catalogue were printed in a quantity of 10,000 and were distributed 5,000 to the Registrar for distribution by mail or otherwise to current students, 3,000 to Admissions for mailing on request to the general public, 1,000 to the Vice Chancellor for Academic Affairs for distribution as a reference book to other colleges and educational organizations, 500 to the Office of Development for mailing to foundations and government agencies, and 500 to the Dean of Students for discretionary use. The distributions would be treated under G.S. 143-169.1 as follows:

- a. 5,000 to the Registrar for current students--not subject to the statute because recipients contemplated are not the general public.
- b. 3,000 to Admissions for mailing pursuant to any request--subject to the statute, as recipients are essentially the general public.
- c. 1,000 to Vice Chancellor for Academic Affairs for distribution as a reference to other colleges and educational organizations--not subject to the statute because recipients contemplated are not the general public.
- d. 500 to Office of Development for mailing to foundations and governmental agencies--not subject to the statute because recipients contemplated are not the general public. (Note. If the 500 copies are intended for mailing to anyone or agency interested in contributing to the institution, G.S. 143-169.1 would require a mailing list update because recipients are essentially the general public.)
- e. 500 to the Dean of Students for discretionary use--the statute would apply only if in fact all 500 copies were earmarked by the Dean for distribution by mail to the general public. Yet, if the copies were not so earmarked but were in fact later distributed by mail to the general public, an obligation to update the list created by the previous year's distribution would be generated and continue until the earmarking for mailing or the practice of mailing at least 500 copies to the general public ceased as an activity of the Dean's Office.

4. Subsection (a) requires, in effect, that mailing lists subject to the statute be updated at approximately 12-month intervals, using June 30 to mark the permissible later limit of each update period. If, however, a special report or other ad hoc publication, though ostensibly a "public document" under G.S. 143-169.1(b) and previously mailed to the general public in a quantity of at least 500, were not to be re-distributed, then the updating requirement on or before the subsequent June 30 would not be imposed. On the other hand, if the one-time mailing of a public document ostensibly governed by the statute precipitated further requests for that document, then the re-printing of that document in a lot of which at least 500 copies were to be distributed to the general public by mail after an intervening update deadline would require updating the mailing list. In determining

what recipients constitute the general public upon the re-mailing, it appears that addressees who comprise only those who renewed their request would, despite their request, be considered members of the general public unless they had originally received copies of the document as members of a special group, e.g., alumni, library directors, enrolled students. That is to say, a special group as opposed to a segment of the general public is distinguished by more than the fact that the group members requested a public document.

5. Subsection (a) requires that mailing lists governed by the statute be updated so as to comprise only "those persons and organizations who, within the previous 12 months, have either requested that they be included in such a mailing list or have renewed a request that they be so included." However, if a person or organization receives a governed publication by reason of the recipient's office or official duties, e.g., the State Librarian, the recipient may be presumed or deemed to have requested the pertinent publication or renewed that request whether or not such request or renewal was actually transmitted to the issuing State agency.

(Note. A group of recipients who receive a publication by reason of their office are likely not to be on a mailing list governed by G.S. 143-169.1. However, if those recipients were really only one group of recipients in a larger group of recipients on a statutorily governed mailing list, the smaller group would, without an actual or presumptive request, be forced off the list by operation of the statute. Clearly, however, such request must be presumed or deemed made by the smaller group members. Otherwise, the effect of the statute would be not to diminish but to generate mailing and administrative costs through renewal procedures for the maintenance of routine mailings to pertinent officials.)

6. G.S. 143-169.1 contains no penalty for non-compliance, only a requirement that the specified updating of mailing lists be certified to the Director of the Budget (the Governor) as having been completed within the 12 months preceding the certification date, which shall be not later than July 1, except by extension of the certification deadline up to 90 days beyond July 1 by order of the Director of the Budget "for good cause shown." The required certification appears to constitute only a written assurance that the stipulated updating has been accomplished, not the submission of the actual, updated mailing lists to the Director of the Budget.

G.S. 143-169.1 requires that certification is to be made by the issuing agency's head. Although the certification dates and the agents for so certifying could then become numerous at any institution, it appears administratively desirable for there to be a uniform certification date throughout The University and for only designated officers of The University to render the certification to the Director of the Budget. Accordingly, I am taking hereby the following action to assist The University in complying with G.S. 143-169.1:

a. Requesting each Chancellor to continue as the certifying officer for all mailing lists generated at his respective institution that are subject to update pursuant to G.S. 143-169.1.

b. Requesting each certifying officer to use June 30 as the effective date of mailing list update.

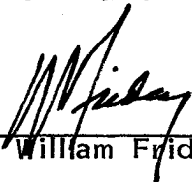
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c. Requesting that in rendering the certification to the Director of the Budget as required under the statute, the certifying officer use the following wording:

I hereby certify that any mailing lists of (name of constituent institution) subject to the provisions of G.S. 143-169.1, have been carefully reviewed, updated, and corrected within the 12-month period ending June 30, 19\_\_, so that any mailing lists of this institution subject to the provisions of G.S. 143-169.1 were in compliance with the requirements of Chapter 362 as of June 30, 19\_\_.

d. Requesting that the certifying officer continue at the appropriate time to send directly to the Director of the Budget the foregoing certification.

If you have questions about this Administrative Memorandum, I request that you direct those questions to Mr. David Edwards of this office.

  
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William Friday

Attachment