

ADMINISTRATIVE MEMORANDUM

SUBJECT Publications and mailing lists of State agencies; update

NUMBER 278

DATE September 27, 1989

This Administrative Memorandum supersedes Administrative Memorandum Number 193 (dated February 9, 1984). It is issued to incorporate into prior guidance from this office the substance of amendments to the law concerning the public documents of State agencies of North Carolina. The law is codified as General Statutes Chapter 143, Article 13: "Publications." As amended by Chapter 34, 1989 Session Laws, the law is attached to this Administrative Memorandum. All State agencies, including the constituent institutions, must generate, distribute, and use their "public documents" in accordance with the following statutory restrictions:

Annual and biennial reports of State agencies. G.S. 143-168 requires that the annual and biennial reports of State agencies be compact, concise, and lucid.

Other publications. G.S. 143-169 limits the use of the "multicolor [full color] process." However, the restriction of use of the multi-color process pertains only to publications "published at State expense," and the Attorney General has ruled that such publications are only those prepared with State-appropriated funds, for purposes of implementing the publications statute.

Public document mailing lists. G.S. 143-169.1 requires that the mailing lists for "public documents" be reviewed and revised periodically. However, the Attorney General has ruled that "public documents" as referenced in G.S. Chapter 143, Article 13, are only those documents "printed at State expense," this is, "published with State Appropriated funds." G.S. 143-169.1 requires that mailing lists for public documents be kept current by annual review under the following limitations and procedures:

1. G.S. 143-169.1(a) governs only State agencies. Such agencies 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.
2. G.S. 143-169.1(a) covers only the mailing lists for "public documents," which by reference to G.S. 143-169.1(b)

-- include only those publications that are "printed," i.e., reproduced in tangible form by some repetitive process (thereby excluding a computer printout or CRT display at a local or a distant terminal).

- include only those publications printed in a quantity of at least 200 copies. Presumably the threshold of 200 is to be referenced to the number of copies of a publication printed under one order or related series of orders by the issuing agency.
 - exclude "intra-agency communications" (e.g., this Administrative Memorandum).
 - exclude "agency correspondence," which is understood to be any written communication whose address label and content speak to an identifiable person or organization or group of identifiable persons or organizations (e.g., a letter from the membership chairman of the institution's concert artists series to each previous series member, whether actually named or not).
3. G.S. 143-169.1(a) requires that State agencies issuing public documents review, update, and correct the mailing list for each public document within 12 months preceding the annual certification of the update. This certification must be rendered on or before each July 1 from the agency head to the Director of the Budget (the Governor). Under G.S. 143-169.1(a) the following limitations to this requirement are established:
- The document must have been distributed or contemplated for distribution by mail. Excluded, then, would be hand-distributed or State-courier-distributed publications.
 - Recipients of a public document distributed under express provision of statute need not be reviewed under the annual update provision; e.g., distributees of certain State publications from the Secretary of State pursuant to G.S. 147-45.
 - Recipients of a public document distributed under express provision of judicial order need not be reviewed under the annual update provision; e.g., recipients of University public documents pursuant to conditions of the Consent Decree in N.C. v. Department of Education (E.D.N.C. No. 79-217-CIV5).
4. G.S. 143-169.1(a) requires that mailing lists of public documents be updated at approximately 12-month intervals, using June 30 to mark the permissible later limit of each update period. However, if a public document is distributed on a one-time basis, no update need be undertaken until it is determined, if ever, to redistribute the document after an intervening update. Similarly, multiple distributions of public documents within a 12-month period not extending beyond a calendared update would not bring a publication under statutory coverage for update purposes.
5. G.S. 143-169.1(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 should 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.

Upon reference to the foregoing considerations the Office of State Budget and Management has determined that the following types of publications are not subject to the mailing list update provisions of G.S. 143-169.1(a):

- Personnel manuals and State salary schedules.
- Departmental accounting system manuals.
- Budget manuals.

Statement of cost of public documents. G.S. 143-170.1 requires that each public document, unless "published for the principal purpose of sale to the public," show on the document near the identification of its issuer, the following:

- total cost of the printing.
- number of copies in the printing.
- per-unit cost.

The wording of the statement prescribed by new G.S. 143-170.1 is

(Number of copies) copies of this public document were printed at a cost of \$ _____, or \$ _____ per copy.

G.S. 143-170.1, as amended in the 1989 Session, defines "cost" to include printing costs in the form of labor, materials, and other identifiable design, typesetting, and binding costs. Again, this notice pertains only to "public documents" as that term is defined by the Attorney General; and, further the office of State Budget and Management does not consider personnel manuals and State salary schedules, Departmental accounting system manuals, and budget manuals to be subject to G.S. 143-170.1. However, by amendment to the law in 1989, G.S. 143-170.1 now prohibits the mailing or distribution at public expense of any public document lacking the statement of cost. The 1989 amendments are effective October 1, 1989.

Compliance. G.S. 143-170.1(c) places the responsibility of compliance with all the foregoing on the "chief administrator of the agency authorizing the printing." In accordance with these legislative provisions and in harmony with prior administrative action by this office concerning publications subject to G.S. Chapter 143, Article 13, I am taking hereby the following action to assist The University in continued compliance:

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

- b. 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 G.S. 143-169.1 as of June 30, 19__.

- c. Requesting that the certifying officer continue, not later than July 1 of each year, to send directly to the Director of the Budget the foregoing certification.
- d. Requesting each Chancellor to provide at his or her institution for the cost accounting of public documents prescribed by G.S. 143-170.1.

Future guidance. This office will communicate to you any further significant developments in amendment or interpretation of the publications statute. Questions concerning this Administrative Memorandum may be directed to Mr. David Edwards of this office.


C. D. Spangler, Jr.

Attachment

G. S. CHAPTER 143

ARTICLE 13.

Publications.

§ 143-167: Transferred by G.S. 147-54.1 by Session Laws 1943, c. 543.

§ 143-168. Reports; conciseness.

The annual or biennial reports now authorized or required to be printed by the several State agencies and institutions shall be as compact and concise as is consistent with an intelligent understanding of the work of those agencies and institutions. The details of the work of the agencies and institutions shall not be printed when not necessary to an intelligent understanding of such work, but totals and results may be tabulated and printed in their reports.

§ 143-169. Limitations on publications.

(a) Repealed by Session Laws 1983, c.866, s.2, effective October 1, 1983.

(b) Every publication published at State expense which makes use of the multicolor process is prohibited except:

(1) In cases of scientific illustrations when the illustrations would be unintelligible if published in black and white;

(2) When the publication is a project of the Department of Natural Resources and Community Development, or is a part of the magazine "Wildlife in North Carolina," published under the auspices of the Wildlife Resources Commission; or

(3) When the express approval of the Department of Administration is obtained.

§ 143-169.1. State agency public document mailing lists to be updated.

(a) On or before July 1 of each year, beginning with July 1, 1976, the head of every agency of this State shall certify to the Director of the Budget that the mailing lists for each public document issued by his agency have been carefully reviewed, updated and corrected within the previous 12 months. The above date may be extended by the Director of the Budget for 90 days for good cause shown. The reviewed, updated and corrected mailing lists shall be comprised only of 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, or are recipients contemplated for receipt of the pertinent public document by express provision of statute or judicial order.

(b) For the purposes of this Article, the term "public document" shall mean any annual, biennial, regular or special report or publication of which at least 200 copies are printed, but shall not include intra-agency communications nor agency correspondence.

(c) For the purposes of this Article, the term "agency" shall mean and include, as the context may require, State department, institution, commission, committee, board, division, bureau, officer or official; provided, however, the provisions of this section shall not apply to the General Assembly of North Carolina, the Department of Revenue, the Department of Commerce or to the Administrative Office of the Courts and the court system.

§ 143-170: Repealed by Session Laws 1955, c. 986.

§ 143-170.1. Statement of cost of public documents; chief administrator charged with compliance.

(a) Every agency of this State publishing a public document, other than one published for the principal purpose of sale to the public, shall cause the

following statement to be printed adjacent to the identification of the agency responsible for the publication:

"(Number of copies) copies of this public document were printed at a cost of \$....., or \$.... per copy."

For the purpose of this Article the term "cost" shall include printing costs in the form of labor and materials, and other identifiable design, typesetting, and binding costs.

(b) Any public document without a statement of cost shall not be mailed or distributed at public expense.

(c) The chief administrator of the agency authorizing the printing is charged with agency compliance with the provisions of this Article.