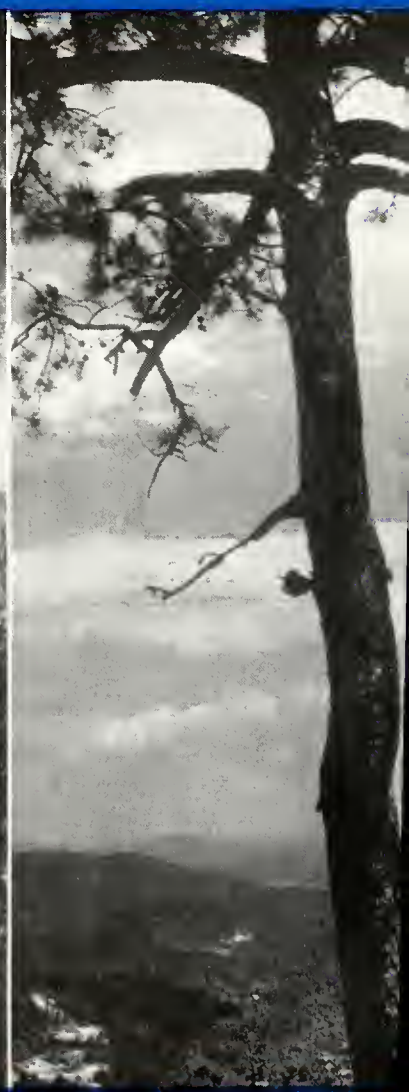


POPULAR GOVERNMENT



PUBLISHED MONTHLY BY THE

INSTITUTE OF GOVERNMENT
UNIVERSITY OF NORTH CAROLINA

Dec 44

POPULAR GOVERNMENT

VOLUME 10
NUMBER 9

PUBLISHED BY THE INSTITUTE OF GOVERNMENT
THE UNIVERSITY OF NORTH CAROLINA

DECEMBER
1944

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COVER PICTURE

On the past nine issues of POPULAR GOVERNMENT have appeared a series of scenes representative of North Carolina's natural beauty, her resources and her economy.

With this month's cover, showing Orton Plantation, the series of murals is completed. The sweet gum tree, sentinel of the lowlands of the east, and the stately pine, towering above the horizons of the west, which flank the picture of this beautiful colonial house, reemphasize the note of variety found within North Carolina's borders.

Orton House overlooks the Cape Fear River in Brunswick County. Located a few miles south of Wilmington, it is a perfect example of ante-bellum southern architecture. The South's bygone grandeur still lives in the history of its rich colonial background. Ancient oaks with festoons of silvery moss, frame the portico of the mansion. The grounds surrounding the house contain a profusion of wisteria and climbing smilax; they are noted for their formal gardens of dogwood, azaleas and gardenias, daffodils and camelias, and roses, holly and crepe myrtle.

Now serving as the private home of Mr. and Mrs. J. Laurence Sprunt, it is rich in the romance of the past. Built by Roger Moore, who chose the site for his estate in 1725, Orton has received Cornwallis and his British regulars, and entertained George Washington. In 1820 it became the residence of Benjamin Smith, former Governor of North Carolina. During the Civil War the Confederates built breastworks there, and the Federal troops used the house in 1865 as a hospital for smallpox cases. For many years it was deserted and abandoned almost to the point of obliteration, until it came into the possession of the present owner's family.

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ROBERT GREGG CHERRY

Newly-Elected Governor
of
North Carolina

Robert Gregg Cherry was born in 1891, orphaned at the age of seven, lived his childhood on the farm of his grandparents in the closing days of the 19th Century while North Carolina was slowly rising from the ruins of civil war and reconstruction, grew to manhood in the early years of the 20th Century while North Carolina was swinging into the stride which carried her to the front rank of southern states, matured through the battleline experiences of World War I, seasoned in the prosperity of the 1920's and the depression of the 1930's, commissioned on November 7, 1944 as Governor of North Carolina for four years.

As North Carolina and North Carolinians face the critical years of transition from war to peace, they may find confidence in the record of a man who has shown the instincts of leadership in the varied activities and relationships of his fifty-two years. He graduated from Gastonia

public schools in 1908, from Trinity College in 1912, from Trinity College Law School in 1914, and rose to membership of the Board of Trustees of his Alma Mater as Trinity College became Duke University. He volunteered for the armed services of his country in 1917; became Captain of Company A, Machine Gun Battalion, 30th Division, in two years of military service; Major in the 120th North Carolina National Guard in 1920-1921; State Commander of the American Legion,

1928-1929. He was Mayor of Gastonia 1919-1923; member of the North Carolina House of Representatives in 1931, 1933, 1935, 1937, 1939; Speaker of the House of Representatives in 1937; member of the North Carolina State Senate in 1941 and 1943. He was Chairman of the State Democratic Executive Committee 1937-1940; Democratic nominee for Governor of North Carolina, June 1944; newly-elected Governor of North Carolina, November 7, 1944.



North Carolina's State Officers

Elected November 7th, 1944 for New Terms



THAD EURE—Born in Gates County, November 15, 1899; attended Gatesville High School, the University of North Carolina; Mayor of Winton, 1923-1928; Attorney, Hertford County, 1923-1931; Representative, Hertford County, 1929; Clerk of House of Representatives, 1931-1936; elected Secretary of State, 1936; re-elected 1940. President National Association of Secretaries of State, 1942.



CHARLES M. JOHNSON — Born in Burgaw, N. C., April 9, 1891; attended Burgaw High School, Buies Creek Academy and Bingham Military School; Director of Local Government, 1931-1932; Ex Officio Director of Local Government, 1933; Chairman of Banking Commission; Chairman Teachers' and State Employees' Retirement Commission; Chairman Local Government Commission; elected State Treasurer, 1934; re-elected 1936, 1940.



L. Y. BALLENTINE—Born at Varina, N. C., April 6, 1899; attended public schools; graduated Wake Forest College 1921; Wake County Board of Commissioners, 1926-1934; State Senator, 1937, 1939 and 1941; elected Lieutenant Governor November 7, 1944, for a four-year term ending in 1948.



WILLIAM A. DEVIN—Born in Granville County, July 12, 1871; attended Horner Military School, Wake Forest College, and University of North Carolina; Mayor of Oxford, 1903-1909; State Representative, 1911 and 1913; Judge Superior Court 1913-1935; appointed Associate Justice Supreme Court, 1935; elected 1936.



A. A. F. SEAWELL—Born Lee County October 30, 1864; attended Jonesboro High School, University of North Carolina; State Representative 1901, 1913, 1915 and 1931; State Senator, 1907 and 1925; appointed Assistant Attorney General, 1931; appointed Attorney General, 1935; elected 1936; appointed Associate Justice Supreme Court, 1938; elected 1938.



GEO. ROSS POU—Born in Smithfield, N. C., December 19, 1894; attended Fishburne Military School, the University of North Carolina, and Wake Forest College; Superintendent State Prison, 1921-1933; Executive Director, State Highway and Public Works Commission, 1933; elected State Auditor, 1936; re-elected 1940.



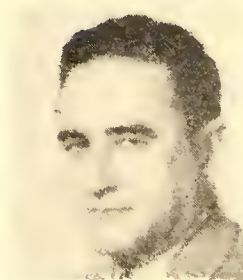
HARRY McMULLAN—Born at Hertford, N. C., July 23, 1884; attended Edenton Public Schools, and the University of North Carolina Law School; State Senator, 1929; practiced law, Washington, N. C., 1907-1933; Attorney for Beaufort County, 1926-1933; Chairman, North Carolina Industrial Commission; appointed Attorney General, 1938; elected, 1938; re-elected, 1940.



WILLIAM P. HODGES—Born in Williamston, N. C., October 19, 1906; attended public schools of Williamston and Wake Forest College; appointed Chief Deputy Insurance Commissioner, July 1936; appointed Insurance Commissioner, 1942.



CLYDE A. ERWIN—Born in Atlanta, Georgia February 8, 1897; attended school at Charlotte, Waco and Lawndale, and the University of North Carolina; Principal Public Schools; Superintendent Rutherford County Schools, 1925-1934; President NCEA, 1932-1933; appointed Superintendent of Public Instruction, 1934; elected 1936; re-elected 1940.



WILLIAM KERR SCOTT — Born at Haw River, N. C.; attended public schools and graduated at N. C. State College, 1917; president State Dairyman's Association; member North Carolina Rural Electrification Authority; Emergency Food Production Agent, 1917-1918; Alamance County Agricultural Agent, 1920-1930; Master North Carolina State Grange, 1930-1933; elected Commissioner of Agriculture, 1936; re-elected 1940.



FORREST H. SHUFORD — Born in Cleveland County, N. C., June 3, 1897; attended public schools of Cleveland County, Berea College, N. C. State College and Duke University; principal public schools, 1924-1926; Chief Inspector, Department of Labor, 1938; elected, 1938; re-elected, 1940.

North Carolina's Federal Officials

North Carolina Elects a Senator and Twelve Congressmen



"For the first time in 80 years we have held a national election in the midst of war. What really is important is that, after all of the changes and vicissitudes of fourcore years, we again have demonstrated to the world that democracy is a living, vital force; that our faith in American institutions is unshaken; that conscience and not force is the source of power in the government of man."—Franklin D. Roosevelt.

Shown in the group of pictures above are scenes on the occasion of President Roosevelt's visit to North Carolina when he was awarded the honorary degree of Doctor of Laws, December 5, 1938, by the University of North Carolina at Chapel Hill.

North Carolina will officially cast her vote for the election of the nation's fourth-term President when the Presidential Electors meet at noon on December 18th in the Capitol at Raleigh for this purpose. The inauguration ceremonies will occur on January 20.



CLYDE R. HOEY—Born in Shelby, N. C., December 11, 1877; attended Shelby High School; studied law at University of North Carolina; licensed to practice in 1899; State Representative from Cleveland County, 1899 and 1901; State Senator, 1903; Assistant U. S. Attorney, 1913-1919; member Congress, 1919-1921; Governor of North Carolina, 1936-1940; elected U. S. Senator November 7, 1944 for a six-year term ending in 1950.

Shown on this and the following page are North Carolina's chief Federal officials. Clyde R. Hoey was elected on November 7, 1944 for a six-year term in the Senate. Josiah W. Bailey was elected in 1942 so that his term will end in 1948.

On page 4 are North Carolina's twelve Representatives to Congress, all of whom were elected for two-year terms on November 7, 1944. All are veteran members with the exception of Joe W. Ervin from the tenth District, who begins his first term in the House. Dean of the delegation is Bob Doughton, Chairman of the Committee on Ways and Means for the past twelve years, and Representative from the ninth District since 1910.



JOSIAH W. BAILEY—Born in Warrenton, N. C., September 14, 1873; educated in the public schools of Raleigh; graduated Wake Forest College, 1893; attended Wake Forest Law School; editor *Biblical Recorder*, 1893-1907; licensed to practice law, 1908; U. S. Collector Internal Revenue, 1913-1921; elected to U. S. Senate, 1930; re-elected 1936; re-elected 1942, for a six-year term ending in 1948.



BONNER

HERBERT C. BONNER — Born in Washington, N. C., May 16, 1891; attended public schools of Washington and Warrenton; served overseas in the World War; elected Congressman from first District, 1923; re-elected 1924-1944, the latest two-year term ending in 1946.



KERR

JOHN H. KERR—Born at Yanceyville, N. C.; educated at Bingham School in Orange County; graduated Wake Forest College, 1895; attended Wake Forest Law School; Solicitor for third District for eleven years; Judge Superior Court, third District, eight years; elected Congressman from second District, 1923; re-elected to 69th through 79th Congresses, 1924-1944, the latest two-year term ending in 1946.



JOHN H. FOLGER — Born in Rockford, N. C., December 18, 1880; attended Yadkinville Normal School and Guilford College; graduated University of North Carolina Law School, 1901; State Representative, 1927; State Senator, 1931; Mayor of Mt. Airy, two terms; State School Commission, 1928-1941; elected to Congress from fifth District, 1941; re-elected 1942, 1944 for a two-year term ending in 1946.



DOUGHTON



ERVIN

ROBERT L. DOUGHTON — Born at Laurel Springs, N. C., November 7, 1863; educated in the public schools; State Senator, 1908; Director, State Prison, 1909-1911; elected to Congress from ninth District, 1910; re-elected 1912-1944 the latest two-year term ending in 1946; Chairman Ways and Means Committee, 1933-

JOE W. ERVIN—Born Morganton, N. C., March 3, 1901; attended Morganton High School; graduated University of North Carolina 1921; University of North Carolina Law School 1921-1923; admitted to bar 1923; City Solicitor, Charlotte; member Democratic Executive Committee, Mecklenburg County; County Attorney, Mecklenburg County; elected to Congress from tenth District November 7th, 1944 for a two-year term ending in 1946.



CARL T. DURHAM—Born in Orange County August 28, 1892; attended the public schools and University of North Carolina School of Pharmacy; Alderman, Chapel Hill, N. C., 1922-1927; Orange County Commissioner, 1933-1938; elected to Congress from sixth District, 1938; re-elected 1940-1944, the latest two-year term ending in 1946.

GRAHAM A. BARDEN — Born in Sampson County September 25, 1896; attended Burgaw High School; graduated from University of North Carolina Law School; Judge, Craven County Court; State Representative, 1933; elected to U. S. Congress from third District, 1934; re-elected 1936-1944, the latest two-year term ending in 1946.

HAROLD D. COOLEY—Born at Nashville, N. C., July 26, 1897; attended public schools of Nash County, University of North Carolina, Yale Law School; Presidential Elector, 1932; elected to U. S. Congress from fourth District, 1934; re-elected 1936-1944, the latest two-year term ending in 1946.



CLARK



BURGIN

J. BAYARD CLARK—Born at Elizabethtown, N. C., April 5, 1882; educated at Clarkton High School, Davidson College and University of North Carolina; lawyer; State Representative 1915; elected to Congress from seventh District, 1928; re-elected 1930-1944 the latest two-year term ending in 1946.

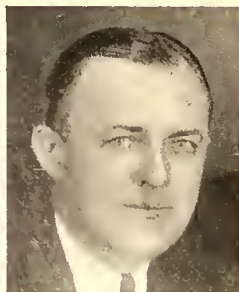
WILLIAM O. BURGIN — Born in Marion, N. C.; lawyer; Mayor of Thomasville, 1906-1910; State Representative, 1930; State Senator, 1932; elected to Congress from eighth District, 1938; re-elected 1940-1944 the latest two-year term ending in 1946.

ALFRED L. BULWINKLE — Born April 21, 1883; attended school at Dallas, N. C., and the University of North Carolina; admitted to the bar, 1904; Prosecuting Attorney, Gastonia, 1913-1916; State Senate nominee, 1916; elected to Congress from ninth District, 1920; re-elected 1922-1926; elected to Congress from tenth District, 1930; re-elected 1932-1940; elected to Congress from eleventh District, 1942; re-elected 1944 for a two-year term ending in 1946.

ZEBULON WEAVER—Born in Weaverville, N. C., May 1, 1872; educated at Weaverville College and the University of North Carolina Law School; State Representative, 1907-1909; State Senator, 1913, 1915; elected to Congress from twelfth District, 1916; re-elected 1918-1926, 1930-1944 the latest two-year term ending in 1946.



BARDEN



COOLEY



BULWINKLE



WEAVER

The Oath of Office

Public Installation of Local Officials on December 4th

Twelve years ago the Election Officials' division of the Institute of Government sponsored public installation ceremonies for newly-elected public officials in the one hundred counties of North Carolina. These installation ceremonies were connected through a statewide hookup of all radio stations in North Carolina with receiving sets in county courthouses carrying the message of incoming Governor J. C. B. Ehringhaus, speaking from his home in Elizabeth City to local officials taking the oath of office on the first Monday in December, 1932.

This precedent of public installation ceremonies was followed as incoming Governor Clyde R. Hoey spoke from the Mecklenburg County Courthouse in Charlotte over a statewide radio hookup to officials taking office in one hundred county courthouses on the first Monday in December, 1936; as incoming Governor J. Melville Broughton spoke at the installation ceremonies in the Wake County Courthouse in Raleigh in 1940.

With the approval of William Joyner, Chairman of the State Board of Elections, the Institute of Government is urging the one hundred Chairmen of County Boards of Elections to arrange for short and impressive public installation ceremonies at a convenient and appropriate hour in the one hundred County Courthouses of North Carolina, for newly-elected officials who will take office on the first Monday in December, 1944. Oaths to be taken are printed in this issue of POPULAR GOVERNMENT. The statewide radio hookup has been omitted on account of difficulties in clearing radio time on all stations at the same hour.



WILLIAM T. JOYNER

Chairman
State Board
of
Elections

The law provides that public officers shall continue in office until their successors are elected and qualified. So, although the curtain has fallen on the more dramatic (certainly the noisier) act of the great American drama of electing hundreds of local, state and Federal officers, there remains to be performed the solemn and important act in which the officers elected must qualify for their office.

An essential part, probably the most important part, of qualifying for office is the taking of the oath. Oath-taking is deeply rooted in the history of the state and the church. It dates back to the time when kings ruled by "divine right," purportedly receiving their commission directly from the Almighty and consequently obligated to acknowledge publicly their debt to Him and to rule their kingdoms in His name; and to the time when the church played a considerable part in the running of the state in England and on the continent, and managed to mingle some of the church ritual into the governmental ritual.

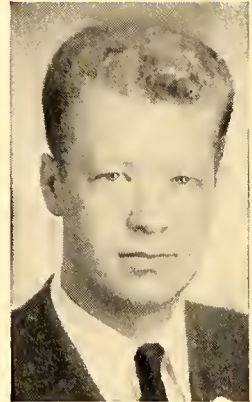
Through its long evolution, the practice of taking the oath of public office retains today much of its original meaning. The law still deems it a good practice to have one solemn moment on the threshold of assuming public office in which the officer reflects on the duties which he is about to assume and promises, in the name of the Almighty, to bear true allegiance to his country and perform faithfully the duties of his office.

The oath is not a privilege accompanying high office only. From December 4, 1944, to January 20, 1945, officers from the lowest rank and with the least jurisdiction to officers with the greatest prestige and most authority must take an oath: in the executive branch, from township constable to President of the United States; in the legislative branch, from county commissioner to state legislator to member of the United States Congress; and in the judicial branch, from justice of the peace to

By

CLIFFORD PACE

Assistant
Director
Institute of
Government



justice of the United States Supreme Court.

Oaths of Federal Officials

The Congress—On the 3rd day of January, 1945, North Carolina's twelve Congressmen and her new United States Senator will proceed to the Capitol of the United States, present their commissions from the Governor, and take the following oath, which is the oath provided by statute for all Federal officials other than the President: "I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me, God."

The President—On January 20th, in the course of his inauguration for his fourth term, the President of the United States will take the following oath, which is prescribed by Section 1 of Article II of the United States Constitution: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

The Vice President—On that same day, the new Vice President will take the same oath taken by the members of Congress.

Oaths of North Carolina Officials

The oath of office has been considered of sufficient importance in North Carolina to merit a constitutional provision and a variety of acts by the General Assembly. Although every voter is eligible to office (with specified limitations), the Constitution requires every person elected or appointed to take an oath to support the Constitution and laws of the United States, the Constitution and laws of North Carolina, and to discharge faithfully the duties of his office before he enters upon his duties.

Pursuant to this constitutional provision, the General Assembly has provided:

1. *The oath to support the Constitution and laws of the United States* (G. S. 11-6):

"I, _____, do solemnly swear (or affirm) that I will support the constitution of the United States; so help me, God."

2. *The oath to support the Constitution and laws of North Carolina* (G. S. 11-7):

"I, _____, do solemnly and sincerely swear (or affirm) that I will be faithful and bear allegiance to the state of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the constitution of said state, not inconsistent with the constitution of the United States, to the best of my knowledge and ability; so help me, God."

These statutory oaths were first enacted in the law in 1791 and have remained unchanged since that time.

3. *The following general oath of office to be taken when no oath is prescribed for the particular office* (G. S. 11-11):

"I, _____, do solemnly swear (or affirm) that I will faithfully discharge the duties of my office as _____; so help me, God."

4. *Particular oaths for various state, county and township offices, which are presented below.*

State Officers

On the first day of January, 1945, according to the Constitution and laws of North Carolina, the Governor, the Lieutenant Governor, all members of the executive branch of the State government, and the two Associate Justices of the Supreme Court re-elected for another term, begin their term of office. But the custom of long years' standing is for the Governor and other State officers to wait until after the General Assembly convenes and take the oath at the formal inauguration ceremonies for the Governor.

The Governor, the Lieutenant Governor, the Superintendent of Public Instruction, the Commissioner of Agriculture, the Commissioner of Insurance, and the Commissioner of Labor will take the prescribed oaths to support the Constitution and laws of the State and the United States, and will take the general oath of office, no particular oath being prescribed for them.

The following State officials will take the oaths to the State and the United States and the particular oaths prescribed for their office:

The Secretary of State:

"I, _____, do swear (or affirm) that I will, in all respects, faithfully and honestly execute the office of secretary of state of the state of North Carolina, during my continuance in office, according to law; so help me, God."

The State Auditor:

"I, _____, do solemnly swear (or affirm) that I will well and truly execute the trust reposed in me as auditor, without favor or partiality, according to law, to the best of my knowledge and ability; so help me, God."

The State Treasurer:

"I, _____, do swear (or affirm) that, according to the best of my abilities and judgment, I will execute impartially the office of state treasurer, in all things according to law, and account for the public taxes; and I will not, directly or indirectly, apply the public money to any other use than by law directed; so help me, God."

The Attorney General:

"I, _____, do solemnly swear (or affirm) that I will well and truly serve the state of North Carolina in the office of attorney-general; I will, in the execution of my office, endeavor to have the criminal laws fairly and impartially administered, so far as in me lies, according to the best of my knowledge and ability; so help me, God."

Solicitors:

If any solicitors were taking the oath at this time, they would take the same oath as the attorney-general, above, making the proper substitutions.

Judges of the Supreme Court:

"I, _____, do solemnly swear (or affirm) that in my office of justice of the Supreme court of North Carolina I will administer justice without respect to persons, and do equal right to the poor and rich, to the state and to individuals; and that I will honestly, faithfully, and impartially perform all the duties of the said office according to the best of my abilities, and agreeably to the constitution and laws of the state; so help me, God."

Judges of the Superior Court:

If any Judges of the Superior Court were taking the oath at this time, they would take the following oath:

"I, _____, do solemnly swear (or affirm) that I will well and truly serve the State of North Carolina in the office of judge of the superior court of the said state; I will do equal law and right to all persons, rich and poor, without having regard to any person. I will not wittingly or willingly take, by myself or by any other person, any fee, gift, gratuity or reward whatsoever, for any matter or thing by me to be done by virtue of my office, except the fees and salary by law appointed; I will not maintain, by myself or by any other person, privately or openly, any plea or quarrel depending in any of the said courts; I will not delay any person of common right by reason of any letter or command from any person or persons in authority to me directed, or for any other cause whatsoever; and in case any letter



The 1943 House of Representatives Is Sworn In

or orders come to me contrary to law, I will proceed to enforce the law, such letters or order notwithstanding; I will not appoint any persons to be clerk of any of the said courts but such of the candidates as appear to me sufficiently qualified for that office, and in all such appointments I will nominate without reward, hope of reward, prejudice, favor or partiality or any other sinister motive whatsoever; and finally, in all things belonging to my office, during my continuance therein, I will faithfully, truly and justly, according to the best of my skill and judgment, do equal and impartial justice to the public and to individuals; so help me, God."

Members of the General Assembly:

On the third day of January, 1945, the General Assembly of North Carolina will convene and all members of both houses will take the oath to the United States, and to the State of North Carolina and the general oath to discharge faithfully the duties of their office. After the Speaker of the House has been elected, he will take the same oaths.

Oaths of County and Township Officials

On December 4th, 1944, in county courthouses from one end of North Carolina to the other, county and township officials will gather to take the oaths and be inducted in office. They, too, must take the prescribed oaths to the United States and the State of North Carolina, and the oath to perform faithfully the duties of their particular office. The oaths for most principal county and township offices are prescribed by statute, as shown below. Other officers will take the prescribed general oath of office.

Register of Deeds:

"I, _____, do solemnly swear (or affirm) that I will faithfully and truly, according to the best of my skill and ability, execute the duties of the office of register of deeds for the county of _____, in all things according to law; so help me, God."

Sheriff:

"I, _____, do solemnly swear (or affirm) that I will execute the office of sheriff of _____ county to the best of my knowledge and ability, agreeably to law; and that

I will not take, accept or receive, directly or indirectly, any fee, gift, bribe, gratuity or reward whatsoever, for returning any man to serve as a juror or for making any false return on any process to me directed; so help me, God."

County Treasurer:

"I, _____, do solemnly swear (or affirm) that, according to the best of my skill and ability, I will execute impartially the office of treasurer for the county of _____, in all things according to the law; that I will duly and faithfully account for all public moneys that may come into my hands, and will not, directly or indirectly, apply the same, or any part thereof, to any use than by law directed; so help me, God."

Clerk of Superior Court:

"I, _____, do swear (or affirm) that, by myself or any other person, I neither have given, nor will I give, to any person whatsoever, any gratuity, fee, gift or reward, in consideration of my election or appointment to the office of clerk of the superior court for the county of _____;

nor have I sold, or offered to sell, nor will I sell or offer to sell, my interest in the said office; I also solemnly swear that I do not, directly or indirectly, hold any other lucrative office in the state; and I do further swear that I will execute the office of clerk of superior court for the county of _____ without prejudice, favor, affection or partiality, to the best of my skill and ability; so help me, God."

County Surveyor:

"I, _____, do solemnly swear (or affirm) that I will well and impartially discharge the several duties of the office of surveyor for the county of _____, according to law; so help me, God."

Township Constable:

"I, _____, do solemnly swear (or affirm) that I will well and truly serve the State of North Carolina in the office of constable; I will see and cause the peace of the state to be well and truly preserved and kept, according to my power; I will arrest all such persons as, in my sight, shall ride or go armed offensively, or shall commit or make any riot, affray, or other breach of the peace; I will do my best endeavor, upon complaint to me made, to apprehend all felons and rioters or persons riotously assembled, and if any such offenders shall make resistance with force, I will make hue and cry, and will pursue them according to law, and will faithfully and without delay execute and return all lawful precepts to me directed; I will well and truly, according to my knowledge, power and ability, do and execute all other things belonging to the office of constable, so long as I shall continue in office; so help me, God."

Justice of the Peace:

"I, _____, do solemnly swear (or affirm) that as justice of the peace of the county of _____, in all articles in the commission to me directed, I will do equal right to the poor and the rich, to the best of my judgment and according to the laws of the State; I will not, privately or openly, by myself or any other person, be of counsel in any quarrel or suit depending before me; the fines and amercements that shall happen to be made, and the forfeitures that shall be incurred, I will cause to be duly entered without concealment; I

will not wittingly or willingly take, by myself or by any other person for me, any fee, gift, gratuity or reward whatsoever for any matter or thing by me to be done by virtue of my office, except such fees as are or may be directed and limited by statute; but well and truly I will perform my office of justice of the peace; I will not delay any person of common right, by reason of any letter or order from any person in authority to me directed, or for any other cause whatsoever; and if any letter or order come to me contrary to law I will proceed to en-

force the law, such letter or order notwithstanding. I will not direct or cause to be directed to the parties any warrant by me made, but will direct all such warrants to the sheriffs or constables of the county, or the other officers or ministers of the state, or other indifferent persons, to do execution thereof; and finally, in all things belonging to my office, during my continuance therein, I will faithfully, truly and justly, and according to the best of my skill and judgment, do equal and impartial justice to the public and to individuals; so help me, God."

Oath-Taking Procedure

How the Oath Must Be Administered in North Carolina

Perhaps more of the solemnity and importance of taking the foregoing oaths is gained by the manner in which the oaths are required to be administered than in the content of the oaths themselves. Since 1777, in North Carolina, the law has provided that, since "lawful oaths for the discovery of truth and establishing right are necessary and highly conducive to the important end of good government, and being most solemn appeals to Almighty God, as the omniscient witness of truth and the just and omnipotent avenger of falsehood," the oaths ought to be taken and administered with the utmost solemnity.

So, the Legislature of that same year provided that every person taking the oath must lay his hand upon the Holy Evangelists of Almighty God, "in token of his engagement to speak the truth, as he hopes to be saved in the way and method of salvation pointed out in that blessed volume, and in further token that, if he should swerve from the truth, he may be justly deprived of all the blessings of the gospel, and made liable to that vengeance which he has imprecated on his own head."

Until 1868, this statute further required that the persons taking the oath should close the oath with the words, "So help me, God," and then kiss the Book. The Code of 1883 removed the requirement that the words, "So help me, God," be spoken. And the General Assembly of 1941, for reasons of sanitation and be-

cause the requirement was seldom enforced, repealed the requirement that the Book be kissed. Although the oath-taker must lay his hand on the Bible, he need not kiss it.

Exceptions to the foregoing rules:

Raising the right hand—When the officer has conscientious scruples against taking the prescribed oath with his hand on the Bible, he is allowed to take it in the following manner: "He shall stand with his right hand lifted up towards heaven, in token of his solemn appeal to the Supreme God, and also in token that if he should swerve from the truth he would draw down the vengeance of heaven upon his head, and shall introduce the intended oath with these words, namely:

'_____, do appeal to God, as a witness of the truth and the venger of falsehood, as I shall answer the same at the great day of judgment, when the secrets of all hearts shall be known (etc., as the words of the oath may be.)'

This oath has remained unchanged since 1777 (c. 108, s. 3). This prescribed method of taking the oath "with . . . right hand lifted" is likewise unchanged, but the original wording reflected the more flowery times: e.g., in token of his Solemn Appeal to the Supreme God, *whose Dwelling is in the highest Heavens* . . . This surplusage was taken from statute between 1836 and 1854. A proviso of 1777, omitted beginning with 1854, read: "And it is hereby declared that an oath, thus admin-

(Continued on page 16)

Again: The Withholding Tax

New Schedules Effective
January 1, 1945

After getting used to the withholding schedules of the Federal tax law which went into effect on July 1, 1943, which had followed by only six months the schedules for withholding the Victory Tax, and after getting employees more or less adjusted to the idea of taking home substantially less than their salaries each pay day, and after settling in a manner fairly satisfactory to employees a large crop of perplexing questions raised by them upon the inauguration of withholding the federal tax, finance officers of counties, cities and towns may now look forward to new withholding schedules, new exemption certificates, new rules and regulations and new questions requiring answers.

New Withholding Tables Drawn Up

New schedules, which are specifically provided by the Individual Income Tax Act of 1944, are set out in Circular WT-Revised 1944, issued by the Bureau of Internal Revenue. Schedules are set out in that circular for weekly, biweekly, semimonthly, monthly and daily and miscellaneous payroll periods. The percentage method of computing the amount to be withheld from each employee's salary is described in the circular. Since five computations are necessary in order to arrive at the amount of tax to be withheld from one employee, most finance officers will undoubtedly use the withholding tables set out in the circular as a matter of convenience.

Official Tables Should Be Used

An examination of the official withholding tables reveals that as many of the schedules must be used as the employer has different payroll periods. By the use of some formula which may be clear to higher mathematicians, the Bureau appears to have successfully forestalled the possibility of consolidating the schedules. For that reason, we are not attempting to construct and distribute a composite table to public officials of North Carolina as we did when the first withholding schedules



By

PEYTON B.
ABBOTT

Assistant
Director
Institute of
Government

became effective. It would seem reasonable that a man who earns a certain monthly salary might expect to have an amount deducted from his salary which would be exactly equal to two deductions from the salary of a man who has the same number of claimed exemptions and earns exactly the same amount per month, but who is paid twice a month, or semimonthly, instead of monthly. According to the withholding tables, however, some differences creep in. For example, if a man who claims two exemptions earns \$2,400 per year and is paid monthly, his check is nicked for \$23.90 each month. But if he is paid twice a month, the total taken out of his two envelopes for the month will be twice \$11.90, or only \$23.80; thereby he takes home 10c more per month by reason of being on the shorter payroll period. On the other hand, a man who claims three exemptions and earns \$60 per week will find his pay light to the tune of \$6.60 each week, but if he should be kept at the same salary but start receiving his salary every two weeks instead of weekly, he would not have twice \$6.60, or \$13.20 withheld, but only \$13.10, and would have an extra 10c to spend every two weeks by reason of being on the longer payroll period. This capricious dime pops out all over the withholding tables, with no readily apparent rhyme or reason. Sometimes the short payroll period gets it, sometimes the long one. We do not intend to try to trace its wanderings, but rather to call attention to the salient features of the Individual Income Tax Act of

1944 insofar as they relate to the duties of municipal and county finance officers.

Employer's Duties

(1) *New withholding exemption certificates* must be secured from each employee subject to the Act on or before December 1, 1944. A new form, W-4 (rev. 1944) must be used. This form explains the manner of arriving at the number of exemptions claimed. New employees must file this certificate before beginning work. After December 1, old employees may file a new certificate at any time their situation so changes as to increase the number of their exemptions. They *must* file a new one within ten days after there is any decrease in their exemptions. The employer is not required to pass upon the correctness of the employee's claim for exemptions, but if he has reason to believe an excessive number of exemptions is being claimed, he should notify the Collector of Internal Revenue at Greensboro. If an employee fails or refuses to file a certificate, deductions should be made on the basis of no exemptions.

(2) *Withhold the tax from each wage payment* made on or after January 1, 1945 in accordance with the new exemption certificates. Note that the new schedule is to be applied to any wage payment *actually made* on or after January 1, 1945, regardless of when the wage was *earned*. If an employee on a monthly salary is paid his salary for December on January 1, the new rates and the new exemption certificates apply. If the salary is paid before the end of December, say on Saturday December 30, the old rates and the old certificates should be used.

(3) *Deposit all taxes withheld the previous month* by the tenth of the month following deductions, in a bank designated by the Secretary of the Treasury as a depository, if the total withholdings for the past month exceeded \$100. Employers whose monthly withholdings aggregate \$100 or less are not required to use depositories in all cases. Upon mak-

(Continued on page 10)

FAITH, WORK AND PLAY IN WARTIME

Continuing a Series of Articles by the Dean of Administration
of the University of North Carolina

R. B. HOUSE

The great Charles W. Eliot, former President of Harvard, and one of the sternest and most unremitting of toilers, nevertheless devoted one half of his speeches and writings to the philosophy and art of enjoyment. He was a great democrat, and the object of democracy he defined as the effort to decrease pains and sorrows and to increase in plain people everywhere pleasurable sensations and cheerful feelings.

He taught that a man ought to be a good animal and enjoy his body. He quotes with keen relish the testimony of an old woman at a religious meeting when she said she thanked God most of all for her victuals and the ability to enjoy them.

But President Eliot thought a man was not truly a man unless he added beauty to the satisfaction of every animal, personal, and social need. To houses, livelihood, churches, civil government, education—add beauty. The characteristics of beauty, he said, are unselfishness and fittingness. Manners are beautiful, for instance, where they consider the other fellow and produce actions to fit the occasion. The foundation of beauty, he urged the teachers, is trained senses. He advised exercises in early school life to train the eye, the ear, the nose, the tongue, and the organs of feeling to habituate them in effectiveness and art, both creatively and appreciatively. He urged his hearers to contemplate the heavens, the landscape, flowers, architecture, museums and all sorts of cultural institutions. But he chiefly stimulated them to look for and to celebrate physical, mental, and moral beauty in people. When a man can note superiorities over himself which other people may possess and can revere



them, then, he said, a man can see clearly new lines of growth for himself. His masterpiece of writing is the life of John Gilley, a New England farmer. It is a record of the birth, life, death, cheerful business and humble joys of one of the forgotten millions for whom God created and upholds the earth.

As a teacher, President Eliot knew that the chief problem of young men and women is to choose their several vocations. In his inaugural address at Harvard he says:

"Where the revelation of his own peculiar taste and capacity comes to a young man, let him reverently give it welcome, thank God, and take courage. Thereafter he knows his way to happy, enthusiastic work, and, God willing, to usefulness and success."

As a college president he knew the temptation which besets an administrator to act too quickly from an impulse of sympathy with the first side of a situation which is dramatically presented to him. "Not energy," he says, "but patience, patience, patience, till men see and endorse, is the quality of a good executive."

Once, in advising a newly inaugurated college president, Dr. Eliot said: "I have learned to wait things out and not to be disturbed when people who wanted to interpret me as being wholly committed to them, have in their impatience charged me with being untruthful."

"Why, President Eliot," exclaimed the young executive, "Has anybody ever called you a liar!"

"Many times," chuckled President Eliot, "And worse than that;—they have proved it on me!"

Withholding Tax

(Continued from page 9)

ing the deposit, the employer will receive a "depository receipt" which is the equivalent of cash in making settlement with the government.

(4) A quarterly return of total taxes withheld must be filed on pre-addressed Forms W-1 by the last day of the month following the close of each quarter. That is, these quarterly returns must be filed during April, July, October, and January of each year. With each quarterly return there must be remitted cash, checks or depository receipts covering the

total taxes withheld during the preceding three months. Erroneous deductions or remittances made in one quarter may be adjusted the following quarter.

(5) A withholding receipt in duplicate, on Form W-2 (Rev.) must be given to each employee on or before January 31 of each year, or within 30 days after an employment ends. The receipts will show the total amount paid to the employee during the preceding year, and the total amount of taxes withheld and paid over to the collector for his account. Since these receipts may be used as

tax returns, employees should be cautioned against losing or destroying them.

(6) A reconciliation of quarterly returns must be filed on or before January 31 of each year, on Form W-3. This return must be accompanied by the triplicate copies of all withholding receipts issued employees during the preceding year, together with a list or adding machine tape showing the amount of each receipt. The reconciliation of quarterly returns, or annual return, should be sent in to the Collector of Internal

(Continued on page 15)

The Attorney General Rules

Recent opinions and rulings of the Attorney General of
special interest to local officials



As each street, hedge-row and hillside has donned its many-hued fall coat during the past few weeks and indicated for everyone that the seasons are changing, so have the Attorney General's rulings of recent weeks indicated that the seasons are changing for city and county officials throughout the State and bringing with the changes different problems.

Schools—It is not hard to tell that the public schools have settled down to their workaday routine and that in that routine the principals, teachers and governing boards are running into perplexing situations. The Attorney General has ruled that: a school board may prohibit the pupils of a school from smoking on the school grounds *or in an area immediately adjacent thereto*; that a school principal may not, under the provisions of G. S. 115-145, refuse admission to a pupil who has become a mother out of wedlock, because that section deals only with the suspension of students who violate the school rules or are guilty of immoral or disreputable conduct, and not with the admission of pupils; and that the law prohibits the solicitation or sale of any article of property to any teacher or pupil either on the school grounds or elsewhere during the school day unless the written permission of the superintendent is first obtained. The Attorney General has pointed out, in answer to inquiries from several teachers, that the State Board of Education is authorized to make provision for sick leave with pay for teachers or principals not exceeding five days, and to promulgate rules and regulations for the employment of substitutes.

Elections — November brought with it the election of local, State and Federal officers, and the growing crescendo of the pre-election excitement, noticeable particularly in the change from letters to telegrams, could be clearly followed in the in-

quiries addressed to the Attorney General as election day drew closer and closer. Several rulings of particular interest to election officials grew out of this election period: persons living in trailers on a government-owned reservation cannot acquire a voting residence because such residence could not be permanent, whether the trailers are government-owned or privately owned, *if the State has ceded jurisdiction over the property to the Federal government*; if a person moves to another county with the intention of making such county his permanent residence he is considered to have lost his residence in the former county (and if within four months of election, his right to vote); Indians possessing the qualifications for voting, including registration, are entitled to vote as other citizens of North Carolina; and a notary public who is a candidate for office may not administer the oath to persons desiring to vote by absentee ballot.

Tax listing—As the time to list taxes rolls around again, tax supervisors throughout the State are beginning to consider their perpetual problem of how to get all taxable property fairly and correctly on the tax books. In this connection, the Attorney General's office has ruled that: county taxing authorities would be authorized to place a valuation on a building partially exempt and partially taxable and pro-rate the valuation so as to require the payment of taxes on that portion of the building which is not exempt; that real property of the Defense Plant Corporation is taxable under the Machinery Act because it is only *indirectly* owned by the Federal government; and that cities and towns may not set up their own machinery for securing tax lists from city taxpayers and then, after the time for listing has passed, decide to use the county records instead.

HARRY McMULLAN

Attorney
General
of
North
Carolina



I. AD VALOREM TAXES

A. Matters Relating to Tax Listing and Assessing

13. Private business enterprise

To Fred Folger.

(A.G.) If a building is owned, held and used in such a manner as to be exempt from taxation under the provisions of the Machinery Act except for the fact that a portion of it is used in such a way as to be in competition with private business it is my opinion that the taxing authorities of a county would be authorized to place a valuation on the whole building and then pro-rate the valuation so as to require the payment of taxes on that portion of the building which would not be exempt. See: *Odd Fellows v. Swain*, 217 N.C. 632, *Hospital v. Guilford County*, 218 N.C. 673, *Sparrow v. Beaufort County*, 221 N.C. 222.

50. Listing and assessment of property

To Thomas C. Hoyle.

Inquiry: Would the tax supervisor or county commissioners have authority to correct an error in the valuation placed on the property of a taxpayer, the error being as follows: taxpayer owned a lot on which there were two houses; the assessors made the assessment of the property and valued each house and the lot upon which it was situated separately, thus making two cards; one house and lot was valued at \$7,150 and the other at \$4,445; one of the clerks assisting the assessors fastened the two cards together and notified the owner that the assessment of both pieces of property was \$7,150; the property went on the books at that amount in 1941 and has remained on the books at that figure until recently discovered.

(A.G.) It is my view that the taxpayer had the right to rely on the valuation contained in her notice until some proper official action was taken by the county authorities to correct the error. If the taxes have been paid on that basis for 1941,

1942 and 1943, it is my opinion that neither the commissioners nor the supervisor would have the right to require any further payments for these years. If the taxes have not been paid for 1944, it is my opinion that the commissioners would have the right to correct the valuation for the year 1944. The taxpayer should be given notice of this change. The valuation can be properly set in 1945.

To C. G. Dunn.

(A.G.) In my opinion cities and towns may not set up their own machinery for securing tax lists from their own taxpayers, and then, after the time for listing has passed, decide to use the county records instead, even though this procedure would have been proper under G. S. 105-333 if adopted in the first place.

On the other hand, cities and towns might compare their lists with the county lists and enter as discovered property any additional property found thereon, notifying taxpayers accordingly.

B. Matters Affecting Tax Collection

23. Disposal of property purchased by taxing unit at foreclosure sale

To M. L. Edwards.

Inquiry: May real estate acquired by a town in tax foreclosure proceedings, and for which the municipality has obtained quitclaim deeds from the original owners since the foreclosure, be conveyed back to the original owner without going through the formality of a public auction? Could this property be conveyed to persons other than the original owners who have since the foreclosure acquired quitclaim deeds from the owners without a public auction?

(A.G.) Our court has not specifically passed on these questions, but since the general rule is that sales of property by a municipality must be made at public outcry, I do not feel that I can safely advise a town to convey the property acquired from tax foreclosure sale at private sale to a former owner who has voluntarily conveyed his property or to any other person who has acquired an interest in the same subsequent to the tax foreclosure sale.

II. POLL TAXES AND DOG TAXES

A. Levy

7. Amount of levy

To Daniel J. Price.

Inquiry: What amount of poll tax can a county or municipality levy?

(A.G.) Article V, Section 1, of the North Carolina Constitution provides that the General Assembly may levy a capitation tax on every male inhabitant over 21 and under 50 years of age, which said tax shall not exceed \$2.00, and cities and towns may levy a capitation tax which shall not exceed \$1.00. Subsection 1 of Section 1402 of the Machinery Act provides that there shall be levied by the board of commissioners of each county a tax of \$2.00 on each taxable poll or male person between the ages of 21 and 50 years and that the taxes levied and collected shall be used for the benefit of the public school fund and poor of the county. Subsection 3 of the same Section authorizes cities and towns to levy a poll tax not exceeding that authorized by the Constitution and provides that poll taxes so

levied and collected may be used for any purpose permitted by law. Thus, counties may levy a poll tax of \$2.00 and municipalities may levy not exceeding \$1.00.

III. COUNTY AND CITY LICENSE OR PRIVILEGE TAXES

A. Levy of Such Taxes

26. License tax—auction sales

To J. S. Liles.

(A.G.) The license levied in Section III of the Revenue Act is required of "every person, firm, or corporation engaged in the business of conducting auction sales for profit or compensation." Thus, if a person intends to engage in the business of conducting auction sales as a professional auctioneer, he would be required to pay the tax specified. However, if he does not intend to conduct auction sales himself, but plans to engage the services of a professional auctioneer to conduct the sale, the statute does not require a license from him merely because he owns the real property which is to be sold.

To J. A. Little.

Inquiry: Are heirs of an estate who sell real property at auction conducted by a local auctioneer liable for a tax for making such a sale?

(A.G.) So far as I can determine, there is no statute imposing a tax on owners of real estate who sell their property at auction, unless such persons are engaged in the business of doing so. Section III of the Revenue Act levies a tax on persons engaged in the business of conducting auction sales of real estate for profit. Thus, the auctioneer who conducts the sale in this case would have to be properly licensed, but the heirs who merely own the property incur no liability.

SELLING TO SCHOOL CHILDREN

To Dr. Clyde A. Erwin.

Inquiry: What is the proper construction of Section 14-238 of the General Statutes, which prohibits the solicitation or sale of articles of property to teachers and pupils during the school day; is it applicable to a merchant who operates an establishment near the school grounds, and then only when the teacher or pupil visits his place of business?

(A.G.) Because of the penal provision of the statute, I cannot construe it otherwise than that it prohibits the solicitation or sale of any article of property to any teacher or pupil either on the school grounds or elsewhere during the school day. This section can be waived by the merchant's obtaining written permission from the superintendent, principal or other person in charge of the school.

IV. PUBLIC SCHOOLS

A. Mechanics of Handling School Funds

12. Funds from intangible taxes

To Dr. Clyde A. Erwin.

(A.G.) I am of the opinion that our law

does not contemplate a per capita distribution to the city administrative unit of the intangible taxes allocated to the county administrative unit by the board of county commissioners under the provisions of Section 715 of the Revenue Act.

F. School Officials

10. Trustees for city administrative units—election

To Dr. E. L. Bowman.

Inquiry: Where the city limits and the boundaries of the City Administrative Unit are not coterminous, may a person serve on the Board of Trustees of the City Administrative Unit who resides within the city but not within the City Administrative Unit?

(A.G.) While there may be a difference of opinion as to the de jure rights of such a person to serve, in my opinion he would be at least a de facto officer.

49. Principals and teachers — authority and control

To Dr. Clyde A. Erwin.

Inquiry: Would the principal of a city school be authorized to refuse admission to school, under the provisions of G. S. 115-145, of a pupil who has become a mother out of wedlock?

(A.G.) This section provides that a principal shall have authority to suspend any pupil who willfully and persistently violates the rules of the school or who may be guilty of immoral or disreputable conduct, or who may be a menace to the school. The statute only authorizes the principal to suspend pupils for certain acts and contains no provision relative to admission. It is therefore my opinion that the principal would not be authorized under this section to refuse admission to a girl who has become a mother out of wedlock.

To J. A. Batson.

(A.G.) I am inclined to the opinion that a school board may, by proper resolution, prohibit the pupils of the school from smoking on the school grounds or in an area adjacent thereto.

63. Sick-leave

To W. L. Winkler.

Inquiry: Is there any statute which gives teachers sick leave with pay?

(A.G.) Section 22 of the School Machinery Act of 1939, as amended, provides in part as follows: "The State Board of Education is hereby authorized and empowered, in its discretion, to make provision for sick leave with pay for any teacher or principal not exceeding five days, and to promulgate rules and regulations providing for necessary substitutes on account of said sick leave. The pay for a substitute shall not be less than \$3.00 per day."

VII. MISCELLANEOUS MATTERS AFFECTING CITIES

J. What Constitutes Necessary Expense

9. Community house

To Charles W. Tillett.

(A.G.) I am of the opinion that funds derived from the sale of real estate owned by a city, which creates a current surplus,

may be used for a public purpose, even though not a necessary expense, and that a city may contribute such funds towards the purchase of a site upon which to build a recreational center.

However, if the center is to be limited to the use of the veterans of World War II or to any other group of citizens or of organizations, this would have the effect of removing the same from the classification as a public purpose as its use would be restricted to one group or class of citizens. I am, therefore, of the opinion that the funds derived from the sale of municipal property, even though considered a current surplus, may not be used for the establishment of a recreational center, the use of which is limited to one particular group of people.

Y. Streets and sidewalks

To J. H. Stockton.

Inquiry: Does a town have authority to assess property owners for the cost of sidewalk improvements unless said improvements are made pursuant to a petition signed and filed by a majority in number of the owners who represent a majority of the lineal feet of frontage abutting upon the street improved or proposed to be improved?

(A.G.) In the absence of a provision in the charter of the town or a local statute applicable to such municipality, which provides a method other than petition, it is my opinion that the town would have no authority to levy any such assessment.

However, the court held, in *Crutchfield v. Thomasville*, 205 N. C. 709, that where levies are made without a petition, the assessments are invalid but not void, and the General Assembly has the power to validate the assessments by subsequent legislative action, due to the fact that the General Assembly had the power to authorize the assessments in the first instance.

VIII. MATTERS AFFECTING CHIEFLY PARTICULAR LOCAL OFFICIALS

B. Clerks of the Superior Court

To W. E. Church.

Inquiry: Is a certificate issued by the Superintendent of the State Hospital at Morganton stating that the person named therein has been restored to sound mind and memory, sufficient to give the ward the right to convey real estate?

(A.G.) The answer depends upon whether the guardian for the incompetent was appointed on a certificate from a hospital for the insane under G. S. 35-3, or after an inquisition of lunacy under G. S. 35-2. If the guardian was appointed after an inquisition of lunacy, he should be removed by the procedure outlined in G. S. 35-4, which requires that the guardian be made a party to the action, and that the competency of the alleged insane person shall be adjudged by a jury of six freeholders. If, however, a guardian was appointed upon the certificate of a superintendent for the insane under G. S. 35-3, the rights of the insane person who has regained his sanity may be restored upon the certificate of sanity by the superintendent of the hospital.

9. Wills and Caveats

To George A. Hux.

Inquiry: Where a will has been admitted to probate in common form and a will bearing a later date is offered for probate, should the clerk of court admit the second will or should there first be a proceeding to set aside the probate of the first will?

(A.G.) The Supreme Court does not seem to have decided whether it is necessary that a petition be filed requesting that the probate of the first will be set aside and the letters testamentary recalled before the second is admitted to probate or whether it is necessary only to have the second will submitted for probate and as a part thereof the setting aside of the probate of the first will. These seem to be the only two methods that could be followed, and I do not know which procedure should be followed as our court has never expressly decided the point.

10. Collection of process tax

To Fred Llewellyn.

(A.G.) Clerks of the Superior Court are required to collect the State process tax imposed by Section 157(e) of the Revenue Act on all cases, whether civil or criminal, which are sent to the Superior Court on appeal from a magistrate's court.

19. Duties with reference to adoption

To Dr. Ellen Winston.

Inquiry: May a certified copy, instead of the duplicate of a form in an adoption proceeding, be filed with the State Board of Charities and Public Welfare, under the law as now written?

(A.G.) From an inspection of G. S. 48-1, and other authorities, it is my opinion that the General Assembly intended to require that two standard form petitions should be signed by the petitioners and filed with the clerk of the Superior Court at the time the adoption proceeding is instituted, and that one be retained by the clerk and the other forwarded to the State Board of Charities and Public Welfare. However, it is my opinion that the court would not be inclined to upset an adoption proceeding solely on the ground that a certified copy of the original petition was forwarded to the State Board instead of the duplicate original.

24. Duties with reference to insane persons

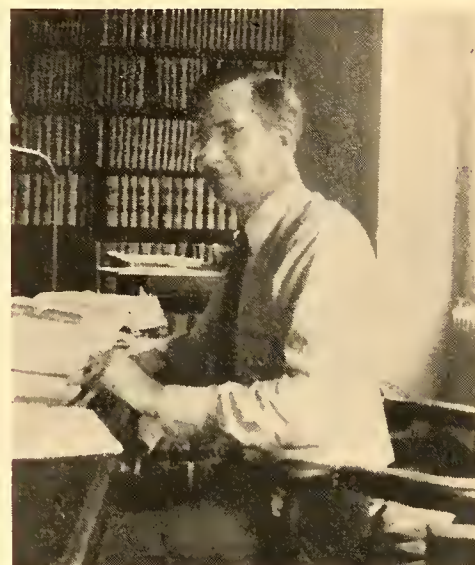
To W. E. Church.

Inquiry: Who must apply to the clerk of court to have committed to the State Hospital a person who is violently insane and is in a county other than the county of his residence?

(A.G.) It is my opinion that Section 122-57 of the General Statutes contemplates action by the clerk whenever it is brought to his attention that a person in his county is violently insane. It is not necessary that the affidavit required by 122-42 be filed with the clerk. The Legislature intended, I think, that in cases covered by 122-57 the action should be taken immediately, upon notice of violent insanity, without regard to the procedure for committing the ordinary insane person.

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PATTON LEAVES ATTORNEY GENERAL'S OFFICE



On November 15th George B. Patton, Assistant Attorney General of North Carolina since 1939, resigned from his position to return to the private practice of law in his native Franklin.

During these five years, he so distinguished himself at this desk, at the conference table, and in the court room that the Attorney General saw fit to inscribe the following tribute in the fly-leaf of the new General Statutes which he presented to Mr. Patton:

"These volumes of the General Statutes of North Carolina are presented by me to my friend and associate, George B. Patton, upon his retirement as Assistant Attorney General, in grateful acknowledgment of the splendid manner in which he has performed all of the arduous duties of his office and the great assistance he has at all times been to me since his appointment in August, 1939. My friendship for him and my admiration for him as a man and as a lawyer has made our close association in the Attorney General's office a source of great happiness and satisfaction to me. My good wishes will follow him wherever he may go.

(Signed) Harry McMullan"

The Institute of Government adds its good wishes to those of Mr. McMullan.

The Attorney General Rules

(Continued from page 13)

33. Funds of minors and incompetents

To G. L. Mewborn, Jr.

Inquiry: Does a clerk of court have authority to accept from administrators and executors who are filing their final accounts, the distributive shares of minor heirs and incompetents; is he entitled to fees thereon, and would he be liable for interest?

(A.G.) G. S. 28-160 is a clear authorization for the clerk to receive the legacies and distributive shares. In *Presson v. Boone*, 108 N. C. 79, it was held that moneys received by the clerk under authority of this statute were received by virtue of his office and that the bond of the clerk would be liable for the same. G. S. 2-26 provides that the clerk shall receive fee or commission for moneys received by virtue of his office. This decision and statutory provision, together, indicate that the clerk would be entitled to a fee or commission on the funds. If the funds were invested by the clerk, he is liable for the interest actually received therefrom; but he does not have to invest the funds.

D. Registers of Deeds

14. Birth certificates

To Mrs. Irene Rodwell.

(A.G.) Even though a person were born before our vital statistics statutes were enacted, he may apply for a birth certificate under the provisions of G. S. 130-88, which authorizes the register of deeds under rules and regulations promulgated by the State Board of Health to register what are known and designated as "delayed birth certificates."

16. Military discharges

To Lt. Colonel Thomas H. Upton.

(A.G.) G. S. 47-110 requires the register of deeds to record official discharges of veterans from the army, navy, and marine corps in a book to be kept by him for such purpose, and does not require a fee for such service. However, G. S. 47-113 provides for a fee of fifty cents for the register of deeds for furnishing any person a certified copy of such discharge.

L. Local Law Enforcement Officers

27. Prohibition—home brew

To George A. Morrow.

Inquiry: Is it necessary to have home brew analyzed in order to show that it has sufficient alcoholic content to be in violation of law?

(A.G.) The burden of proof would be upon the State to show that the defendant was in possession of an intoxicant which contained sufficient alcoholic content to be in violation of law. In *State v. Fields*, 201 N. C. 110, which involved the possession of home brew, the court held that while courts will not take judicial notice that home brew is intoxicating where officers experienced in such matters testify that the liquor in question is home brew and that from its smell and appearance it was intoxicating, the evidence would be sufficient to take the case to the jury. It

is my opinion that the safe course to pursue would be to have the home brew analyzed in order that the State might be in position to show the actual content of the intoxicant in question.

39. Motor vehicle laws

To H. P. Taylor.

(A.G.) Under North Carolina Emergency War Powers Proclamation Number 2, which was issued by the Governor on May 6, 1943, under the authority granted in Chapter 706 of the Session Laws of 1943, it is unlawful for any person to drive an automobile along the public highway of the State at a rate of speed greater than 35 miles per hour, except for such persons as are expressly excluded from the ordinary speed limits under G. S. 20-145.

55. Police—residence and qualifications

To R. B. Slaughter.

Inquiry: Would a person who moved into the State August 15, 1944, with the intention of permanently locating within the corporate limits of a town be eligible to be appointed chief of police?

(A.G.) The statutes require that a chief of police be a qualified voter of the town. Under the facts of this inquiry, the person would not be a qualified voter, for he has not resided in the State the requisite year.

To Roy G. Cadieu.

(A.G.) A person who has been duly appointed a policeman of a municipality, but not a qualified voter thereof, is a de facto officer, and as such, may make an arrest, the same as any other officer.

92. Search warrants

To W. D. Sabiston, Jr.

Inquiry: May a search warrant issued under the provisions of the law with respect to the seizure of liquor (G. S. 18-13) be served on Sunday?

(A.G.) It is my opinion that an officer would be authorized to serve on Sunday a search warrant duly and properly issued and based upon the proper affidavit. It is my thought that the search warrant should contain not only an authorization to search the premises of the person accused, but also order his arrest.

M. Health and Welfare Officers

28. County board of health

To Dr. Carl V. Reynolds.

Inquiry: Is it necessary that the local board of health take official action in order to authorize the vaccination of school children for smallpox?

(A.G.) It is my opinion that the local board of health take official action before school children may be required to present certificates of immunity from smallpox in order to permit such children to attend school. When the local board of health has taken official action, G. S. 130-183 makes any parent, guardian, school committee, principal or teacher guilty of a misdemeanor for permitting a child to violate the requirement adopted by the local board of health.

P. Officials of Recorder's Court

To Walter G. Sheppard.

Inquiry: Should warrants in bastardy cases, issued before the birth of the child, be quashed on motion of the defendant?

(A.G.) The only criminal offense created under the bastardy law is the willful failure or refusal to support and maintain the illegitimate child. The begetting of an illegitimate child is not of itself a crime and a warrant charging a defendant with being the putative father of an unborn illegitimate child is insufficient to support a prosecution under the statute.

From the decision in *State v. Dill*, 224 N. C. 178, it appears that no crime is committed by the putative father until after he has been fixed with knowledge of the alleged paternity and has failed and refused to support the child after its birth. Thus, a criminal warrant charging the willful failure and neglect to support the child issued prior to the birth of such child would not, in my opinion, charge a crime.

32. Authority of clerk

To Ada R. Jones.

(A.G.) Sections 7-198 and 7-202 of the General Statutes seem to be definite authority for a clerk of the recorder's court to issue search warrants for intoxicating liquors, and I am inclined to the opinion that said sections amply authorize such clerks to issue general search warrants.

T. Justices of the Peace

To W. C. Hammond.

Inquiry: If a defendant fails to appear before a justice of the peace and has given an appearance bond, when may and when may not the justice enter judgment?

(A.G.) If the amount of the bond does not exceed \$200 the justice may immediately enter judgment nisi against the principal and his sureties and give ten days notice to appear and show cause why the judgment should not be made final. G. S. 15-120. If the defendant fails to appear and show satisfactory cause the justice may enter final judgment and send a transcript to the clerk, who shall issue execution. G. S. 15-120.

If the amount of the bond exceeds \$200 the justice shall have the accused called, make an entry to that effect upon the bond, and transmit it together with the original papers in the case to the clerk, who shall enter judgment nisi and issue notice to the accused and his sureties to appear at the next term of court to show cause why the judgment should not be made final. G. S. 15-121.

(Continued on page 17)

WHEN GRAND JURY INDICTMENT IS NECESSARY

(A.G.) From the constitution, statutes and decisions in North Carolina, it appears that a defendant in a criminal action may be tried without a bill of indictment where the offense is a misdemeanor, but where the offense is a felony a common law grand jury must return a true bill.

North Carolina Constitution Changed Again

The first returns of the November 7th election indicated that all five amendments to the North Carolina Constitution, which were submitted to the people for approval by the Legislature, were passed by substantial majorities.

Number 1 provides that the Commissioners of Agriculture, Labor and Insurance be made constitutional officers and members of the Executive Department and of the Council of State.

Number 2 makes it possible for notaries public to hold office, exempting them from the prohibition against double office holding. No longer is the notary public an officer, and he may now hold any other office or place of trust under the authority of the State.

Number 3, having to do with the State Board of Education, had been publicly opposed, but incomplete returns indicated that it received the greatest support. It provides that the structure of the State School Board be changed by dividing the State into 8 educational districts with a representative from each, instead of having representation on the basis of 12 Congressional districts, and abolishes the office of comptroller. Membership on the Board is thus changed, as well as the manner of the members' appointment. The Board is to consist of the Lieutenant Governor, State Treasurer, Superintendent of Public Instruction, and *ten* members appointed by the Governor, subject to confirmation by a joint session of the General Assembly. The General Assembly is to divide the State into eight educational districts, subject to change from time to time; and from each of these districts one member of the Board is to be appointed. The remaining two appointive members are to be members at large, and staggered terms are provided for all appointive members.

Under the amendment, the Superintendent of Public Instruction continues as administrative head of the public school system and secretary of the Board. But the job of comptroller provided for in the 1942 amendment, to be appointed by the Board and to have charge of its fiscal affairs, is eliminated. The amendment itself provides that this revised set-up shall be in effect from and after April 1st, 1945.

Number 4—compensation for the lieutenant governor—provides that he shall receive such compensation as shall be fixed by the General Assembly. Until now he has received only seven hundred dollars for services as presiding officer of the Senate, plus a per diem at the same rate and mileage for all meetings necessarily attended, so that the office of lieutenant governor has always been more honor than profit.

Number 5 abolishes the constitutional requirement of private examination of wife for sale of homestead. No longer is it necessary, in order to convey absolute title to real estate free of dower and homestead rights, for the wife to be examined privately, separately and apart from her husband, or to have a certificate to the effect that she signed the instrument voluntarily, without fear or compulsion.

The effective dates of these constitutional amendments, now that they have been ratified by the voters, is whenever registration is complete in the office of the Secretary of State. Such registration follows immediately certification by the governor that the people have adopted them; and that certification comes right after the State Board of Elections has canvassed the vote on November 28. They therefore become effective as soon as the clerical work of certification can be completed, following the State canvass.

Withholding Tax

(Continued from page 10)

Revenue along with the quarterly return for the final quarter of each year. Duplicates of all old-style W-2 withholding receipts issued during 1944 should be sent in with the annual return in January, 1945.

(7) *Records must be kept* of all exemption certificates filed by employees, as well as records of all employees subject to withholding provisions, the periods of their employment, and the amounts and dates of payments made to them.

(8) *Public officials and employees subject to withholding* are those on salaries. If an official is partly on a salary and partly on a fee basis, the withholding table should be applied to the salary part of his compensation. Officials who retain their fees are in the same situation as professional men and others with respect to filing estimates of income and annual returns. Employees who are on a commission basis, however, are subject to withholding if they are regularly employed but have their compensation measured by the computation of commissions. An official on a per diem basis would be subject to withholding, but a casual employee, or an independent contractor, a lawyer, engineer, architect or other person in business for himself who is retained for a particular job and who is not on a salary would not be. In general, an "employee" is one who is subject to control by the employer not only as to what services he is to perform, but also as to the manner in which he performs them. This control does not have to be exercised. It is enough if the power to exercise it exists.

A "casual employee" is not necessarily one who works only a short time. He is one who is employed to perform some service not in the ordinary line of the employer's business, such as a painter who may be called in to paint a public building. On the other hand, a person who is employed to perform some regular duty would be an "employee," although he may for some reason hold his job only a few days, as would a part-time assistant who performs some regular task in connection with the functions of the governmental unit.

Oath of Office

(Continued from page 8)

istered and taken with the right hand lifted up, is and shall be a lawful oath in this state . . . , and shall be equally good to all intents and purposes as if the same oath had been taken by the party having lain his hand upon and kissed the holy gospels."

Affirmations — Quakers, Moravians, Dunkers and Mennonites, having conscientious scruples against swearing at all, are allowed to "make their solemn affirmation" and begin the oath by saying, "I affirm" instead of saying "I swear"; and this affirmation is "effectual to all intents and purposes". (G.S. 11-4)

Atheists and infidels—An atheist, one who denies the existence of an Almighty God, is disqualified from holding public office at all in North Carolina.

An infidel, one who acknowledges the existence of an Almighty God, but who does not conform to the usual religions, must be sworn according "to the form which he holds most sacred and obligatory on his conscience," repeating the oath after the administering officer.

Who Administers the Oaths

In some instances, the law requiring a particular officer to take the prescribed oaths specifies the person before whom the oath must be taken. Judges of the Supreme Court are required to take the oath before the Governor or "some judicial officer"; Judges of the Superior Court may take the oath in open court (presumably before the judge presiding in that court), or before the Governor, or Judge of the Supreme or Superior Court, or a Justice of the Peace; the Governor "before the General Assembly or before a Justice of the Supreme Court"; the County Commissioners may take the oath before the Clerk of the Superior Court, a judge or justice of the peace; and the Register of Deeds must take the oath before the County Commissioners.

If the law does not stipulate the particular officer who is to administer the oath, or if the law indicates that the ceremony is to be before "any officer authorized to administer oaths", the oath should be



Senator J. H. Price is administered the oath of office as President pro tem of the 1943 Senate by Supreme Court Justice W. A. Devin.

taken before a Judge of the Supreme or Superior Court, a judge of an inferior court, or a justice of the peace. The Clerk of the Superior Court is authorized "to administer oaths and take acknowledgements, whenever necessary, in the exercise of the powers and duties of his office"; but this authority seems to be limited to the performance of his enumerated duties, such as swearing witnesses appearing before him, and does not extend to administering oaths to all officers in general.

Subscribing the Oath

After the officer takes the prescribed oaths to support the Constitution and laws of the United States, to support the Constitution and laws of North Carolina, and to discharge faithfully the duties of his office, the oaths must apparently be reduced to writing and subscribed by the officer. Article VI, Section 7, of the North Carolina Constitution requires that the oath presented there (combining all three of the oaths above) must be taken *and* subscribed. The taking of the three prescribed statutory oaths seems to furnish full compliance with this constitutional provision *if* the oaths are subscribed. The statutory oath to the State is specifically required to be subscribed in the statute itself. It

has been held in another jurisdiction, with an identical constitutional provision, that a "taking of the oath without subscribing thereto is not a compliance with the Constitution."

After the oaths are written and signed, they should be filed in some permanent place. The statutes specify in some instances where the oath is to be filed; for example, Judges of the Supreme Court and Judges of the Superior Court are required to file their oaths with the Secretary of State, the County Commissioners with the Clerk of the Superior Court, and the Clerk of the Superior Court with the Register of Deeds. The practice varies. The State officers ordinarily sign an "Oath Book" kept in the Governor's office. In some counties, the oaths of *all* county officers are subscribed and filed in the office of the Clerk of Court.

Penalty for Failure to Take the Oath

The required oaths must be taken by the officer before he begins his official duties. If he undertakes to perform them before he is sworn in, he is liable to a penalty of five hundred dollars, to ejectment from office by proper legal proceedings, to indictment for a misdemeanor, and is not entitled to the salary attached to the office.

The Attorney General Rules

(Continued from page 14)

5. Costs

To W. Duncan Matthews.

(A.G.) In cases tried in a Recorder's Court which are within the final jurisdiction of justices of the peace the defendant shall always be adjudged to pay the cost in case of a conviction, the prosecuting witness in case of an acquittal. In neither case shall the county be required to pay any costs. G. S. 6-64.

However, it is my opinion that it is not lawful for a defendant to be charged with the cost of more than two witnesses when he is prosecuted for a misdemeanor unless the judge for satisfactory reasons appearing directs otherwise. G. S. 6-60.

10. Jurisdiction

To Harvey L. Beck.

(A.G.) A justice of the peace has no final jurisdiction to try cases of gambling since the penalty for violations of the gambling statute, G. S. 14-292, exceeds the jurisdiction of justices of the peace as provided in G. S. 7-129, that is, cases where the maximum punishment does not exceed a fine of \$50 or imprisonment for thirty days.

To V. C. Bradley.

Inquiry: Has a justice of the peace the right to hear and determine controversies in his court involving the possession of specific personal property within the limits of his jurisdiction where no bond is posted nor the property in dispute taken by the officer pending the determination of the issues involved?

(A.G.) There is no action of claim and delivery as such. It is only a writ or order issued in a pending civil action for the recovery of specific personal property and is intended to enable the plaintiff to get possession of the property and hold it until the final judgment determines the right instead of leaving it with the defendant during the pendency of the action. Under our Code, a plaintiff may have the same remedies as under the common law although the forms of action are no longer material. A plaintiff may bring a civil action for the recovery of the property, giving the undertaking required, and have the property seized for immediate delivery and in this the remedy is in the nature of replevin. If he brings the action and does not claim immediate delivery, it is in the nature of detinue. He may elect not to sue for the specific property but to sue for damages and the action is in the nature of trespass or trover.

In the case of Jarman v. Ward, 67 N.C. 32, the court held specifically that in actions to recover the possession of personal property the plaintiff may, if he so elects, make the affidavit and give the undertaking required for the immediate delivery of the property to him and if he does not, his judgment, if he succeeds, is for the possession of the property or for its value and damages for detention. See also Wilson v. Hughes, 94 N.C. 182.

Z. Constables

10. Jurisdiction and power

To Luther F. Congleton.

Inquiry: What is the jurisdiction of a township constable in the service of civil and criminal process?

(A.G.) The Supreme Court of North Carolina, in the case of State v. Corpening, 207 N.C. 805, held that the powers and duties of constables are co-extensive with the limits of the county in which they are appointed and that it was the intention of those who drafted Section 24 of Article IV of the Constitution of North Carolina to intersperse the constables throughout every part of the county and not to restrict the powers and duties of the constables to the township in which they were elected.

XI. GENERAL ELECTIONS

A. Who May Vote

1. Residential requirements

To J. B. Slaughter.

Inquiry: Would the Attorney General's ruling that persons living in a trailer camp on government-owned reservations, as to which the State has ceded jurisdiction, cannot thereby acquire a voting residence as such residence cannot be permanent, apply to privately-owned trailers parked on government-owned property as well as government-owned trailers?

(A.G.) This ruling would apply only to government-owned property as to which the State has ceded jurisdiction to the Federal government. It would make no difference whether or not the trailer was owned by the person who lived in it or by the government.

To Walter T. Nau.

(A.G.) G. S. 163-25(e) provides that if a person moves to another county with the intention of making such county his permanent residence, he shall be considered to have lost his residence in the county from which he has moved; and the first part of G. S. 163-25 requires a person to reside in the new election district four months next preceding the election before he may register and vote.

5. Indians

To Mrs. Irma W. Smith

(A.G.) Indians possessing the qualifications for voting, including registration, are entitled to vote as other citizens in North Carolina.

B. Ballots

6. Write-in votes

To F. W. McGowen.

(A.G.) I am of the opinion that voters who desire to write in the name of a candidate are restricted to writing in the name of the candidate appearing on the proper ballot for the office for which he is a candidate.

To W. H. McDonald.

(A.G.) A notary public who is candidate for township constable may notarize civilian absentee ballots except those to be voted in the township in which he is a candidate.

Traffic Engineering Institute: December

10-14, 1944

Street Construction and Maintenance Institute: December

14-15, 1944

Conducted by the Institute of Government

With the Cooperation of

The Yale University Bureau of Street and Highway Traffic.

The North Carolina Highway and Public Works Commission.

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The Institute of Government welcomes officials and engineers of the Yale University Bureau of Street and Highway Traffic, the North Carolina Highway and Public Works Commission and the North Carolina Department of Motor Vehicles to the instruction staff of the great university of public officials which the Institute of Government is building within the framework of the University of North Carolina.

City traffic engineers and city traffic officers will be primarily interested in the 4-day Traffic Engineering Institute beginning the late afternoon of December 10.

City Street Superintendents will be primarily interested in the 2-day Street Construction and Maintenance Institute beginning Thursday morning December 14. City Engineers and Directors of Public Works will be primarily interested in both the Traffic Engineering and the Street Construction and Maintenance Institutes and are urged to attend both.

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Again, in 1945, the Institute of Government will furnish to the cities, towns and counties of North Carolina a service designed to keep them fully informed of all of the activities of the General Assembly. This service will consist of:

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