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COVER PICTURE

Blue Ridge Parkway (the cover scene shows a section of it, at Buck Creek Gap, North Carolina) is a far cry from the rough and winding mountain roads of a generation ago. The North Carolina part of the Parkway runs atop some of the most beautiful mountain country in the world, and when completed will connect the Great Smoky Mountain area with the Shenandoah National Park. This part is the highest highway in the East, with altitudes ranging from 2,000 to 6,000 feet.

The Blue Ridge Parkway is a link in what will eventually be a superb boulevard from the Canadian border to the lower end of Florida. It is a Federal highway, built by the Federal government on land obtained from the states. (Photograph by Hemmer, courtesy State News Bureau.)

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Development of The Automobile Law In North Carolina

By
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Early History

In my childhood I used to drive frequently to my paternal grandfather's home with an uncle who, since he was a lawyer in those more leisurely times, found it easier to get away from home when court was not in session than it was for my father, whose business kept him to more restricted hours. Though the trip was scarcely twenty miles the road passed through three counties. I remember my uncle's pointing out to me again and again that as long as we were in the county in which our homes were located the road was macadam; when we reached the second county it was dust or mud, or an alternation of both, depending on the weather; when we finally arrived at the third county, if we did, the road was again improved, and later hard-surfaced.*

If, however, the construction of roads was left to the imagination, the backwardness or the caprice of the individual counties, the regulation of traffic on those roads had been, until 1905, left almost entirely to the local communities. It is true there was a state-wide act passed in 1901 making it "unlawful for any person to ride on horseback or to drive any vehicle faster than a walk on, over or across any bridge exceeding thirty feet in length maintained at public expense across a natural stream." With few exceptions, however, traffic in urban areas might be regulated as each city and town saw fit, and traffic in rural areas went entirely unregulated.

In the year 1905 a great innovation was made in the law. Traffic regulation was likewise made county-wide, or at least the county commissioners of the several counties were authorized to make traffic regulations if they saw fit. Chapter 331 of the Public Laws of that year provided that county commissioners, in addition to their other powers, should have authority "to regulate the speed of automobiles, motorcycles and other like vehicles on the public roads and bridges, and make such ordinances as they may deem necessary governing the same." Any violation of the ordinances was made a misdemeanor, subjecting the offender to a fine of not more than fifty dollars or imprisonment for not more than thirty days. The act did not apply to the counties of New Hanover and Mecklenburg.

The reason the act did not apply to Mecklenburg was that earlier in that same session the representatives of that county had procured the passage by the legislature of a county-wide act which was the first comprehensive attempt at automobile regulation ever passed by the General Assembly of North Carolina. It provided, among other things:

That all persons driving carriages or vehicles of any description on any public road or highway of Mecklenburg County should, on meeting carriages or vehicles of any description, keep to the right, so as to leave half the road free; but that "all persons riding on horseback, or on bicycle, tricycle, tandem bicycle, locomobile, automobile or other motor vehicle" should, on meeting carriages or vehicles of any description, other than cycles or motor vehicles, keep to the right, so as to leave two-thirds of the road free.

That any person operating an automobile or other motor vehicle on any public road should not operate it "at a rate of speed greater than is reasonable and proper, having regard to the use in common of such highway or place, or so as to endanger the life or limb of any person," and in no case greater than:

eight miles an hour "in the business and closely built up portion of any municipality,"

fifteen miles in other portions of such a municipality,

twenty miles elsewhere in the county,

eight miles at sharp curves and crossings.

That any person operating an automobile or other motor vehicle should "at request or on signal by putting up the hand from the person riding, leading or driving a horse, or horses, or other animals, bring such locomobile, automobile, motorcycle or other motor vehicle immediately to a stop," and if traveling in the opposite direction should remain stationary so long as might be reasonably necessary to allow the animal to pass. If the animal appeared frightened the motorist was, upon request, to turn off his motor for "so long as shall be necessary to prevent accident and insure the safety of persons using such public road," and if going in the same direction was thereafter to use reasonable care and caution in passing. It was made illegal for the person in charge of the animal to put up his hand just for mischief.

The statute also had meager provi-

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* For material on the development of travel and transportation in North Carolina the reader is referred to the following authorities: Brown, C. K., *The State Highway System of North Carolina*, Chapel Hill, U. N. C. Press, 1931; F. W. Clonts, "Travel and Transportation in Colonial North Carolina," *The North Carolina Historical Review*, Vol. III, No. 1 (Jan. 1926), and the interesting series of articles by C. C. Crittenden in *The North Carolina Historical Review*, Vol. VIII.

sions as to lights, brake and horn. It required that any motor vehicle should, during the period from one hour after sunset to one hour before sunrise "exhibit a lamp, or lamps, showing a white light or lights for

The Duryea Motor Wagon, from "Scientific American," Nov. 9, 1895 (Courtesy Federal Bureau of Investigation).

a reasonable distance in the direction towards which such vehicle is proceeding, and also showing a red light or lights in the reverse direction," and should also be provided with (and use at all proper and necessary times) "a good and sufficient brake and a suitable bell, horn or other signal."

Violation of any of the provisions of the statute was made a misdemeanor punishable by a fine of not more than $50 or imprisonment for not more than thirty days.

During the next session of the legislature two acts, obviously modeled on the Mecklenburg act, were passed for other counties, one for Guilford, Wake and Wayne, and one for Forsyth.

The more conservative people of Guilford, Wake and Wayne, however, did not want to emulate the speed demons of Mecklenburg, so the act applying to those counties established the following speeds:

six miles in a business district,

ten miles in other portions of a municipality,

fifteen miles elsewhere in the county,

four miles at sharp curves and crossings.

This act is notable also in that it contained the first licensing provisions. Motorists were required to provide license numbers on metal plates, front and rear, and to register their numbers with the Clerk of the Court.

The Forsyth act was similar except that it allowed a speed of eight miles an hour in a business district.

At the extra session of 1908 Rockingham, Orange and Caswell Counties were added to the act applying to Guilford, Wake and Wayne, and a separate but similar act was passed for Scotland County.

In 1909 Anson County was also added to the act applying to Guilford, Wake and Wayne, and additional acts were passed, covering separately, or in groups of two or three, the following counties: Cumberland, Edgecombe, Rowan and Nash, Harnett and Johnston, New Hanover and Sampson. A separate act was also passed applying to licensing in New Hanover.

State-wide Regulation
The Act of 1909

Before the 1909 session of the legislature adjourned, however, it had become apparent that so many counties wanted automobile regulation by the State that an act was introduced and passed which became the first attempt at state-wide control of the motor vehicle traffic, and applied to all the counties except New Hanover.

This act, likewise, was modeled on the original Mecklenburg act. It defined, for the first time, such terms as "motor vehicles," "highway," and "business portion of any city or village." It provided for state-wide licensing of motor vehicles by application to the Secretary of State, who issued a number on a small metal disc which was attached to the automobile, the motorist supplying his own display plates. It, too, prescribed minimum requirements for lights, brakes and horn. It made operating an automobile while intoxicated an offense punishable under the statute, although it may have been indictable previously by an application of the common law doctrine of nuisance. It prohibited from taking place upon the highway all races, all bets or wagers on speed and all attempts to make records. It made it mandatory for the first time that the driver stop after an accident, render assistance, and, if requested to do so, give his name and address and the name and address of the owner of the car.

A general standard was laid down, as in the local acts, that no one should "operate a motor vehicle upon a public highway at a rate of speed greater than is reasonable and proper . . .," and in no case at a speed greater than

eight miles in a business district,

twelve miles in other portions of a municipality,

twenty-five miles outside a municipality,

five miles upon approaching and traversing "an intersecting highway, a bridge, dam, sharp curve or steep descent." Local authorities were authorized to make "reasonable ordinances" concerning lower speeds in any parks or parkways, provided they were marked accordingly, and might "exclude motor vehicles from any cemetery or grounds used for the burial of the dead."

The provisions as to the meeting of frightened animals were substantially the same as in the local acts, except that it was now necessary to leave only half the road free, and any male occupant of the motor vehicle who was over fifteen years of age was required upon request of the person in charge of the animal, to "give such personal assistance as would be reasonable to insure the safety of all persons concerned and to prevent accident." Meeting and passing was still to be done on the right, but a vehicle which was being overtaken, whether a motor vehicle or a vehicle drawn by an animal, might pull either to the right or left to allow the overtaking vehicle to pass.

Penalties for violating the act were, for the first offense, a fine of not over $50 or imprisonment for not over twenty days, and for the second and any subsequent offense, a fine of not over $50 or imprisonment for not over thirty days. Upon any conviction both the fine and imprisonment might be imposed. Upon a third conviction, since no drivers' licenses were provided for by the act, the certificate of the owner of the automobile was to be canceled for a period of six months.

The duty of enforcing the act was placed squarely upon the shoulders of the local officers, who were given power, within the territorial limits of their jurisdiction, "to arrest any

person known personally to any such officer or upon the sworn information of a credible witness to have violated any of the provisions" of the act, to take him immediately to a justice of the peace for trial, and to accept bond if a justice of the peace was not immediately available.

Finally, the Secretary of State was directed to have printed every year a list of all the motor vehicles registered with him, to mail it free of charge to every sheriff and mayor who requested a copy, and to furnish the list to any other person requesting it upon the payment of one dollar.

Further Development 1909-1927

The lines of development of the automobile law for the next eighteen years had been drawn. The 1909 act, which was extended to cover New Hanover County, was revised and reenacted in 1913 and again in 1917, and a number of acts dealing with particular topics were passed which amended existing provisions or added new sections to the law. Generally speaking the history of automobile legislation during this period is a history of increasing speeds and of the progressive regulation of more and more aspects of driving.

Speed

The most interesting thing with respect to the history of the speed laws is, perhaps, the fact that with the slow development of high-powered motors and the even more lagging development of speedways within cities urban speeds developed to their present limits much more rapidly than speeds in rural areas. In business districts, for instance, the 1909 limit of eight miles was increased in 1913 to ten miles, in 1925 to twelve miles, in 1927 to fifteen miles, and in 1935, although this is anticipating somewhat, to the present limit of twenty miles. In residence districts the 1909 limit of twelve miles was increased in 1913 to fifteen miles, in 1917 to eighteen miles, in 1925 to twenty miles, and in 1935 to the present limit of twenty-five miles. Speed in rural districts, meanwhile, remained at the 1909 limit of twenty-five miles until 1925, when it was increased to thirty-five miles. It was finally increased to the present limit of forty-five miles in 1927. The changes in the speeds upon approaching and traversing "an intersecting highway, a bridge, dam, sharp curve or steep descent" are more difficult to follow since this provision of the 1909 law soon gave way to more detailed regulation.

Reckless Driving

The term "recklessly" was first used in the law in 1913, so that reckless driving first became a crime during that year. There was, however, in the statute, no separate section about it. The section with respect to speed merely opened with these words: "No person shall operate a motor vehicle upon the public highways of this State recklessly, or at a rate of speed greater than is reasonable and proper . . .," and continued with the speed limits which we have already discussed. The definition of the crime remained in this nebulous state until, with the adoption of the Uniform Act in 1927, the provision became: "Any person who drives any vehicle upon a highway carelessly and heedlessly in wilful or wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of reckless driving and upon conviction shall be punished . . ."

Drunken Driving

The act of 1913, like the act of 1909, contained, along with restrictions as to age, racing, etc., the simple provision that "no person shall operate a motor vehicle when intoxicated." In many ways this was a better statute than some of those which were passed later. It applied to everybody. It applied everywhere, irrespective of whether or not the operation was on a public highway. The enforcement of this act was strengthened in 1915 by an act which gave to sheriffs and other officers the right to seize vehicles "used in conveying, concealing or removing" intoxicating liquor in violation of law.

In 1919 a separate act was passed, again prohibiting intoxicated persons from driving, and extending the prohibition to persons under the influence of morphine or other opiates. The operation of the act, however, was restricted to "the public highways of any county or the streets of any city or town in the State of North Carolina." In 1925 it was made to cover also "any public highway or cartway or other road over which the public has a right to travel." The same act authorized a judge, in his discretion, to deprive of his right to drive, for a period of not more than twelve months, any person convicted under the act.

In 1927 officers were prohibited from using a seized automobile until the rights of all parties had been adjudicated and an order entered disposing of the machine. In the same year, instead of being discretionary, it became mandatory to deprive a person of his right to drive if he was convicted of driving drunk.

Other Matters Connected with Driving

The first appearance in the law of a few other matters connected with driving might be mentioned, since they represent attempts to solve an ever-increasing traffic problem, some elements of which are disappearing or have disappeared; most elements of which have continued to contribute to a situation of increasing importance to the people of the State.

In 1913 a motorist was required to slow down upon approaching or passing a street car which had stopped to allow passengers to alight or embark and, if necessary for the safety of the public, to bring

Old model car on macadam road in 1913 (Courtesy Public Roads Administration and Federal Bureau of Investigation).

his vehicle to a complete stop. Upon approaching a pedestrian who was on the traveled portion of the highway he was required to slow down also and to "give a timely signal with

his bell, horn or other device for signaling."

In 1917 the required use of hand signals was added to the existing provisions with respect to turning. As to parking, no person was allowed to leave his vehicle unoccupied on the public highway with the motor running for a period of more than five minutes nor to park a motor vehicle within fifteen feet of a fire plug "unless in charge of a person who can immediately move such vehicle in case of necessity."

In 1923 a law was passed requiring a full stop before traversing a railroad grade crossing, and in 1925 the first act authorizing the State Highway Commission to eliminate grade crossings came into being.

In the latter year also a full stop was required before passing or attempting to pass "any public school bus, while the same is standing on the said public road taking on or putting off school children."

Finally, in 1927, an act was passed which required coming to a complete stop before entering a main highway, provided the main highway had been so marked by the proper road-governing authority.

Local Ordinances

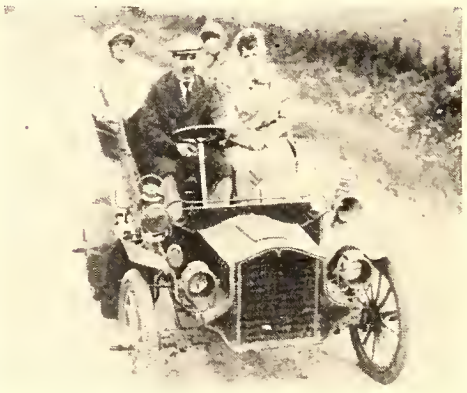
Meanwhile the legislators were grappling with the always troublesome problem of the extent to which local communities should be permitted to alter, supersede or supplement these rules of the road. We have seen that in 1909 local authorities were authorized to exclude vehicles from cemeteries and to lower but not to raise speeds in parks and parkways. In 1913 cities and towns were authorized to reduce speeds anywhere within their corporate limits, but were still prohibited from raising them. In 1917, however, it was provided that "no governing board of any city or town shall pass or have in effect or in force any ordinance contrary to the provisions of this act." This act was to stay in force until 1927. In 1925, however, a provision was added that "the governing body of every incorporated city or town shall have authority by ordinance to make reasonable street crossing regulations."

The Age of Drivers

When the first state-wide act for the control of motor vehicles was passed there was, as we have seen, a provision for the licensing of motor cars. No thought was given, apparently, to the licensing of drivers. When it became desirable to regulate age it was done simply by making it illegal for anyone under the age of sixteen years to drive. In 1917 persons not competent physically and mentally were added to the prohibition. In 1923 it was made a misdemeanor for any owner or person in charge of a motor vehicle to permit a person under sixteen to drive.

I suppose one ancestor of the state-wide driver's license was the local license sometimes required by cities and towns. Another was undoubtedly the driver's permit which was required, and is still required, of persons engaged in transporting persons or property over the highways of the State for compensation. These permits were first required in 1925. The minimum age for securing such a permit was placed at eighteen years, a driver's examination was required, and the Secretary of State was authorized to revoke the permit "for cause."

These provisions were considerably expanded in 1927, and the drivers were required to wear badges and to post their names and photographs inside their vehicles.



Family group in old model car, from "Wheels of Progress" (Courtesy Federal Bureau of Investigation).

Administrative Provisions

We have seen that when licensing was first required the statement upon which registration was based was to be filed with the Secretary of State. However, the duties of that officer in connection with the automobile laws were few. They consisted largely in assigning numbers, in keeping and publishing a list of cars, and in recording transfers. The Secretary of State was to get all blanks, books, seals and other incidentals required for this work, in so far as possible, from the State Printer, and was allowed a sum of not over $300 for extra clerical assistance.

In 1913 the Secretary of State was assigned the additional duty of providing one display number with each certificate of registration, and was authorized to assign to manufacturers and dealers a distinctive number which might be used in the operation of all their cars. The number of display plates was increased to two in 1917, only to be reduced to one again in 1919.

The 1913 law omitted the requirement of the 1909 act that the Secretary of State publish a list of automobile registrations. This feature was re-introduced into the law in 1919, but was repealed in 1921.

In the extra session of 1921 the Secrteary of State was authorized to appoint one or more "Automobile Inspectors" to aid in the better enforcement of the automobile laws. The "Automobile Inspectors" were given "the same police power in cases of the violations of the automobile laws as are now conferred on sheriffs, police, marshals, and other officers," and these powers were declared to be operative anywhere within the State.

In 1923 an act was passed authorizing the issuance of certificates of title by the Secretary of State, in addition to certificates of registration, and prescribing the method by which vehicles covered by such certificates of title should be transferred. By the same act the Secretary of State was directed to keep a "stolen and recovered motor vehicle index," based on reports of stolen and recovered vehicles to be sent him by sheriffs and chiefs of police. To carry out the provisions of the act the Secretary of State, with the approval in writing of the Governor, was authorized "to appoint all necessary deputies, in addition to the present officers of the law," and these new deputies, together with the other deputies and inspectors of the department, were given "police power and authority throughout the

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The Energies of Peacetime

By R. B. House

Chancellor of the University of North Carolina at Chapel Hill

The most popular literature in the world for the past four years has fallen into two great divisions—letters from home to the men and women at the fighting fronts and letters home from these same men and women. Home has been the great topic; home has been the great goal and the inspiration of the greatest and most persistent dream of humanity individually and collectively. Just to get back to home as it is, has seemed enough to millions of men and women who, no doubt, had found home a little boring and hum-drum in peacetime.

To get a job and to build and enjoy homes of their own is the consuming passion of the service men and women. This passion is the greatest constructive force in the postwar world at present, if it is allowed consummation. If, on the other hand, it is frustrated by economic and social inadequacy, this passion will wreck the commonwealth. America needs quickly and wisely to foster and give avenues of development to all that makes for better homes, —education and jobs as the economic basis,—health, religion, culture as the parallel enrichments of home.

On September 12, 1945 at State College, I attended the 25th anniversary of the North Carolina Federation of Home Demonstration Clubs, 41,000 organized women with whom I have been working and to whom I have been speaking since 1934. I regard this privilege as one of the greatest I have ever had; for health,

scientific skill, civic foresight and determination, religion, and culture are creative forces at the heart and center of the endeavors of these home-makers.

The feature of the meeting was an address by Helen Carlton-Smith, a Missouri woman who runs farms in Idaho, but who, as an official of the Associated Country Women of the World, has worked intimately in all the European countries for fifteen years. She stayed in London from the outbreak of the war till the V-2 bombs ceased to fall. She has worked ankle-deep in human blood on the streets of London. Yet she never ceased to plan and to work for homes, worthy homes for all people in all lands, drawing home-building plans in the one room left intact in a bomb-shattered mansion. She was the incarnation of mercy, intelligence, courage, and the constructive home-making spirit.

Yet, matching the constructive determination of Mrs. Carlton-Smith was the twenty-five year history of these North Carolina farm women, for the Federation is made up of farm women, though in other connections they appear as Parent-Teacher Associations, Garden Clubs, Culture Clubs, and Religious Clubs. Founded by Dr. Jane S. McKimmon, led by Estelle T. Smith, Ruth Current, Pauline Smith, to mention only a few, but self-creative and resourceful in their own passion for better homes, they have led the way in every constructive movement in North Carolina for twenty-five years. Their method has been simple and unhesitating. (1) They sensed needs. (2) They defined issues. (3) They got expert advice on these issues. (4) They formulated a policy. (5) They worked to bring the policy into operation. Their leaders and these women wanted nothing for themselves; they wanted it just for North Carolina as a whole. But they do know what they want, why they want it, and how to get it.

They do not want glory and they are not exclusive. They are the first to commend other individuals and organizations. I cite them not by way of praise, but by way of suggestion. Their lives are passed in furthering the greatest of values. They live what they dream of and plan for—better homes for North Carolina and the world. They are miracles of energy that will build the better life they dreamed of in their letters from home to the front and read of in letters from the front to home.

Development of Automobile Law

(Continued from page four)

State, to arrest without writ, rule, order or process any person in the act of violating or attempting to violate in his presence any of the provisions of this Act."

In 1925 the transportation of persons or property over the State for compensation was made subject to regulation, but this regulation was by the Corporation Commission rather than by the Secretary of State. The Secretary of State, however, was required to countersign the certificate issued to such carriers by the Corporation Commission, and then to issue special plates to the carriers.

Later in the same session the duties of licensing motor vehicles and regulating motor vehicle traffic were removed from the Secretary of State and lodged with the Commissioner of Revenue, who was also

given authority to collect certain taxes formerly collected by the Department of Insurance and the Corporation Commission.

The Drive toward Uniform State Laws

The legislation which we have thus far considered was the development on a state-wide basis of what had originally been a county-wide act. In the matter of licensing, certain concessions were made to non-resident owners by which they did not have to acquire North Carolina licenses immediately. In 1917, however, these concessions were made contingent on similar concessions made to North Carolina owners by the state in which the machine of the non-resident owner was registered. No concession was made to a non-resident owner because he did not know our laws, and no attempt was made to correlate our laws with the laws of other states. Traffic meanwhile was developing on a nation-wide basis, and the interstate automobilist was becoming a familiar figure on the roads.

In 1925 and 1926, while Herbert Hoover was Secretary of Commerce, the National Conference on Street and Highway Safety, in cooperation with the National Conference of Commissioners on Uniform State Laws, was working on the problem of a method of control of traffic that might be uniform among the several states. The dual purpose was to make available to all the states the best methods of control which had been developed in any state, and to facilitate interstate traveling by eliminating the variations as between states.

Section of US Route 19 in Haywood County during 1920. (Photo courtesy State Highway and Public Works Commission).

A series of acts was drawn up to form a code of uniform state laws on the subject, and this so-called "Hoover Code" was recommended for adoption by the several states.

The Uniform Act of 1927

In 1927 the General Assembly of North Carolina adopted, in a form modified to meet local conditions, the first of this series of acts, which dealt with motor vehicle administration, the registration, certification and transfer of motor vehicles, and the unlawful taking, transfer, or injury of vehicles, and also the substance of the act with respect to uniform rules of the road.

Under the first of these acts the Commissioner of Revenue, who had taken over the control of motor vehicle administration in 1925, was given the additional title of Vehicle Commissioner. His duties under the new act, however, were very similar to those which he had acquired from the Secretary of State. He was still to issue registration cards and certificates of title, to supply number plates, to handle transfers of title or interest, and to keep a record of vehicles which had been stolen. He was given authority to appoint agents and deputies whose police powers were similar to those which had previously been granted to the deputies of the Secretary of State. He was also directed to prepare accident report forms and to compile statistics on accidents.

Under the second act, which bore the cumbersome title of the "Uniform Act Regulating the Operation of Vehicles on Highways," the speed limits, which we have already discussed, were, for the first time, made prima facie limits only, and local authorities were, for the first time, allowed to increase speeds along through highways the entrances to which has been marked by stop signs. They were also authorized to regulate traffic by means of semaphores and other signaling devices and to establish one-way streets.

Habitual users of narcotic drugs were added to the list of persons prohibited from driving automobiles, and the penalties for drunken driving were raised, for the first offense, to imprisonment for not less than thirty days nor more than one year or a fine of not less than one hundred dollars nor more than one thousand dollars, or both such fine and imprisonment, and for a second or subsequent offense, to imprisonment for not less than ninety days nor more than one year, "and, in the discretion of the court, a fine of not more than one thousand dollars." In no case was the court to have power to suspend judgment upon payment of the cost.

Perhaps most important among the other changes in the rules of the road was the requirement of driving on the right-hand side of the highway at all times "unless it is impracticable to travel on such side of the highway and except when overtaking and passing another vehicle subject to the limitations applicable in overtaking and passing set forth" in other sections of the act.

The act also contained the first comprehensive provisions with respect to stopping on the highway.

A section of Route 48 in Halifax County, showing state highway topsoil construction in 1923. (Photo courtesy State Highway and Public Works Commission).

The enforcement of the rules of the road was still left very largely to local officers, but the State Highway Commission, which had previously received authority to make recommendations as to the size and weight of busses and trucks, was given certain supervisory powers over equipment also. It was also directed, in so far as possible, to bring guide and warning signs on the roads comprising the state highway system into conformity with the system of signs adopted in other states.

The same legislature, in a different act, initiated a very tentative state-wide highway safety program, by providing that a digest of the traffic laws should be distributed to and taught in the public schools.

The Decade 1929-1939

Service of process upon non-residents

The 1929 legislature enacted into law an act the substance of which had been adopted in a number of states but the constitutionality of which was much mooted at the time. It was not one of the uniform acts. It provided that the use of the highways of the State by a non-resident subjected that non-resident to the jurisdiction of the State in so far as any legal proceeding growing out of an accident or collision in the State was concerned, and that service might thereafter be had upon such non-resident by leaving a copy of the process with the Commissioner of Revenue and mailing to the non-resident by registered mail a copy of the process and a notice that such service had taken place. In 1931 there was authorized an alternative method of service on a non-resident whose place of residence was known whereby the Commissioner of Revenue mailed a copy of the summons, a certificate that the summons and complaint had been served on him, and a statement showing the nature of the cause of action to the sheriff or other process officer of the county and state in which the defendant resided for service there upon the non-resident.

The 1929 session of the legislature also provided for the first time for the separation of races in busses and bus terminals by any motor vehicle franchise carrier undertaking to transport both races.

The State Highway Patrol

This legislature also created for the first time a State Highway Patrol of thirty-seven members, consisting of a Captain, with headquarters in Raleigh, and one Lieutenant and three patrolmen in each of the nine Highway Construction Districts of the State. These highway patrolmen were authorized to "enforce all laws and regulations respecting the use of motor vehicles upon the highways of the State, and all laws for the protection of the highways of the State." For this purpose they were given the powers of peace officers, and their jurisdiction was declared to extend anywhere within the state. This State Highway Patrol was placed under the

Lincoln sedan, 1928 (Courtesy Public Roads Administration and Federal Bureau of Investigation).

control and supervision of the State Highway Commission, which, since it already had control of the size, weight and equipment of vehicles, gave promise of becoming the chief agency of the State for the enforcement of the automobile laws.

Safety Responsibility

In 1931 the legislature did an anomalous and somewhat amusing thing. Approximately eight states had by that time adopted the Uniform Safety Responsibility Act, and in that year North Carolina adopted a somewhat watered-down version of the act. This act did not require compulsory automobile liability insurance. Rather, it provided that when a judgment for personal injuries in any amount or a judgment for property damage in an amount of more than $100 was rendered against any person in a cause of action resulting from the ownership, maintenance, use or operation of a motor vehicle, the operator's license and all the registration certificates of that person should be suspended by the Commissioner of Revenue. This suspension was to take place upon receipt by the Commissoiner of a certified copy or transcript of the final judgment, from the court in which it was rendered, showing that it was still unsatisfied more than thirty days after it became final. The licenses and certificates were then to remain suspended, and might not be renewed, nor might any motor vehicle thereafter be registered in the name of that person until the judgment was satisfied or discharged *or* until the person gave proof of his ability to respond in damages for future accidents. The "satisfaction" spoken of was not necessarily satisfaction in full, but might be a sizeable curtailment, the amount of which, under various circumstances, was specified in the act. The "ability to respond in damages" was evidenced by a bond or insurance policy. This act went into effect *in spite of the fact that at that time there was no statewide driver's license act in force in North Carolina.* It is true that certain cities had ordinances making it mandatory for their residents to secure annual licenses, but a tremendous proportion of the drivers of the State were still permitted to operate with no license at all. Thus an important provision for the enforcement of the act was eliminated even before the act went into effect.

Other Matters

It might be interesting to notice that in 1931 also the use, in turning, of mechanical and electrical devices instead of hand signals was authorized for the first time. The State Highway Patrol was reorganized to bring about a more fluid organization. Although the duty of administering the Safety Responsibility Act was, as we have seen, placed upon the Commissioner of Revenue, the authority to draw up rules and regulations under certain new reciprocity provisions of the automobile registration act was given to the State Highway Commission.

In 1933 the Commissioner of Revenue was directed to set up in his department a Motor Vehicle Bureau and to appoint as administrative head of it a Deputy Motor Vehicle Commissioner, since he himself held the title of Motor Vehicle Commissioner. The Motor Vehicle Bureau took over those activities of the Revenue Department which had to do with the collection of gasoline taxes, as well as those which had to do with the registration and licensing of motor vehicles; it took over from the Department of Agriculture the duties of gas and oil inspection; and it took over from the State Highway Commission such authority as it had in the enforcement of the automobile laws, particularly its direction of the State Highway Patrol. The number of the patrol was increased to not more than sixty-seven. The members were given the addi-

tional duties of inspectors of oils and gasses and of weights and measures. The patrol was also required to perform such "other and additional duties as may be required of it by the Commissioner of Revenue in connection with the work of the Motor Vehicle Bureau in this department" and also "such other and additional duties as may be required of it from time to time by the Governor."

Drivers' Licenses

In 1935 there was finally passed the Uniform Driver's License Act, adapted to fit the needs of North Carolina. When the act was passed a further change in the administration of the automobile laws was obviously in contemplation, but the nature of that change had apparently not yet been agreed upon. The "department" that was to administer the act was described as "the same agency that may by law have control of the State Highway Patrol acting directly or through its duly authorized officers and agents." Under the act no person, unless he was a member of a few groups expressly excepted, was permitted to operate a motor vehicle over any highway in the State without being licensed by the "department" under the provisions of the act. Separate licenses were provided for operators and chauffeurs. The age for operators was placed at sixteen and the age for chauffeurs at eighteen. Arrangements were made for reciprocity with other states. Elaborate provisions were made for the cancelation, revocation and suspension of licenses for certain causes specified in the act, and courts were deprived of their authority to suspend licenses.

Later during the same session the number of the State Highway Patrol was increased to one hundred and twenty-one persons, and its members were relieved of their duties of gas and oil inspection. The Commissioner of Revenue was authorized to establish a Division of Highway Safety to which he might assign the direction of the patrol and the administration of the Uniform Driver's License Act. The authority of the patrol was expanded to approximately the highest point it reached up to the time it received additional authority by direction of the Governor during the war emergency, and the Commissioner of Revenue, through the Division of Highway Safety, was authorized and directed to set up and maintain a state-wide radio system.

Fairly extensive changes were made that same year in the act embodying the rules of the road. Municipalities were authorized to require liability insurance or surety bonds from all persons operating for hire jitney busses, taxicabs and other motor vehicles, except those operated under the jurisdiction of the Utilities Commission. Finally, safety glass was required on all automobiles manufactured or assembled after January 1, 1936.

The Motor Vehicle Act of 1937

Meanwhile the uniform acts had been revised by the National Conference on Street and Highway Safety in 1930 and again in 1934. Some of these changes had been incorporated into the North Carolina law in the revisions of the rules of the road passed in 1935. In 1937 a new Motor Vehicle Act was passed which is, with its amendments, still the law under which the operation of motor vehicles is governed in this State. This comprehensive statute revised, expanded and reenacted the previous statutes with respect to motor vehicle administration, the registration, certification and transfer of motor vehicles, the recovery of stolen vehicles and the rules of the road.

The Motor Vehicle Act itself, in so far as it concerned the department which was to administer it, brought about very few changes. The Commissioner of Revenue, as Vehicle Commissioner, was given authority to adopt and enforce such rules and regulations as might be necessary to carry out the provisions of the Act and of any other laws with the enforcement and administration of which the department was vested. The police authority of the department also, as distinguished from that of the patrol, was somewhat extended. There was, however, a good deal of tinkering with the State Highway Patrol in other acts. The commanding officer was made a major, the limitation was removed from the number of the patrol, and

A section of four-lane divided highway on US 29 north of Charlotte, 1945. (Photo courtesy State Highway and Public Works Commission).

the Commissioner of Revenue, with the approval of the Governor and Council of State, was authorized to accept federal aid for the patrol. The duties of its members to persons arrested were for the first time specifically set forth, and a bond was required of each patrolman.

The same session of the legislature reorganized the State Highway Commission, and authorized, for the first time apparently, the establishment of truck routes, although the authority to establish light and heavy duty roads had long been a portion of the law.

A comprehensive statute was passed with respect to the sale of used motor vehicles brought into the state, but this statute was subsequently declared unconstitutional by the federal courts.

A number of school bus accidents precipitated a law providing for the examination of school bus drivers by the State Highway Patrol and placing on the operation of school busses a speed limit of thirty-five miles per hour.

More Recent Developments

In 1939 the autonomy of the Commissioner of Revenue in his direction of the State Highway Patrol was reduced somewhat by an act which provided that he should have control and supervision of the State Highway Patrol "under the direction of the Governor," and should draw up rules and regulations for the patrol and encourage cooperation with local officers "with the approval of the Governor." The patrol, however, was placed under his imme-

diate supervision and direction. The Highway Safety Division, which was thus deprived of the patrol, was allowed to retain authority to administer the Uniform Driver's License Act.

In this year an act was passed placing an over-all absolute limit of sixty miles on speed.

The prohibition against drunken driving contained in the old 1919 act was extended to the driveways and grounds of various public and private institutions.

In this year also the dimming or tilting of headlights upon approaching another vehicle, which had already been permitted under the "Uniform Act Regulating the Operation of Vehicles on Highways" of 1927 was, for the first time, made mandatory.

The Department of Motor Vehicles

In 1941 the administration of the motor vehicle laws was removed from the Commissioner of Revenue and placed under a new Department of Motor Vehicles headed by a Commissioner who was responsible directly to the Governor. The new department took over the registration of automobiles, the tabulation and recovery of stolen automobiles, the adminsitration of the Uniform Driver's License Act and the direction of the State Highway Patrol and Highway Safety Program. The Department of Revenue retained, however, all matters in connection with gasoline and oil taxes.

Under other acts franchise motor vehicle carriers and union bus station companies organized by authority of the Utilities Commissioner were given the power of eminent domain for the purpose of constructing and operating union bus stations in the larger cities, and sanitary inspection was provided for bus stations. Cities and towns were authorized to establish and maintain parking lots, and the larger cities, with the exception of those in a few counties, were authorized to establish parking meters, the installation of which had been held to be beyond the power of municipalities without express statutory authorization.

In 1943 the Uniform Driver's License Act was amended to provide for learners' permits and to authorize the Commissioner of Motor Vehicles to require the re-examination of licensed operators or chauffeurs if he had good cause to believe that they were incompetent or were not otherwise qualified to be licensed. An emergency war-time measure permitted the licensing, under certain conditions, of fifteen-year-old drivers. Cities and towns were given authority to require drivers and operators of taxicabs to secure permits before operating, and the Town of Canton was authorized to fix rates. As a war measure the Governor received authority to "prohibit, restrict, or otherwise regulate and control the flow of vehicular and pedestrian traffic," and to modify any law, rule or regulation with reference to "the use of the roads, streets and highways of the State."

The changes brought about by the 1945 legislature have been summarized in a recent issue of POPULAR GOVERNMENT.

Conclusion

Of the more than two hundred statutes having some reference to automobiles which were passed during the period we have been considering it has been possible to summarize only a few. The topics covered by this mass of legislation have been extremely various, from the prohibition of false emblems on motor vehicles to the use of smoke-screens; from the sale of lubricating oils to the elimination of grade crossings. Where it was possible to mention a topic at all often only that statute has been noted which introduced legislation upon the subject, and subsequent amendments and revisions have not been called to the reader's attention. Legislation as to the size, weight and equipment of vehicles, for instance, has grown from the primitive requirements as to lights, brakes and horn which appeared in the Act of 1909 to the twenty-three long sections which now appear in the General Statutes, to which should be added the legislation of 1945.

Nor has any attempt been made to summarize the various duties to which the State Highway Patrol has been called "by direction of the Governor," nor to analyze its temporary powers under the various Emergency War Powers Proclamations. Many of these powers were transitory, or at least have not as yet been enshrined in the permanent law. When, however, the history of the State Highway Patrol comes to be written, the services, often unobtrusively performed, which contributed, during the recent times of emergency, to the war effort, will not appear the least of its accomplishments.

Perhaps a word should be said about future legislation. With the return of the traffic problem already apparent and the prospect, during the next few years, that it will increase greatly, probably some further changes will be made in the State agencies which enforce the "laws and regulations respecting travel and the use of vehicles upon the highways of the State." Then, too, North Carolina has not yet passed the Uniform Motor Vehicle Civil Liability Act, which deals with the liability of a city for the operation of its automobiles, the responsibility of the owner of a car for injuries while the car is in use by another, and the liability of an owner or operator to a guest who is in the same car. The National Conference on Street and Highway Safety has also drawn up a set of Model Traffic Ordinances for municipalities which might help some of our cities to modernize their codes or to bring them more nearly into conformity with those in use in other places. Engineering problems have not yet all been solved, and a wide field is open in the field of driver and pedestrian education. With, also, the prospect of a different type of car in the future, and the air over our heads already congested with aeroplanes, the members of our future legislatures are likely to find ample occasion to devote at least some of their attention to the problems of traffic.

Modern police radio car. (Courtesy Federal Bureau of Investigation).

• MONTHLY SURVEY •

News of Developments Here and There

Public Health---Hospitals

The concern of federal and state governments in the field of medical care is being increasingly matched by that of the counties and towns of North Carolina, which, out of funds provided by bond issues, by various federal and state grants, and by particularly generous contributions from citizenry and industry, are going ahead with hospital expansion and building as never before in the history of this commonwealth.

A recital of local efforts in this field is impressive. Some of the proposed new and expanded hospital programs are: the Scotland County Memorial Hospital, for which nearly $400,000 has been raised, including $35,000 from the Duke Endowment and $25,000 from colored citizens cooperating in the project; the Stanly County Hospital, with over $150,000 of the $750,000 sought already raised well before the general drive for funds which is to start in April; the Lenoir and Caldwell county program, where over half of the $200,000 sought for a community hospital has been raised in an American Legion sponsored drive; the Lexington Memorial Hospital, which is already under construction with hopes of being in use by summer; the Gaston Memorial Hospital, with $750,000 being sought in an American Legion drive to take over and enlarge existing facilities into a 300 bed hospital for community use; the Thomasville program, where a drive is underway to enlarge their hospital to 100 beds; the Roxboro and Person County program where nearly half of a $250,000 fund has been raised for the Person County Memorial Hospital; the Chowan County Hospital, with over $160,000 pledged or collected toward the $200,000 sought; the Rutherford County program, where over half of a proposed $150,000 Norris Memorial Wing to the county hospital has been raised; the Cabarrus Hospital, which has received over $125,000 of $600,000 sought for enlargement; the Harnett County Hospital, for which a drive is on to provide funds to increase its 37 beds to 100; the Henderson and Vance County program, where a goal of $150,000 has nearly been reached, for enlargement of local hospital facilities; the Chatham County Hospital, where a drive is on for contributions to build a new unit; the Lee County and Ashe County Memorial hospitals, for which expansion drives are underway; and the biggest community project of all now underway in this field, the Winston-Salem drive for $3,000,000, with the goal nearly reached.

Accent on Memorials—Nearly all these hospitals are memorials to the heroes of the World Wars, in line with the spreading philosophy that useful facilities such as hospitals or libraries or parks and recreation areas are better memorials than monuments.

Doctors Follow Hospitals—These new hospitals will inevitably attract young physicians seeking promising areas for beginning practice, and this thought has had its part in the minds of citizens organizing hospital building programs, as in Stanly county where proponents pointed out that the county and Albemarle today have one less physican than the total they had 15 years ago. An increase in facilities for training nurses, and therefore a much needed increase in the number of nurses trained, will be another important by-product by the expansion. And of course the basic need behind the whole thing, more hospital beds in proportion to the population, will be increasingly served—the situation in Caldwell county, which is not the worst in the state, but where there are two hospital beds for every 1,000 of population, is indicative. They are seeking in that county to raise the proportion to five beds for every 1,000 people.

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The Housing Shortage

The Senate Committee on Education and Labor estimates that 1,140,000 married veterans will be seeking housing in 1946, and that the acute shortage will force 3,240,000 civilian families to double up in single family units. Other estimates are higher and lower than these, but all agree that the pressure is increasing each month, for in nearly every city and town in North Carolina the local officials have housing as their number one problem.

Methods of Attack. Efforts on the part of community governing and civic groups have been directed along three channels of attack on the problem: (1) Survey of existing housing in the community, accompanied by appeal to householders having extra rooms, which many of them would never think of renting in normal times, to list these rooms with a central agency, governmental or civic; (2) application to the federal government for prefabricated or demountable housing and trailers used during the war and now being declared surplus at defense plants and military centers throughout the country; and (3) self-help, as it were, in the community itself, by organizing groups of citizens to finance, and local construction and contracting firms to erect, as much housing as present material and labor shortages will permit.

Local action.

Dunn, Charlotte, Roxboro and Wilson among others have called on their householders to make room for veterans in particular, in the face of desperate pleas from couples with and without children who are willing to take one room until the crisis eases. During January eight North Carolina towns were allotted a total of 390 temporary family dwelling units by the federal housing authority under the $191,900,000 emergency veterans housing act, as follows: Charlotte, 15; Durham, 90; Greensboro, 90; Hickory, 25; High Point, 50; Newton, 15; Raleigh, 80; and Wilson, 25. In each of these cases the number of houses allotted was smaller than the number applied for.

In Asheboro the Kiwanis club joined with the Chamber of Commerce and local construction companies in a program to build at least 100 new homes during 1946. Efforts were being made in Charlotte and Wilson to obtain trailers from the Atlanta branch of the Federal Housing Authority, to be set up on city owned property for veterans' families.

Reasons for the Shortage—One of the major reasons for the general shortage in housing is revealed in annual building inspection and permit reports, of which the High Point report is a fair sample: During the year of 1945 only 55 family units were erected there, *as against 267, including apartment buildings, in 1941, providing residences for 633 families.* And during the intervening war years the report showed 3 family units in 1944, 3 in 1943, 40 in 1942—*a total of 101 family units during the war.*

Housing existing at the beginning of the war has suffered in considerable degree because of the difficulty of obtaining materials and labor for normal maintenance and expansion, further reducing its effectiveness. Durham city and county, where it is estimated that most of their 20,618 units are in need of repair or remodeling, with half needing outside paint, make the picture clear.

Schools and Colleges—With enrollments already topping their highest previous records as veterans flock to school to take advantage of the GI Bill of Rights, the universities and colleges of the state are up to their ears in the housing problem. At the University of North Carolina, where the enrollment has already reached 4,011, more than ever before, students are being packed in three to a dormitory room built for two, and townspeople are being pushed to the limit to help take up the surplus. Of these students 1561 are veterans, 400 of them married, but over half of the married veterans have had to leave their wives at home.

Similar conditions prevail in most of the other college communities in the state, and similar steps are being taken to meet the lack of space. Some help for the higher educational institutions was expected from surplus housing allotments, but to date there have been far fewer temporary family units allocated than were applied for. In the same grant made to the 8 cities and towns listed above, the following allotments were made to educational institutions: University of North Carolina at Chapel Hill, 150; State College at Raleigh, 100; Agriculture and Technical College of North Carolina at Greensboro, 35; and Elon College, 20.

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Veterans' Service Officers

County veterans' service officers are now functioning in 83 of the state's 100 counties under authority of the 1945 act of the legislature creating the North Carolina Veterans' Commission and authorizing counties, cities and towns to pay salaries and buy supplies and office equipment for such officials.

In addition to these county officers who operate under the leadership of Colonel Wiley M. Pickens, director of the State Veterans' Commission, and his 13 district service officers, American, Legion, Red Cross, Veterans of Foreign Wars and Selective Service System service officers are helping in the task of advising and assisting returning veterans to understand and take advantage of their rights and benefits under state and federal laws.

Country Roads

Mark Twain said, "Weather is a literary speciality, and no untrained hand can turn out a good article on it." By this time in North Carolina, though, the state highway people trying to work the county roads, and the farmers trying to travel them should have produced some trained hand for this field of literary endeavor.

Certainly more editorials and news reports and mass meetings have risen out of the up-to-the-hub condition of our county roads than from any other of our common woes in recent weeks.

The weather is the immediate villain in the drama, of course, ably seconded by continued war-caused material, equipment and manpower shortages.

Some Day—The eventual ideal would be realized when our dirt roads are one day converted into all-weather highways. But there are over 45,000 miles of dirt roads under the control of the State Highway Commission, posing a long term construction policy problem running into millions of dollars. School bus routes and farm-to-market roads are receiving top priority in maintenance and improvement projects.

The state plans to spend $100,000,000 of state and federal funds during the next three years on both primary and secondary roads.

(Continued on page sixteen)

Typical of rural roads and highways in North Carolina in 1916. Even the best roads were in this condition in wet weather. (Photo courtesy State Highway and Public Works Commission).

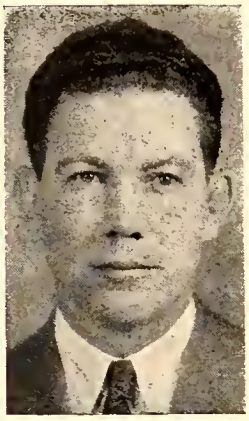
Recent Supreme Court Decisions

Of Interest to City, County and State Officials

"Ignorance of the law excuses no one."

Many of the questions arising in city halls, county courthouses and state departments go beyond the inferior and Superior Courts and on to the Supreme Court for final adjudication. This Court of last resort may find it unnecessary to pass upon particular questions in the form in which they are presented; it may refuse to consider them as unnecessary to the disposition of the cases at hand; or it may meet them squarely and blaze new trails for the guidance of officials.

By
PEYTON ABBOTT
Assistant Director Institute of Government



The Supreme Court of North Carolina has recently:

Decided that an action can be maintained by a county or town against a mortgagee or trustee who forecloses a mortgage or deed of trust and fails to apply the proceeds of sale toward the payment of accrued taxes and accrued installments of special assessments. In *New Hanover County v. Sidbury*, 225 N. C. 679 (December, 1945), the Court held that in such cases the taxing unit could at its election resort either to its lien against the property, or it could proceed against the trustee or mortgagee (or person proceeding under any other power of sale) under G. S. 105-408. Said the Court: "This [statute] creates an alternative remedy in behalf of the taxing agency. It may look to the trustee or mortgagee for the payment required by the statute or it may waive that remedy and resort to the foreclosure of the tax lien."

G. S. 105-408 applies where sales are made under powers of sale contained in some instrument. The statute also requires that all judgments ordering judicial sales shall contain an order for the payment of accrued taxes and installments of special assessments out of the proceeds of sale. The statute does not seem to leave any room for advertising sales subject to taxes and assessments—a fairly common practice, especially in deflationary periods—nor does it differentiate between sales under first or second mortgages.

Veterans' Recreation Authorities

Decided that the Act of the 1945 General Assembly (S.B. 154, Ch. 460, Sess. Laws 1945) authorizing cities of more than 100,000 population to create "Veterans' Recreation Authorities" is valid, and that the city of Charlotte has authority to convey to the Authority so created real estate purchased by the city with "surplus funds," to be used by the Authority or to be exchanged for other property to be used as a veterans' recreation center. Such an Authority, said the Court in *Brumley v. Baxter*, 225 N. C. 691 (December, 1945), is created for a "public purpose" within Article VIII, section 1 of the Constitution of North Carolina, and the donation by the City of Charlotte to the Authority is "in consideration of public services" within Article I, section 7, for, although military services were rendered primarily for the United States, "they were also rendered to an extent to each community constituting a component part of a common county." The court held, however, that the city did not have power to convey the property with no provision for the reversion of the property or its equivalent to the city in the event it should cease to be needed or used to carry out the purposes for which the Authority was created.

The court discussed the doctrine of "necessary expense" but did not pass upon whether the expenditure was a necessary expense in the instant case, pointing out that the city's donation came from the equivalent of "surplus funds." It did not discuss the fact that the legislative act under which the authority was created, though State-wide in terms, could presently apply only to the City of Charlotte.

Admissibility of Confessions

Reversed the ruling of the trial court that a confession of murder and attempted robbery by three youths was voluntarily made and admissible in evidence. In *State v. Biggs*, 224 N. C. 23, 29 S.E. (2d) 121, the defendants had been located in a Virginia jail. At first they refused to make any statement, but twelve days after they had been found and had been questioned from time to time by North Carolina county officers, members of the State Bureau of Investigation and the Superior Court Solicitor, alleged confessions were made. At the *voir dire* the boys testified that they were induced to confess by the statements of the solicitor that he would send in an indictment for second degree murder which carried a penalty of 25-30 years but that they would probably not have to serve over 5 years. An S. B. I. agent testified that part of his "scheme" to induce a confession was to tell the boys that under the Virginia law they were liable to the death penalty. There was other testimony of this nature, and though the trial judge received no explanation to his question as to why the boys, after continually stating that they had nothing to say, should suddenly say "I want to make a statement that will hang me," he ruled the confessions voluntary and admissible. This, said the Supreme Court in a four to three decision, was error.

For a note on this and other cases involving confessions, see 23 N. C. Law Review, 364 (June, 1945) which supplements Coates, Limitations on Investigating Officers, 15 N. C. Law Review 229 (1937).

(Continued on page sixteen)

The Attorney General Rules

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

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HARRY McMULLAN
Attorney General of North Carolina

The New Year's bells of 1946 rang in some problems for city, county and State officials that the New Year's bells of any other year might well have rung in. January of every year brings to the Attorney General's office numerous inquiries arising out of the listing and assessing of property for ad valorem taxes, some of the questions new and some old. January of 1946 produced opinions that property of electric membership corporations is exempt from ad valorem taxes, that there is no procedure provided by law to compel the county tax authorities to change the classification and increase the valuation of town property, and that there is no difference in amount or application between the penalty for late listing and the penalty for failure to list.

Particularly connotative of North Carolina's winter-time life in any year was a recent inquiry as to the necessity for a citizen engaged in slaughtering his neighbor's hogs to comply with the standards of sanitation which have been established.

Perennial and continuing throughout every year are questions which grow out of our peculiar liquor-control situation, and they constantly increase in number and complexity. In some of our counties liquor can be legally sold by the ABC stores and legally possessed by a citizen in his home, office, car or other place, so long as it is not possessed for resale. In the remainder of our counties liquor cannot be legally sold by anyone, but it can be bought in neighboring counties and states where the sale is legal, transported in limited quantities (and with container seals unbroken) to counties where the sale is not legal, and legally possessed in the "bona fide" home of the possessor if for consumption by him, his family and guests.

Some of the questions which this situation creates are immediately obvious. If a person can go into a wet county or state and bring back to a dry county a specified quantity (one gallon), can he take "friends" along in his car to get their lawful amounts? Suppose they all go in a taxicab; does that have any bearing on the total amount that can be transported? Suppose the person transporting has a reputation for bootlegging; does that make any difference? Does a person have to take his purchase home directly or can he deviate? Does he have to leave it at home; i.e., would he be guilty of illegal transportation if he removed it once he had got it there?

The Attorney General has previously issued opinions that the so-called "one gallon" law means one gallon to a car. He now rules that the law permitting transportation into a dry county was never intended to permit transportation **except** to a place where possession is legal. The only such place, under the statutes and the decisions construing them, is the home.

But some of the problems revealed by recent inquiries are distinctly peculiar to these times. Many North Carolina families left the State during the war years, either for war work or to be with a soldier-husband and father. Now, many of them are returning, along with new families who are arriving to seek their opportunity here. The question has been raised as to whether children now six years old, but who were not six years old as of October 1, 1945, and who have been in regular attendance in the first grade in schools of another state during this school year, should be admitted to North Carolina schools for the remainder of the year. One small community reported that it had several such cases.

As the number of servicemen being discharged rapidly increases, more and more communities are moving to establish a service office for their benefit, pursuant to the 1945 legislation granting such authority. In one recent opinion, the Attorney General sums up his previous rulings as to the authority of a local unit to expend funds for this purpose.

These and other questions, old and new, and the Attorney General's replies to them, are presented below

1. AD VALOREM TAXES

A. Matters Relating to Listing and Assessing

15. Exemptions — cooperatively owned power lines

To W. A. Blount.

(A.G.) G.S. 117-19 provides that an electric membership corporation created under Article 2 of Chapter 117 of the General Statutes shall be a public agency and that all property owned by such a corporation and used exclusively for the purpose of said corporation shall be held in the same manner and subject to the same taxes and assessments as property owned by any county or municipality of the State, so long as said property is owned by said electric membership corporation and is used for the purposes for which the corporation was formed.

50. Listing and assessment of property

To J. Buxton Weaver.

(A.G.) I know of no procedure whereby the assessors and tax authorities of a county can be compelled to change the classification and valuation placed on town property. If it is desired to get farm property classified and valued as building property, the only remedy seems to be to prevail upon the assessors to reclassify the property and change the valuation. They are required to consider the advantages and location and other factors which may affect the value of property and move it from one classification into another: but it is a matter entirely left to the local authorities unless their classifications and standards are absolutely arbitrary, unreasonable and abusive of their discretion.

130. Penalty for failure to list

To T. G. Stem.

(A.G.) There is no distinction between late listing and failure to list as far as the penalty due is concerned. The penalty applies equally to both and the penalty is applicable even though the taxing authorities list the property and bring it forward on their lists or pick it up as a discovery. This rule applies alike to real and personal property.

B. Matters Affecting Tax Collection

75. Tax collection—to what property lien attaches

To T. A. Adams.

(A.G.) I am of the opinion that, under G.S. 105-340, personal property taxes are a lien upon all the real property of the taxpayer in the unit and that payment of the personal property tax may be required before releasing the lien on the real property.

98. Tax collection—release on particular parcels

To John Kerr, Jr.

Inquiry: A taxpayer owned two tracts of land in one township upon which 1937 taxes were due when he sold one of said tracts. The purchaser has tendered to the county the proportionate part of the taxes assessed against the tract which he purchased. Is the county required to accept payment of the taxes assessed against the one tract and release the same from the liens of the taxes?

(A.G.) Under the provisions of G.S. 105-376, I am of the opinion that the purchaser may have the tract purchased released from the county's tax lien by the payment of that portion of the tax based on the assessed valuation of the tract purchased, plus interest, penalties and the proportionate part of the personal property, poll and dog tax owing by the listing taxpayer and proportionate part of any costs allowed by law.

III. COUNTY AND CITY LICENSE OR PRIVILEGE TAXES

A. Levy of Such Taxes

64. License tax on out-of-town businesses

To J. M. Baley, Jr.

Inquiry: What is your opinion as to the validity of a municipal license tax ordinance which levies a license tax upon the "sale of bakery products from trucks where the business is located outside the municipality?"

(A.G.) In my opinion, the safest thing for municipalities to do in levying such a tax is simply to levy a strict license tax on persons selling bakery products under their general power to levy license taxes on trades, professions and franchises, taking into consideration the language of the Court in State v. Bridgers, 211 N. C. 235, and Hilton v. Harris, 207 N. C. 465. There should be no mention in the ordinance of the method of distribution, as this is an unwarranted method of classification. A tax should be levied that would apply equally to all persons engaged in a business in a municipality—in this case, dispensing bakery products.

IV. PUBLIC SCHOOLS

D. Powers and Duties of Present School Districts and Agencies

7. Attendance

To Isham B. Hudson.

Inquiry: Should children who are now six years of age but who were not six years of age as of October 1, 1945, who have been in regular attendance in the first grade in schools in another state during the fall session, be admitted to North Carolina schools upon application?

(A.G.) I do not think that under the provisions of G.S. 115-371 these children are eligible to be admitted in school for the spring session. The section specifically says that children must be six years of age on or before October 1 before they are entitled to enrollment.

VI. MISCELLANEOUS MATTERS AFFECTING COUNTIES

P. Costs Payable by Counties

3. Extradition costs

To Pittman, McLeod and Webb.

(A.G.) Where extradition papers fully comply with the provisions of G.S. 15-77, I am of the opinion that the payment of costs of extradition in a misdemeanor case is controlled by G.S. 15-78, which requires the cost to be paid out of the county treasury in the county wherein the crime is alleged to have been committed. I agree with you that sometimes the county is imposed upon in this respect; but it seems to me that the key to the situation is the prosecuting attorney, since he, among other things, must certify that in his opinion the ends of justice require the arrest and return of the accused to this State for trial and that the proceeding is not instituted to enforce a private claim. If he refuses to so certify, the Governor probably would not issue the requisition.

EXPENDITURES FOR SERVICE OFFICER

To Sam Poole.

(A.G.) This office has issued opinions to the following effect in connection with the right of local governmental units to expend funds for the employment of a veterans' service officer:

1. A city or county can expend surplus funds or funds derived from non-tax sources for the purpose of maintaining a service officer and supplies.

2. The Legislature has directly and expressly authorized appropriations for the purpose of providing a service officer and for quarters and equipment, and such expenditures are a public expense.

3. It is our thought that a county has a right to make appropriations for this purpose from the general funds of the county if made within the statutory and constitutional limits of the taxing authority.

4. We do not think that there is any law which would authorize county commissioners to make a special levy for the purpose of paying a salary to a veterans' service officer and equipping and maintaining his office.

5. If there are any unexpended balances in the general fund that have not been allocated, then such balances of general funds can be used for this purpose.

To J. P. Bunn.

(A.G.) I know of no authority for a board of county commissioners to pay the attorney's fee or the attorney who appeared at the request of a district solicitor in an extradition proceeding in another state for a misdemeanor. G.S. 15-87 authorizes the county commissioners to pay the cost of extradition in misdemeanors, but no provision is made for the payment of attorneys' fees.

VII. MISCELLANEOUS MATTERS AFFECTING CITIES

L. Liability for State and Federal Taxes

5. Sales tax

To Wade H. Lefler.

Inquiry: Is a municipality liable for sales tax on the sale of an automobile by the municipality under the power conferred by G.S. 160-59, which authorizes the mayor and commissioners of any town to sell town property at public outcry after proper notice?

(A.G.) Section 405 of the Revenue Act levies a sales tax only on those sales made by a person who "engages in the business" of selling tangible personal property. The sales tax article of the Revenue Act was not intended to apply to a casual sale of an item of tangible personal property by a person who is not in the business of selling tangible personal property, and I assume this is the case here.

N. Police Powers

15. Regulation of taxicabs

To Jack W. Jennette.

(A.G.) Under the provisions of Ch. 564, Session Laws of 1945, it must appear that a municipal corporation has found that the public convenience and necessity requires the operation of the taxicab before a State license can issue for the operation of the cab. In my opinion, this is sufficient authority for a city to limit the number of persons to whom certificates to operate taxicabs are to be issued. I do not believe, however, that a municipal corporation has authority to grant an exclusive franchise to any taxicab operator.

A municipal corporation may require taxis to operate from taxi stands; but I do not believe that a town may designate or allot a certain portion of its streets for the exclusive use of one taxicab operator.

Q. Town Property

5. Sale of town property

To Mayor O. F. Walker.

(A.G.) G.S. 160-59 provides that municipal corporations may sell town property at public outcry to the highest bidder after 30 days' notice and this has been held to be the only method which can be followed (some property cannot be sold even in this manner). See Asheville v. Herbert, 190 N. C. 732, and Allen v. Reidsville, 178 N. C. 513. I am, therefore, of the opinion that a city could not sell a piece of property to the American Legion for a nominal consideration, the property to be used for a Legion hut. If the city should lease the property in question, it is my opinion that it must act in good faith and require the payment of a reasonable rental therefor.

VIII. MATTERS AFFECTING CHIEFLY PARTICULAR LOCAL OFFICIALS

B. Clerks of the Superior Court

1. Salary and fees

To George A. Hux.

Inquiry: Does the $3.00 fee fixed by G.S. 55-159 for certificates of incorporation cover all charges, including indexing and recording the certificate?

(A.G.) It is my opinion that the fee of $3.00 covers the recording and indexing of the certificate of incorporation and I

think that this is the practice generally followed throughout the State.

Inquiry: Should an agreement of consolidation between several corporations be treated as a certificate of incorporation under the same section for the purpose of fixing the clerk's fee?

(A.G.) The recording of such an agreement in the clerk's office is provided for in G.S. 55-165, and I do not find there any mention as to the clerk's fee. I think, however, that he would be justified, by analogy, in treating this, for the purpose of fixing the fee, as a certificate of incorporation and charging the $3.00 fee.

To J. H. McKinney.

(A.G.) I am of the opinion that the clerk of court is not entitled to any fees or commissions on fines collected or on the $2.00 item of costs which is to be turned over to the Law Enforcement Officers Benefit and Retirement Fund. The clerk is entitled to a commisison for his services in including the $2.00 process tax item in civil cases in the bill of costs when the costs are taxed against a party other than the party making the original deposit.

79. Decedents' estates—distribution and administration

To W. H. Young.

(A.G.) Where a husband dies, apparently leaving no property other than a car, the car is allotted to the widow as her year's support, and then a man pays into the clerk's office a sum less than $300 which he owed the deceased husband, it is my opinion that this sum should be applied to the funeral expenses of the decedent and, if there remains a surplus, the surplus should be distributed as provided in G.S. 28-149. G.S. 28-68, which authorizes the payment of sums less than $300 due decedents to the clerk, provides the order in which such sums are to be paid out. No administrator need be appointed.

81. Decedents' estates—inheritance tax

To Edwin Gill.

(A.G.) Inasmuch as ungathered crops are recognized at law as a personal asset of the estate, it seems clear that the value thereof is includible in an estate for inheritance tax purposes. Such value is to be determined as of the date of the distribution of the property. But there seems to be no definite method of determining the value of growing crops for inheritance tax purposes. I am of the opinion that the "right" to bring the crop to fruition, which is the subject of taxation in such cases, should be valued at whatever it may be worth at the time of the decedent's death much in the same way a value would be placed upon a doubtful monetary claim in favor of the estate. There is no absolute value and no absolute yardstick for determining the value.

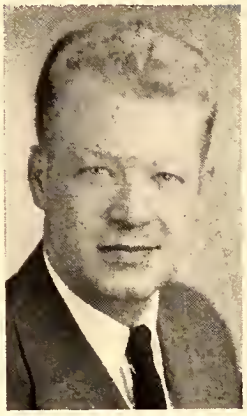
HIGH ABOVE THE CLOUDS

(A.G.) I am of the opinion that no alcoholic beverage of any kind may be sold on an airplane while it is passing through the State of North Carolina, unless it is beer or wine (of not more than 14% alcohol by volume). Beer and wine could be sold only by a person or corporation which has been a resident of the State for one year and has been licensed under the provisions of Chapter 18 of the General Statutes.

By

CLIFFORD PACE

Assistant Director
Institute of Government



82. Decedents' estates—fiduciary's bond

To E. M. Underwood.

Inquiry: Is a resident executor of a will required to give bond?

(A.G.) A resident executor is not required to give bond unless the will requires him to do so, except where he obtains an order to sell real estate for the payment of debts, or unless he marries a woman who is an executrix.

L. Local Law Enforcement Officers

13. Prohibition law—illegal possession

To Adam Younce.

Inquiry: Where a person in a "dry" county leaves his home and drives to another point in the county, having at the time less than one gallon of tax-paid liquor in his car, is he guilty of all or any of the following offenses: a) illegal possession of liquor; b) illegal possession of liquor for the purpose of sale; and c) illegal transportation of liquor?

(A.G.) Under G.S. 18-11, liquor may be possessed in one's private dwelling while the same is occupied as such, if the liquor is kept for the personal consumption of the owner, his family and guests. But under the same section, possession of any amount of liquor is prima facie evidence that such liquor is kept for the purpose of being disposed of in violation of the Turlington Act. This has been modified by the case of State v. Suddreth, 223 N. C. 610, to the extent that the possession of less than a gallon of tax-paid whiskey in the home of the defendant in a dry county will no longer raise a presumption that such liquor is possessed for the purpose of sale, but only to that extent. G.S. 18-49 allows the transportation of not more than one gallon of tax-paid whiskey, with seals unbroken, from a wet county to or through a dry county. But this was not intended, in my opinion, to grant the right to transport liquor to a place where it could not be legally kept or possessed—only to a place where it could be legally kept. So it appears that the person in question would be guilty of a, b and c, above.

46. Permitting intoxicated person to drive

To I. B. Watkins.

(A.G.) It is my opinion that if the owner of an automobile knowingly permits a person under the influence of intoxicating liquors to operate his car, a conviction could be sustained in our Supreme Court.

62. Jurisdiction

To E. R. Richardson.

(A.G.) In the absence of a public-local act to the contrary, I am of the opinion that a municipal police officer does not have authority to make an arrest in cases outside of the corporate limits of the city. See Wilson v. Mooresville, 222 N. C. 283. There is one exception to this rule in the general law: paragraph 0 of G.S. 18-45 provides that when any person is charged with the violation of the prohibition law any officer while in hot pursuit of such offender shall have the right to pursue him outside the corporate limits and into another county and make arrest.

M. Health and Welfare Officers

31. Health laws and regulations

To Dr. William P. Richardson

(A.G.) I am of the opinion that a person who does "custom" slaughtering of hogs at his home for farmers and others who bring their hogs to him, for which he charges a set fee, is conducting an establishment or operation which is subject to the laws and regulations dealing with abattoirs. Such person would, therefore, have to comply with those laws and regulations with regard to sanitation and a failure to maintain the sanitary standards required would be a violation of the criminal law if the violation is proven in a court of competent jurisdiction.

P. Officials of Recorders' and County Courts

15. Jurisdiction and powers

To O. L. Williams

(A.G.) In my opinion, the court has the power to require the defendant to be present at his trial. This power to determine whether or not the defendant shall appear must be exercised by a court sitting as such and cannot be exercised by an inidvidual who may become a part of the court once the court is convened, such as the clerk of a recorder's court.

BB. Local Governmental Employees Retirement System

5. Mergers and transfers

To John D. Shaw.

Inquiry: Is a retirement fund association of city employees, such as firemen, which is supported entirely by contributions of the members and to which the city makes no contributions whatsoever, its only connection with the association being an agreement to assist in the administration of the fund, the type of local retirement system which is authorized by G.S. 128-25 to be merged with the Local

TESTIMONY IN DIVORCE ON GROUNDS OF INSANITY

To J. E. Butler.

Inquiry: In an action for divorce from an incurably insane spouse, pursuant to Chapter 755, Session Laws of 1945, should the testimony of the physician and superintendent of the institution where the insane spouse be verbal or written?

(A.G.) I am of the opinion that this chapter was intended merely to add a new ground for divorce and was not intended to change the rules of evidence which ordinarily apply in such proceedings. It would seem, therefore, that the doctors should appear in person or by deposition, as the facts and circumstances of the case indicate. It is quite probable that the guardian of the insane spouse would defend on the ground that the defendant was not incurably insane, and in such case he should be entitled to cross-examine the physicians whose evidence tends to show that the spouse is incurably insane.

Governmental Employees Retirement System?

(A.G.) It is my opinion that such a system is not a "city" system within the meaning of the G.S. 128-25 and cannot, therefore, be merged with the State system.

To Nathan Yelton.

(A.G.) There is no statutory authority permitting an exchange of members from the Teachers and State Employees Retirement System to the Local Governmental Employees Retirement System, and vice versa. There is no authority for transferring funds from one system to another and none that says that the governing authorities of one system must recognize the membership service accumulated in the other. There is no sanction of law for recognition of prior service in one system by the other system.

10. Amount of participation

To Nathan Yelton.

(A.G.) There is no limitation fixed by statute on the amount of salary on which an employee must contribute to the Local Governmental Employees Retirement System. Four per cent of the employee's "earnable compensation" must be deducted by the employer, and there is no limitation on the amount.

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Highway Safety

(Continued from page eleven)

During the first nine months of 1945 the increase in the number of traffic accident deaths in North Carolina over a similar period in 1944 was slightly over ten per cent. In October it rose to 77, in November it was 67, in December, it was 55.

The situation is becoming so serious that the possibility of requiring federal licenses for all drivers has been discussed by no less a person than the President of the United States.

Meanwhile local police departments and the State Highway Patrol are gradually replenishing their numbers. Approximately 30 former members of the patrol have returned from the armed services while sixty are still on leave in the service of their country.

Suggested Remedies

All remedies do not have to await the convening of the next legislature or the return of the Highway Patrol to its pre-war strength. In addition to conducting a publicity campaign Major Hatcher is attempting to apply at least one remedy now by exercising the heretofore little-used provision of the statutes which authorizes the Department of Motor Vehicles to suspend the license of any driver without preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee "has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage, which accident is obviously the result of the negligence of such driver." Of course the licensee is entitled to a hearing later on the question of the justness of the suspension. It is more than a little difficult to say how "obvious" the obvious negligence of the licensee must be. Wisely administered, however, the enforcement of this provision may be very beneficial.

The commission appointed by the last legislature to consider the advisability of compulsory liability insurance for all motorists has met and will meet again. The chief objection to compulsory insurance seems to be that when the insurance companies have to accept all risks the rates are high. They might be lowered somewhat if the state would adopt the "Uniform Motor Vehicle Civil Liability Act," which eliminates entirely certain types of liability and hence certain types of insurance risks. Incidentally, insurance rates under the present law have been revised by the Commissioner of Insurance on the basis of statistical experience in 1941 to a point somewhat above the war-time level but approximately 8 per cent below that prevailing in the pre-war years.

Under contemplation are the compulsory reexamination of all drivers and the annual inspection of all equipment.

The Emergency War Powers Proclamations are gradually going by the boards. Truck weights have been reduced to the statutory limits.

Local Matters

Many cities and towns are revising their traffic codes. Many also, in accordance with an act passed by the last legislature, are undertaking the regulation of taxicabs as to number, insurance and rates. Since local affairs often loom largest it might be interesting to note that Chapel Hill has passed an ordinance requiring that any taxicab operator convicted of speeding shall forfeit his permit for thirty days, and that all taxicabs must have governors to control speed (if and when governors are available).

Other matters coming in for a considerable share of local attention are the perennial ones of parking, double parking, parking meters, speeding, failure to observe traffic lights and drunken driving.

Ahoskie has reported four accidents upon the highways all caused by hogs.

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Supreme Court Decisions

(Continued from page twelve)

Ladies of the Jury

Held that women are not eligible to serve on juries in North Carolina. Specifically, the five to two decision in *State v. Emery*, 224 N. C. 581, 31 S.E. (2d) 858 (Associate Justices Devin and Sewell dissenting) held that ten men and two women did not constitute a jury of "good and lawful men" within the meaning of Article I, section 13 of the Constitution of North Carolina. For a discussion of this case and a survey of the practice with respect to the eligibility of women for jury service in other States, see note in 23 N. C. Law Review 152 (February, 1945). In view of limited sanitary facilities in jury rooms in North Carolina courthouses it is interesting to note that some states have conditioned the inclusion of women on juries upon a showing that adequate accommodations and facilities for such jurors have been provided.

As a direct result of the *Emery* case a constitutional amendment will be submitted to the voters of the State next November, by virtue of H.B. 3 of the 1945 session of the General Assembly. The amendment, if adopted, will substitute "person" or "persons" for "man" or "men" in several sections of the "Bill of Rights," including Article I, section 13. For example, "no person or set of persons" rathan than "no man or set of men" will be entitled to exclusive emoluments, and it will be clear that all "persons" rather than merely all "men" are created equal. For, although other sections of the "Bill of Rights" have been construed as applying equally to men and women, the proponents of the amendment apparently do not want to take a chance on the court's ruling in the future that "men" in the Constitution was not used in the generic sense.

Chief Justice W. P. Stacy
Supreme Court of North Carolina
Raleigh, N. C.

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		TO CITY, COUNTY AND STATE OFFICIALS	TO CITIZENS	TO SCHOOLS
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	DEMONSTRATED IN	Governmental Laboratory and Demonstration Offices	Governmental Laboratory and Demonstration Offices	Governmental Laboratories and Demonstration Offices
LEGISLATIVE SERVICE to inform officials, citizens and schools of new laws in the making	THROUGH	Daily Bulletins	Periodic Summaries of Daily Bulletins	Periodic Summaries of Daily Bulletins
		Summary of New Public Laws	Summary of New Public Laws	Summary of New Public Laws
		Summaries of New Local Laws affecting each County and City	Summaries of New Trends in Local Legislation	Summaries of New Trends in Local Legislation
		State and District Conferences for Interpretation of New Laws	State and District Conferences for Interpretation of New Laws	State and District Conferences for Interpretation of New Laws
CLEARING HOUSE OF INFORMATION between city halls, county court houses and state and national capitols to keep officials, citizens and schools informed of new developments in government	THROUGH	Digests of Supreme Court Decisions and Rulings of Atty.-Gen. and State Depts.	Digests of Supreme Court Decisions and Rulings of Atty.-Gen. and State Depts.	Digests of Supreme Court Decisions and Rulings of Atty.-Gen. and State Depts.
		Bulletins on New Federal Laws, Programs and Rulings	Bulletins on New Federal Laws, Programs and Rulings	Bulletins on New Federal Laws, Programs and Rulings
		Monthly Magazine and Special Studies	Monthly Magazine and Special Studies	Monthly Magazine and Special Studies
		Federal and State Services to Local Units	Federal and State Services to Local Units	Federal and State Services to Local Units
		General Informational and Consulting Service	General Informational Service	General Informational Service