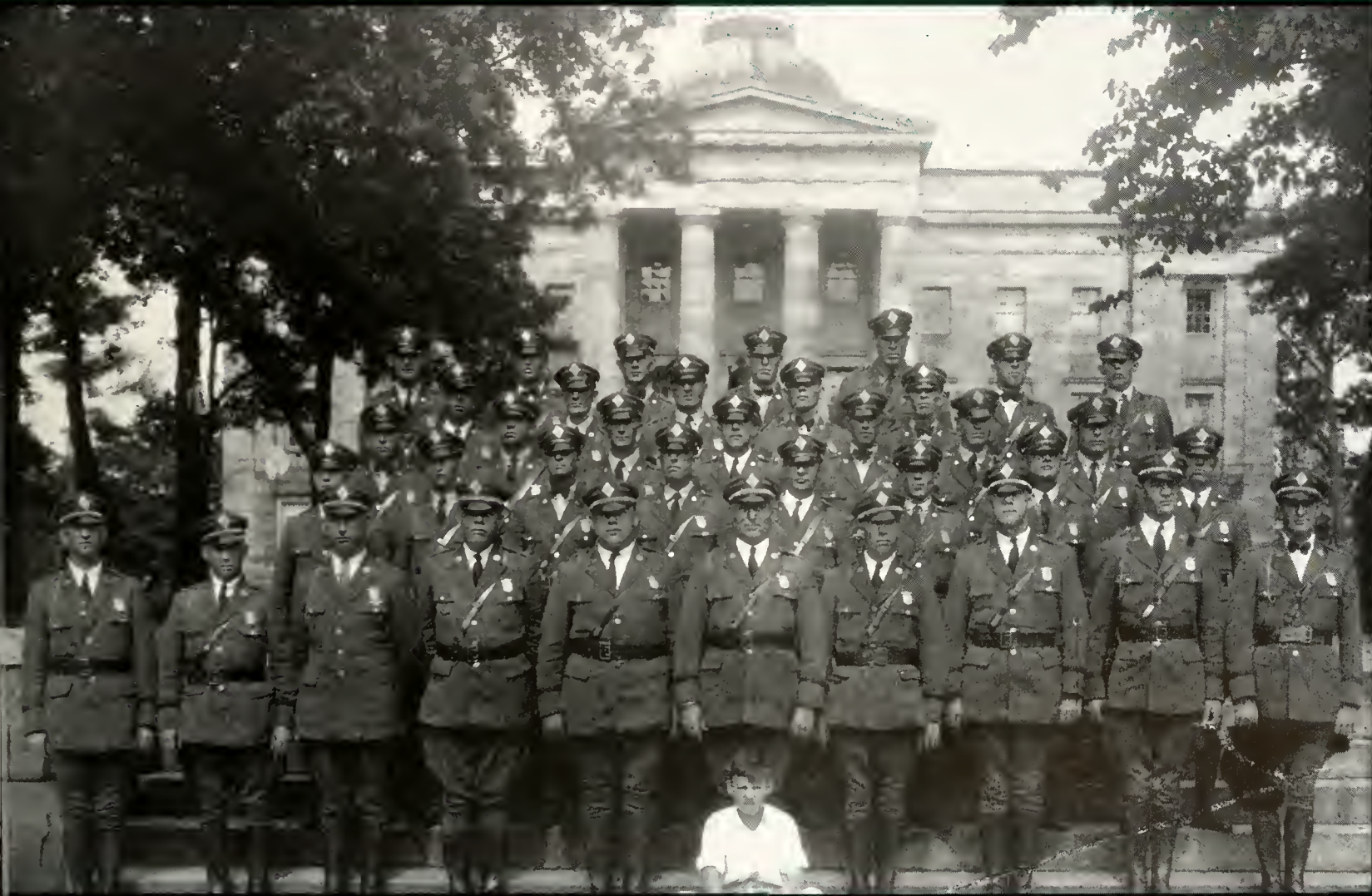


POPULAR GOVERNMENT



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The State Highway Patrol

By JOHN FRIES BLAIR



T. BODDIE WARD
Commissioner of
Motor Vehicles

Born at Nashville, N. C., January 13, 1890; attended Nashville Collegiate Institute, 1896-1902; Rhodes Military Institute, 1905; Trinity Park, 1906; Secretary to Edward W. Pou and Clerk to Committee on Rules, U. S. House of Representatives, 1913-1917; President Wilson Chamber of Commerce, 1924; member State Highway and Public Works Commission, 1937-1941; Commissioner, Department of Motor Vehicles since 1941.

The State Highway Patrol, which is the principal agency of the State for the enforcement of the automobile laws, cannot be considered in the abstract, like a jewel out of its setting, but must be considered in relation to the Department of Motor Vehicles under which it operates. For an adequate understanding of the patrol, therefore, some consideration must be given to the history of the department and to its organization and functions.

The Department of Motor Vehicles CREATION

In a previous article in *POPULAR GOVERNMENT* which attempted to trace the history of automobile legislation in North Carolina we have seen that the responsibilities of motor vehicle administration were lodged first with the Secretary of State, then with the Commissioner of Revenue, and finally with a separate Department of Motor Vehicles which had the administration of the automobile laws as its sole function.

During the years which immediately preceded the creation of the Department of Motor Vehicles, the

There were 82 persons killed and 433 injured on the streets and highways of North Carolina in February, 1946, compared with 44 persons killed and 242 injured in February, 1945—an increase of a little over 80% in fatalities.

Fatal accidents by type were:

Motor vehicle with motor vehicle	35
Motor vehicle ran off roadway	17
Motor vehicle with pedestrian	15
Motor vehicle with train	6
Motor vehicle overturned on roadway	4
Motor vehicle with fixed object	3
Motor vehicle with bicycle	1
Other non collision	1

There were 11 persons killed in the cities and towns of North Carolina in February, 1946, compared with 71 killed in the rural areas during the same period. The persons killed outside the incorporated areas account for 86% of the total fatalities.

—Statement by T. Boddie Ward.



JOE W. GARRETT
Asst. Commissioner of
Motor Vehicles

Born at Madison, N. C., March 7, 1911; graduated Wake Forest College Law School, 1932; State Representative, 1937-1941; 2nd Lieutenant, M. A. C., National Guard; investigator, N. C. Parole Commission, 1940-1943; Director, Registration Division, Department of Motor Vehicles, 1943-1945; Asst. Commissioner of Motor Vehicles since 1945.

Commissioner of Revenue, in his capacity as Vehicle Commissioner, performed a variety of duties which had been imposed on him at various times by statutes which had little relation to each other. The duties of motor vehicle registration and the keeping of a record of stolen automobiles he took over from the Secretary of State in 1925. The direction of the State Highway Patrol he took over from the State Highway Commission in 1933. The duty of issuing drivers' licenses he acquired in 1935 when the possession of a state-wide driver's license was for the first time made mandatory. The Motor Vehicle Bureau and the Division of Highway Safety, which had been created by statute, but as administrative conveniences, had not only performed various functions at different times but had tended to take on a life of their own and to become administrative organizations the disposition of which had to be reckoned with in any reorganization of the department. In addition, other duties of the Department of Revenue, such as, for instance, the inspection of gas and oil, had been assigned sometimes to the State Highway Patrol and some-

times to other persons designated by the department.

The present Department of Motor Vehicles was organized by a statute which took effect July 1, 1941. It was the declared intent and purpose of that statute "to transfer and consolidate under one administrative head in the Department of Motor Vehicles agencies now operated under the Department of Revenue and dealing with the subject of the regulation of motor vehicular traffic, whether such activities are at present handled directly by the Commissioner of Revenue or by the Motor Vehicle Bureau, the Auto Theft Bureau, the Division of Highway Safety, the Major of the State Highway Patrol, or the officials handling the Uniform Drivers License Act." Various other closely related activities of the Commissioner of Revenue, such as those dealing with gasoline and oil, the Department of Motor Vehicles did not take over. If any conflict arose between the Department of Motor Vehicles and the Commissioner of Revenue as to just what functions had been transferred the Governor was authorized to settle the matter by executive order.



MAJOR S. L.
GAYNOR

Asst. Director,
Highway
Safety
Division

ORGANIZATION

The Commissioner of Motor Vehicles

The Department of Motor Vehicles is under the control of an executive officer who is known as the Commissioner of Motor Vehicles. He is appointed by the Governor, is responsible solely to him, and may be removed by him without the assignment of any cause. His salary is fixed by the Governor, with the approval of the Advisory Budget Commission. In addition to his salary he is allowed his traveling expenses when he is away from Raleigh on official business.

The Assistant Commissioner

Next to the Commissioner of Motor Vehicles is the Assistant Commissioner, who is the only other officer of the department having executive authority over all divisions.

The Divisions

The statute gives wide latitude to the Commissioner to organize the department as he may see fit, subject to the approval of the Governor and of the Advisory Budget Commission, but requires the establishment of at least two divisions, a Division of Registration and a Division of Highway Safety and Patrol. There are at present only these two divisions, although at one time the department was divided into three. Under each division there are several units, of which it will be possible to mention only a few.

Under the Division of Registration the Motor Vehicle Bureau handles the registration of all automobiles, and the Automobile Theft Bureau, which must use the registration records constantly, checks the records of stolen auto-

mobiles and assists in the detection of thefts. Under the Division of Highway Safety and Patrol there is the patrol itself, the bureau which handles the issuance and also the cancellation, revocation and suspension of automobile drivers' licenses, and the highway safety program.

LOCATION

The statute requires that the commissioner shall maintain an office in the city of Raleigh, N. C. That office is at present located in the Revenue Building which was, as a matter of fact, projected as an automobile building and paid for out of highway funds. It was not authorized to house the Department of Revenue until that department took over the duties of automobile administration in 1925. The statute also provides that the commissioner shall establish offices at such other places in the State as he may deem necessary in order to carry out the provisions of the act. Through arrangements with the Carolina Motor Club and the Winston-Salem Motor Club there are offices for the distribution of automobile and truck licenses in about sixty cities and towns of the state. The various district offices of the State Highway Patrol will be discussed in the section of this article dealing with that organization.

POWERS AND DUTIES

The Commissioner of Motor Vehicles performs many duties, as the enumeration of the agencies under his control will already have suggested. Specifically, for our purposes, he is vested with the power and charged with the duty of administering and enforcing the provisions of the Motor Vehicle Act of 1937, which is still the basic law under which the operation of automobiles is governed in this State. He is also charged with the duty of administering and enforcing any other laws "regulating the operation of vehicles or the use of the highways" the enforcement of which has been or may at any time be placed within the jurisdiction of his department. For the purpose of carrying out these duties the commissioner is authorized to adopt rules and regulations, to appoint agents, field deputies and clerks, and

to adopt an official seal for the use of the department.

ADMINISTRATIVE POWER

Many of the powers of the Commissioner of Motor Vehicles are administrative, and it will not be possible to discuss them in detail here. Each division, and every unit in each division presents its own problems and its own opportunities for imaginative public service. Many of the powers of the commissioner are outlined in the statute; many of the methods have been devised by him or the able staff with whom he has surrounded himself. Cutting across the divisions, however, and the various units within the divisions, are certain powers, expressly conferred by statute, that contribute much to the efficient operation of the department. Thus the commissioner is authorized to provide uniform licenses, certificates and other forms for the use of the department and of those who deal with it. He is authorized to keep the records necessary to the efficient functioning of his department and to issue certified copies. He is authorized to summon witnesses and take testimony, either orally or in the form of a deposition, and to require the production of relevant books, papers and records. He is authorized to administer oaths and take acknowledgments. He is authorized to give notices either by personal delivery or by mail. He is authorized to seize documents and plates which are illegally retained by the person in possession of them. He is authorized to distribute a synopsis of the automobile laws.

POLICE POWERS

In addition to the powers previously mentioned the department

W. E. KOONCE

Director
of the
Auto Theft
Bureau



has also certain police powers specifically enumerated in the statute. These powers may be exercised by the commissioner himself, by the State Highway Patrol, and by such other officers and inspectors of the department as the commissioner shall designate. They have in fact been conferred additionally only on the inspectors of the automobile theft bureau. They include the power to act as peace officers in the enforcement of the automobile laws, the power to make arrests for certain crimes committed in the presence of the arresting officer, the power to arrest upon reasonable belief that a vehicle is being operated in violation of the automobile laws, the power to serve warrants, the power to direct traffic, the power to investigate traffic accidents and secure testimony, the power to inspect for stolen vehicles and the power to investigate thefts. Since the State Highway Patrol has the authority to exercise all these powers and certain additional ones these powers will be considered along with the others in the section of this article devoted to the patrol.

The State Highway Patrol

The State Highway Patrol is under the immediate supervision and control of the Commissioner of Motor Vehicles, who is directed to establish, in the Department of Motor Vehicles, a Division of Highway Safety and Patrol, to prescribe rules and regulations for it, and to assign to it such duties as he may deem proper. The commissioner, however, in his supervision of the patrol, acts under the direction of the governor.

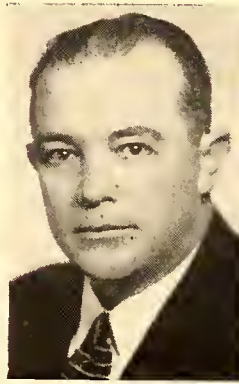
OF WHOM IT CONSISTS

Personnel

The patrol itself is under the command of a major, who maintains his office at Raleigh. Under him are two captains, one commanding the eastern division, with offices also in Raleigh, and one commanding the western division, with offices in Charlotte. Under each captain are two troops, A and B in the east and C and D in the west. Each troop is under the command of a lieutenant. The major delegates the authority of each division to the captain, who in turn, delegates his

COL. HOWELL J. HATCHER

Commanding
Officer
State Highway
Patrol
and
Director,
Highway Safety
Division



Born Burke County, N. C.; graduated Trinity College Law School, 1924; practiced law, Morganton, 1924-1940; State House of Representatives, 1935; State Senate, 1939; Captain, Company "B", 105th Engineers, National Guard; entered military service, September 1940, with rank of Captain; released as Lt. Col. with 9th Army after eighteen months overseas service, 1945; decorated by American and French Governments with Bronze Star and Croix de Guerre; appointed Commander State Highway Patrol and Director Highway Safety Division, August, 1945.

authority to the lieutenants. The lieutenants, therefore, are in direct charge of operations in the field. The headquarters of the troops are as follows: A at Greenville, B at Fayetteville, C at Greensboro and D at Asheville.

Each troop is divided into six districts, with a sergeant in command of each district. Under each



Col. Hatcher is here shown receiving the Bronze Star from General Simpson at Maastricht, Holland, on December 1, 1944. Col. Hatcher also received the Croix de Guerre.

sergeant there is a corporal, who is his assistant district commander, and several patrolmen.

The normal complement of the patrol is 213 officers and men. This number, however, has not yet been completely restored since a loss of men to the armed services depleted the ranks of the patrol. All officers and men are appointed by the Commissioner of Motor Vehicles with the approval of the Governor, and serve at the pleasure of the Governor and commissioner.

The patrol maintains a clerical staff of only eight persons. The major has the assistance of two persons, one of whom devotes her entire time to radio matters. Each captain and lieutenant has the assistance of one woman secretary.

In addition, about seventeen mechanics are employed in the repair shops of the patrol.

Salaries

The salaries of the major, the other officers and the members of the State Highway Patrol are fixed by the Division of Personnel in the Budget Bureau.

Uniform

The Department of Motor Vehicles has adopted a uniform for the members of the patrol and is required to furnish each member with an adequate number of these uniforms. The members of the patrol are required to be dressed in these uniforms when on duty.

In summer, the regulation uniform while the member is away from the station consists of shirt, trousers, side arms and ornaments.

In winter it consists of blouse, shirt, trousers, side arms and ornaments. There is also a regulation overcoat issued for severe weather.

Vehicles and equipment

The department is likewise required to furnish each member of the patrol with a suitable motor vehicle and necessary arms. At present the equipment of the patrol consists of about 222 cars, all provided with radio receiving apparatus. One hundred and seven of these cars have two-way radios.

The patrol owns sixty-six 45-calibre sub-machine guns, one placed in the possession of each sergeant and corporal and the rest kept in reserve. The patrol also has

twenty-four 12-gauge automatic riot guns, sixteen 16-gauge automatic riot guns, six high-powered 351 calibre rifles, and four 11½ gauge gas guns. Each lieutenant has about twenty-five or thirty hand gas grenades. Each patrolman is equipped with a gas mask, a steel helmet, a 38 Colt police revolver and an adequate supply of ammunition.

Expenses

The department is required to provide for all reasonable expenses of the patrol incurred while they are on duty.

Oath and bond

The members of the State Highway Patrol are required to take an oath for the faithful performance of their duties. They are also required to give a bond in an amount to be fixed by the commissioner at not less than \$1000 nor more than \$2500. This bond covers not only the faithful performance of their duties but also the diligence with which they collect money and the faithfulness with which they turn over all moneys received.

DISTRICT HEADQUARTERS

It is the duty of the department to supply suitable district headquarters at the various district offices, or at some other place within each district, if that is deemed advisable. At present, the district headquarters of Troop A is in the city administration building at Greenville, the district headquarters of Troop C in the courthouse at Greensboro, and the district headquarters of Troop D in the courthouse at Asheville. Accommodations in all these buildings are lent to the patrol free of charge. At Fayetteville the patrol has rented the old county home, which not only serves as the district headquarters of Troop B but also contains barracks which are used for the in-service retraining schools of the patrol. In connection with this headquarters the patrol maintains one of the best pistol ranges in the south.

SHIFTING PATROLMEN

The major of the State Highway Patrol has authority, under such rules and regulations as the depart-

ment may prescribe, to shift forces from one district to another, or to consolidate at any point for special purposes the forces of more than one district. This provision gives a flexibility to the patrol which otherwise it would not possess.

POWERS AND DUTIES

When we come to the specific powers and duties of the State Highway Patrol it is interesting to note what those duties are and to see which powers may be exercised concurrently by the patrol and by the commissioner and other officers and inspectors of the department whom he may designate, and which powers are conferred only on the patrol.

GENERAL DUTIES

It is clear that the State Highway Patrol is subject to such orders, rules and regulations of the commissioner as he may adopt with the approval of the Governor, that it has a *duty to patrol* the highways which does not devolve upon the commissioner personally, nor upon the other officers and inspectors of the department, that it has, concurrently with certain other members of the department, the duty to enforce the Motor Vehicle Act of 1937 and any other laws "regulating the operation of vehicles or the use of the highways," and that it has specifically conferred upon it the duty to enforce (a) "all laws and regulations respecting travel," (b) "all laws and regulations respecting . . . the use of vehicles upon the highways of the state," and (c) "all laws for the protection of the highways of the state."

The power to enforce "all laws and regulations respecting travel" certainly seems broader than "laws regulating the operation of vehicles or the use of the highways," which is the typical language used in the section conferring powers on the department. Indeed, to the extent that those activities are not controlled by other agencies, the power seems broad enough to cover travel by boat and travel by air. I am informed that while the State Highway Patrol was charged with the duty of inspecting gasoline and oil

it did at one time contemplate the purchase of a fleet of boats to assist in preventing the smuggling of gas, and that it does assert jurisdiction over such an interesting activity as driving an aeroplane while under the influence of intoxicating liquor.

The power to enforce "all laws and regulations respecting . . . the use of vehicles upon the highways of the state" certainly seems to confer no authority that is not exercised by the department generally.

On the other hand, the power to enforce "all laws for the protection of the highways of the state" does seem to go beyond the powers otherwise exercised by the department. It is undoubtedly broad enough to include the removal of barricades from the highways, the preservation of road signs, and the attempt to protect the surface of the highways where, as in one case, a truck carrying explosives had a wreck, caught on fire, and was in danger of destroying the road. In addition, there are many other acts of negligence or sabotage that might result in injury to the highways which the State Highway Patrol would have undoubted authority to prevent, and for the perpetration of which it would have unmistakable power to arrest.

SPECIFIC POWERS

In order to carry out the general duties already outlined the State Highway Patrol has, either concurrently with certain other members of the department or exclusively, certain specific powers to which, rather than to the general powers, they ordinarily look for the authority under which to act.

Power as Peace Officers

The first power given to the State Highway Patrol, in this case concurrently with certain other members of the department, is that "of peace officers" for the purpose of enforcing the provisions of the Motor Vehicle Act of 1937 and of "any other law regulating the operation of vehicles or the use of the highways."

This raises the very interesting



In prewar days the State Highway Patrol enrolled as a unit in a program of one-day training schools for Traffic Law Enforcing Officers, to be conducted by the Institute of Government, at the headquarters of each troop of the Patrol, every thirty days. Above are pictured the schools in the opening sessions: Troop A at Greenville, Troop B at Fayetteville, Troop C at Greensboro, Troop D at Asheville. This program was interrupted by the war and will be resumed in an intensified form in the near future.

question as to what a peace officer is. Black's *Law Dictionary* says, "This term is variously defined by statute in the different states, but generally it includes sheriffs and their deputies, constables, marshals, members of the police force of cities and other officers whose duty is to enforce and preserve the public peace." Unfortunately there is no express statutory definition in this State. Perhaps the statute that inferentially best defines the term is G.S. 15-41: "Every sheriff, coroner, constable, officer of police, or other officer, entrusted with the care and preservation of the public peace, who shall know or have reasonable ground to believe that any felony has been committed, or that any dangerous wound has been given, and shall have ground to believe that any particular person is guilty, and shall apprehend that such person may escape if not immediately arrested, shall arrest him without warrant, and may summon all bystanders to aid in such arrest."

Turning to the opinion of the courts, in the case of *State v. Freeman*, 86 N.C. 683 (1882), with respect to the duties of a county constable, it is stated, "In executing warrants and other process issued by justices of the peace, he is a ministerial officer, in the apprehension of those who violate the law, he is a conservator of the peace."

Likewise, in the case of *Wilson v. Mooresville*, 222 N.C. 283, 22 S.E. (2d) 907 (1942), Mr. Justice Winborne said, "At common law justices of the peace, sheriffs, coroners, constables and watchmen are recognized as peace officers, and as such have the right by virtue of office not only to arrest without warrant where a felony has been committed, but for any offense amounting to a breach of the peace committed in their presence." To the town watch, of course, must now be added the city police department. Although in some states justices of the peace may still have some of the rights of peace officers, [See: *Patton v. State*, 129 Tex. Co. R. 269, 86 S.W. (2d) 774 (1934)] it is probable that in this State they are no longer peace officers within the common law meaning of the term, since their powers are now almost exclusively judicial.

From the foregoing authorities it seems clear that the plain intent and meaning of the statute is that the State Highway Patrol shall have the kind of powers, in the enforcement of the automobile laws, that sheriffs, constables and policemen have in the enforcement of the criminal laws generally, and that, in addition to the powers the ordinary citizen has to arrest under certain circumstances, they have at least the power to arrest without war-

rant when they have reasonable ground to believe that a felony has been committed or that a serious wound has been given. If the distinction between peace officers and ministerial officers is no longer observed; if, in other words, they have additional powers merely because they are peace officers, those powers are probably covered more specifically anyway in other sections of the statute.

Crimes of Violence

The State Highway Patrol may at all times arrest persons accused of highway robbery, bank robbery, murder, or "other crimes of violence."

What are "crimes of violence"? It is clear that this description has no relation to the gravity of the offense, but only to the type. Larceny, for instance, is not considered a crime of violence, since no force is used. *State v. Brown*, 113 N.C. 645, 18 S.E. 57 (1893). Neither is statutory rape when there is, in fact, consent. [See *State v. Goldston*, 103 N.C. 323, 9 S.E. 580 (1889).] It is even doubtful whether subversive activities would be included, under the statute making it unlawful "for any person . . . to advocate, advise or teach a doctrine that the government of the United States, the State of North Carolina or any political subdivision thereof shall be overthrown or overturned by force



Ptl. F. R. Bell
Elizabethtown,
N. C.

or violence or any other unlawful means." (G.S. 14-11.) The courts might well hold that the gravamen of this offense is advocating, advising, teaching, and that the force urged in connection with it is so remote that the crime would not be one of violence.

A much more difficult question is presented, however, in the cases dealing with assault, where some element of force is involved. In these cases one finds such expressions as this: "An offer to strike" is an act which is the beginning of the act of striking, and most usually results in a blow, as if one draws back his fist or raises a stick, it is violence begun to be executed, and amounts to an assault, being 'an offer to strike'; *State v. Meyerfield*, 61 N.C. 108 (1867) or the dictum in *State v. Church*, 63 N.C. 39 (1868), "so an offer of violence is an assault, even if it be accompanied with a declaration that violence will be forborne upon a condition which the actor had no right to impose, as if one offering to strike says 'I will strike you if you do not pull off your hat.' This will be an assault, because he has no right to require the hat to be pulled off."

It is true that at least one federal statute, the Federal Firearms Act, defines crimes of violence, but of course the definition is only for the purposes of that act. That statute says: "The term 'crime of violence' means murder, manslaughter, rape, mayhem, kidnaping, burglary, housebreaking; assault with intent to kill, commit rape, or rob; assault with a dangerous weapon or assault with intent to commit any offense punishable by imprisonment for more than one year."

In the absence of such a statutory definition or even a departmental interpretation in this State, the highway patrol has, in practice,

placed a laudable restraint on its interpretation of what are "other crimes of violence." Probably the courts, likewise, would place a much more limited construction on the expression than the assault cases would suggest, since in the statute "crimes of violence" are linked specifically with highway robbery, bank robbery and murder.

However, "the law is a seamless web," said Maitland long ago, and one experience of the State Highway Patrol would seem to bear out that statement. A group of men were engaged in a gambling game in a house on the Lumberton road near Fayetteville. Gambling is perhaps not a "crime of violence" within the meaning of the statute, although the fact that it may lead to violence is one of the reasons it has always been regulated. During the game two men came in and held up the players, relieving one of them



Sgt. G. R. Duncan
Morganton, N. C.

of the sum of \$8000.00. Here was a crime of violence which gave the State Highway Patrol undoubted jurisdiction. After an investigation the two men were arrested for the robbery and two others for conspiring with them to perpetrate it. In making the arrest an unprecedented supply of ration tickets was discovered, which linked the robbers with a recent breaking that had taken place into the office of the rationing board, and a supply of tires which had been stolen from an oil company in Fayetteville. There were also found a hypodermic syringe and needles, although the peddling of dope is a crime of the utmost secrecy, not violence. The running of a gambling joint and gambling are also obnoxious to the law. Here was a case where no watertight compartments were possible, and where the enforcement of one law

spilled over into the enforcement of law generally.

*Other duties as peace officers
directed by the governor*

The State Highway Patrol may perform such additional duties as peace officers "as may from time to time be directed by the governor."

This grant of power is obviously not limited to the type of laws heretofore discussed. This power has been exercised from time to time when by reason of crime, racial animosities or industrial disagreements there has been a threat of mob violence anywhere in the State. During the recent war emergency the Governor conferred general police powers on the patrol with particular reference to two types of situations: first, those "arising in connection with the emergency created by the Defense and War Program, and with particular reference to acts of sabotage, espionage, to the investigation and apprehension of enemy aliens and other suspicious characters under instructions of the Federal Bureau of Investigation or State Bureau of Investigation"; and, second, those arising in connection with "any violation of any of the criminal laws of the state committed in their presence either on or off the highways while on duty by special assignment . . . in connection with public gatherings, riots, or public disturbances." Fortunately, the occasions on which the patrol has been called upon to exercise these powers have not been very frequent nor of momentous importance.

*Power to arrest for crimes
committed in their presence*

The 1945 session of the General Assembly conferred on the members of the State Highway Patrol the broad power to arrest for any crime committed in their presence. Pre-



Capt. Charles D.
Farmer
Raleigh, N. C.

viously, they had, concurrently with certain other members of the department, the power to make arrests "upon view and without warrant" for any violation committed in their presence of the Motor Vehicle Act of 1937 and of "any other law regulating the operation of vehicles or the use of the highways," and by direct grant also the power to arrest without warrant any person who, in their presence, "is engaged in the violation of any of the laws of the state regulating travel and the use of vehicles upon the highways, or the laws with respect to the protection of highways." The recent act simply extends the list of crimes for which arrests may be made so as to include crimes of all types, but then limits the extension to those which take place in the presence of the officer.

This power to arrest for crimes committed in the presence of the officer is similar to that which constables and sheriffs have long exercised in their own jurisdictions, and which has been given to police officers by statute. Though originally confined to breaches of the peace, it has been extended by statute to various other crimes committed in the presence of the officer.

Power to arrest for crimes committed on the highway

The 1945 session of the General Assembly also conferred on the members of the State Highway Patrol the power to arrest for any crimes committed on the highway. This power, also, includes crimes of all types but is limited to, in this case, those which take place upon the highway.

The power to arrest upon reasonable belief that a vehicle is being operated in violation of law

The State Highway Patrol has the power, concurrently with certain other members of the depart-

ment, to stop any vehicle "upon reasonable belief" that it is being operated in violation of the Motor Vehicle Act of 1937 or of "any other law regulating the operation of vehicles or the use of the highways," to examine the license and registration card of the driver and the registration card and plates of the vehicle itself, to examine the vehicle and to inspect and test its equipment.

This "reasonable belief" provision is similar to the provision allowing peace officers to arrest without a warrant upon "reasonable belief" that a felony has been committed, and shows how dangerous the legislature conceives the illegal operation of motor vehicles to be.

What is this "reasonable belief"? In one test conducted before there was a war-time scarcity of parts and equipment the State Highway Patrol checked the lights on 97,093 cars and found those on 77,270 defective. Does this mean that the

Sgt. R. S. Harris
Durham, N. C.



designated officers of the department may stop *any* car because the chances are approximately four to one that it will have at least defective lights? Could not such a power be used in a coercive way? Is it justified by the number of fatalities and serious accidents upon the highways?

Perhaps these questions are not important because, under another statute, the law enforcement officers of the State, as well as of each county, city, or other municipality, have power within their respective jurisdictions to stop any motor vehicle upon the highways "for the purpose of determining (Italics mine) whether the same is being operated in violation of any of the provisions of" the Motor Vehicle Act.

The power to serve warrants

The State Highway Patrol has the power, concurrently with cer-

Lt. Lester Jones
Greenville, N. C.



tain other members of the department, to serve all warrants "relating to the enforcement of the laws regulating the operation of vehicles or the use of the highways." Its members also have, by direct grant, "the power and authority of peace officers for the service of any warrant or other process issuing from any of the courts of the State having criminal jurisdiction." Apparently the latter power is limited likewise to warrants or other process for violations of the particular types of laws which it is the primary duty of the highway patrol to enforce.

Two questions arise here. One is whether the power to serve warrants had already been covered when the power of peace officers was given, or whether, if the distinction between ministerial officers and peace officers is preserved, a separate power is conferred by this provision. The second grant above set forth certainly seems to confuse the issue, but perhaps a decision of the question is not important since the power has in fact been given.

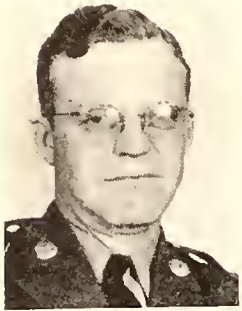
The other question which arises here is whether the grant includes the power to serve *civil* process, which certainly might be issued by many of the courts of the State "having criminal jurisdiction." I am informed that it is not the practice of the patrol to serve civil process, but that they feel it incumbent upon them to do so when directed by a court.

The power to direct traffic

The members of the State Highway Patrol have, concurrently with certain other members of the department, the power to *direct traffic*. They are authorized to direct traffic "at all times . . . in conformance with law," and to direct traffic "as conditions may require, notwithstanding the provisions of law" in three cases: in the event of



Capt. L. R. Fisher
Charlotte, N. C.



Lt. D. T. Lambert
Greensboro, N. C.

fire or other emergency, to expedite traffic, and to insure safety.

It may seem anomalous that any provision of the law should authorize officers to direct traffic in what would otherwise be a violation of law, but it becomes understandable when one realizes that in an emergency the sound judgment of an officer located on the spot may be more valuable than the foresight of any legislature. As a matter of practice, I am informed that this power is used sparingly, but that on the occasions mentioned an officer does feel himself at liberty to re-route traffic, to cause it to drive on the left-hand side of the road or in one direction only, or even to direct it to drive in violation of a sign or stop light.

The power to investigate traffic accidents and secure testimony

The State Highway Patrol has power, concurrently with certain other members of the department, "to investigate traffic accidents and secure testimony of witnesses or of persons involved."

This section is of the utmost importance from the standpoint of law enforcement. An entire section of the State Highway Patrol Regulations is given over to the duties of the patrolman as investigator. The patrolman is unable to perform his duties at the scene of an accident unless he can observe carefully and record accurately. Courts are unable to enforce the law justly and

impartially unless they have before them the facts. These facts must be obtained, not only from the officers themselves, but also from the witnesses who have been interviewed by them and brought into court at their suggestion.

This section is of equal importance from the standpoint of accident prevention, since the very foundation of an accident prevention program is the careful reporting of all accidents. Unless accident reports can be assembled and analyzed as to where the accidents occurred, when they occurred, and the extent to which defects in the road, in the car or in the driver contributed to them, the true causes of many accidents cannot be found, nor can adequate steps be taken to prevent their recurrence.

Two illustrations will suffice. In the first, it was found that an undue number of accidents were oc-



Lt. W. B. Lentz
Asheville, N. C.

curing on the causeway running from Morehead City to Atlantic Beach. The causeway itself was a winding affair. The paving of the road was dark. Windshields, cooled by the night air over the land, became fogged upon coming into contact with the warmer air over the sound. Motorists confused the lights on the draw-bridge with those on passing boats. When all elements in the situation had been analyzed it was decided to install reflectors on the uprights of the causeway, and since then accidents at that location have practically ceased.

Again at Bladenboro motorists were confused by signs just outside the town which authorized a speed of thirty-five miles an hour, so that they approached with too great rapidity the crowds emerging from a suburban mill at change of shifts. By the simple expedient of taking down the signs the accidents at

that location also were materially decreased.

The power to inspect for stolen vehicles

The State Highway Patrol has the power concurrently with certain other members of the department to inspect vehicles and investigate their title and registration for the purpose of locating those which have been stolen. This power is subject to two limitations. In the first place, the vehicle must be of the type required to be registered; that is, bicycles, farm tractors and the like are excluded. In the second place, the vehicle must be in a public garage, a repair shop (apparently also public), or "any place where such vehicles are held for sale or wrecking."

The only serious question of interpretation which seems to arise here is that as to whether, when the statute says "any place where such vehicles are held for sale or wrecking," it means to include the power to invade private property for the purpose of making the inspection. Apparently, since the plural form "vehicles" is used, the legislators had in mind a wrecking establishment or "graveyard," even though the operator of it might claim that it was not "public."

The power to investigate thefts

The final power which the State Highway Patrol may exercise without being requested to do so is that which it has, concurrently with certain other members of the department, "to investigate reported thefts of motor vehicles, trailers and semi-trailers."

The State Highway Patrol maintains very close relations with the Automobile Theft Bureau which, because it must use the records of the department constantly, is under the Division of Registration in the Department of Motor Vehicles at Raleigh. If, therefore, the theft of an automobile is reported to a member of the State Highway Patrol he gets into immediate contact with the nearest station of the state-wide radio system, which gives the report a state-wide broadcast. The information is recorded and indexed by the Raleigh office of the State Highway Patrol, and also turned over to the Automobile Theft Bu-



Sgt. G. D. Lewis
Recky Mount, N. C.

reau. That bureau has a nation-wide tie-up, so that the information is disseminated to all the states in that tie-up.

A similar procedure is followed, although not necessarily by radio, if a car is found which has been abandoned, or even if one is noticed which looks suspicious.

Once when the state-wide radio system was operating on a different frequency from that used at present, and very near the frequency used by the State of Delaware, it was not even necessary to use the national tie-up. A car was reported stolen from Mt. Olive, and had been missing for some time. The report was broadcast over all the North Carolina stations at night. A Delaware state trooper picked up the broadcast and the car which was immediately in front of him on the road. Of course he made the arrest immediately, and the prisoner was held for extradition.

A discussion of the recovery of lost automobiles and the identification of abandoned ones would not be complete without mentioning the indispensable activities of the Automobile Underwriters Detective Bureau. That unofficial organization sponsored by the insurance underwriters nevertheless acts in very close cooperation with the law enforcement agencies of the State. It keeps an invaluable card index, and in the event an automobile is stolen or abandoned its Atlanta office has facilities for checking that car from the factory to the last known owner. It also has experts who can locate secret numbers and in many cases recover those which have been cut or erased.

Automobile thefts are strangely repetitive, and it is as important to keep accurate records on them as on automobile accidents, in order that analyses may be made, statistics compiled, maps kept, and the information gotten back to the men in the field who are responsible for solving the thefts.

A few illustrations will bring this section to a close. On several Saturday nights a car was stolen from the streets of Chapel Hill between the hours of 10:00 and 11:00 P.M. Within the next day or two after

each theft the car was discovered abandoned in the vicinity of Aberdeen. It was finally ascertained that a soldier from Camp Mackall, after keeping a rendezvous in Chapel Hill, was habitually stealing a car in which to drive himself back to camp.

Again at Kinston, for seven Saturday nights straight, a car was stolen, and each time it was found abandoned later near Phillips' Crossing in Jones County. It was not difficult to arrive at the conclusion that someone at Phillips' Crossing was stealing the car, although this conclusion might have been arrived at sooner if a map had been kept at that time.

Again, in the spring of 1944, the A.B.C. stores in the northeastern part of the State were being burglarized, and usually a pick-up truck was stolen to transport the loot. This truck was usually found aban-

Sgt. S. H. Mitchell
Winston-Salem,
N. C.



doned and burned in the vicinity of New Bern. When the matter was finally traced down seventeen people were arrested and a total of fifty-nine counts lodged against them. All but one were convicted of some participation in the affair.

ADDITIONAL DUTIES PERFORMED BY REQUEST

Except for those duties as peace officers which the State Highway Patrol performs from time to time "as may . . . be directed by the governor," all the duties we have thus far considered are expressly conferred by statute either on the patrol concurrently with certain other members of the department or on the patrol exclusively and may be performed by the patrol without the request of any person. The State Highway Patrol may also, by request, perform certain additional duties.

Lt. Arthur Moore
Fayetteville, N. C.



Additional duties required by the commissioner

The State Highway Patrol may perform such other and additional duties as may be required of it by the Commissioner of Motor Vehicles in connection with the work of the department of motor vehicles.

The duties imposed upon the patrol under this section have varied, particularly as the agencies with which the patrol has been connected have been reorganized from time to time. The following functions are illustrative only of the kind of duties often imposed on the patrol and are not intended to be exhaustive.

For two years, while the State Highway Patrol was under the direction of the Commissioner of Revenue, it was the duty of the patrol to collect gas samples and to test pumps.

In towns in which there is no license bureau the patrolman often functions as the license bureau for the town. In other towns also he handles the sale of license plates for motorcycles and vehicles for hire. Sometimes he is even called upon to give examinations for drivers' licenses.

The patrolman may be required to make a certificate as to the numbers on trailers or to check those on motors.

He may be directed to serve notices of the revocation or suspension

Sgt. S. D. Moore
Charlotte, N. C.



sion of drivers' licenses, or occasionally to contact the licensee for errors in the issuance of a license.

If a man is arrested for having no license the patrolman has authority not only to make the arrest but also to collect the fee, issue an official receipt and send the money to Raleigh with the proper papers. The same is true as to the fee for the overloading of a vehicle.



Sgt. J. R. Pridgen
Whiteville, N. C.

Additional duties required by Governor

The State Highway Patrol must perform such other and additional duties "as may be required of it from time to time by the governor."

This power is given in addition to the powers as peace officers which the Governor may from time to time confer upon the patrol. As to many of the activities of the patrol pursued at the direction of the Governor during the war period it is frequently difficult and usually unnecessary to decide whether they were being carried on under the one or the other grant of power. Lest the importance of these unusual



Sgt. J. R. Smith
Wilmington, N. C.

duties be minimized, however, it might be well to say that during the war emergency they consumed about sixty per cent of the time of the patrol. A few examples will suffice.

1. Enforcement of the selective service law

The Federal Bureau of Investigation made extensive use of the State Highway Patrol in the enforcement of the selective service law. The practice was that the local selective service board made its report of a local draft violator to the United States attorney, who notified the F.B.I. Very frequently the F.B.I. called on the State Highway Patrol to make the investigation. Often several investigations were required in one case. In one instance a registrant who had been working for a construction company in Greensboro was under the jurisdiction of the Durham selective service board. He had given the address of his nearest relative as Greenville, and stated that he had been born in Wilmington. When he became delinquent and the services of the State Highway Patrol were enlisted by the F.B.I., investigation began in all four places simultaneously. Before the man was finally located it had been necessary to make a total of nine investigations.

When a draft violator was finally located and taken into custody the State Highway Patrol notified the F.B.I., which then directed whatever steps were to be taken next. If the violation was flagrant the man might be placed in jail first and the F.B.I. notified only thereafter.

2. Assistance to the Army and Navy

If a state highway patrolman came to your door, however, it did not necessarily mean that you or a member of your family had been delinquent in an obligation to the draft board. Often it meant that your employee, professional rival or former pupil had applied for a commission in the Army or Navy and had given your name as a reference. Requests for investigations of this kind came to the State Highway Patrol directly from the Army and Navy, and the number of such requests was, of course, very great during the early period of the war.

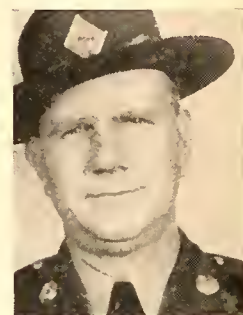
Similar requests often came to the State Highway Patrol for investigations concerning people about to be employed in war plants.

Occasionally, also, the Army, Navy or Marines notified the State Highway Patrol of a desertion, and an investigation concerning the

whereabouts of the deserter also became necessary.

3. Assistance to other federal agencies

Pursuant to a policy of cooperation with the federal government in furtherance of the war effort, the State Highway Patrol was called



Sgt. W. W. Stone
Greensboro, N. C.

upon to assist other federal agencies participating in that effort. Notable in this connection was its assistance to the O.P.A., not in the detection of price violators but in the tracking down of other more flagrant violators of the law, such as black market operators.

4. Assistance to county, city and other State agencies

Pursuant to a policy of cooperation with local officers, the State Highway Patrol was often called upon to assist them also in their activities in furtherance of the war effort.

Power to arrest at the request of a sheriff or chief of police

The 1945 act, to which we have already referred, gave to the State Highway Patrol one additional power: that to make arrests when called upon to do so by the sheriff



Sgt. A. W. Welch
Ahoskie, N. C.

of any county or the chief of police of any municipality. While this is in form a new power, in effect it is little more than a change of procedure. Heretofore requests for assistance from the State Highway Patrol have frequently emanated

(Continued on page 13)

The Duties of Local Officers in the Enforcement of the Automobile Law

The power and duty to enforce the automobile laws is not confined to the Department of Motor Vehicles nor to the State Highway Patrol. We have seen in a previous article that historically this duty rested almost solely on local law enforcement authorities. As State control of the automobile traffic increased and the State officers who were authorized to enforce the automobile laws became more numerous local officers were not thereby relieved of their duty to enforce those laws. They merely shared that responsibility progressively with more and more officials and officers whose authority came not through the local governmental units, but directly from the State. Although, through experience in cooperation, express or tacit agreements for a division of duties between local officers and the State Highway Patrol may have been worked out in certain communities, the full duty and authority to enforce the automobile laws still rests upon the local officers.

Duty to Enforce Local Ordinances

Of course one group of laws which it is the particular prerogative of local officers to enforce is the considerable body of municipal ordinances which most cities and towns have enacted for the control of traffic within their borders. Cities and towns are ordinarily not permitted to enact ordinances for the control of vehicular traffic which conflict with the State law. However, subject to certain limitations, they are given specific authority, within their jurisdiction, to lower permissible *prima facie* speeds at intersections, to increase permissible *prima facie* speeds on through highways, to make stopping before entering through highways mandatory, to provide for one-way traffic, to modify methods of turning at intersections, to install semaphores and other traffic control devices, and to increase, but apparently not to decrease, the no-parking zone around fire hydrants. They also

By
JOHN FRIES
BLAIR

Assistant
Director
Institute of
Government



have authority, for a period not to exceed ninety days in any one calendar year, to prohibit or restrict traffic over any highway within their jurisdiction which, by reason of deterioration, rain, snow or other climatic conditions, would otherwise be damaged. In addition, some municipalities reenact as local ordinances considerable portions of the State law or pass, with respect to particular local situations, ordinances which might or might not be held to be in conflict with the State law. At any rate, in the enforcement of local ordinances alone, the duty of any municipal police department with respect to the automobile laws would be very considerable indeed.

General Duty Imposed by the Motor Vehicle Act

The duty of local officers with respect to the automobile laws, however, is not confined to the enforcement of local ordinances. They have a duty to enforce the State laws as well. Nor is this duty merely historical or residual. It is expressly imposed by the Motor Vehicle Act of 1937. That act, in two places, G.S. 20-114 and 20-183, charges local officers with the duty of enforcing all its provisions within their own jurisdiction. It may have been the intention of the framers of the act to confer, in G.S. 20-114, the power and authority to enforce the provisions with respect to the licensing of motor vehicles, and in G.S. 20-183 the power and author-

ity to enforce the rules of the road. However, the sections are so worded, or at least so codified, that each seems to apply to the whole act. In the present analysis of the law, therefore, it will be assumed that any power conferred under either section applies to every portion of the act.

Specific Powers

Many statutes having a bearing on the operation of automobiles which are not part of the Motor Vehicle Act of 1937 are likewise enforceable by local officers, either because they confer special powers on those officers or merely because they are part of the general law of the State. This article will attempt to discuss only those portions of the Motor Vehicle Act and of the other laws which impose special duties or confer special powers. Some, at least, of those powers have been conferred likewise on the State Highway Patrol and have already been mentioned in a previous article dealing with that organization.

Power to arrest upon warrant

The law enforcement officers of each county, and of every city or other municipal corporation are specifically authorized, within their respective jurisdictions, to arrest upon warrant "any person found violating the provisions" of the Motor Vehicle Act.

Since sheriffs, constables and policemen are already required to execute and make due return of all writs and other process legally issued to them, this provision merely makes explicit with respect to the automobile law what would have been their duty anyway irrespective of the existence of this particular provision.

Power to arrest without warrant for violations committed within their sight

The law enforcement officers of each county, and of every city or other municipal corporation are also authorized to arrest without warrant any person whom they see

violating the provisions of the Motor Vehicle Act.

This provision is similar to the authority given to every citizen at common law to arrest any person who commits a felony or breach of the peace in his presence. The power here, however, is conferred on officers only, but is extended to *all* breaches of the motor vehicle law, most of which are misdemeanors. While, however, at common law, a crime may be committed in the presence of a person, even though he detects it by some sense other than sight, the application of this particular section of the statute is limited to those crimes which the officer *sees*.

Power to arrest without warrant for known violations

The law enforcement officers of cities and counties, and of villages also, are authorized to arrest without warrant any person "known personally to any such officer to have violated any of the provisions" of the Motor Vehicle Act.

This is the provision which was intended originally, perhaps, to apply only to violations of those portions of the act which deal with the registration of motor vehicles. Since, however, it is phrased and codified in such a way as apparently to apply to the whole act, it must be considered as an additional power to enforce all the provisions of the act. Looked at in that light the power which it confers is largely cumulative to those which we have already considered. Nevertheless, this provision escapes the limitation which we have considered in connection with the previous one, in that an officer might rely for his knowledge on the sound of crashing cars or the smell of burning brakes, whether or not he had *seen* the actual violation take place. It must still be knowledge, however. The provision probably does not mean that the officer, in making the arrest, may rely on what is told him other than by his five senses. Before arresting on the basis of what is told him by someone else he should, in all probability, require a warrant and proceed under the first power, except in the case of felonies, where he may proceed upon reasonable belief that a felony has

been committed and that a particular person is guilty.

The statute then proceeds, perhaps gratuitously, to incorporate some of the substance of the provisions of the Constitution of the United States. In the event of an arrest the officer is directed "to immediately bring such offender before any justice of the peace or officer having jurisdiction," where the accused is entitled to a speedy trial, and to the other safeguards of his personal liberty guaranteed by the Constitution.

Power to stop vehicles to see if they are being operated in violation of the law

Local officers, as well as members of the State Highway Patrol, also have the power to stop any vehicle upon the highways of the state "for the purpose of determining whether the same is being operated in violation of any of the provisions" of the Motor Vehicle Act.

This is a clear justification of the "spot checks," "break checks," "light checks" and other interruptions of traffic to which some police departments have been addicted. It is to their credit that they have usually carried on these checks in such a way as not to interfere unduly with traffic.

Power to stop vehicles suspected of being overweight

Local officers, as well as members of the State Highway Patrol, have the specific power to stop a vehicle which they suspect of being overweight. After they have stopped such a vehicle they may weigh it on portable scales, or they may cause it to be driven to the nearest stationary scales, provided those scales are located not more than two miles away. If the vehicle is found to be in fact overweight they may cause the driver to unload immediately the excess portion of the load.

Power to move vehicles found standing on the highway

Local officers, as well as members of the State Highway Patrol, have the power to move any vehicle which they find standing upon the highway in violation of the pertinent section of the Motor Vehicle Act. They may either move the vehicle themselves to a position permitted by the act or, if the driver is avail-

able, they may require him to move it to a similar position.

Duty to File Reports

The duties of local law enforcement officers have not been fully performed, however, when they have enforced all the local ordinances which have a bearing on the operation of automobiles and enforced likewise all the State laws which concern the apprehension of drivers and other violators of the law. They are also integral parts of a reporting system which is of tremendous importance, not only in the compiling of statistics but also in the apprehension of violators, the prevention of accidents and the recovery of stolen cars.

Duty to file reports of seized vehicles

It is the duty of all sheriffs, police and other peace officers to make immediate report to the Commissioner of Motor Vehicles of all vehicles seized by them on account of the illegal transportation of intoxicating liquors or use for other unlawful purposes.

Since bootlegging is often linked with other illegal activities, the reports required under this section may develop the fact that the car had been stolen and so result in the recovery of a stolen automobile or the apprehension of a car-thief. They may also, through a check of the title, link with the bootlegging someone not present at the scene. They may, perhaps, prevent the illegal transfer of the title to the vehicle seized after it has been taken possession of by the officer. In order that there may be an adequate opportunity to check all records, no sale of the vehicle may be conducted until twenty days have elapsed after the commissioner has been notified.

Duty to file reports of abandoned vehicles

Similar reports are required in the event a vehicle is found which has been abandoned.

The purpose of this provision is similar to that of the previous one, and the filing of such a report may result in the detection of a theft or the apprehension of a criminal who has stolen and then abandoned a car.

Duty to file reports of individual accidents

The statute requires the reporting of every accident in which any person is killed or injured or in which there is property damage to an apparent extent of \$25.00 or more. The primary duty to file the report of any such accident rests on the driver of each car involved. In the event the driver is incapacitated the duty devolves on any other occupant of the car. However, the State Department of Motor Vehicles is directed to supply accident report forms to local officers, on request, and since most drivers are inexperienced in filling them out the duty of actually preparing the reports often falls on the local law enforcement officer. Although the statute apparently contemplates the filing of three reports, one by each driver and one by the officer, as a matter of practice the report by the officer is often the only one filed. In addition, many municipalities have special ordinances requiring their officers to file reports of all accidents, either on the State forms or on special forms prepared for use in the city.

The reports which are required by the State law must be made within twenty-four hours after the accident. If the accident occurs within a city the report must be made to the police department of that city; if it occurs in a rural area it must be made directly to the Department of Motor Vehicles.

Duty to file monthly reports with the department

Every police department is required, on the fifth day of each month, to forward to the Department of Motor Vehicles all accident reports which were filed with it during the previous month. These may be the original reports or copies, but must be on forms approved by the department.

The purpose of these reports is not just to let dry statistics accumulate in the place where statistics do accumulate. They are intended to perform, on a State-wide basis, many of the same functions which similar reports perform when filed within a city. Properly analyzed they may show, in rural areas, for instance, where and when more enforcement is needed. If there is a

repetition of accidents in the same spot, they may show that there is a need for engineering changes in the road. If there is a repetition of accidents of the same kind, they may show that operators need to be educated concerning a particular aspect of driving, or may point the way to desirable changes in the law.

Special duties of coroners

In addition to the reports required of every police department, every coroner is required to file, on the tenth day of each month, a report of any death which occurred during the previous month as the result of an accident involving a motor vehicle. He is also required to give the circumstances of the accident.

This provision is a sound and useful adjunct to the law. It gives a multiple check on each accident and prevents from being recorded as involving personal injury only an accident which was, in fact, fatal. There are two difficulties in its application, however. One is that the causes of human death are so multifarious that it is sometimes difficult to determine the extent to which a prior automobile accident contributed to the fatality. The other is that death and the consequent report are sometimes delayed so long that the accident has already become a matter of statistical history. It is at least possible that the major purposes of the provision could be accomplished even though the statute were changed in such a way that the coroner would be relieved of his duty to file the report if death had not taken place within a certain period after the date of the accident.

Duty to Cooperate

In addition to the particular duties which we have heretofore considered, the statute lays on local officers the more generalized duty of cooperating with the Department of Motor Vehicles and with the State Highway Patrol, just as it lays on the latter the duty of cooperating with the local officers. It is provided that nothing in the Motor Vehicle Act (such as the conferring of special powers upon the department and upon the State Highway Patrol) shall be construed as relieving the local officers of any of

the duties imposed upon them under the act. On the contrary, it is specifically provided that every local officer who neglects or refuses to carry out his duties under the act shall be liable on his official bond.

Such powers as the State possesses in the control of motor vehicle traffic were evolved because that traffic itself had developed on a basis which was at least State-wide, and because, prior to the entry of the State into the field, there was very little enforcement of any kind, especially in the rural areas. However, a system of motor vehicle control which will be adequate to enforce the law, to instill the practice of safe driving and to suggest needed engineering and statutory changes, cannot be predicated solely on the efforts of local officers nor on those of the officers of the State, but must be achieved through a combination of both. It is the very genius of our American system of government that the efforts of local and State authorities should be correlated in such a way that each fortifies the other, and that both are able to accomplish, through a community of effort, what it would be impossible for either to accomplish if it were working separately.

State Highway Patrol

(Continued from page 10)

from sheriffs and chiefs of police. However, because of the statutory requirement, these requests were routed through the office of the Governor and his approval was necessary before they could be granted. Occasionally, however, the Governor was not available when the granting of such a request was needed for the keeping of the peace or the proper enforcement of the law, and the officer in the field had to decide whether he could spell out authority to act under another power, or whether he must lose valuable time until the Governor could be located. In order that such a situation may not occur in the future, the present act makes the routing of these requests through the Governor's office no longer necessary.

TERRITORIAL JURISDICTION

The statute specifically provides

that the State Highway Patrol "shall have jurisdiction anywhere within the state, irrespective of county lines."

The existence of this provision is extremely important for the effectiveness of the patrol. It is obviously intended to relieve the members of that organization from such a situation as that in the case of *Sosamon v. Cruse*, 133 N.C. 470, 45 S.E. 757 (1903), where a town policeman was held guilty of assault when he followed and arrested beyond the limits of the town a man guilty only of a misdemeanor; or that in the recent case of *Wilson v. Mooresville*, 222 N.C. 283, 22 S.E. 907 (1942), where a policeman of the Town of Mooresville was denied workmen's compensation for an injury which he received under similar circumstances.

COOPERATION WITH LOCAL AUTHORITIES

It was apparently the intention of the legislature to eliminate any rivalry that might arise by reason of the fact that the State Highway Patrol operates within the territorial jurisdictions of sheriffs, policemen, constables or other local officers. Therefore, it has been provided that the commissioners, with the approval of the Governor, "shall encourage the co-operation between the highway patrol and the several municipal and county peace officers of the state." The specific laws in the enforcement of which they are encouraged to cooperate are the traffic laws and the Uniform Drivers' License Act, and, quite logically, it is the Division of Highway Safety and Patrol that is charged with the duty of encouraging this cooperation.

There is even a provision in the statute that, with the approval of the Director of the Budget, arrangements may be made whereby local officers are compensated, out of the funds allotted to the Division of Highway Safety and Patrol, for any special services they may have rendered.

THE STATE-WIDE RADIO SYSTEM

The statute also directs the Commissioner of Motor Vehicles to set up a state-wide radio system. This radio system is operated by the State Highway Patrol. It maintains

five broadcasting stations located at Raleigh, Williamston, Elizabethtown, Salisbury and Swannanoa, near Asheville. Each station has a capacity of 1,000 watts and broadcasts on a frequency of 1658 kilocycles.

This frequency is in very close proximity to that used by New York, Texas and Minnesota. This proximity is sometimes an inconvenience, especially at night, because of the jamming of the stations. On the other hand, there is sometimes a compensating advantage. Upon one occasion a patrolman near Southport stopped a car for speeding. The car was found to have liquor and a New York license which the patrolman desired to check. He called the Elizabethtown station, and it, in turn, called the Charleston, W. Va. station, which is the east coast center of a practically nation-wide tieup. New York broke in, said that it had heard the first broadcast, and gave prompt identification of the number.

Any message of statewide police interest is carried over all the State's stations. Matters of more local interest may be carried over only one. All the automobiles of the State Highway Patrol have receiving sets, and about half of them have transmitters also, which can be heard within a radius of about 60 miles.

Broadcasting is done by word of mouth. This means that the smaller receiving sets owned by individuals, if provided with short-wave equipment, can pick up the police broadcasts. One can picture, for instance, a rural magistrate listening to his short-wave radio and licking his chops with avidity over the cases which are likely, in the near future, to be brought before him. Each patrolman is assigned a key number, however, and there are also key numbers for certain specific situations, such as the fact that a car has been stolen. Therefore the criminal, even if he is listening in on a short-wave radio, is unable to follow the meaning of the broadcasts.

Through Charleston, W. Va., the radio of the State Highway Patrol is tied up with a broadcasting system that is almost nationwide. The broadcasting of that system is done by key, however, so that North

Carolina broadcasts must be received there and re-transmitted in code.

Eight states, New York, Pennsylvania, Delaware and five of the New England states have also a teletype system which facilitates simultaneous communication with the headquarters of each of the other states in the system without broadcasting. Perhaps in the future North Carolina will develop such a system with her neighboring states.

Use of the radio by local units

In order that the state-wide radio system may be used to its fullest advantage, counties, cities and towns are authorized to provide radio receiving sets "in the offices and vehicles of their various officers," and an expenditure for this purpose is declared to be a legal outlay of those funds which are available for police protection.

Often, also, cities and towns have local police radios, and in order that these local stations may tie in with the State system it is the practice for the local police and the State Highway Patrol to exchange receivers, that is, to place them in each other's radio stations. Thus, if a crime is committed in Durham, and the Durham police think that the criminal has fled by automobile, they will communicate with the Raleigh station, in order that it may make a state-wide broadcast which will be received by the Highway patrol; or, if a crime is committed near Fayetteville and the highway patrol want the Durham police to make a spot check they give the information to the Elizabethtown station, which broadcasts it. The Durham police pick up the report by radio, make the spot check, and give their report, by radio if important, otherwise by letter.

Telephone cut-ins

The statute also provides that the Commissioner of Motor Vehicles may arrange with the telephone companies for cut-ins on the telephone lines in cases of emergency. However, a system for the use of such cut-ins has never been worked out.

(Continued on page 17)

The Attorney General Rules

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

I. AD VALOREM TAXES

A. Matters Relating to Tax Listing and Assessing

25. Revaluation

To F. W. McGowen.

Inquiry: Will it be legal to reassess all real estate in a county for taxation for the year 1947?

(A.G.) G.S. 103-273 provides for assessment in 1941 and quadrennially thereafter. From time to time provisos have been added permitting postponement from year to year. Chapter 5, Session Laws of 1945, added a proviso to G.S. 105-278 allowing boards of county commissioners in their discretion to postpone reassessment for the years 1945 and 1946. The postponement for each county must be examined separately. If a particular county has been allowed postponement under the statute for 1945 and 1946, the revaluation could take place in 1947.

50. Listing and assessment of property

To Joe M. Cox.

Inquiry: Is a tax based upon real property not listed by the owner but listed by the tax supervisor or tax lister legal and would the judgment rendered in such an action be sustained?

(A.G.) Assuming that the tax foreclosure suit was in all other respects regular, I am of the opinion that one based on real property not listed by the true owner but listed or brought forward by the tax supervisor or tax lister would support a judgment conveying title to such property. I base this opinion on the last paragraph of Subsection 1, Section 105-331, G.S., which reads in part as follows: "When such property is so listed in the name of the owner or in the name of the person last listing the same, the listing shall be as valid in every respect as if made by the owner; provided, that such listing shall not render any person individually liable to pay the taxes who is not under a duty to list such property."

B. Matters Affecting Tax Collection

10. Penalties, interests and costs

To J. Hardie Ferguson.

Inquiry: May an ex-serviceman be charged with interest and advertising costs on city and county taxes accrued during his term of military service?

(A.G.) G.S. 105-345 as amended in Chapter 1041 of the Session Laws of 1945 covers this point: "Any member of the Armed Forces of the United States may be relieved of the payment of any charges in the form of interest or penalty on delinquent ad valorem taxes assessed against the property of said member by any county or municipality for any taxable year during service in the said armed forces; provided, this Act shall not extend beyond the duration of World War II; and provided further that said member of armed forces presents to proper tax collecting authorities a certificate of discharge from the United States Armed Forces in proof of membership therein."

33. Statute of limitations

To J. C. Ramsey.

Inquiry: Is a tax sale certificate where property is bid in by the county barred

HARRY
McMULLAN

Attorney
General
of
North
Carolina



by the ten-year statute of limitations, or may a suit by the county be brought on a sale certificate after ten years from the date of sale of property for taxes?

(A.G.) The county would not be barred from bringing an action for foreclosure of a tax sale certificate by the 10-year statute of limitations. If the action is brought under Sec. 8037, Michie's Code of 1939 and based on a tax certificate representing 1937 or prior taxes such suit would be subject to the time limitation contained therein, if pleaded affirmatively. If the action is brought under G.S. 105-391 or 105-414, there is no statute requiring that such suit be instituted within any particular time and the ten-year statute does not apply.

75. To what property lien attaches

To Robert T. Wilson.

Inquiry: Do the unpaid personal property taxes assessed against a non-resident taxpayer who no longer has personal property within the county constitute a lien upon subsequently acquired real property in the county?

(A.G.) The personal property taxes do not constitute a lien on the subsequently acquired real property under the provisions of G.S. 105-340. This Section seems to limit the lien for personal property to real property owned by the taxpayer in the taxing unit on the date of the listing of the personal property.

III. COUNTY AND CITY LICENSE OR PRIVILEGE TAXES

A. Levy of Such Taxes

2. Exemptions—veterans and soldiers

To R. W. Pender.

Inquiry: Is a veteran of the second World War required to procure a privilege license under Schedule B of the Revenue Act for operating a rolling store?

(A.G.) Subsection (f) of Section 121 of the Revenue Act provides that the Boards of County Commissioners of any county in the State may, upon proper application, exempt from the tax disabled veterans of the second World War who have been bona fide residents of this State for twelve or more months continuously. The Boards, upon exempting such persons, are required to furnish them with certificates of exemption, and such certificates entitle the holders to peddle goods within the limits of the county in which the particular exemption certificate is issued without procuring a peddler's license tax from such county, the State, or any city or town in such county. The last paragraph

of the Section prohibits counties, cities and towns from imposing a peddler's tax upon persons, firms, or corporations exempted in the Section.

IV. PUBLIC SCHOOLS

B. Powers and Duties of Counties

8. Disposal of buildings when use discontinued

To A. B. Carter.

Inquiry: Where an abandoned school has been sold as authorized by statute, what disposition should be made of the proceeds from the sale?

(A.G.) G.S. 115-86 provides that the proceeds of such a sale shall be paid to the treasurer of the county school fund. This has reference to the sale of property belonging to the county board of education and would not apply if title were in the board of trustees of a city administrative unit. Where the funds are derived from the sale of property the title to which is held by such trustees in a city administrative unit having an outstanding bonded indebtedness, the proceeds should be applied toward reducing that indebtedness.

27. Transporting teachers to school

To Clyde A. Erwin.

Inquiry: Where public school teachers are forced to reside at some distance from the schools in which they teach because of lack of adequate housing near the schools, may the county purchase and operate busses for the purpose of transporting the teachers to and from the schools in which they teach?

(A.G.) I know of no authority whereby a county may purchase busses for this purpose. I am of the opinion that a county would have to be given legislative authority before it would be justified in expending even surplus funds for this purpose.

F. School Officials

OPA CEILING PRICE ON SALES OF AUTOS BY GOVERNMENTAL AGENCIES

To George W. Tomlinson.

Inquiry: Is the ABC Board subject to OPA ceiling prices on a truck seized by ABC Enforcement Officers for violation of the prohibition laws, and which the Board is now advertising for sale?

(A.G.) It is my understanding that a ceiling price is fixed by OPA for such a sale, and if it does fix a ceiling price upon a truck sold under these circumstances, then I am of the opinion that such ceiling price is valid and binding even as to a sale by the ABC Board or any other agency of the State or local government. The Supreme Court of the United States recently decided (Case v. Bowles—U.S.—) that even State governments, in the exercise of necessary governmental functions, were subject to ceiling prices as in the case of any private person.

**HUGHES J. RHODES**

Assistant
Attorney
General

26. School committeemen—number

To R. I. Leake.

Inquiry: May a county board of education increase the membership of a local school committee after the committee has been named by the board for their term of office?

(A.G.) G.S. 115-354 requires the county board of education during the month of April or as soon thereafter as practical, biennially, to appoint a local school committee for each of the several districts in their respective counties consisting of not less than three nor more than five persons for each district, whose term of office shall be for two years. After the county board of education has once acted in naming the committee for the several school districts, I do not think that it may at some subsequent date increase the number of the committee.

VI. MISCELLANEOUS MATTERS AFFECTING COUNTIES**G. Support of the Poor****14. County home**

To Robert P. Burns.

Inquiry: May a county board of commissioners remove an unruly inmate from the County Home to the jail when he refuses to respond to any kind of discipline?

(A.G.) I know of no authority to permit this action unless the inmate is charged with some criminal offense. The extent of discipline would be to exclude him from the county home.

L. County Property**10. Disposal of property no longer used for county purposes**

To J. Ray Shute.

Inquiry: May a county sell surplus real estate at a private sale without advertisement?

(A.G.) Where sale of the land in question will not in any way interfere with the functioning of the county, G.S. 153-9, subsection (14) permits the Board of County Commissioners to sell or lease any property of the county and make deeds or leases for it to the purchaser without a public sale. The statute does not require public advertisement. This, however, does not refer to school property which is covered in G.S. 115-86.

VII. MISCELLANEOUS MATTERS AFFECTING CITIES**F. Contractual Powers****15. Requirement for competitive bids**

To J. R. Benson.

Inquiry: May a city, after advertising for bids, consider the quality of the product which the bidder offers, or is it compelled to award the contract to the lowest bidder?

(A.G.) I am of the opinion that the city is not compelled to award the contract to the person or firm making the lowest bid in dollars and cents without considering the quality of the product offered by such bidder. According to G.S. 143-129, "All proposals shall be opened in public and

shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder, taking into consideration the quality and the time specified in the proposals for the performance of the contract."

N. Police Power**15. Regulation of taxicabs**

To E. R. Keeter.

Inquiry: May a town require resident taxicab operators to purchase a city auto license for \$1.00 as a registration fee after they have paid the required \$15.00 privilege license?

(A.G.) Section 20-97 of the General Statutes provides "that cities and towns may levy not more than one dollar (\$1.00) per year upon any such vehicle resident therein: Provided, however, that cities and towns may levy, in addition to the one dollar (\$1.00) per year herein set forth, a sum not to exceed fifteen dollars (\$15.00) per year upon each vehicle operated in such city or town as a taxicab." The total authorized tax of this type is \$16.00 per automobile.

To Paul Swanson.

(A.G.) This office has ruled that municipalities are not authorized to issue exclusive franchises to operate taxicabs therein. G.S. 160-200 provides that the governing board of the municipality is authorized to issue franchises to taxicab operators on such terms as it deems advisable. But Section 1 of Chapter 564 of the Session Laws of 1945 provides that no State license to operate a taxicab shall issue

**FRANK P. SPRUILL**

Assistant
Attorney
General

until the municipal corporation in which the taxicab is to be operated, if the operation is in an incorporated town, has issued a certificate showing that the convenience and necessity of the public requires the operation of such taxicab. This Section impliedly grants to municipal corporations the authority to refuse to issue franchises to taxicab operators when the public convenience and necessity does not require the operation of such a cab.

20. Regulation of trades and businesses

To Garland S. Garriss.

Inquiry: Is a town ordinance valid which forbids peddlers or transient vendors from entering upon private property for the purpose of selling their goods without a request to do so?

(A.G.) If the ordinance is now in effect, I am of the opinion that it should be treated as constitutional and valid until declared unconstitutional by a court of competent jurisdiction. *Bickett v. Tax Commission*, 177 N.C. 433.

VIII. MATTERS AFFECTING CHIEFLY PARTICULAR LOCAL OFFICIALS**A. County Commissioners****31. Appointive power**

To Charles C. McNeill.

Inquiry: May the Board of County Commissioners increase the number of clerical

assistants in the offices of the county officials because of the increased work during recent months?

(A.G.) I would say that the Board of County Commissioners, in its appropriation to carry on the functions of the several county departments, may make provision to provide the necessary clerical help in such departments and to fix the compensation of such employees, if there is no public-local or private act to the contrary.

B. Clerks of the Superior Court**1. Salary and fees**

To J. P. Shore.

Inquiry: Is the Clerk of Court entitled to a fee for making up and forwarding records of convictions to the Department of Motor Vehicles as required by G.S. 20-24, Subsections (a) and (b)?

(A.G.) There is no provision in the Motor Vehicle Law providing for payment of such a fee, nor does G.S. 2-26 covering fees of the Clerk provide for its collection. The provision for such a fee in the 1927 Motor Vehicle Law, Section 2621 (105), North Carolina Code, Annotated, Michie, 1931, was apparently superseded by the 1935 Motor Vehicle Act which omits the provision.

79. Decedent's estates

(A.G.) G.S. 55-117 provides that a corporation created by another State of the United States or by any foreign State, Kingdom or Government is not eligible or entitled to qualify in this State as executor, administrator, guardian or trustee under the will of any person domiciled in this State at the time of his death. Sections 58-13 through 58-118, providing that corporations licensed by the Commissioner of Insurance could qualify as executors, guardians, etc. were repealed by Section 2 of Chapter 743 of the Session Laws of 1945.

90. Juvenile court duties

To Mamie Dowd Walker.

Inquiry: May a complaint in a juvenile court be treated as confidential?

(A.G.) The type of complaint or petition to be used by juvenile courts is prescribed by statute, and the court must keep records of all cases brought before it. While such records may be withheld from indiscriminate public inspection, they should be open to parents, guardians or other authorized representatives of the child concerned. If the form of complaint used has been developed by the court, it cannot be kept confidential, nor may the persons making complaint remain anonymous since they constitute court records. If, however, the form is a mere method by which to obtain information analogous to a letter from a neighbor, and as a result of this complaint proceedings are instituted, then this form need not be made a public record. Thus as a source of information a complaint may be treated as confidential, but it cannot be used as a substitute for a petition authorized by statute.

106. Name changes

To W. H. Young.

Inquiry: May a married woman, whose husband obtained a divorce outside of the State when she has been and still is a resident of the same county, apply to the Clerk and have her name changed just as if the divorce was granted in this State?

(A.G.) In my opinion, G.S. 50-12 may be used only when a divorce has been granted in this State, as the petition which

is to be filed under this section provides that the name of the county in which the divorce was granted shall be set out. In requiring this information, it seems that the General Assembly has evidenced an intention that the provisions of this section are to apply only to a change of name following a divorce granted in this State.

I am of the opinion that the person should petition for a change of name under Chapter 101 of the General Statutes. This chapter, as amended by Chapter 37 of the Session Laws of 1945, would apply in this case.

D. Register of Deeds

9. Marriage—licenses and certificates

To R. G. Brooks.

Inquiry: Where a marriage license has been lost after the ceremony has been performed and before the minister has returned it to the Register of Deeds, how can the Register of Deeds furnish a certified copy of the license?

(A.G.) Inasmuch as the license has not been filed with the Register of Deeds there is no method by which he can furnish a certified copy. The only manner which I know of by which this record could be perpetuated would be a proceeding under Chapter 98 of the General Statutes, which authorizes the perpetuation in the manner prescribed of any instrument or writing required to be recorded or registered but not having been recorded or registered.

To C. C. Duke.

Inquiry: Where an applicant for a marriage license has taken the Rapid Treatment for syphilis and has been certified as cured, must the Register of Deeds require the applicant to wait one year before issuing the license as required by G.S. 51-10?

(A.G.) G.S. 51-10 was rewritten by Chapter 577, Session Laws of 1945, repealing the entire Section as enacted in 1939. As rewritten the statute provides that when the applicant has completed treatment and is certified by a licensed physician as having been cured or probated, and when the physician has certified that he has informed both the applicant and the future marital partner of any possible future infectivity of the applicant, there is no stated period for the length of the treatment. All that is required is that a regularly licensed physician furnish the certificate as required.

L. Local Law Enforcement Officers

26. Prohibition law—beer

To W. E. Williams.

Inquiry: Is a municipal ordinance prohibiting the issuance of a beer or wine license to a person who has not been a bona fide resident of the town for twelve months prior to the filing of the application for such license valid?

(A.G.) The necessary qualifications for an applicant to receive a license for the sale of beer and wine are set out in G.S. 18-75. Paragraph 6, therein, prohibits issuance of such a license to any applicant who has not been a bona fide resident of the state for one year. There is no municipality residence requirement. G.S. 18-77 requires a municipality to grant such a license to any person meeting the quali-

fication of G.S. 18-75. I do not think the courts would uphold the ordinance in question.

RALPH MOODY

Assistant
Attorney
General



XIII. STATE INSTITUTIONS

C. State Educational Institutions

7. Residence for tuition purposes

To F. D. Duncan.

Inquiry: Does a person in military service stationed at a regular army, navy or marine base within the State thereby establish such residence as would exempt him from paying out-of-state tuition when he later enrolls in a State institution without benefit of the G. I. Bill of Rights?

J. E. TUCKER

Assistant
Attorney
General



PERSONS HOLDING OTHER OFFICES AS ELECTION OFFICIALS

As the time for holding the primary election approaches, many inquiries are being received by the Attorney General as to what persons are eligible to serve as local election officials. In addition to the Constitutional prohibition against double office holding (Section 7, Article XIV), there is a special statute prohibiting persons holding other office from serving as election officials; G.S. 163-15 provides that no persons holding any office or place of trust or profit under the government of the United States or of the State of North Carolina or of any of the political subdivisions thereof, except justices of the peace, shall be eligible to appointment as election officials (i.e., registrars and judges of elections). In response to these inquiries the Attorney General has ruled that a deputy sheriff, a notary public, a tax lister, and a school committeeman may not serve as an election official. He has ruled that acting as a member of a political party precinct committee is not holding an office and such a person could serve, and that the same election officials may conduct the election for both the county and State primary and the city primary.

(A.G.) Residence in such a case should be determined by the same rules as are used in divorce cases. There should be not only the intention to be a resident of the state, but there should be independent or a separate establishment or household as evidence of that residence which exists off the military reservation.

State Highway Patrol

(Continued from page 14)

ASSIGNMENT OF A MEMBER OF THE HIGHWAY PATROL TO THE GOVERNOR'S OFFICE

Under the statute it is the duty of the commissioner to assign one member of the highway patrol to the office of the Governor at his request, "there to be assigned such duties and perform such services as the governor may direct."

This member of the highway patrol is paid out of the funds made available to the Governor's office, and his salary is fixed by the Governor and the Advisory Budget Commission.

As a matter of history, the man who drove the Governor's car was inducted into the State Highway Patrol and was in turn assigned to the Governor's office, where he continued to perform his former duties and such others as might be assigned to him by the Governor. He does not make his reports to the State Highway Patrol and is under the sole direction of the Governor. From time to time, however, other members of the State Highway Patrol have been assigned to the Governor's office in substitution for him.

EXPENSES

With the foregoing exception, all expenses for the operation of the State Highway Patrol are paid out of the maintenance funds of the State Highway and Public Works Commission.

DISPOSITION OF FEES

All fees that may be taxed in the bill of costs of any of the courts of the State on account of the official acts of the members of the patrol are remitted to the general fund of the county in which the costs are taxed.

GOVERNMENTAL LABORATORY BUILDING

INSTITUTE OF GOVERNMENT



INSTITUTE OF GOVERNMENT SERVICES

