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Shrimp Boats in Pamlico Sound

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THE COVER

Shrimping is a vital segment of North Carolina's fishing industry. These boats are typical of the numbers which ply the waters off our coasts. Last year the shrimp catch was 4,376,000 pounds, and it constituted a good portion of the $12,000,000 annual take attributed to Commercial Fisheries. (Photograph through the courtesy of the North Carolina News Bureau.)

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THE CLEARINGHOUSE

A summary of events of particular interest to city, county and state officials

Election Mechanics and Costs

The mechanics and costs of registration, voting, and tabulating votes have caused headaches all over North Carolina this year. In line with the nation-wide campaign to increase registrations, the Guilford County Board of Elections has increased the registration period in that county from three to six weeks before the General Election. While registrars will not be required to appear at the polling places until the regular date, October 11, they have been available for registration at their homes since September 13.

In most places the general feeling is that smaller precincts and more of them should make it easier for the voter to vote, easier for the officials to regulate the election and tabulate the results, and,in the minds of some, easier to pick officials capable of handling the precinct work. Since the May primary **Mecklenburg, Stanly,** and perhaps other county election boards have increased their number of precincts. Where voting machines have been tried, however, this tendency may be reversed. High Point owns fifteen voting machines, one per precinct. The voting populations of the precincts run from a low of 297 to a high of more than 1,200. A proposal has been made there that only four voting places be used in the future, one for each city ward. Under this plan the machines could be grouped according to need in convenient buildings, facilitating the tabulation work as well as eliminating some of the waiting in line required in the larger precincts under the present system.

Incrasing the number of precincts, unfortunately, brings with it an automatic increase in the costs of elections. More precinct officials must be hired; more supplies are needed. The whole problem of election costs is one that few counties have analyzed with much care. One thing is certain: The cost of an election in which few voters participate is practically as expensive as one in which great numbers participate. The second primary last June cost Durham County $3,404.48; a recent Harnett County bond election in which only 2,182 persons voted cost the county approximately $1,500 —about 70c per voter. Ballot costs were not included in this Harnett figure, but to illustrate the waste resulting from failure to vote, it is significant that in one precinct 500 ballots were ready for use and less than 150 people showed up to use them. Minimum pay figures for precinct officials are set by the state statutes, but a number of counties have adopted higher scales. The need for competent and trustworthy election officials is obvious, and in many places the fees paid will not attract the best qualified individuals. While protests about the high costs of elections are heard all over the state an almost equal number of protests tell of the large amount of work required of all election officials and the small sums paid for their services. The **Charlotte News** sees voting machines as a possible solution to this dilemma: "Electric voting requires less attendant personnel at elections, thus makes for a decreased payroll, or greater payment per individual."

The public today demands quick tabulation of election results; the North Carolina statutes, framed in a day of slower communications, envision a more leisurely process. In most counties energetic newspapers and radio stations have pressed precinct and county election officials for returns as quickly as possible after the polls have closed. Completion of tabulations on election night and communication of returns to a central agency can become an expensive proposition. In at least two counties after the last primary the matter came to a head. One was solved by the local newspaper's agreeing to pay the cost of a special telephone line to its office; in another the matter is not yet settled. The more populous the county, the more expensive and more serious the problem.

Calendar of Events

Notice will be given in this calendar of meetings which should be of interest to city, county and state officials. Information regarding such meetings should be sent to *Popular Government*, Box 990, Chapel Hill, N. C. for inclusion in this column.

National Conference on Government.
November 17-19, 1952.
Sponsored by the National Municipal League at San Antonio, Texas.

American Municipal Association
December 1-3, 1952.
Los Angeles, California

Tighter Assistance Requirements Help Multiply Appeals

In six years the number of appeals heard by the State Board of Allotments and Appeals has increased almost 1000% (from 14 in 1945-1946 to 138 in 1950-1951) according to a report issued by the State Board of Public Welfare. The Welfare Board gives as the primary reason for the rise the adoption of more stringent policies with regard to property and income in the home. The right to appeal to the three-man Appeals Board belongs under the statutes to every applicant for public assistance whose application is denied by a county board of public welfare and to every recipient of assistance whose grant has been modified or terminated.

The State Welfare Board's statistics support its contention: "Property of the appellant was the issue causing the request for appeal in three cases in 1945-46; in 1950-51 this was the issue in 47 cases. Income or property in the family resulting in ineligibility for assistance contributed to dissatisfaction and a resulting appeal request in five situations in 1945-46, in 50 in 1950-51."

Mecklenburg Press Joins Delinquency Fight

Recent stories in the **Mecklenburg Times** indicate a public-spirited campaign on the part of that newspaper to educate its readers in the causes and effective treatment of juvenile delinquncy. Concurrently, the **Charlotte Observer** is conducting television programs on the problem.

Contributors to the **Times** series have been W. I. Gatling, judge of the Domestic Relations and Juvenile Court of Mecklenburg and the City

of Charlotte; Wallace Kuralt, Superintendent, Mecklenburg County Welfare Department; Stanhope Lineberry, Chief, Mecklenburg Rural Police; Neal Forney, Crime Prevention Bureau, Charlotte Police Department. Each of these men comes in contact regularly with delinquents in the county and each sees the problem in a little different light; nevertheless, all with varying degrees of emphasis stated that the primary cause of the child's social maladjustment rested in the home. Mr. Kuralt stressed the relativity of "delinquency," at the same time refuting the notion that there is a growing moral relaxation producing increasingly grim child-crime statistics.

Child-Jailing on Decrease but Remains Prevalent

Confinement of children in jail, often contrary to state law, though decreasing, continues. Children over fourteen charged with committing felones may be held in jail (1) if the punishment after conviction may be confinement of ten years in the State penitentiary, or (2) if, regardless of the possible sentence, the case is held over for Superior Court trial. These are apparently the only legitimate occasions for jailing of children. State Welfare Department figures indicate that between July 1, 1951, and June 30, 1952, 248 children under 16 years of age were held in 55 county jails in North Carolina. While no statistics were released indicating how many of these jailings were illegal (conceivably they are incapable of computation), the Department has reported that few of the children held in jail were eventually committed to correctional schools or to prison. Lack of adequate facilities rather than overzealousness on the part of jailers would seem to lie behind most of the illegal confinements.

Institute Training Enters New Field

New methods of crime reporting by law enforcement agencies and careful statistical analysis of the reports compiled have revealed a weak spot in the handling of criminal investigation by many departments . This weak spot is in the field of arson and other unlawful burnings. North Carolina has been no exception in this nation-wide pattern. To meet this specific need, the Institute of Government is conducting a SCHOOL FOR ARSON INVESTIGATORS, PRIMARY COURSE, at Chapel Hill from November 5 to 8. This school initiates a new series of training courses to be offered to law enforcement officers in this state. It will be followed by secondary and advanced courses.

Although all of the training which the officers will recieve at this school is designed to add to their general efficiency, there are certain subjects which are directly aimed at the unique problems presented in solving cases of unlawful burnings. These are: "The Law of Arson in North Carolina" to be taught by Richard A. Myren, Assistant Director of the Institute of Government; "Motives for Arson" to be taught by H.H. Moore, Manager of the Raleigh Office of the General Adjustment Bureau; "Automobile Fires," a training film and lecture to be presented by J. H. Clark, Assistant Manager of the Southern Division of the National Automobile Theft Bureau; "Arson Detection by Firemen" presented by Captain Harold Gibson, Winston-Salem Fire Department; "Causes of Fire" by Captain Fred Trulove, Greensboro Fire Department; "Fraud Fires" taught by C. C. Duncan, Investigator, North Carolina Insurance Department; and "What the Solicitor Wants from the Arson Investigator" to be discussed by Basil L. Whitener, Solicitor from the 14th Judicial District. To give relief from the rigorous schedule of classes and at the same time add to the value of the school, a Hollywood movie, "Arson, Inc." based on the files of an actual police case, has been booked for presentation at one of the evening sessions.

Of more direct general application are the following subjects to be offered: "Scientific Aids and Preservation of Evidence" taught by Richard W. Turkelson, Assistant Director, State Bureau of Investigation; "Rules of Evidence For Investigators" by Richard A. Myren; "Expansion of the Investigation" by Lewis E. Williams, Special Agent, State Bureau of Investigation; "Cooperation and Coordination" by Charles W. Lewis, Investigation Division, North Carolina Insurance Department; "Interrogation Techniques" by Richard W. Turkelson, and "Courtroom Procedure" by Richard A. Myren.

Attendance at the school is restricted to law enforcement officers and firemen except for a limited number of special investigators. The investigators attending, who will be quartered in the training barracks of the Institute of Government, will report to the Institute for registration prior to the initial meeting at 1:30 on Wednesday, November 5, 1952. A room charge of one dollar per night per man will be made to cover janitor and linen expense. This three dollar fee will be payable at registration. Meals will be available at reasonable rates at the University cafeteria in Lenoir Hall on the campus. Advance registration is possible by writing to Richard A. Myren, Assistant Director, Institute of Government, Chapel Hill.

Wake County Authorizes Job Classification Study

The Wake County Commissioners have asked the Employment Security Commission to conduct a job classification survey of the government of Wake County. All positions but those in the health and welfare department which are under the classification plan of the State Merit System Council will be included in the survey.

The purpose of the survey will be to determine the exact duties and responsibilities of each position in order that "equal pay may be given for equal work." The survey like all other classification studies is not concerned with the individual employee's qualification or ability, but only the duties and responsibilities of each position. After the positions have been carefully studied, the survey will provide for (1) a detailed description of the duties to be performed by each employee, (2) a grouping of all positions involving similar duties and responsibilities together under the same descriptive title, and (3) arranging the groups of positions in an orderly fashion with respect to each other.

This arrangement of all positions into groups requiring similar duties and responsibilities will enable a pay plan to be developed on an objective basis with a salary assigned to the job rather than to the individual.

Wake County is the third county in North Carolina to authorize a job classification study. Guilford County is now following the classification plan prepared by A. M. Pullen & Company in 1950. Forsyth County is now under contract to have the

duties and responsibilities of their employees studied by the Public Administration Service of Chicago, Illinois.

Although the Wake County survey is the first survey to be promised by the industrial relations section of the Employment Security Commission, they have completed similar studies for five North Carolina municipalities. During 1951, surveys were prepared for Burlington, Rocky Mount, and New Bern. This year surveys have been completed for both Gastonia and Raleigh. The survey for Raleigh was completed on September 15.

Four North Carolina cities have realized the advantages of position classification surveys for a number of years. The first classification survey made in the state was by the Public Administration Service in Greensboro in 1939. High Point had a similar survey by the same agency in 1940. A position classification plan was prepared for Durham in 1942 by Kent Mathewson while he was an assistant to the city manager. The Greensboro plan was revised twice after the war as the result of surveys under the direction of the local personnel supervisor. Following the recommendations of Mayor Frazier's special advisory committee headed by Mr. Robert F. Moseley, Greensboro has engaged the Public Administration Service to study and report on the administrative organization and procedures of the City of Greensboro. A part of this larger study will be a revision of the existing position classification plan.

Salaries of County Employees

"County Salary Determination and Administration" is the title of a study by Donald Hayman, Assistant Director of the Institute of Government which will soon be available for distribution. Prepared as a special report for use of county governing boards and members of the General Assembly, it will describe the various methods used to set the salaries of county officials in North Carolina and discuss the advantages and disadvantages of each method. The report will also contain a comparison of salaries paid county officials as well as tables setting forth the salaries of all the principal county officials in every county in North Carolina.

Copies of the study will be sent to the members of the General Assembly, county commissioners, and the principal county officials of each county. Other citizens may obtain copies by requesting them from the Institute of Government, Box 990, Chapel Hill, N.C.

Notes . . . On North Carolina Personnel

Job Classification in Charlotte Five-Day Week

In **Charlotte** the Chamber of Commerce tax study committee appeared before the City Council and requested that a competent firm be employed to make a job classification study of city government. Their request seems to have been prejudiced by an accompanying suggestion that the results of the survey be used as a guide in amending the local charter to establish permanent rates of pay within maximum and minimum limits for department heads. Such an amendment would reduce the authority of the Council and prevent the Council from lowering or raising the salaries beyond the established limits without obtaining the permission of the General Assembly.

The recommendations of the tax study committee were received but not acted upon. Some members of the Council feel that relinquishing their power to determine salaries would mean an abdication of local responsibility for self government and an unnecessary increase in the quantity of local legislation which already troubles the General Assembly.

Five-Day Week

The North Carolina State Highway Commission on September 18 announced that effective October, all highway and prison department workers will work only five days a week. Under the new plan, highway maintenance workers and prison department employees will work a 50-hour week in five days instead of a 55-hour week in five and one-half days. They will work from 7 A.M. until 6 P.M. with one hour off for lunch.

State officials and workers in Raleigh, including the Highway Commission's headquarters personnel, went on a five-day work schedule on January 1, 1950. This policy was not extended to the field for fear of delaying the $200,000,000 rural road bond program. Now that the road bond program is nearing completion, the Highway Commission had approved a 5-day work week for their 13,400 field employees. In announcing the change, Department officials stressed that all full-time employees were subject to emergency call or special work whenever necessary.

Prisoners assigned to highway details will not work the roads on Saturday unless needed since maintenance workers will not be on duty except in cases of emergency. Prison Director Walter Anderson said prison farms will continue to work on Saturday mornings and prisoners will be kept busy around the camps or assembled for supervised training under the Prison Department's new rehabilitation program.

Charlotte Studies 40-Hour Work Week for All Employees

Charlotte City Manager Henry A. Yancey has asked department heads for information concerning the number of municipal employees working more than 40 hours a week. The information obtained will be used to determine the number of additional employees that would be required to provide present service and the cost of the additional employees if all employees were placed on a 40-hour work week.

Most Charlotte employees went on a five-day, 40-hour work week on December 17, 1949. Prior to that time they worked 39 ½ hours, on a 5 ½ day work schedule.

County Salary Plan Saves Money

According to the September 8th issue of the Roxboro Courier-Times, the abandonment of the fee system for paying three **Person County** departments has saved Person County $5,521 during this past fiscal year. The savings were reported by County Auditor Carlyle Brooks and confirmed by Arthur Knight, certified public accountant, after examining the financial reports covering Person County's first full year under the salary system for its three top public offices.

For many years prior to 1951 the Clerk of Superior Court and the Register of Deeds in Person County had been compensated from the fees received through their offices. The sheriff and his employees had been paid from a percentage of his tax collections. This was changed in 1951 by

the General Assembly which placed all three on a salary basis.

The 1951 act also provided for the separation of the sheriff's office and the tax office and the appointment of a full-time collector. This enabled the sheriff to devote full time to law enforcement duties and the tax collector was able to spend some of his time collecting delinquent taxes. A breakdown of the savings reveals three principal sources: First, an increase in revenue over expenses; second, an increase in the collection of delinquent taxes; third, the saving of clerk fees from Recorder's Court fines.

Person County is not alone in its abandonment of the fee system. Under the rural conditions of North Carolina during the 18th and 19th centuries, the fee system worked well. It was certainly the most economical system for sparsely settled counties where life was simple, property values small, and courthouse business meager. The following arguments were then advanced on behalf of the fee system. (1) The financial burden was borne by those benefited. (2) Property taxes were left free to support other county functions. (3) Officials were stimulated to exercise greater initiative and diligence. (4) Prompt service and greater efficiency were encouraged.

As population and business increased, receipts and expenditures did also. The reports of scandals in certain northern states in 1900 focused attention upon the fee system in all states. The examination of the fee system revealed that it provided some officials with exorbitant incomes and that the remitting of the fees was used as a political weapon. The arguments which are today used against fees are as follows: (1) Fees do not insure income commensurate with duties—if too low, competent candidates may not run for office; if too high, exorbitant incomes result. (2) Fees promote a philosophy that public office is a vested right or a private sinecure instead of a public trust. (3) Political favoritism and the remittance of fees are encouraged.

Since the first decade of this century, the number of officials on a fee system in North Carolina has declined steadily. In 1951 only 9 counties still had the three principal county officials—clerk, register of deeds, and sheriff—on a fee system. Only 38 counties had one or more of the three officials on a fee basis. Since 1951 **Person** and **Sampson** counties have abandoned the fee system and **Mitchell** and **Cherokee** have reduced their use of it.

Forsyth Deputy Clerks Get Pay Boost

Citing the loss of 17 deputies and assistants as their chief reason, the County Commissioners of **Forsyth** gave employees of the Clerk of Superior Court's office salary raises totalling $4,717.50. One of the commissioners explained: "That office has become a training school. The loss of key employees and the expense of training their replacements has cost the county a tremendous amount of money in recent years. These pay raises are a move toward reducing that greater expense."

Clerk W. E. Church had requested the increases, and had shown the increased volume of work in his office as additional reasons therefore. He announced that in 1951, 25,811 papers were probated in the office, and that in the first 8 months of this year 18,911 had been probated. Also in the first 8 months of this year a total of $527,861.69 had been paid into his office for investigation, certification, and disbursement.

Salary Increases

Reports from **Wilmington** reveal that all Wilmington city employeee have received a $5 a month salary increase effective the first of this fiscal year. **Lenoir County** employees received a $10 monthly raise. A few Merit system employees received slightly larger increases. **Chapel Hill** employees will receive approximately 5 per cent more as the result of a general increase effective July 1.

N. C. Highway Employees Meet

The North Carolina State Highway Employees Association held its seventh annual convention in Winston-Salem on September 11-12. Principal speakers included Dr. Henry W. Jordon, chairman of the State Highway and Public Works Commission, Governor W. Kerr Scott, and William B. Umstead.

During the business session the asssociation adopted the following resolutions: (1) A 10 per cent or greater salary increase for all highway employees retroactive to July 1, 1952. (2) A work week of five 10-hour days rather than five 9-hour days and one 5-hour day. (See article "Five Day Week" above) (3) Raise employees from the minimum to the maximum of their salary classification in a five-year period. (4) Place long-term "temporary" employees on a permanent status. (5) Review personnel classifications in the sign department to see if they are in line with other comparable positions in the highway divisions. (6) Eliminate rent payments by highway employees quartered in state-owned houses because rent is not paid by certain other State employees. (7) Establish a definite pay period so employees will receive their checks on the same day of each month. (8) Appoint a personnel director for the Highway Commission.

N. C. State Employees Association Holds Convention

Worth G. Giles of Morganton was elected president of the N.C. State Employees Association at their fourth annual convention held in Charlotte on September 5-6. Giles, an auditor for the Revenue Department, succeeded Sergeant H. C. Johnson of Winston-Salem. Captain A. W. Welch, Greensboro, was elected vice president and Josephine R. Thomas, Raleigh, was reelected secretary-treasurer. Principal speakers appearing before the convention were J.S. Vincent, vice-president of the Pilot Life Insurance Company, John W. McDevitt, director of the North Carolina State Personnel Department, and William B. Umstead, Democratic nominee for governor.

State School Board Association Convention

The fifteenth annual convention and first work conference of the North Carolina State School Board Association was held in Chapel Hill on September 12-13. Principal speakers were State Superentendent of Education Charles F. Carroll, Luther Hodges, Democratic nominee for Lieutenant Governor, Guy B. Phillips, dean of the School of Education of the University of North Carolina, William B. Umstead, Democratic nominee for Governor, and Amos Abrams, editor of **North Carolina Education.** Mr. C. W. McCrary, President of the State School Board Association, presided over the convention.

Not only was this the first two-day convention that the association had ever held, but it was the first time that group discussions were held to consider topics of interest to the members of the county boards of education, the city boards of trustees, and the local school committees. At the Saturday morning session those attending had an opportunity to participate in group discussions of their problems.

Notes . . .

From North Carolina Cities

Bond Issues

Bladenboro voters have approved a $40,000 bond issue, $25,000 of which is to be spent improving the water system and $15,000 on the sewerage system.

Durham's Council has ordered the issuance of $3,495,000 of bonds approved by the voters in 1951. The largest portion of this amount, $1,715,000, will be spent on improvments to the city water system, with the remainder being divided between street improvements, sidewalks, curbs and gutters, cemetery improvements, and improvements to the sewerage system. $2,925,000 more has been approved by the voters but not yet issued.

Louisburg's commissioners plan to call an election on three bond issues for (a) paving, curbing, and gutters, (b) constructing a mixing and settling basin for the water plant, and (c) establishing a sanitary landfill garbage disposal system.

Kinston voters will pass upon four bond issues totaling $1,750,000 at an election on October 14.

The **Louisburg** Town Board has ordered its department to stop answering outside fire calls on September 15. The town will negotiate fire-protection contracts with individuals and groups who are interested in such protection.

Permanent Improvements

Hertford has formally opened its municipal building. The building, eercted at a cost of $25,000, contains a large office for the Town Clerk, public and private offices for the Police Department, and a large room for Town Board meetings. **Greenville** is remodeling its fire sub-station, at a cost of between $10,000 and $12,000.

High Point's City Council, acting on recommendations of the City Manager and Planning Director, has decided to construct new court facilities and a municipal library, rather than undertake construction of an entire new Civic Center.

During the past year **Wilson** has completed a municipal power plant expansion, constructed an additional fire station, and enlarged its water main and storm sewer systems. By the end of the present fiscal year it expects to complete a new city lot and maintenance garage, install two-way radios on its utilities trucks, and expand and improve its water filter plant.

Durham's City Council has adopted a priority list of streets for resurfacing and other improvements.

Charlotte is working on a $375,000 street improvement program. An additional $741,000 of authorized street improvement bonds is available for work later this year.

Raleigh has been asked to lease 50 acres of city-owned farm land for construction of a large wholesale farmers' market.

Planning and Zoning

The **Dunn** City Council is considering the establishment of a Town Planning Board. . . . **Southport** has been holding public hearings on a proposed zoning ordinance. . . . The **Durham** zoning ordinance has been amended to provide that any multi-family apartment building containing three or more dwelling units whose main netrance is on a side lot line or side street line must provide side yards of not less than 25 feet on that side and on the opposite side of the building.

Housing and Redevelopment

Many City Councils have been busy with public hearings as the deadline of September 30 for requesting extension of rent controls approached. In **Durham** this task was eased somewhat by two surveys. The first, conducted by local representatives of the U. S. Bureau of the Census and the Office of Rent Stabilization, was designed to assist the Council by providing it with facts concerning the local housing situation. The second was conducted by the federal Housing and Home Finance Agency to determine whether the Durham area should be declared a "critical defense area" with respect to housing and rent control. The State Department of Labor made a survey in **Southport** preparatory to applying for designation as a critical defense area.

Winston-Salem has stepped up enforcement of its minimum housing standards ordinance with the addition of another man to the enforcement staff. According to the 1950 housing census, there were approximately 9,600 substandard dwelling units in the city. During the past year 285 of these were brought up to standard, while 250 more were demolished. The enforcement program is being coordinated with the work of the Redevelopment Commission. The Building Inspector's office has made an intensive study of an area in East Winston, with a view to its being selected as the first site for redevelopment.

Wilmington's City Council has been considering adoption of a minimum housing code. The code is patterned after the Charlotte code, with some sections of the Norfolk code added.

Traffic and Parking

The **Wilmington** City Council has given tentative approval to the expenditure of $100,000 for off-street parking space in the downtown business district.

Beaufort's commissioners have approved plans of the Town Planning Board for easing the traffic situation by making a part of Queen Street one-way and by prohibiting parking along certain other streets.

Charlotte is considering the establishment of taxi stands at 10 points in the downtown business district.

Modern Accounting Installation

Over the past several years Albemarle has completely modernized its accounting set-up. An addressing machine is used to address water and light bills and tax notices. A utility billing machine computes the water and light bills and prints the amount due on the bill. An accounting machine with typewriter keyboard keeps the books of account, recording on each expenditure ledger card the appropriation, amount expended, and unexpended balance. This information expedites the preparation of monthly reports to the city council. Two collection control machines have been recently installed, which accumulate totals during the day of all revenue received and the amount received from each source. In addition, two automatic cashier machines for making change and a calculating machine have been installed.

The total expenditure for the new equipment came to around $13,500, but 5 employees are now doing more work than was formerly done by 8 people under the manual system. And city officials are convinced that they have the most modern and completely mechanized accounting department in the State.

Acquisition of Property

Raleigh has adopted a new method of acquiring property. Under the new method, the city will initially take an

option on desired property for a price acceptable to the property owner, the option not being binding upon the city. A report will then be made to the City Council, which may order an appraisal if the price seems too high. Otherwise the option will be taken up. The real estate agent will be paid a percentage of the sale price, but will receive no fee if the sale is not completed.

Th plan was adopted as a result of a number of instances in which the price of property was sharply increased between the time the property owner was initially contacted and the action of the City Council in selecting the property for purchase.

Administrative Assistant

Wilmington is adding an administrative assistant to relieve City Manager James R. Benson of routine duties. The assistant will act to clear complaints, handle requests for service, serve as a liaison man between the city manager and his department heads, study operations of the various departments, and assist in public relations.

Federal Aid to Airports

A total of $202,582 in federal funds from the Federal-Aid Airport Program has been allotted to three North Carolina airports. The **Charlotte** Municipal Airport will receive $157,582; the **Greensboro-High Point** Airport, $30,000; and **New Bern's** Simmons-Mott Airport, $15,000. The funds will be matched locally.

Municipal Codes

Zebulon has accepted a codification of its ordinances by a local attorney, the job having last been done in 1939. **Wilson** has approved a revised code of ordinances to replace its 1940 code. The new code, to be published by a Virginia law publishing firm, cost $4,000.

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Notes ... From North Carolina Counties

Valuations and Revaluations

The big property tax news of the late summer was the State Board of Assessment's announcement of marked increases in the public utility assessments, a total increase of more than $23 million over last year's figures. Mr. J.C. Bethune, Secretary of the State Board, explained the increases as the normal result of large-scale expansion programs recently undertaken by the telephone and power companies. Railroads and telegraph company assessments saw slight reductions. This should be welcome news for county and municipal governments, especially those still struggling with long outdated valuations on property assessed locally. The revaluation movement has shown some signs of spreading this year. **Cleveland, Guilford, Forsyth, Lenoir, Montgomery, Richmond, Orange, Halifax, Northampton,** and several other counties are now engaged in revaluations or else are thinking seriously about starting revaluations in 1953. From newspapers in counties not yet decided on whether to revalue have come comments describing the unhealthy situation caused by long delays in this essential tax operation. A rural editor writes that ". . . changing conditions have greatly altered values of real estate in the county. Land that formerly sold for $25 an acre and which was then valued at $10 is now selling for $75 an acre and still valued at $10 an acre. . . . We saw land valued at $2700 from which the timber alone sold for $41,000.00 in a fairly recent transaction. . . . O nthe other hand, we find some over-valued by any fair comparison; many new homes are on the tax books at too high a rate although many of these are ridiculously low. We find one man listing his property for 10 per cent less of its value and another listing his at 50 per cent of its value, and we find owners of motor vehicles required to list these at practically their full value....." A city editor writes, "It has been pointed out that some property recently subdivided is appraised at less than 30 per cent of its sales value, while other whole neighborhoods, which in the past had high business value but have since depreciated, remain on the assessment books at taxable values greater than 70 per cent of their present market value."

What these editors report is common knowledge among local officials and individuals intimately concerned with real estate transactions, but often the general public has little or no understanding either of the facts of assessment inequity or of the methods necessary to eliminate them. One North Carolina editor recently showed considerable interest in a device used in Berwick, Maine. After a revaluation there "a small 20-page booklet listing the names of all the taxpayers and the appraisal put on their property was published. And a copy of this booklet was included with every tax notice. . . . The point we want to make is that every taxpayer knows the values which have been placed on all other property in the city, and we can be certain that no serious injustices have been done." This same editor speculates on the disturbance such a publication might cause in his county today; that speculation might well be broadened to include the effect in any North Carolina county.

Planning and Zoning

The **Mecklenburg County** Planning Board has elected officers and begun operations. First item on the agenda is a study of county problems, preparatory to asking the 1953 General Assembly for authority to make and enforce regulations of property in the county.

Durham County's proposed zoning ordinance, authorized by chapter 1043 of the 1949 Session Laws, will be the subject of a public hearing on October 6 called by County Commissioners. The county Zoning Commission spent two and one-half years preparing and holding hearings on the proposal.

Rural Fire Protection

The State Insurance Department has been making a county-by-county survey of rural fire protection measures. Among the developments in this field during the summer and early fall were the following:

New Hanover County abolished its county fire department and established a $5,000 fund with which to aid local volunteer departments. Representatives of three existing volunteer departments and three proposed departments have been preparing plans for division of the funds. Under their plans, a three-man executive board would be established, one member being a County Commissioner. The board would divide up the territory to be covered and formulate mutual assistance plans.

Twelve rural departments in **Forsyth County** are forming a county volunteer firemen's association. It is anticipated that the move will lower fire insurance rates throughout the county.

The Proposed

Constitutional Amendments

HENRY W. LEWIS

On Tuesday, November 4th, the people of North Carolina will vote on four amendments to the State Constitution. This article undertakes to explain the proposals and their effect if approved by a majority of the voters.

I
Property Tax Limitation

☐ FOR limiting the amount of total State and county tax which may be levied on property to twenty cents (20c) on the one hundred dollars ($100.00) valuation.

☐ AGAINST limiting the amount of total State and county tax which may be levied on property to twenty cents (20c) on the one hundred dollars ($100.00) valuation.

The Law Today.—Aritcle V, Section 6, of the North Carolina Constitution now provides: "The total of the State and county tax on property shall not exceed *fifteen cents* on the one hundred dollars value of property, except when the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act: Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the State for the term required by article nine, section three, of the Constitution: Provided further, the State tax shall not exceed five cents on the one hundred dollars of property."

The Proposed Change.—The amendment now proposed would change the italicized "fifteen cents" to read "twenty cents" in the section of the Constitution quoted in the preceding paragraph. This is not a proposal to authorize raising tax rates; it is a proposal to give county commissioners authority to impose a maximum rate of 20c rather than 15c for financing the *general operating expenses* of the county government. The provisions for exceeding the limitation for *special purposes* already allowed by the Constitution will not be disturbed in any way.

The Pros and Cons.—In 1948 the people of the state were asked to approve an amendment to the same section of the Constitution raising the limit from 15c to 25c and the proposed amendment was defeated. The background and the arguments are the same today as they were in 1948; the only difference lies in the fact that the new proposal would set the maximum levy at 20c rather than at 25c. Those in favor of this proposal emphasize the fact that county government's services, general operating expenses, and number of employees have all seen great expansion since 1920 when the 15c limitation was inserted in the Constitution. Many counties find it impossible to finance general operating expenses on the yield from a 15c levy, and especially is this true at present price levels. This has forced many of them to adopt "various and sundry means—to get around this limitation," and a number of officials take the position that "it would be better to face the issue squarely and permit counties to levy a rate sufficient to take care of necessary expenses." One official has written, "I naturally hate the subterfuges that are resorted to in order to give the people what they desire. It is a question of higher valuation which the taxpayers seem to despise and do not understand." Those opposed to the amendment cite the fact that if the counties would adhere strictly to the revaluation statutes, property assessments would rise and make the rate increase unnecessary. They maintain that too much expenditure and expansion in a period of inflation is unsound and that the present limitation is a healthy check on the tendency. Others seem to think that a raise from 15c to 20c now would only be an opening wedge, that within a few years an effort would be made to raise the limit to a still higher figure. Before the 1948 referendum the Institute of Government made a detailed survey of the whole subject and collected opinions from officials all over North Carolina. The results of that study can be found in *Popular Government* for October, 1948.

II
Filling Vacancies in the General Assembly

☐ FOR amendment to fill a vacancy occurring in the General Assembly by death, resignation or otherwise by immediate appointment of the Governor, upon the recommendation of the executive committee of the county in which the deceased or resigned member was resident, being the executive committee of the political party with which the deceased or resigned member was affiliated at the time of his election.

☐ AGAINST amendment to fill a vacancy occurring in the General Assembly by death, resignation or otherwise by immediate appointment of the Governor, upon the recommendation of the executive committee of the county in which the deceased or resigned member was resident, being the executive committee of the political party with which the deceased or resigned member was affiliated at the time of his election.

The Law Today.—At the present time Article II, Section 13, of the North Carolina Constitution reads as follows: "If vacancies shall occur in the General Assembly by death, resignation, or otherwise, writs of election shall be issued by the Governor under such regulations as may be prescribed by law." In other words, whenever a vacancy occurs the Governor must call a special election to fill the vacancy.

The Proposed Change. — If the proposed amendment is adopted, when a vacancy occurs in the membership of the legislature, instead of calling a special election to fill the position, the Governor would be required to appoint a person to fill the vacant seat. The Governor, however, would not be free to appoint any individual h might care to name inste;ad he would be required to appoint the person recommended to him by the executive committee of the deceased or resigned member's political party in the county of his residence.

How the Two Systems Work.— By keeping in mind the factual situations in which this provision of the Constitution come into play it is possible to apreciate the arguments for the proposed change. Suppose, for example, that Mr. X, a registered Democrat, wins election to the State House of Representatives in County A at the general election on November 4, 1952. Three possible events would bring the Constitutional section into action: (1) Mr. X might die or resign his office on December 4, 1952; (2) he might die or resign on January 30, 1953; or (3) he might die or resign on February 1, 1954. Bear in mind that Mr. X is elected for a two-year term. During that term the General Assembly will hold only one regular session, that beginning in January, 1953. It is possible, of course, that special sessions may be

called at any time between adjournment of the regular 1953 session and the general election for new members in November, 1954. In the third factual situation mentioned above, where Mr. X's seat becomes vacant long after the regular 1953 session, the situation under the present Constitutional provision is not likely to present any serious practical difficulties. But the first two situations suggested might cause considerable confusion and possibly some hardship. Under the present system, upon official notification of the vacancy, the Governor must call a special election in County A to fill Mr. X's seat. When the election date has been set, executive committees of both political parties in the county must make nominations and certify them to the county board of elections. The elections board must have ballots printed, set the normal election machinery in process, and conduct a special election. The candidates, in either case mentioned, would have little or no time to present their views to the public; the public would have little information about issues. The mechanics of the election process would be crowded into a very short period of time, because the need for filling the vacancy as soon as possible would be obvious. If the vacancy did not occur until after the 1953 legislature were already in session, it is clear that under the best of circumstances the county would be without representation for several weeks. Under the proposed amendment no special election would be held. Instead, in the illustration used here, the Democratic party executive committee in County A would meet and agree on a person to replace Mr. X and recommend his name to the Governor. The Governor would be required to name that person to fill the vacancy. In this illustration a vacancy in the House of Representatives has been used to demonstrate the procedure. If Mr. X had been elected to the State Senate from a district composed of only County A, the situation both under the present provision and under the proposed amendment would be exactly as they have been described in the case of vacancies in the House. On the other hand, if Mr. X had been elected to represent a senatorial district composed of more than one county, while the system under the proposed amendment would be the same as that described for filling a House vacaney, under the existing section the system would be quite different. If the district had no rotation agreement, the nominations for the special election would be made by the parties' district executive committees. If the district were operating under a rotation agreement, the nominations would be made by the party executive committee or committees of the county or counties entitled to make the nomination that year under the plan of rotation. In both cases, under the present constitutional provision, an election throughout the district would be required.

Opponents of the proposed amendment raise questions about the advisability of inserting a provision in the Constitution making officers of voluntary agencies (political party executive committees) necessary agents in the important process of selecting members of the General Assembly. They see dangers in any provision removing from the people their right to vote directly for the individuals who are to represent them in the General Assembly, and especially when that provision places the appointive power in the executive branch of the government.

III

☐ FOR amendment providing a uniform method for filling vacancies in certain State offices.

☐ AGAINST amendment providing a uniform method for filling vacancies in certain State offices.

The Law Today.—The proposition to appear on the November ballot, as quoted above, gives no indication of which state offices are to be covered

(Continued on inside back cover)

Association Formed

After looking at some programs of past conferences of the Clerks of Superior Court, Robert (Bob) Windsor, a deputy from the office of Clerk W. E. Church of Forsyth, decided that other assistants and deputies were interested. Then Bob discussed his ideas With the encouragement and assistance of Mr. Church, Bob began writing to other offices and found that assistants and deputies were interested. Then Bob discussed his ideas with Mr. Coates and others on the Institute of Government staff, and was advised to present his plan to the Clerks at their convention. He did this at the July 1952 conference, and was given not only assurance of the blessings and cooperation of the clerks, but an amount of cash sufficient to assure a first-rate promotion and program for the first conference.

It was thought that the first meeting should be held at a time when all assistants and dupties would be free to attend, if this were possible, and that the meeting should be held in the center of the state. Labor day week-end, August 31 and September 1, was selected as the date, and the site chosen was Chapel Hill. Had Mr. Windsor been a long-range weather prophet, he might have selected another date. On Sunday, August 31, hurricane "Able" roared through North Carolina, and consequently the

registration for the first conference totalled only fifteen.

At the business session on Sunday night, August 31, it was natural that Bob Windsor would be elected by acclamation as the first president of the organization. Mrs. Quin Meyer, assistant clerk from Franklin County, was chosen as first vice-president, and Mr. O. M. York, deputy from Rutherford County, was selected second vice-president. It was agreed to rotate the presidency from east to west each year, by having the first vice-president and second vice-president be from opposite ends of the state, and by having these officers step up annually to the presidency and first vice-presidency, respectively. Mrs. Madge Parker, deputy from Guilford, was elected treasurer, and the Institute of Government was named secretary.

On Monday morning a round table discussion of problems incurred in the clerk's offices brought forth a number of things on which legislation would be desirable, as well as ways in which these problems are now being handled in different clerks' offices. Probate of deeds, deeds of trust, chattel mortgages, conditional sales contracts, and other instruments required to be registered came up for extended discussion. In connection with the issuance of pistol permits, the need for more stringent laws on registration of firearms, and a clarification of the law on concealed weapons was brought out. Some of the other topics discussed were adoptions, appearance bonds, commitment of incompetents, commitment of prisoners, and appeals from inferior courts.

At the afternoon session Mr. Albert Coates, director of the Institute of Government, spoke to the group, and was followed by Basil Sherrill, Assistant Director of the Institute of Government, who spoke on *Powers and Duties of Assistant and Deputy Clerks*. The final hour was a business session, in which several committees reported including the committee on the site of the 1953 convention. Chapel Hill was recommended for the 1953 meeting, but with the President to have authority to change the location.

Those attending were: W. E. Church, Clerk, Forsyth County; R. G. Windsor, deputy, Forsyth County; Mrs. Quin D. Meyer, Assistant, Franklin County; Miss Martha Irwin, deputy, Vance County; Mrs. Carolyn M. Goodman, deputy, Cabarrus County; Mrs. Dorothy C. Barbee, deputy, Cabarrus County; Mrs. Madge Parker, deputy Guilford County; J. A. Walker, deputy, Guilford County; O. M. York, deputy, Rutherford County; Miss Mary Willie Woody, deputy, Rutherford County; Mrs. Faye Craig, deputy, Lincoln County; Miss Vernell Devane, assistant, New Hanover County; Mrs. Alex Bass, assistant, Person County; and Alex Bass, Clerk, Person County.

State v. Roman

An Investigative Masterpiece

RICHARD A. MYREN

This actual case history of the solution of a murder at Lexington, North Carolina, is printed here in the belief that law enforcement officers will profit from reading about criminal cases which are outstanding examples of efficient investigation. Those in charge of the training of these officers will recognize at once the value of this case as a teaching tool. The Solicitor will see mirrored herein the progress of North Carolina courts in accepting scientific evidence. To the average citizen, this story should give new heart in the knowledge that those charged with the duty of protecting him from crime in this state are alert leaders in their profession.

This case was first drawn to the attention of the author by Lewis E. Williams, S.B.I. agent resident at High Point, North Carolina, who recognized the excellence of the performance of the Lexington Police Department while he aided them with the case. Agent Williams assisted the author in the gathering of the material here presented and checked the several preliminary drafts of the article for accuracy. Acknowledgment is also due the Lexington officers who worked on the case. These men gave an afternoon of their time to fill in details otherwise not available.

●

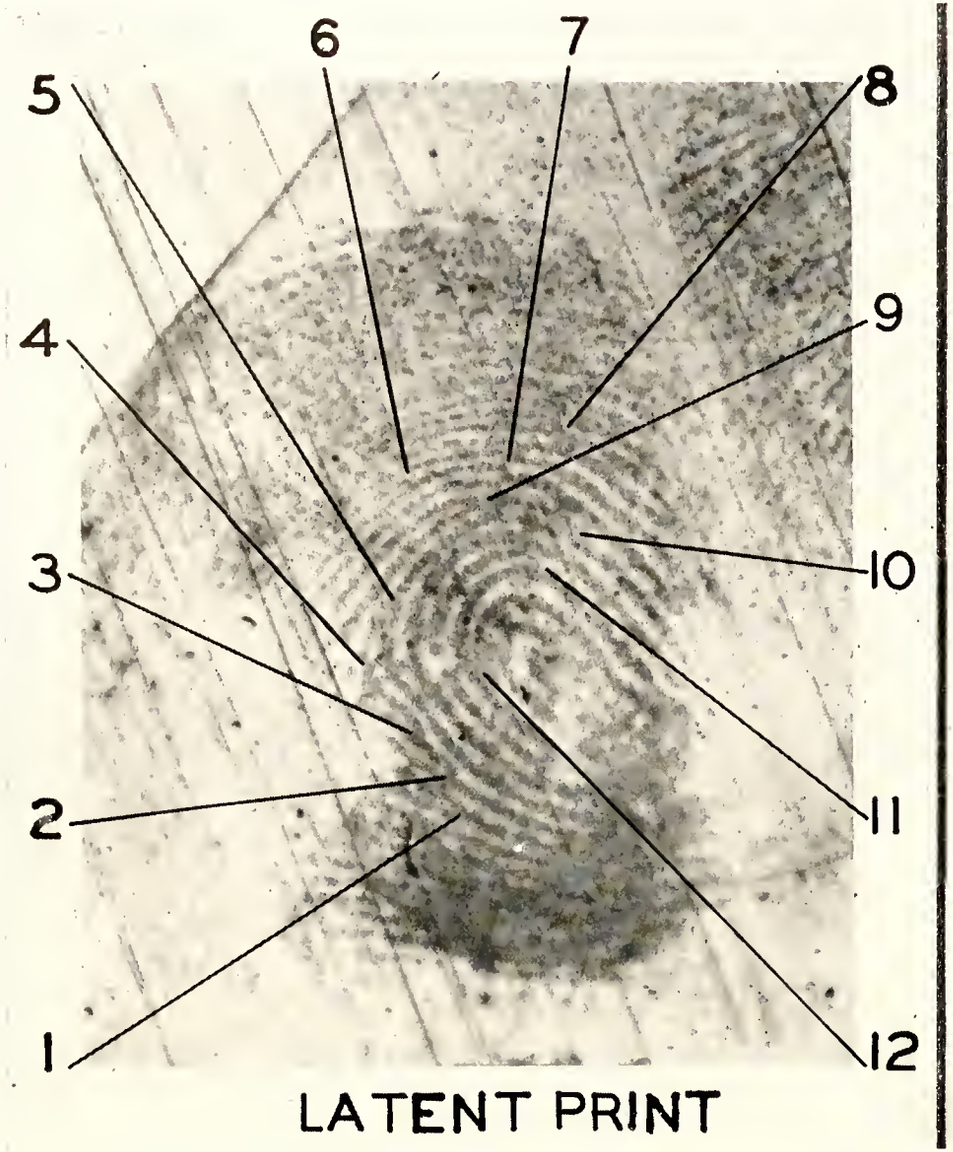
At two minutes before nine one Monday morning the phone rang in the Lexington police headquarters. It was a report of a robbery and murder. At 9:05 the first police officers were on the scene. They found two elderly sisters awaiting them.

The women told a simple story. It was their sister who had been killed. She owned the house and had lived alone in it since her husband had died. Every Monday morning all three sisters would get together at their mother's house to do their washing with their mother's machine. On this particular morning the widowed sister did not appear, even though one of the others had visited her shortly before nine the night before and had been told that she would be there as usual at seven the next morning. The two sisters waited and then, shortly after eight, they went over to see if she might be sick.

When they arrived all the shades in the house were drawn. The side door which they ordinarily used was locked. They knocked and called but there was no answer. They went around to the back porch. There one of them noticed that the screen door had a slit in it at the level of the latch. The door was unhooked. They went on to the back porch and from there into a back hall. In the hall two trunks were open and their contents strewn over the floor. Also on the floor was a chenille bedspread all bunched up.

Thinking that the bedspread was her sister's laundry bundle, one of the two pulled up a corner and saw the body of her widowed sister. She dropped the spread and ran from the house, shouting for someone to call the police. When she was assured that the police had been notified, she sat down on the porch steps to wait for them and keep out curious neighbors. The other sister remained inside the house long enough to observe that the spread was missing from a bed in a room opening on the hall where her sister's body lay. In the same room a dresser drawer was open with its contents scattered about. Then she too went outside and waited. These two women were citizens who, even in their great distress, realized that nothing should be touched or moved before the officers came. Law enforcement officers would be helped greatly if every citizen followed this rule. This was an auspicious start for the investigation which followed.

At this point the Lexington police officers arrived and proved that they practiced the golden rule of homicide investigation: Never touch, change, or alter anything at the scene of a crime until it has been photographed, sketched, and measured from every conceivable angle, remembering that



LATENT PRINT

The print to the left above is the latent print of the murderer which was taken off the metal box found in the top drawer of the trunk. The print on the right is the fingerprint taken of the murderer upon his capture by police. The two prints are placed side by side and all similarities are marked. The expert usually finds twelve points of similarity befor he will identify the prints as being the same.

INKED PRINT

In the above picture the twelve points of similarity are indicated by number with the lines pointing to the area of similarity. This pictorial comparison was used in the trial of the murderer to illustrate testimony given by the S. B. I. fingerprint expert, Haywood R. Starling.

once a body or an article has been moved it can never be restored exactly to its original position and the investigation repeated. Their first move was to call a photographer.

Realizing that all possible assistance should be utilized to apprehend the perpetrator of the crime, the Lexington police then notified the Davidson County Sheriff and the State Bureau of Investigation. Both departments offered their services. The assistance of the district S. B. I. agent, Mr. Lewis E. Williams, was requested at once. Personnel from the sheriff's office aided in a later stage of the investigation.

Additional city policemen were called for immediate investigation of the scene, and Dr. D. E. Plummer, the county coroner, was notified. One of the officers had noted almost as soon as he arrived that a shiny metal box lying in the top of one of the rifled trunks bore latent fingerprints. When the photographer came he was careful to photograph the position of this box as well as all the other details of the scene. (See illustration.) The first officer to arrive remained until all the photographs had been taken, so that he would later be able to swear in court that each photograph was a true representation of the scene as he had found it and that nothing had been moved prior to photographing.

Coroner Plummer arrived shortly before noon and examined the body at the scene before ordering it removed to a local undertaking establishment where a more thorough examination could be made. The chief of the Lexington department and S. B. I. agent Williams, who had just arrived, accompanied the body to the undertaker's after locking up the house and accounting for all the keys. These precautions were necessary because Agent Williams had not yet been able to process the house for fingerprints. He did this the next day, aided by local officers.

After his examination, the coroner decided that the case required an autopsy by a pathologist in order to determine the exact cause of death. Dr. H. C. Lennon of Greensboro was called to perform the operation. Upon its completion, he and the coroner both agreed that death had been caused by traumatic shock from numerous cuts and abrasions on the face, neck, body, arms, and legs. One cut was a stab wound over the left breast which had sheared one rib, broken three others, and pierced the lung. The medical experts also found that the woman's vagina had been entered by some instrument, but they were unable to find any male spermatazoa in or about the vagina at the time of the examination.

While the above phases of the investigation were being carried on, an intense search of the grounds at the scene was being made. This brought quick results. One officer found a rubber boot for a left foot, cut off about five inches above the ankle. There were signs of struggles in the right rear corner of the back yard. The grass had been trampled. The bent and twisted frames of the victim's glasses were lying on the ground, as well as a torn and stained piece of a woman's girdle. A pair of wome's panties had been bunched up and thrust into the deep grass bordering that part of the back yard. Just over the back fence at this point, an officer discovered the prints of bare feet on a muddy path. The path circled a ball park situated behind the house. The footprints cut into and continued down the path until it ended in a muddy dirt road leading to one of the ball park gates. Here the footprints stopped and tireprints were found on the road. Guards were posted to protect the footprints and tireprints until Agent Williams could preserve them permanently with plaster casts.

The Lexington department had requested Agent Williams to take charge of the preservation and identification of this wealth of physical evidence. Each item was packaged and identified by the officer who originally found it. The identification consisted of a brief description, the date, notation of the place where found, and the name of the officer. Then each officer turned over the items he found to Agent Williams to be kept in his possession and under his exclusive control, except when the various items were in the hands of laboratory technicians for scientific processing.

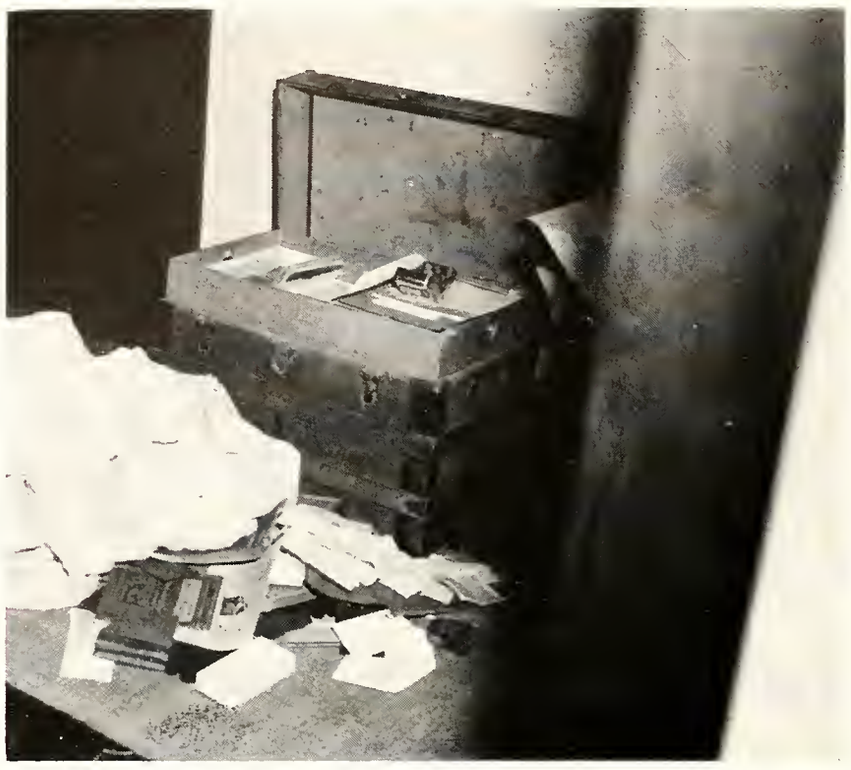
This procedure effectively accomplished one of the most important and difficult jobs in an extended investigation — the preservation of the chain of identity of the items of physical evidence. The chain of identity traces each item of physical evidence from the time it is discovered until it is produced in court. Each person who handles the item must be able to testify that the item he passed on to the next person in the chain of identity was exactly the same item he received from the person who preceded him in the chain. He must also be able to testify that his control of the item was of such a nature that the item could not have been altered or changed in any way, at any time, while it was in his possession. So well was this phase of the investigation handled that, at the trial, not a single objection based on the improper establishment of the chain of identity was sustained, despite the fact that the prosecution offered thirty-nine separate pieces of physical evidence.

At this stage of the investigation enough evidence had come to light so that a partial reconstruction of the crime was possible. Sunday night had brought a cloudburst to Lexington between the hours of nine and ten. There was only one set of tire prints on the dirt road and the only footprints on the path between the house and the road were the ones leading to the road. Consequently, the killer must have arrived at the scene before the downpour and left during or after it. Since one rubber boot was found at the scene and bare footprints led down the path to the road, the killer probably had worn boots when he came but not when he left. Since one sister of the dead woman had seen her alive shortly before nine on Sunday evening, the crime could be roughly estimated as having occurred between nine and eleven.

A canvass of the entire neighborhood was begun to find out if residents had noticed anything unusual after 8:30 the previous evening. Since people are accustomed to routine in their lives, they are apt to notice and remember the unusual. The Sheriff's office assisted in this canvass.

One of the Lexington police officers thought he remembered a worker at a local ice plant who wore boots like the one found at the scene of the crime. Therefore, as the canvass of the neighborhood got underway and the autopsy was being performed, three Lexington officers took the boot found at the scene and went to the ice plant. They showed the boot to Mr. Cecilffi C. Eanes, owner of the plant, and asked him if he recognized it. Mr. Eanes said it looked like one of the boots usually worn by one of his employees, John Andrew Roman. Basing their questions on the information they already had, the Lexington officers obtained from Mr. Eanes and Roman's ellow employees the ollowing account o Roman's activities on the previous evening.

Roman had arrived at work at about 5:00 p.m. At that time, Charlie Smith, another employee, was also



Above is the death scene as it was photographed by police investigators. The deceased party lies covered by the bedspread. The contents of the trunk litter the floor. A close look will disclose a small metal box lying on the top shelf of the trunk. It was from this box that the murderer's fingerprints were taken.

on duty. About 8:30, Roman left the plant after telling Smith that his wife was sick and that he was going to take her to the hospital. Roman was wearing his cut-off boots when he left. He took company truck number 11 for transportation. The ignition key of that truck was rusted into the lock in such a fashion that the truck could be operated but the key could not be removed. About 9:00 p.m., G. W. Leonard, the ice plant engineer, had come to the plant and had asked Smith about Roman's absence. Smith told him what Roman had said about leaving to take his wife to the hospital. Smith left work about 9:30 p. m., but Roman had not yet returned, so Leonard went to Roman's home to look for him. It was just up a bank and across some railroad tracks behind the plant.

Roman's wife answered the door. She was apparently in good health and told Leonard that she didn't know where Roman was if he wasn't at work. Leonard went back to the plant where he stayed until about 10:00 p.m., when the owner, Mr. Eanes, who had been called to take charge until Roman could be found or replaced, arrived. Leonard told Eanes what Smith and what Mrs. Roman had told him. Thus, at the trial Smith's testimony as to Roman's actions could be corroborated by Leonard, and Leonard's testimony could in turn be corroborated by Eanes. Then Leonard left for the night.

About 11:30 p. m., Mr. Eanes, sitting in the plant office, saw one of the company trucks pass beneath a nearby street light and turn into the plant yard some 300 yards away. He started toward the truck and met Roman coming toward the ice house. Roman was barefooted. Shortly after, Mr. Eanes left the plant, first checking the truck that had come in just before he met Roman in the plant yard. It was number 11. This evidence tended to establish that Roman not only left in that truck but returned in it also.

The Lexington police officers now had a suspect and a strong *chain of circumstance* pointing to his guilt. They did not relax, however, since they realized that an investigator never has "enough" evidence. When the prosecution relies on circumstantial evidence, the facts which it produces in court must be "of such a nature, and so connected or related, as to point unerringly to the defendant's guilt and exclude any other reasonable hypothesis". The *chain of circumstances* which must be forged to sustain a conviction should not be confused with the *chain of identity* which must be maintained for each item of physical evidence to assure admission of the item in court. Writers in the field have increased confusion by using the ambigious term, "chain of evidence", to refer to *chain of circumstances* and *chain of identity*. They are two separate things.

Circumstantial evidence includes all the evidence about the crime except the testimony of persons who actually saw it happen. The *chain of circumstances* must be complete and unbroken and point unerringly to one man. The *chain of identity* applies only to items of physical evidence. Its purpose is to prove that the items found at the scene of the crime or elsewhere are the same items introduced in court. To accomplish this the *chain of identity* must also be complete and unbroken.

On the strength of the evidence then in their possession, the Lexington officers went to the home of John Andrew Roman and picked him up. They also impounded the clothing that he admitted having worn the night before, and a hawk-billed knife that had several dark spots on it. When asked, Roman admitted that he owned a pair of cut-off rubber boots. He said they were at the plant, and told the officers where they could be found. On checking at the plant police found only a right boot. It was meticulously clean on the outside but red mud was found in the toe where it had collected because of a large hole in the sole. This mud was removed from the boot and preserved.

The officers had with them the left boot found at the scene of the crime. Roman tried both boots on and they fit. The officers noted that there were dark rings around both of Roman's legs at precisely the place where the boot tops came. Roman admitted that several years before he had delivered ice to the home of the deceased, but he denied any connection with the crime. This denial was never retracted.

The trousers that Roman had worn the night before were examined and a considerable amount of mud was found on them. Roman insisted that the mud had gotten on his trousers when he slipped and fell climbing up the mud bank at the rear of the plant on his way home. To check this story, samples of mud were taken both from the alibi area and the scene of the crime for laboratory comparison with the mud on the trousers.

By this time, the neighborhood

canvass had turned up three witnesses who had seen the ice company truck the night before. Two of the witnesses had been sitting together on a front porch about a block and a half from the scene of the crime and had seen the truck at 11:20 p. m. The time was accurately fixed because one of the two was looking for a bus. The third witness lived on the street from which the dirt road led to the ball park, the dirt road on which the tire-prints were found. He had seen the truck drive by his house three times, the last time being just before the cloudburst broke.

The physical evidence was now entirely in the possession of Agent Williams. He shipped some of it by air express to the laboratories of the Federal Bureau of Investigation in Washington. Other items he delivered in person. Both methods of transfer preserved the chain of identity. It should be noted that whenever evidence is shipped by public transportation, some means such as air express which receipts delivery should be used in order to accomplish this end. The only piece of evidence that was not sent or taken to the F. B. I. was the shiny metal box on which fingerprints had been found. Agent Williams took this, along with a set of Roman's fingerprints obtained after he had been taken into custody, to the State Bureau of Investigation laboratories in Raleigh. The evidence sent and taken to the F. B. I. was returned to Agent Williams in a large carton which he opened for the first time in court before the jury.

Across the street from the ice plant office was an old warehouse used in connection with the coal division of the ice company's business. The building, which had once been a creamery, contained an old walk-in refrigerator box. The box had been sold, and on the Wednesday following the killing was being dismantled for removal by the purchaser. One of the workmen dismantling the box noticed two shiny objects between the wall of the box and the wall of the building. These turned out to be watches taken from the home of the deceased on the night of the crime. This discovery led to a search for a pistol which was also missing from the home of the deceased. Mr. Leonard, the plant engineer, found the gun wrapped in a burlap bag in the loft of the warehouse building. All of these items were positively identified as belonging to the deceased and her late husband.

Reports on the physical evidence submitted to the F.B.I. indicated that the two boots, Roman's right boot and the left one found at the scene of the crime, were alike in every aspect of design, construction, and wear pattern. At the trial, the F.B.I. expert testified that there was every reason to believe that they were a pair. Analysis of the mud samples revealed that the mud on the trousers worn by Roman that night could not have come from the bank behind the plant. In color, granular structure, and mineral content, it was different from the mud on the bank. However, the mud on the trousers, along with that which had been found in the toe of Roman's boot, was exactly like the samples which had been taken from the muddy path at the scene of the crime.

At the trial, another F.B.I. scientist testified that there were no observable differences and many points of similarity between the left front tire of the ice truck used by the defendant on the night of the crime and the tire-print found at the scene. This print had been preserved in a form admissible in court by casting with plaster of Paris.

The F.B.I. expert who had run tests on the stains found on the knife was in the hospital undergoing an operation at the time of the trial and was unable to present his findings.

A fingerprint expert from the S.B.I. was able to swear that the print on the shiny metal box was Roman's fingerprint. When presented by the solicitor, Charles T. Hagan, Jr., in open court, this chain of circumstantial evidence convinced the jury of Roman's guilt beyond a reasonable doubt. John Andrew Roman was found guilty of murder and sentenced to death. The sentence was affirmed by the Supreme Court of North Carolina.

It should be noted that there was absolutely no direct evidence that Roman had committed the murder. Not a single witness could testify that he saw Roman do it. The conviction was based entirely on circumstantial evidence. The case presents an excellent example of the use of scientific evidence. Expert opinion testimony by two physicians was admitted to show the cause of death, the fact that the vagina had been penetrated by some instrument, and that no male spermatazoa had been found. An F. B. I. expert was allowed to testify as to the results of the soil comparison. Another testified that the two rubber boots were a pair, and that the left front wheel of truck number 11 made the tireprints found at the scene. The S. B. I. fingerprint expert established the fact that Roman had been present

(Continued on inside back cover)

The Attorney General Rules

CLERKS OF SUPERIOR COURT

Custody of children. What is the jurisdiction of juvenile courts to determine the custody of children?

To: K. W. Lawrence

(A.G.) 1. When the issue arises between husband and wife who are living in a state of separation without being divorced, the procedure is by habeas corpus. G.S. 17-39; *Robbins v. Robbins*, 229 N. C. 430.

2. If a divorce action is pending between the parents in the courts of this State, the divorce court has exclusive original jurisdiction to award custody of minor children; and if the divorce has already been granted by a court in this State, the procedure is by motion in the cause in the divorce case. G.S. 50-13; *In Re Blake*, 184 N. C. 278; *Winfield v. Winfield*, 228 N. C. 256; *Phipps v. Vannoy*, 229 N. C. 629.

3. If the parents of the child have been divorced outside of North Carolina, custody may be determined in a special proceeding instituted by either of said parents or by the surviving parent if the other be dead. Although most special proceedings are before the Clerk, this particular type of special proceeding is before the Judge. Second paragraph G.S. 50-13. The foregoing procedure was provided by an amendment to the statute in 1939, evidently for the purpose of supplying a deficiency in our law forcibly called to the attention of the bench and bar by the decision in the case of *In re Ogden*, 211 N.C. 100 decided in 1937. This paragraph of the statute was rewritten by Chapter 1010 of the Session Laws of 1949 by adding the expressions "and controversies respecting the custody of children not provided for by this section or G.S. 17-39," and "or by the surviving parent if the other be dead." These amendments were probably added as a result of the decision in *Phipps v. Vannoy, supra*, and the effect probably is that since 1949 the procedure in such cases is also by a special proceeding before the Judge.

4. In all other cases the juvenile court has jurisdiction under G.S. 110-21(3).

Appointment of guardians for inebriates. Is there any authority for a Clerk of the Superior Court to appoint a guardian for an inebriate person on the certificate of the superintendent of the hospital where such inebriate is confined?

To: J. N. Sills

(A.G.) G.S. 35-3 is the only statute which provides for the apointment of a guardian based upon the certificate of the Superintendent of a State Hospital. Here you will find that in order for the clerk to be authorized to appoint a guardian upon the certificate of the Superintendent, the Superintendent shall declare therein "such person to be of insane mind and memory".

In view of the language of this section, it is my opinion that in order for you to appoint a guardian based on the certificate of the Superintendent, the Superintendent must declare such person to be of insane mind and memory. A declaration in the certificate of the Superintendent which simply declares such person to be an inebriate is not a sufficient compliance with the statute.

COUNTIES

Disposition of Jail Fees Collected by City Courts. Where a city, through its courts, collects fees from prisoners covering the costs for their care while committed to the county jail by the city court, can it withold them from the county or should it pay them to the county?

To: R. A. Nunn

(A.G.) I see no reason why fees of jailers, taxed in the bill of costs, as well as items or fees for care and maintainance of prisoners, should not be turned over to the county. There is no apparent legal sanction for any city court to collect such items of costs from a prisoner for such purposes and then withold them from the county. This opinion is advisory only since this matter is one for final solution between county and city attorneys.

Use by County of Unexpended Funds for a Purpose Other Than the One for Which Appropriated in Previous Fiscal Year. Where a county appropiated a sum of money to be used for the purchase of white school building sites, and this money was not used in the fiscal year of its appropriation, can it be used the following year for purposes other than that for which it was originally appropiated?

To: G. T. Davis

(A.G.) In my opinion the county could appropriate the unexpended sum for any other purpose and withdraw the appropriation made for the school sites. This would not be considered as being a transfer of the appropriation within the restrictions imposed by G.S. 153-127. The old appropriation would be lapsed and cancelled and the new appropriation from available funds could be made for any purchase which the county is authorized to make for school purposes.

ELECTIONS

Qualifications of Candidate in Primary; Right to Demand Second Primary. Does a candidate for office in a party primary have to be a registered voter? If, after the first primary, the county board of elections determines that the second highest candidate in a particular race (normally the one entitled to demand a second primary) in fact does not have the statutory qualifications to register, may the board deny that candidate the right to call a second primary?

To: G. C. Hampton, Jr.

(A.G.) "To *participate* or vote" in a primary an individual (1) must be a legal voter or must become one by the date of the general election and (2) he must have declared and recorded in the registration book the fact that he affiliates with the party in whose primary he proposes to vote. That being true, if the county board of elections, following the first primary, finds that the candidate normally entitled to call the second primary does not possess the statutory qualifications to register and vote, he would not be entitled to demand a run-off, and unless another candidate qualified to call one did so under G.S. 163-40, no second primary would be held.

Challenges before Registration Books in Hands of Registrar. Can a citizen or citizens challenge the registration of a citizen at a time when the registration books are not open for registration and are in the possession of the county board of elections?

To: G. C. Hampton, Jr.

(A.G.) G.S. 163-78 contains a provision stating that the precinct registrar must be present at the polling place on Saturday preceding the election to conduct what is called "challenge day." The same section contains a proviso stating that "nothing in this section shall prohibit any elector from challenging or objecting to the name of any person registered or offering to register at any time other" than on challenge day. It should be observed, however, that the statute confers on the registrar the authority to hear and decide the question of eligibility to register and vote (G.S. 163-79). There is nothing in the statutes giving the county board of elections the right to pass on or hear a challenge when the books are in their possession and not open for registration. Nevertheless, once a ballot has been cast, at the county canvass the county board of elections canvasses and judicially determines the results. In this connection they can send for papers and persons and examine them in order to pass on the legality of any disputed ballot. Thus the county board could review the action of the precinct officials, including the registrar, with respect to the eligibility of any voter if his ballot were disputed.

Second Primary—Selecting Precinct Officials. If candidates of only the Democratic Party participate in the second primary should the Republican judges who served in the first primary serve in the second or should the county board of elections appoint a Democratic judge to serve in each Republican's place in the second primary?

To: Glenn W. Brown

(A.G.) Under the provisions of G. S. 163-15, if only one party participates in a primary election all precinct officials must be chosen from the one party participating. Thus, since only Democrats would participate in the second primary under discussion, the county board of elections should appoint a Democratic judge to serve for this second primary in the place of each Republican judge appointed for the first primary.

RABIES VACCINATION AND DOG TAX CREDITS

Fee for Vaccination after Close of Vaccination Period. The commissioners of a certain county have set the annual rabies vaccination fee at $1.00 per dog. If a dog-owner brings his dog to the rabies inspector for vaccination after the close of the regular vaccination period may the inspector charge $1.25 for the vaccination?

To: Dr. B. L. Carraway

(A.G.) No. The statutory period for vaccination runs for ninety days, beginning on April 1 each year (G.S. 106-367). The county commissioners may fix the fee for vaccination during that period at "not more than $1.00." If the dog is vaccinated after the regular period, the owner must pay the rabies inspector an additional 25 cents to be retained by the inspector, but even in this situation the total charge must not exceed $1.00 (G.S. 106 372). If the dog is vaccinated during the regular period, the owner is entitled to credit for the full amount of the vaccination fee against the dog tax. If the vaccination is performed after the regular period the owner is entitled to only 50c credit on his dog tax, regardless of the amount of the vaccination fee. If, for example, the county commissioners had set the vaccination fee at 75c, the owner who had his dog vaccinated during the regular period would have paid 75c and would have been entitled to 75c credit on his dog tax. If he had his dog vaccinated after the regular period he would have paid the inspector $1.00 (75c fee plus 25c for the inspector) and would have received only 50c credit on his dog tax. If, as in the question presented here, the commissioners had set the vaccination fee at $1.00, the owner who had his dog vaccinated during the regular period would have paid $1.00 and would have received $1.00 credit against his dog tax. But if the dog were vaccinated late the owner would still pay the inspector only $1.00. Of this amount the inspector could retain 25c, and the owner would be entitled to 50c credit on his dog tax.

HOSPITALS

Authority to Use A.B.C. Funds for Maintenance and Operation of Hospital. Can a city, by resolution of its Board of Commissioners and without a vote of the people, authorize a donation by the city to a local hospital, which is a non-profit, charitable corporation, provided the funds are not derived from taxes but from some other source, such as the city's share of the profits from the county A.B.C. stores?

To: W. B. Allsbrook

(A.G.) Under the authority of G.

S. 131-126.20 and G.S. 131-126.41, a city is authorized to make such a donation, provided the funds are derived from sources other than taxes.

LIQUOR LAWS

Municipality liable for federal admissions tax. Is there a Federal amusement tax on adult tickets to ride on riding devices owned by a municipality?

To: R. Roy Proctor

(A.G.) Section 1700 of the Internal Revenue Code, as amended by Section 1650, imposes an admissions tax of one cent for each five cents or major fraction thereof charged for admission to any place, and this applies to riding devices operated by municipalities. Although this section does exempt admissions of less than ten cents when paid by children under twelve years of age, the federal admissions tax applies to adult tickets for such riding devices.

Use of ABC profits. A 1951 law authorizes the County of Pitt and the Town of Greenville to advance, as a loan, a sum not exceeding $50,000 to the Tar River Port Commission. May the ABC funds of the county be used for this purpose?

To: R. B. Lee

(A.G.) Yes. G.S. 18-57 requires that ABC profits be paid quarterly into the general fund of the county. In the absence of any local law to the contrary, there is no limitation on the use of ABC profits as a part of the general fund of the county. The provisions of Article VII, Section 7, of the N. C. Constitution limiting taxes for purposes other than necessary expenses does not apply to ABC profits.

Beer and wine elections. A county board of elections called a beer and wine election to be held on a certain day. Subsequently, a municipality in the county called a special election on another question to be held within 60 days of the scheduled county election. May the county beer and wine election be held as scheduled?

To: A. F. Torrence

(A.G.) A county beer and wine election is void if held within 60 days of a general or special election in the county or any municipality thereof. G.S. 18-124(f); *Ferguson v. Riddle*, 233 N. C. 54. If the city authorities cannot be induced to cancel the proposed special election, the county beer and wine election cannot be held as scheduled.

LOCAL GOVERNMENT ACT

Auditing Contracts. Does G.S. 153-144 require the approval of auditing contracts entered into between certified public accountants and county ABC boards?

To: L. B. Maddison

(A.G.) G.S. 153-144 is applicable to all such contracts by a county, city, town, special charter district "or other subdivision officials." In my opinion, this would include the ABC board in any county.

MOTOR VEHICLES

Mufflers — Hollywood and Dyna-Tone types. Is the use of the Hollywood and Dyna-Tone types of mufflers prohibited by statute?

CORRECTION

In "The Attorney General Rules" section of the September issue (at page 15—the bottom of column one and the top of column two), two rulings of the Attorney General relating to special taxes for health centers were discussed. Because of a mix-up in the preparation of copy for printing, the digest of rulings did not present a clear picture of the rulings. The rulings are re- digested here for clarification.

Taxes to Build County Health Center. Can County Commissioners levy a tax to cover their share of the cost of a health center?

To: J. M. Sharp and J. T. Arledge

(A.G.) (1) A county may raise its share of the cost of a health center from the 15-cent tax rate levied for the general fund. In my opinion, in spite of *Palmer v. Haywood County*, 212 N.C. 284, 193 S.E. 668 (1937), in which it was held that the building, maintenance, and operation of a public hospital is not a necessary expense, a health center would be a necessary expense and hence the tax could be levied without a vote of the people.

(2) A county may levy a special tax for this purpose under the provisions of G.S. 131-126.22. That section, however, requires that such a tax must be approved by the voters.

(3) A county may issue bonds under the County Finance Act for this purpose and then levy a special tax to pay principal and interest on the bonds.

To: Joe W. Pearce

(A.G.) G.S. 20-128 requires all motor vehicles to be equipped with mufflers in good working order and constant operation. The muffler must prevent "excessive or unusual noise, annoying smoke and smoke screens." Whether a particular muffler permits excessive noise is a question of fact for the court. Since this office is not familiar with either of the types of mufflers referred to, it cannot venture an opinion as to whether a court would find that they permit excessive noise.

Defense of mistake to Overloading Penalty. By missing a turn, a truck driver accidently got onto a road for which his truck was overloaded. Is the owner of the truck liable for the overload penalties set out in G.S. 20-96?

To: Frank B. Turner

(A.G.) The owner is liable despite the fact that he directed his drivers to comply with all weight regulations and despite the fact that the driver in this case got onto the road which his truck overloaded by mistake. The statute imposes liability on the owner when a truck driven by his employee is loaded beyond the limit fixed by law even though the owner does not know of the driver's violation, and even though the driver himself did not intend to overload the road.

Overloading the Axle. A three axle truck is licensed for the maximum weight permitted by the statute: 44,000 pounds,. While carrying a load of 41,340 pounds, it was found overloaded, as to the rear axle by 2,070 pounds. Does the fact that the truck was operating within its licensed capacity make the statute inapplicable?

To: Evander H. Britt

(A.G.) No, a truck must meet both of the weight requirements. For compliance with the law, it is not enough that a truck is operating within its overall licensed weight limits; it must also be loaded so that the weight on any one axle does not exceed 18,000 pounds. G.S. 20-118(d).

"For hire" tags for star route carriers. At the expiration of his current contract, and after its renewal, will a star route mail carrier who uses his own vehicle be required to have a "for hire" tag?

To: P. C. Myrick

(A.G.) A star route mail carrier operating under a contract which was in effect on or before April 14, 1951, is expressly exempted from classification as a "for hire" carrier G.S. 20-38(r)(1). However, if his contract has been renewed since that date, he is operating under a new contract and must have "for hire" tags.

Suspension of license—Judgment rendered by Justice of the Peace. A Justice of the Peace rendered a judgment of $51.56, plus interest and costs, against a defendant in a civil suit arising out of a motor vehicle accident. If the judgment remains unpaid, can the Department of Motor Vehicles suspend the defendant's license?

To: Robert H. Irvin

(A.G.) The Department cannot suspend the license because the judgment of the Justice of Peace was void. Justices of the Peace, in cases involving damage to property, have jurisdiction only up to $50.00. Even if the judgment had been for $50.00 or less, the Department would not be able to suspend the license because the statute gives the department power to suspend a license for failure to satisfy a judgment only where the judgment is for more than $50.00. G.S. 20-235.

Unsatisfied Judgment—Suspension of Father's License. A boy, operating his father's car, was involved in an accident. The father was sued and a judgment obtained against him. If the father does not pay the judgment, may the Department of Motor Vehicles suspend the father's driver's license and registration plates?

To: William B. Rodman, Jr.

(A.G.) The Department has the authority to suspend the father's license and plates until the judgment is satisfied. G.S. 20-235 defines the judgment for which the Department is directed to suspend licenses and plates as, "any judgment . . . arising out of the ownership, use or operation of any motor vehicle."

Duration of Suspension for Failure to Satisfy a Judgment. When a driver's license is suspended by the Department of Motor Vehicles pursuant to G.S. 20-234 for failure to satisfy a judgment, how long does the suspension last?

To: J. Shepard Bryan

(A.G.) Suspension for failure to satisfy a judgment is of indefinite duration. It lasts until the judgment is satisfied, so that it might be as little as a few days or as much as several years. When the judgment is satisfied, the judgment debtor is entitled to reinstatement of his license upon proof of future financial responsibility.

Suspension for Failure to Satisfy a Judgment entered in erroneous name. Donaldson Patrick Jones was sued for damages arising out of an automobile accident. The summons which was served on him stated his name as Donald Jones. Mr. Jones did not answer or demur and judgment against him was taken by default. All papers served used the name Donald Jones. Mr. Jones has failed to satisfy the judgment. May the Department of Motor Vehicles suspend his license despite the fact that his name was erroneously stated?

To: L. C. Rosser

(A.G.) The Department may suspend the license because the judgment is valid. If the writ bearing the wrong name is served on the party intended to be sued, the party must appear and plead the misnomer in abatement; otherwise he is concluded and the judgment is valid and enforceable. *Freeman on Judgments*, 5th edition, §s 83 & 414; *Restatement of Judgments*, §79 (e).

Transfer of Title. What is the liability of a transferee of a truck who fails to have the title transferred to him within the statutory period?

To: Honorable Burley T. Johnson

(A.G.) The transferee of a motor vehicle, unless he is a dealer or unless the certificate of title is lost or wrongfully withheld by the transferor, must apply within twenty days to the Department of Motor Vehicles for a transfer of the registration of the vehicle. Failure to do so makes him guilty of a misdemeanor (G.S. 20-73), the punishment for which is a fine of not more than $100 or imprisonment for not more than sixty days in the county or municipal jail, or both, (G.S. 20-176). G.S. 20-75 contains the provisions applicable to dealers, and G.S. 20-76 provides the special procedure in the event that the certificate of title is lost or wrongfully withheld.

MUNICIPAL FINANCE

Contingent Obligations as Debt. A Sanitary District, without approval of the Local Government Commission and in possible violation of Art. V, sec. 4 of the North Carolina Constitution, borrowed $11,000 from the Federal Works Agency, to be used for meeting expenses of a survey for a proposed sewer and water facility project. These funds were to be repayable upon the condition or contingency that the project plans be put under construction. District residents refused, by their vote, to issue the necessary bonds and incorporated the territory within the district into an adjoining town. The State Board of Health now refuses to approve the dissolution of the district on the grounds that the district has outstanding an indebtedness of $11,000. Does such an indebtedness exist? Has the town assumed a contingent obligation?

To: H. L. Fagge

(A.G.) It appears to us that no indebtedness exists for the very basic reason that the contingency upon which the indebtedness was to arise or accrue has not happened and cannot ever happen.

While it is true that municipal corporations can take over other boundaries of territory and assume governmental debts created by those territories, I do not think that a newly formed municipal corporation would assume a contingent or conditional debt which has not, and can now never accrue, and which was probably contracted contrary to the Constitution. We are of the opinion that the town has not assumed this contingent obligation. I think there is a probability that if the town should later on use these plans and put them in effect by construction it would become indebted to the governmental agency, upon the contractual theory of either quantum meruit or an implied assumpsit, to pay the reasonable worth of the plans.

Powell Bill Funds. May Powell Bill street-aid funds be used to pay principal and interest on bonds issued by a municipality for street purposes?

To: George C. Franklin

(A.G.) Session Laws 1951, Ch. 260, sec. 3 (Powell Bill) does not state that the funds may be used for the payment of principal and interest on bonds issued for the purpose provided in the Statute, but I am of the opinion that such funds would be used for the purpose of paying principal and interest on bonds issued after enactment of the Powell Bill. Bonds could not, of course, be issued except as authorized by G.S. 160-378, which would exclude maintenance and repair of streets.

Although the Municipal Finance Act, G.S. 160-397, provides that a municipality shall annually levy ad valorem taxes in payment of principal and interest on bonds issued thereunder, it further provides "that such tax may be reduced by the amount of other monies appropriated and actually available for such purpose."

This indicates to me that there would be no complications in appropriating Powell Bill Funds for payment of principal and interest on bonds issued for the construction of streets not a part of the State Highway System.

Public Purpose—Necessary Expense. A town owns a community building which is rented for civic purposes and community gatherings, but is not used for any governmental purposes. An extensive remodeling of the building is proposed. May the town appropriate tax revenue, or funds from other than tax revenue, to meet this expense?

To: John H. McMurray

(A.G.) G.S. 160-200(13) specifically provides that municipalities have the power to erect, repair and alter all public buildings. I am of the opinion that the proposed expenditure is for a public purpose but is not a necessary expense of the town. *Purser* v. *Ledbetter*, 227 N.C. 1; *Power Co.* v. *Clay County*, 213 N.C. 698. Therefor, it would seem that the town may not include this expense in its budget or levy a special tax therefor without a vote of the people. However, I see no reason why the town may not appropriate the necessary funds from any surplus it may have other than tax levy.

MUNICIPALITIES

Control of pool halls. A town wishes to control billiard rooms and pool tables within its limits. What are its powers?

To: William L. McCoy

(A.G.) Under the authority of G.S. 160-200 (33) the town's governing body can absolutely prohibit billiard rooms and pool parlors if it desires to do so, or it can issue licenses or permits for pool and billiard rooms and revoke these licenses for misconduct or other adequate reason. The question has been committed entirely to the government and discretion of the governing authority of the town.

Effect of zoning ordinance on partially completed buildings. At the time of enactment of a zoning ordinance, the foundations for a commercial garage have been laid in a district where garages are prohibited. May the city secure an injunction against completion of the garage?

To: P. V. Critcher

(A.G.) In the absence of a North Carolina case squarely in point, I cannot give you a direct answer. Examination of the law in other jurisdictions, as found in McQuillen on Municipal Corporations and in Corpus Juris Secundum, would seem to indicate that since the owner had made substantial progress in the construction of his garage building prior to the effective date of the zoning ordinance, he could not be enjoined from further construction and final completion of the garage building. However, see *Raleigh* v. *Fisher*, 232 N.C. 629.

MUNICIPAL EMPLOYEES

Application of Wage and Hour Law. Do municipal employees come under the provisions of the Fair Labor Standards Act?

To: R. B. Mallard

(A.G.) I advise you that the Wage and Hour Law does not apply to employees of municipal corporations. Such employees are specifically exempt and are not engaged in interstate commerce. Th Federal Attorney here for the Wage and Hour Division also advises me that this is correct.

SOLICITORS

Authority to issue capias without order. Can a county solicitor issue a capias without the signature or order of the judge or clerk of the county court?

To: Gracy Mercer

(A.G.) I have been unable to find

any statute or decision directly in point which would allow a solicitor to issue capias without the signature or order of the judge or clerk of the court. There is no suggestion in G.S. 15-175 that the solicitor may, as such, issue a capias. Reasoning from this statute and the cases of *State v. Smith*, 129 N.C. 546, and *State v. Thornton*, 35 N.C. 256, it is my opinion that the solicitor is without authority to issue a capias unless upon order of a judge or clerk of the court.

State v. Roman

(Continued from page 13)

at the scene of the crime. Many of these witnesses illustrated their testimony with photographs.

This case is also an outstanding example of the preservation of physical evidence and the chain of its identity. The state introduced thirty-nine separate items of physical evidence but the chain of identity for each was so solidly established that not a single defense objection was sustained at the trial.

Investigation of this murder in Lexington also illustrates that city, county, state, and Federal law enforcement officers can and do cooperate profitably in the solution of crimes. Here the Lexington officials asked for and received valuable assistance from the County Sheriff, the State Bureau of Investigation, and the Federal Bureau of Investigation. Each organization had something to offer and was used to good advantage by the Lexington police department.

Consider what might have happened. Suppose the officers had allowed the contents of the trunks to be restored to their places, destroying the fingerprint on the metal box. Suppose the tireprints and footprints had been rubbed out by curious feet because no guards had been posted, or that they had been preserved by the officers in some fashion inadmissible at trial. Suppose an officer in a not too careful search had overlooked the boot and the signs of struggle in the back yard. How many such mistakes, each of which has been made in other cases, would have been necessary to make this another unsolved crime? In this case, all available resources, investigative and analytical, were used with speed, care, and persistence. These were the ingredients necessary to make the case an investigative masterpiece.

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SPEED KILLS
DRIVE SAFELY

The Constitution

(Continued from page 7)

by the uniform provision for filling vacancies, nor does it indicate what that uniform method is. The offices covered are those of Supreme Court justice, superior court judge, and superior court solicitor. At the present time the pertinent portion of Article IV, Section 25, of the Constitution reads as follows: "All vacancies occurring in the offices provided for by this article of the Constitution shall be filled by the appointment of the Governor, unless otherwise provided for, and the appointees shall hold their places *until the next regular election for members of the General Assembly*, when elections shall be held to fill such offices."

The Proposed Change.—If the proposed amendment is adopted, the provision quoted above would be amended to read as follows: "All vacancies occurring in the offices provided for by this Article of the Constitution shall be filled by the appointment of the Governor, unless otherwise provided for, and the appointees shall hold their places until the next regular election for members of the General Assembly *that is held more than 30 days after such vacancy occurs*, when elections shall be held to fill such offices." The words italicized in the proposed section would be inserted immediately following the italicized words in the provision of the present constitutional section as quoted in the section above.

How the Two Systems Work.—The difference in the methods for filling vacancies in the Supreme Court, the superior courts, and the solicitorial office can be illustrated by an actual case. On October 14, 1950, Mr. Justice Seawell of the Supreme Court died, thereby creating a vacancy on that Court. Under the existing constitutional provision it was clear that the power to appoint a successor lay in the Governor's hands, but there was some question about how long the Governor's appointee would be entitled to fill the position. The regular election for members of the General Assembly was coming up on November 7, less than a month after Mr. Justice Seawell's death. Would the Governor's appointee serve only until a person elected on November 7, 1950, could qualify, or would he serve until a person elected on November 4, 1952, could qualify? In an advisory opinion the Supreme Court stated that under the language of the Constitution, it was clear that the Governor's appointee would serve only "until the next regular election for members of the General Assembly [i.e., November 7, 1950]" and that on that day an election would have to be held to fill the office. On October 19, 1950, the Governor appointed Murray G. James to fill the Seawell vacancy. The primary date having long passed, the party executive committees proceeded to make nominations of persons to run in the general election on November 7, 1950. At that election the Democratic nominee, Jeff D. Johnson, Jr., was elected to fill the vacancy and to serve out Mr. Justice Seawell's unexpired term. Upon Mr. Justice Johnson's qualifications, Mr. Justice James stepped down from the Court.

If the proposed amendment is passed, the situation outlined in the case of the Seawell vacancy would have been as follows: Since the vacancy occurred less than thirty days before the next general election, the Governor's appointee would have served until the 1952 general election instead of merely to the 1950 general election. The proposed amendment would not, however, make any change in those cases where the vacancy occurs more than thirty days before the regular election. The arguments for the proposal are much the same as those used for the proposed amendment in the procedure for filling vacancies in the General Assembly. The Johnson-James case illustrates the possibility of having one man serve in one of these judicial offices for only an extremely brief period, often hardly enough time to warrant the appointment. To obtain nominations and have ballots printed and distributed in time for the imminent general election, all within thirty days' time, places a considerable burden on the election machinery of the state. Campaigns in which candidates can present their views and develop issues are almost impossible. The proposed change would eliminate this problem in the unusual cases in which the vacancy occurs less than thirty days before the election; it would not come into effect if the vacancy occurred more than thirty days before the election.

Citing another section of the Constitution to the effect that "elections should be often held," opponents of the proposed amendment take the position that the mere practical and mechanical difficulties of the election process possible under the present provision are preferable to any proposal depriving the people of the right to vote as soon as possible to fill judicial office vacancies.

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