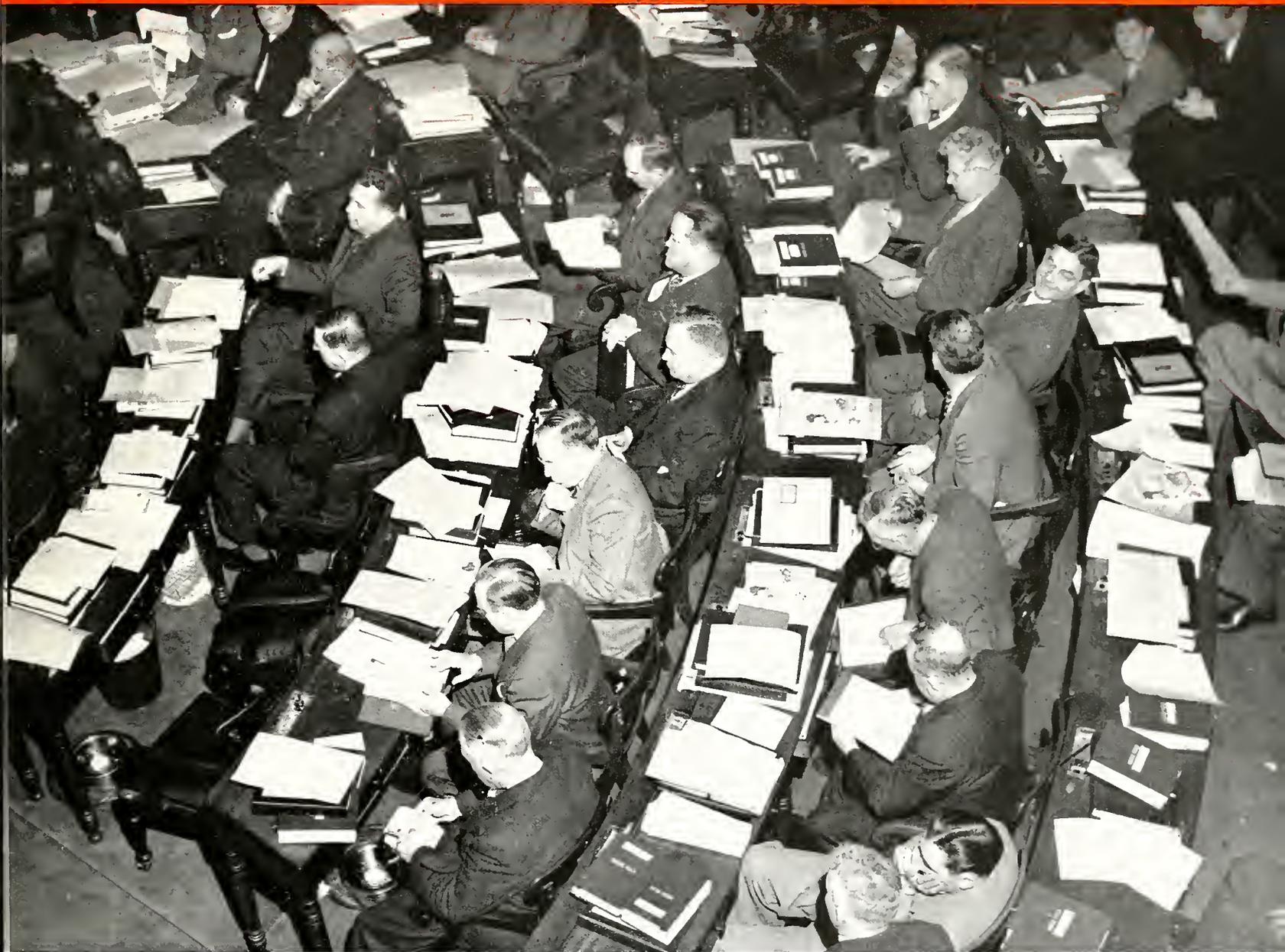


Popular Government

February 1957



It's General Assembly Time

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COVER

The biennial excitement of a legislature in session will sweep over Raleigh this month. The cover picture is of the House of Representatives at work in 1955. Photo courtesy of News Bureau, Dept. of C. & D.

THE CLEARINGHOUSE

Criminal Jurisdiction in National Forests

From time to time in the past, questions have arisen in the minds of law enforcement officers concerning their jurisdiction over crimes committed in national forests. As clarification of the legal situation, D. J. Morriss, Forest Supervisor of the North Carolina National Forests, has written the state's Attorney General as follows:

"In the past we have had numerous instances where County Sheriffs' Departments and officers of the Highway Patrol have stated that they had no jurisdiction on national forest land. Cases where we have notified them include drunk and disorderly conduct, drownings, accidental injuries and deaths, and a suicide. In one case there was a delay of approximately three hours before anyone investigated a drowning case in which there was suspicion of murder. We have explained the jurisdictional status of the national forest land to quite a number of state and local officers, but due to the normal turnover of personnel it is a recurring problem.

"The organic federal act under which the National Forests were established in North Carolina is the Weeks Law. Section 12 of the law (Act of March 1, 1911, 36 Stat. 961, as amended, Sections 480, 500, 513-519, 521, 532, 563, title 16, U.S.C.) reads as follows:

"That the jurisdiction, both civil and criminal, over persons upon the lands acquired under this Act shall not be affected or changed by their permanent reservation and administration as national forest lands, except so far as the punishment of offenses against the United States is concerned, the intent and meaning of this section being that the State wherein such land is situated shall not, by reason of such reservation and administration, lose its jurisdiction nor the inhabitants thereof their rights and privileges as citizens or be absolved of their duties as citizens of the State."

"It would be much appreciated if the concerned Sheriffs, Coroners, Highway Patrol Officers, and any others having state or local jurisdiction could be so notified."

INDEX AVAILABLE

The Institute of Government has prepared an index to POPULAR GOVERNMENT covering volumes 18-22. A limited number of copies are available for free distribution. Please address all requests to Institute of Government, Box 990, Chapel Hill, North Carolina.

Personnel Notes

Robert M. du Bruyne retired November 19 as assistant director of the Employment Service Division of the N. C. Employment Security Commission. **Ernest G. McCracken** moved up to succeed Mr. du Bruyne, and **Alden P. Honeycutt** replaced Mr. McCracken as chief of staff services for the commission. **Edson E. Bates, Jr.** has been appointed industrial services supervisor to replace Mr. Honeycutt.

Walter F. Anderson has resigned as head of the Wildlife Resources Commission, ending 30 years of law enforcement work. **Ben H. James** of Williamston succeeded Mr. Anderson.

Mr. Anderson served on the police force in Winston-Salem, was chief of police in Charlotte, headed the State Bureau of Investigation for a number of years, and was state director of prisons before taking the game law enforcement post.

Sam N. Smith, who has been chief auditor of the State Highway Commission for 30 years, resigned January 1. Mr. Smith first joined the Highway Commission in 1921 and since that time has handled over two billion dollars in state money, keeping watch over a highway fund budget which now runs at about 183 million dollars a year. **Ervin Dixon**, CPA, of Robersonville, has been named to succeed Mr. Smith.

Maj. Edgar D. Kuykendall, solicitor of Greensboro courts for 47 years, has retired from his post. He came to Greensboro and began practice there in 1901. When the Greensboro Recorder's Court was established eight years later, he was appointed prosecuting attorney. **Hubert E. Seymour, Jr.** succeeds Maj. Kuykendall as solicitor of Municipal-County Court.

George Aull has been appointed city manager of Lexington to replace **H. W. Zimmerman** who retired recently. Mr. Aull was formerly assistant to the city manager of Greensboro and comes to his new post from Elberton, Ga., where he was city manager.

Charlotte's fire chief, **Donald S. Charles**, moved up to the first vice presidency of the International Association of Fire Chiefs at a recent convention of the group in Miami, Fla. He served as second vice president this year and is scheduled to become president at next year's convention.

Lt. H. C. Mitchell of the Greensboro Police Department died on November 15 at the Piedmont Memorial Hospital. He had served in the department for 22 years, first as a foot patrolman in 1934, and later as sergeant and then lieutenant in the uniform division.

Assistant Fire Chief **J. Bryant Gofforth**, a veteran Winston-Salem fireman, died October 29 of a heart attack, after becoming ill while directing operations at a fire. He had been with the fire department since 1915 and had been assistant fire chief for seven years. At the time of his death he was department supervisor of maintenance and equipment.

J. Marion Redd, former mayor of Charlotte and a long-time judge of Juvenile and Domestic Relations Court, died November 14. He had been presiding jurist in the Charlotte-Mecklenburg County domestic relations and juvenile court for 14 consecutive years when he resigned in 1949.

Tom E. Cunningham, city manager of Southern Pines, resigned his position in Southern Pines effective January 1 to join the University of Tennessee, with the specific assignment of Professor of Fiscal Administration at the University of San Andres, La Paz, Bolivia. The University of Tennessee, working with the International Cooperation Administration, will establish a school of public administration for officials of governmental units in Bolivia.

Louis E. Scheipers, for several years accountant, tax collector, clerk and purchasing agent in Southern

Pines, has accepted the job as city manager in Southern Pines, succeeding Cunningham.

Arson School Held in December

Fifty-six experienced arson investigators from all over the southeastern seaboard attended the Fifth Annual Arson School held at the Institute of Government, Dec. 4-7. Neal Forney, assistant director of the Institute, was in charge of the school.

Those attending were representatives of local, state, and national governmental agencies responsible for arson and unlawful burning control, law enforcement agencies, fire protection departments, and special agents of underwriting organizations who have graduated from one of the previous arson schools at the Institute of Government or who have had four or more years of employment in the capacity of a criminal investigator or special agent.

The school was designed to give up-to-the-minute detailed instruction to the experienced investigator in the areas of investigative technique and criminal interrogation.

Classroom sessions were held in the new Institute of Government building and were conducted by experienced investigators. Lecturers and discussion leaders and their subjects were Roland M. Smith of the Na-



Arson school students investigate a burned rural dwelling

tional Board of Fire Underwriters, urban and rural fires; W. Paul Whitley, director of the Wake County-Raleigh Identification Bureau, latent fingerprints; Louis Reineri of the National Automobile Theft Bureau, crime scene investigation — burned automobiles; Henry N. Martin of the National Board of Fire Underwriters, investigation of dwelling house fires; Wyatt G. O'Neal of the N. C. Department of Insurance, criminal investigation; H. J. Harmon of the National Automobile Theft Bureau, burning

automobile investigation; A. E. Pearce of the N. C. Department of Insurance, crime scene searches; Robert L. Turnage of the N. C. Department of Insurance, plaster casting; Robert E. Carter of Virginia State Fire Marshal's Office, criminal investigation of a burned automobile; Roy Hall, assistant director of the Institute, law of arson and recent court decisions; and Mr. Forney, investigative techniques (plaster casts,

(Continued on page 4)



The Fifth Annual Arson School

December 4-7, 1956



PUBLIC PERSONNEL

By DONALD B. HAYMAN

Assistant Director, Institute of Government

Management Institute

A five-day Southeastern Management Institute sponsored by the American Society for Public Administration will be held in Athens, Ga., beginning Feb. 25.

The Institute will afford federal, state, county and municipal administrators an opportunity to share experiences and broaden their understanding of fundamental administrative techniques while testing their thinking and planning with a distinguished staff of governmental administrators and educators from the Southeastern region.

Monday, the first day of the Institute, will be devoted to an examination of the economic, social, and public management trends of the region. Tuesday's schedule will include a lecture on the executive's responsibility for personnel, followed by small group consideration of personnel and human relations cases and a demonstration interview on delegation of authority. Wednesday's program will consider finance as a tool of management. Cases and problems to be considered will include departmental accounting for administrative control, preparation of budget justification, and budget execution. Thursday's sessions will consider problems of communications. Sessions are planned on the problems and techniques of conference leadership, management's responsibility for reporting, and the administrator's role in making agency writing effective. The Friday morning session will consider how an administrator can utilize staff services. Participants may arrange for individual tests and counseling in effective speaking during the evening hours.

All Institute activities will take place in the University of Georgia's new Center for Continuing Education. Registration fee for the Institute is \$50.00. Meals and lodging at the Georgia Center will be available

at \$50.00 per individual for double room accommodations and \$60.00 per individual for a single room for the five-day Institute session.

Public officials interested in attending this Institute should write Donald Hayman, Assistant Director, Institute of Government, Chapel Hill, or Dr. Frank K. Gibson, Center for Continuing Education, University of Georgia, Athens, Ga.

Employee Handbook

Greensboro has recently distributed an attractive employee handbook to each of its more than 800 employees. The handbook includes a brief description of the organization of the City of Greensboro and a listing of the staff officers and departments and operating departments.

The handbook describes briefly the classification plan, the pay plan, the probationary period, merit increases, pay days, deductions, hours of work, holidays, leave privileges, the group life insurance plan, group hospitalization and surgical insurance, the retirement plan, the credit union and workmen's compensation.

The handbook also includes a brief statement of what the city expects of every employee and what each employee can expect of the city. The handbook is carefully written and cleverly illustrated and even includes a detailed subject-matter index.

Copies of the handbook may be secured by writing Mrs. Ruth B. Cowan, Personnel Supervisor, City Hall, Greensboro.

Changes in Highway Personnel Policies Recommended

The report of the Commission Studying the Organization of the State Highway and Public Works Commission contains two recommendations concerning personnel. Recommendation No. 6 provides, "We recommend that serious study be given to improving the personnel

policies which concern highway employees. We believe that an improved organization, together with other specific changes, will improve morale at all levels, and that this will in turn improve performance at all levels." Recommendation No. 7 provides, "We recommend that restrictions be placed on the political activity of officers and employees of the Highway Department, in order that highway operations be removed from politics."

In explaining Recommendation No. 6, the Commission noted its approval of recommendations of the Highway Personnel Office that engineering salary scales be raised, that an adequate training program be established, and that a mandatory retirement age limit of 65 be established. (*Ed. Note:* The Highway Personnel Office has already acted to implement some of these recommendations.) The Commission suggested that the Highway Department and the Engineering Department at State College cooperate in a training program for prospective engineers. The Commission also suggested that maintenance and other employees not now under the classification and pay plans be brought under those plans immediately.

In explaining Recommendation No. 7, the Commission had the following to say:

"We believe that highway operations would be immeasurably improved if restrictions were placed on the political activity of officers and employees. We also believe that restrictions on the political activity of highway employees would enhance the reputation and prestige of the Highway Department, whose employees may be accused of greater political activity than they deserve. We have observed that restrictions on the political activity of officers and employees of the Prison Department have led to improvement in the operations of that department.

"To this end, we believe that officers and employees of the High-

way Department should be prohibited from running for partisan political office, managing a political campaign, engaging in partisan political activities while on duty, soliciting or accepting money from any person for any political purpose, using or threatening to use their position to influence the political action of any person, or using any state supplies, equipment, or vehicles for political purposes.

"On the other hand, we believe that officers and employees of the department should retain the right to vote as they please, to express their opinions on all political subjects and candidates, to hold non-partisan public office, to belong to any political party, club or organization, to serve as a member of a precinct or county political committee, and to make voluntary political contributions.

"Finally, we believe that violations of the restrictions on political activity by any officer or employee of the department should be made a misdemeanor, and that the offending officer or employee should be subject to suspension, demotion, or discharge."

These and the other recommendations of the Commission Studying the Organization of the State Highway and Public Works Commission have been endorsed by Governor Hodges and will be considered by the 1957 General Assembly.

Pay Increases

Most Asheville employees on the semi-monthly payroll received an 8½ per cent salary increase effective December 1. The increase was implemented by providing that employees would be paid every other Friday instead of twice a month. Weekly employees in Asheville received approximately \$.05 more an hour effective July 1. The starting salaries for laborers was increased from \$.875 to \$.96 an hour. Policemen and firemen were not affected by the recent percentage increase, as they received a \$20 a month increase last July.

In October by a split vote, with Mayor Kurfees breaking the tie, Winston-Salem granted its employees approximately a five per cent salary increase. Total cost of the raises for municipal employees was approximately \$250,000 a year. A few technical employees received raises of 20, 25, or 30 per cent. The salary increases for employees receiving \$420 per month and less were made retroactive to July 1. Increases for employees receiving \$440 per month

and above were retroactive to October 1.

The new pay plan was based on, but did not follow in every respect, the recommendations of the Public Administration Service, which recently completed a revision of the classification plan and a study of the former pay plan.

Shorter Work Week

Working hours of Greensboro firemen were reduced from 84 to 72 hours effective September 1. Eighteen men were added to the department in order to allow the present force a three-day off-duty period every 16 days.

New Training Center

Greensboro's new \$200,000 firemen's training and maintenance center was dedicated in October during Fire Prevention Week. The training center is the culmination of a five-year effort to improve methods and programs of training by the Greensboro Fire Department.

New Personnel Director

James P. McGaughy has been appointed the first Personnel Director for the city of Burlington. He has been employed by the Industrial Services Section of the N. C. Employment Security Commission.

Classification Plan Revised

A consulting firm has recently completed a revision of the position classification in effect in Mecklenburg County. One of the pioneering innovations as far as North Carolina is concerned is the classification of the position of court reporter.

The new classification plan and pay plan is now included in an attractive three ring notebook binder.

Conference on Local Governmental Retirement

Over 210 local officials met in Chapel Hill on December 13 to discuss current problems in local governmental retirement. The morning session included a welcome by Donald Hayman of the Institute of Government; a talk tracing the progress in local retirement systems by Mrs. Davetta L. Steed of the N. C. League of Municipalities; and talks by Nathan Yelton, Director, N. C. Public Employees' Social Security Agency; Henry Bridges, State Auditor; and M. D. Dewberry, Regional

Representative of the Bureau of Old-Age and Survivors Insurance.

The afternoon sessions were divided into three panels. Leigh Wilson of the N. C. League of Municipalities and N. H. Cox of the Local Governmental Employees Retirement System discussed the question, "Should Local Employees Now Under OASI Be Brought Under the Local Governmental Employees Retirement System?" Nathan Yelton and Donald Hayman discussed the question, "Should Policemen and Firemen Now Under the Local Governmental Employees Retirement System Be Brought Under Social Security?" Henry Bridges and H. B. Trader of the Law Enforcement Officers' Benefit and Retirement Fund discussed the question, "Should Law Enforcement Officers Now Belonging to the Law Enforcement Officers' Benefit and Retirement System Be Brought Under Social Security?"

In the final general session, C. P. Deyton of the N. C. Public Employees' Social Security Agency spoke on the procedure for holding a referendum and problems in reporting. The session ended with a question and answer period.

Clearinghouse

(Continued from page 2)

charting, mapping, and photography) and psychological problems of the psychopath, the deviate, and the juvenile. A panel discussion was held on public information releases on fire investigations.

Practical problem burnings were set up at the Institute's Clear Water Springs firearms ranges two miles from Chapel Hill. The problems included investigation of a burned rural dwelling, warehouse, and automobile; investigation of the area surrounding a burning; practical instruction in the preparation of plaster casts; and instruction in charting, mapping, and photography.

URBAN GROWTH AND MUNICIPAL SERVICES: A SERIES OF ARTICLES. Publication of the next article (Part III) in this series has had to be postponed to make space for a discussion of the anticipated impact on cities and counties of the proposals of the Tax Study Commission.

(Continued on inside back cover)

General Statutes Commission Recommends 17 Changes in Laws

By F. KENT BURNS, *Revisor of Statutes*

The General Assembly adopted the General Statutes as the general law in North Carolina in 1943 and at that time assigned to the Division of Legislative Drafting and Codification of Statutes, of the Attorney General's office, the duty of keeping the laws as clear and concise as possible by means of continuous statutory research and correction.

The General Statutes Commission was created by the General Assembly in 1945 for the purpose of advising the Division of Legislative Drafting in its continuous statutory research and correction, in the publication of the General Statutes, and in making a continuing study of all matters involved in the preparation and publication of modern codes of law. By 1951 it had become apparent that this limited type of revision would not keep the General Statutes in line with the changing conditions in this state and to accomplish this purpose, the General Assembly authorized the General Statutes Commission to recommend substantive changes in the law.

Bills Proposed

In preparing the bills which are to be submitted to the 1957 General Assembly the Commission has considered suggestions from many groups and many individuals, including members of the General Assembly, clerks of the superior court, professors at the law schools of North Carolina, members of the Bar and the North Carolina Judicial Council. During the biennium 17 bills have been approved by the General Statutes Commission for submission to the 1957 General Assembly. The titles of these bills, together with a very brief explanatory note with respect to each bill, are set forth below. Copies of a more comprehensive brief for each bill will be furnished to the members of the Senate and House committees to which the bills are referred. The bills recommended for enactment are as follows:

1 and 2. Two bills providing the fee and tax schedules for the new Corporation Acts. When the Business Corporation Act and the Non-Profit Corporation Act were enacted by the

General Assembly in 1955, the fee and tax schedules were omitted, with the understanding that such schedules would be incorporated in separate bills to be submitted to the 1957 General Assembly. Consequently, two such bills have been prepared—one for the Business Corporation Act and one for the Non-Profit Corporation Act.

3. A bill to clarify the status of corporations having less than three shareholders. A recent decision of the North Carolina Supreme Court has had the effect of casting a doubt upon the existence of all corporations having less than three shareholders. A great many corporations in this state do not comply with the requirements laid down by the court. The bill is in two steps: first, it renews the life of corporations which may have become dormant as a result of the Supreme Court's decision and, secondly, it takes care of corporations in which all of the stock is acquired by less than three shareholders after the effective date of the Act.

4. A bill to amend sections 55-46(a), 55-52(c) and 55-59(a) of the Business Corporation Act. The first of these sections amends G.S. 55-46(a) by making clear, in accordance with the general theory of the Act, that one can become a shareholder before stock is fully or partly paid for. The second section of this bill, amending G.S. 55-52(c), is designed to clarify the corporation's power to purchase its own stock in the exercise of a first refusal right, such a right being frequently found in stock transfer restrictions in close corporations. The third section of the bill amends G.S. 55-59(a) by inserting an exception to the general right given to corporations in that subsection to rely on the stock records by depriving it of such right when the issuance is based on forged endorsements or on duplicate certificates issued upon false affidavits of loss.

5. A bill to amend G.S. 1-79 so as to conform to the terminology of the Business and Non-Profit Corporation Acts. The purpose of this bill is simply to incorporate the changes in terminology made by the Business and Non-Profit Corporation Acts into

G.S. 1-79. This section sets forth the residence of a domestic corporation for the purposes of suing and being sued. Residence is where the principal office or registered office of the corporation is said to be located by the certificate or articles of corporation.

6. A bill relating to the place of registration of corporate mortgages on personal property (G.S. 47-20.2). This bill would make such changes in the corporate mortgage registration statute as are necessary to make it conform to the new Business Corporation Act and certain changes in the law relating to the place of registration to avoid any confusion that may arise as to the proper place of registration.

7. A bill to validate certain amendments to corporate charters extending corporate existence. Under the existing law (G.S. 55-164.1), where a private corporation, chartered under the general laws of this state, has continued to act as a corporation after the expiration of its period of existence as theretofore fixed in its charter and has thereafter filed in the office of the Secretary of State an amendment to its charter to extend or renew its corporate existence, such amendment is validated. This provision was included in the new Business Corporation Act (G.S. 55-162, effective July 1, 1957), but was not included in the new Non-Profit Corporation Act. This bill would write a similar provision into the new Non-Profit Corporation Act.

8. A bill to clarify the procedure for levy on shares of stock. Under the present law a distinction has been made between shares of stock and share certificates in investment or business trusts. The Commission felt that for the purposes of execution there is no justifiable distinction between these interests and stock certificates. The bill further clarifies certain terminology to insure that all corporations are included and provides necessary changes in the procedure.

9. A bill to abolish the rule in Shelley's Case. This rule has already been abolished in all but nine of the states of the United States and in England

(Continued on page 21)

Judicial Council Makes Proposals

By JOHN A. ROBERTSON, *Executive Secretary*

Court Administration

Financial Responsibility Act, G.S. 20-279.2

The petition which stays the Commissioner of Motor Vehicles' order revoking or suspending a driver's license caused such an accumulation of cases that it became impossible for the superior court to dispose of them in a prompt and orderly fashion. The maximum accumulation was 2100 cases. Over 3600 have been filed and there are now about 1000 cases on the docket. The Judicial Council is presenting an amendment to correct this situation with a view to a speedy, competent hearing with due regard to the motorist's right of petition. The petitions are now being filed at the rate of 100 a month, and it is estimated that a substantial percentage of the petitioners are unquestionably in the right. It is felt this bill will expedite these matters and protect an innocent segment of the public.

This amendment provides that upon the filing of a petition in the superior court by the petitioner, setting forth his grounds for relief, the order of revocation would be suspended for sixty (60) days after filing of an answer, unless disposed of meantime by order of court; that priority on the calendar be given to the hearing of such petitions; that if the matter is not heard within sixty (60) days after answer is filed, the Commissioner's order will take effect; that there may not be a continuance except by an order signed by the judge for good cause shown; that such petitions are to be heard by judges of the superior court, regular or special, in or out of term; that if a party is only guilty of contributory negligence and a person is probably not damaged by the accident the petitioner shall not lose his license. It also proposes that the petitioner pay the costs. The Chief Justice of North Carolina is authorized to call special terms and assign judges there-to for the disposal of petitions. The petition may be disposed of whether the Commissioner is represented or not, if he has been given notice.

A Bill to Amend G.S. 7-70 to Change Designation of Court Terms

A situation has developed where

frequently it is desirable to change the designation of court terms. This arises when a county has a term of civil court approaching with very few civil cases to try. The local bar may wish to proceed with the heavier load of criminal cases. Occasionally, the reverse is true and the bar would like to convert from criminal to civil. It has been possible to effect this under existing statutes (G.S. 7-71.1 and G.S. 7-78) but it is cumbersome and wasteful administratively. A more streamlined procedure is needed and it is the purpose of this bill to provide it. It is considered that this will make possible a change in terms from criminal to civil, and from either to a mixed term, or vice versa.

Solicitorial Workload Bill, G.S. 7-43.3 and G.S. 7-43.6

In several of the solicitorial districts a backlog of cases has accumulated that cannot be removed without providing some assistance to the solicitor. This help must be of a regular nature, and to clear the docket the court will have to stay in constant session. It is also contemplated that the need will be recurrent, and the existence of machinery to handle this will implement any reorganization that is made.

This amendment provides that if there is more than one term of criminal court in a solicitorial district the same week, it shall be the duty of the solicitor to appoint an assistant. When the appointment is made because there are conflicting terms, the county having the more recently created term is to pay the compensation of the assistant at the rate of \$200 per week. In the event said conflicting terms were created at the same time, the solicitor is to determine which county is to pay. But no additional compensation is required if the solicitor in his discretion appoints the existing assistant solicitor who has been appointed by the County Commissioners under G.S. 7-43.2.

Reform of Jury Selection, G.S. 9-1

A grievous problem in the manner of selecting jurors in a number of counties has been called to the attention of the Council. It has been shown that as a result of these methods a large number of people who have been convicted of crimes are impaneled to try criminal cases.

Another result has been the impossibility to secure a literate jury for the trial of civil cases, some of which are very complicated.

These situations appear to have developed from lack of supervision and the difficulty of placing the ultimate responsibility for the operation of the system.

It is believed this bill will remedy the situation by providing for the resident judge of the superior court to appoint a jury commissioner. This is a system which has long proved satisfactory in the operation of the federal district courts in this state.

Procedural Matters

To Provide Fee for Guardian Ad Litem, G.S. 1-65.1

Though it seems the general practice, there is no specific authority to tax the fee of a guardian *ad litem* where the defendants are infants or persons *non compos mentis*. The Council has decided at the suggestion of the clerk of the superior court of Guilford County that it would be helpful to court officials to make this statutory. The bill provides that the fee be fixed and taxed as part of the costs.

To Provide Fee for Respondent's Attorney in Condemnation Proceedings, G.S. 1-209

In a condemnation proceeding where the petitioner abandons the action, the clerk is not authorized to tax the petitioner with the fee for respondent's attorney. The inequity here is that the respondent through no fault of his own has been proceeded against and has been forced to retain counsel. The purpose of this amendment would allow the clerk to tax as part of the costs against the petitioner the fee of the attorney whom the respondent has been obliged to obtain. The bill also provides for the petitioner to take a voluntary non-suit.

Instructions in Writing Discretionary With Judge, G.S. 1-182

At the present time a trial judge has no discretion as to whether he puts his instructions to the jury in writing. A bill is presented which leaves it to the discretion of the judge.

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The Tax Study Commission's Report As It Affects Cities and Counties

By GEORGE H. ESSER, JR. and HENRY W. LEWIS, Assistant Directors, Institute of Government

Introduction

Since the release of the report of the North Carolina Tax Study Commission on November 30, 1956, principal attention has been given to the report's recommendations as they affect state revenues on the one hand and the taxation of business on the other. The purpose of this article is to look specifically at the recommendations of the Commission as they will affect city and county government.

Summary of Recommendations

The Commission's report directly or indirectly affects city and county government in recommending:

1. That the present local tax on bank shares should be repealed;
2. That the personal property of state banks be exempted from local taxes;
3. That 100 per cent (rather than 80 per cent) of the net collections from the intangibles tax be returned to the counties and municipalities under the existing distribution formula;
4. That the General Assembly consider submitting to a vote of the people the following proposals for amendments to the Constitution:
 - a. To exempt products of the North Carolina soil from property taxes when such property is in the hands of the farmer who raised it or in the hands of the manufacturer who bought it;
 - b. (an alternative to a) To classify products of the North Carolina soil when in the hands of the farmer who raised them or in the hands of the manufacturer who bought them so that they may be taxed at a low protective rate;
 - c. To exempt all or certain classes of intangibles from property taxation;
5. That the present Schedule B license tax structure of the state and the license taxing powers of cities and counties

be replaced by an occupational license levy which for the most part is based on business volume with reasonable rates applied to each category and with the rates for different categories fixed to reflect broad differences in gross profit margins. The powers of counties and municipalities will supplement the state's powers so that no business will pay more than one tax to one unit of government; in general, business of a strictly local character will be taxed locally and highly mobile businesses will be taxed on a uniform state-wide basis by the state only;

6. That municipalities be granted the power to raise additional revenues from two sources:
 - a. Increasing the maximum motor vehicle tax which may be levied by cities from \$1 to \$10;
 - b. Permitting cities to levy a tax of up to \$10 on all persons earning salaries or wages within the city.

This article presents those parts of the Commission's report which deal with these recommendations. So far as possible the words of the Commission have been used. In a few instances, for purposes of clarity, the paragraphing and punctuation have been altered. The figures in brackets supply the page references for the quotations in the Commission's printed report.

The Locally Administered Ad Valorem Property Tax

"It is an incontrovertible fact that state and local taxes are cost factors which are carefully considered by business and industry when it is contemplating expanding or locating at any given place. . . . It has always been known that North Carolina has relatively high income and franchise taxes on corporations." [p. 4] In summarizing North Carolina's answer to criticism on these two taxes, the Commission noted that the state has (1) maintained that a larger portion of state and local governmental

functions have been financed at the state level in North Carolina than is true in any comparable state of the union, and, therefore, (2) that local property taxes were consequently at such a reasonably low level that the *total tax burden* [state plus local] was not too high in comparison with neighboring states. [p. 4]

But, in its study of this very point the Commission "found that the impact of state and local taxes in many desirable locations in North Carolina is greater on many types of industries and businesses than is the impact of state and local taxes in many locations in the other Southeastern States. In other words, it is not always true that the total tax package in North Carolina is as reasonable as that of the other Southeastern States. . . ." [p. 5]

Having made this determination, the Commission gave an analysis of the reasons that led it to this conclusion:

"The two major reasons for this comparative unfavorable tax burden are to be found within the state income tax and the local property tax. Whereas, there are many desirable available plant sites within North Carolina in locations where the property tax bill would be quite low in comparison with sites in other Southeastern States, there are many existing plants within cities (and within certain counties where there is a large and healthy growth now taking place) which levy a much higher tax than many such locations in other Southeastern States. Aside from the question of tax exemptions granted in some other states, the ratio of assessed value to fair market value of industrial type property in many locations in other Southeastern States is extremely low, and this has a marked effect upon the impact of taxation upon industries in such locations. . . ." [pp. 5-6]

With respect to municipal corporations, the Commission added this significant comment: "Since in certain cities property taxes are becoming relatively high and since certain cities feel cramped because the property assessment machinery is in the hands of the county, some flexibility

in city tax levying authority seems desirable." But the Commission was quick to add: "City assessment at present is deemed undesirable. . . ." [p. 13]

As to the future, the Commission summarized its attitude toward the property tax as follows:

"The property tax problems are always many. Some of them have been alluded to herein. The State long ago recognized the heavy hand of such a tax and virtually removed itself from the field and then adopted a broader state tax structure . . . and centralized state government to provide property tax relief.

"Since that time, local property taxes in general have had no great impact on agriculture.

"At the location of many available and highly desirable plant sites, however, and within certain cities, property taxes have reached a level which when combined with the impact of a bad allocation formula under the State Income Tax, produces a comparatively excessive tax load.

"A change in the allocation formula [as the Commission proposed] should alleviate the total impact distortion for the present.

"When the need for a comprehensive property tax study arises, it should be made on an intensive and extensive basis with proper staff and proper financing." [p. 14]

Specific Recommendation:

"Since agricultural production and the manufacture of agricultural raw materials into finished consumer products are of such primary importance to a large portion of North Carolina's population and industry, the General Assembly should consider the advisability of offering a constitutional amendment.

"[1] to exempt products of the North Carolina soil from property taxes when such property is in the hands of the farmer who raised it or the manufacturer who bought it,

"[2] or, as an alternative, tax it at a protective low classified property tax rate." [p. 14]

The Tax on Bank Shares

"In studying the taxation of state and national banks under the North Carolina tax laws the Commission found banks to be taxed under an archaic and cumbersome share tax system. . . . [T]he State Board of Assessment certifies to local property tax jurisdictions the value of the

shares of the capital stock of the banks after deducting certain investments from the surplus accounts. Against this valuation of this class of intangible property the several local governmental units each levy a tax at the general property tax rate of the unit. [p. 8]

"[The Commission] also found that *state* banks are subjected to the corporate net income tax but that *national* banks do *not* pay the income tax, or any tax directly to the state government. At the time the share tax was first employed, prior to 1921 when the income tax was adopted, it was the only method by which national banks could be taxed under the laws of Congress which prescribe the allowable methods. [p. 8]

"The Congress thirty years ago enacted a provision permitting the taxation of national banks under a franchise tax measured by total net income. During this time the postponement of a re-examination of the methods by which banks are taxed has permitted the evolution of a situation of inequitable distribution of the total tax bill of banks between various types of banks.

"National banks are favored over state banks.

"Larger state banks are generally favored over smaller state banks.

"State banks engaged in commercial type operations are favored over state banks engaged in industrial type operations.

"State banks in different geographical locations pay different taxes because of widely varying property tax rates.

"Due to the fact that under the North Carolina Income Tax, income from Federal government obligations is not included as taxable income, state banks which act only as depositories receiving the people's deposits, investing the money in government bonds and declining to make loans to any appreciable extent to local businesses and individuals are favored over the banks that try to fulfill their obligation as a part of the modern business community.

"Because of the peculiar manner prescribed for ascertaining the tax base of the present share tax, state banks with small capital stock accounts are encouraged to increase surplus rather than capital stock, creating a disproportionate net worth structure in order to avoid an increased share tax liability.

"In short, from the viewpoint of the impact of state and local taxes on various types of banking institutions the Commission could find no equity in the present method of measuring tax liability." [pp. 8-9]

Specific Recommendations:

The Commission recommends that this situation be alleviated:

"[1] by equalizing the present total tax bill of the state banking institutions by the use of a 4½% excise or franchise tax measured by net income (including interest from Federal obligations and other governmental obligations except North Carolina state and local bonds);

"[2] that the share tax be repealed; and,

"[3] as is prescribed by Congress under this method of taxing national banks, that banks be exempt from local personal property taxation, and

"[4] that dividends paid by the banks be deductible from the individual's gross income under the income tax." [p. 9]

Projected Effect:

"This will result in the payment by both national and state banks of an equitable tax to the State Government and will equalize the tax burden between all types of banks. The tax will be in lieu of all other state and local taxes except real estate taxes. . . ." [p. 9] The Commission estimated that its recommendations as to the taxation of banks would bring an annual loss to counties of \$300,000 and to cities an annual loss of \$272,000. [p. 12]

The Tax on Intangible Personal Property

"The present [intangibles tax] system and the various alternatives were carefully studied. Since the field of property taxation is significantly guided and controlled by constitutional provisions, it is necessary to evaluate the alternatives available in light of probable constitutionality.

"The General Assembly is not granted authority to exempt intangibles from the property tax.

"It may place intangibles under the local general property tax. But the General Assembly may not authorize local taxing authorities, in their discretion, to exempt intangible personal property from taxation.

"The authority granted [to the General Assembly by the Constitution] is that of classification; the power to exempt is specific and not

general; and uniform property taxation within classes is required.

"In addition to the legal problems involved in the consideration of any recommendations as to exemption or local option there is a serious question as to the equity of advising that such a broad class of property be allowed to escape the property tax. . . ." [p. 10]

Specific Recommendations:

"[1] Since the problem has been presented to the Commission as such a pressing and important one, we recommend that the General Assembly consider whether it be advisable to offer to the people a Constitutional amendment to exempt all or certain classes of intangibles from property taxation so that the will of the people [may] be known on this question. [p. 10]

"[2] . . . The Commission believes . . . that collections from intangibles taxes should be entirely local revenues since the State government itself levies no general property tax and since the tax is in lieu of local general property levies against these classes of property. It is, therefore, recommended that the State continue to collect the tax because of the impracticability of local administration but that one hundred per cent of the net collections be distributed to local units instead of the present eighty per cent. . . ." [p. 11]

Projected Effect:

The Commission estimated that its recommendations as to the taxation of intangible personal property (without reference to any constitutional changes) would bring increased revenues at the rate of \$950,000 per year for counties and \$650,000 per year for cities. [p. 12]

The Privilege License Tax

The Commission studied carefully the system of privilege license taxation, consisting of state taxes levied in Schedule B of the Revenue Act, a small number of county license taxes levied under specific authority found in Schedule B, and city license taxes levied in comprehensive city ordinances under general authority contained in G.S. 160-56 as limited by Schedule B with respect to those businesses also taxed by the state.

Findings

"The system of *license taxation* is a hodge podge method of extracting relatively small total amounts of revenue through a very inequitable and irritating hierarchy of levies by

three different governmental units, the various levies being on a multitude of various bases in many instances having no relationship to the amount of business done. The total of all licenses levied on a particular business by all levels of government in some instances constitutes a considerable impact. . . ." [p. 7]

"There are inequities between competitors in the same categories of businesses, between different types of businesses, and there are inequities because of the locations of businesses." [p. 7]

Amplifying this general statement in the body of the report, the Commission found that:

"1. The taxes levied by the state (and by most local units) have no direct relation to the size or volume of the business.

"2. The basis of taxation is often so inexact as to be discriminatory.

"3. Rates of taxation in Schedule B have not been periodically changed to reflect economic conditions. . . .

"4. No provision has been made for avoiding possible discrimination in the accumulation of taxes on a number of different activities." [p. 70]

The Commission further pointed out that (1) small businesses pay proportionately higher license taxes than large businesses in the same category, and (2) license taxes are higher in large cities than in small cities. [p. 70]

". . . As a state with many thousands of marginal businesses, North Carolina cannot afford to put unnecessary obstacles in the face of small enterprises, even when those obstacles are not high in relative dollar amount. In the opinion of this Commission, the system of license taxation should be changed to eliminate this inequity—particularly as between businesses of the same type." [p. 70]

"When it is necessary to issue over 500,000 licenses to no more than 75,000 individual enterprises in order to raise just \$10,000,000 in tax revenue at all three levels of government, it is obvious that something is wrong. . . ." [p. 70]

Basis for Revision of the Tax

"The Commission feels that the State should plan to eventually abandon the license tax or privilege tax approach. Until repeal is possible from the revenue standpoint, however, it is highly desirable to clean up this area of taxation by more

clearly and equitably defining the businessman's license tax obligation, by removing the overlapping taxing authority of the different levels of government and by setting a ceiling on the licensing authority of local governmental units. . . ." [p. 7]

Other criteria set forth by the Commission included a desire to protect the revenue-producing potential of both state and local governments, to recognize insofar as possible the principle of local legislative discretion, and to make administration of the tax easier and less annoying to businessmen. [p. 61]

". . . Rather, [the Commission] approves the theory that every business should pay in some measure for the privilege of doing business, that this tax payment should not be based on the value of property owned or on the profitability of doing business in a particular way, and that the tax should be a relatively low tax so constructed that no business will be penalized in relation to other competitive businesses or in relation to all other types of business." [p. 73]

"Volume of business has long been considered as an effective basis for taxation, at the state as well as at the local level, and it generally fits the concept of a broadly-levied occupation tax. . . ." [p. 73]

After reviewing the arguments for and against volume as a measure of taxation, the Commission concluded that "any effort to consider all the complex factors entering into business operations in devising an occupation tax which will produce a relatively small amount of revenue would be self-defeating. The Commission has concluded that a tax measured by the gross receipts or gross sales of particular businesses would be fair if the rate were low and if the element of cost of goods sold were taken into consideration in fixing rates." [p. 73]

In order to take the element of cost of goods sold into consideration, the Commission authorized a special study to compare gross profits ratios (the ratio of gross receipts minus cost of goods sold to total gross receipts) in each of the business categories defined for this state by the Department of Tax Research.

"The Commission has not strictly followed the mathematical relationships established by this study, but these relationships have been used as a guide in arriving at the rates recommended for the levy of occu-

pation taxes. . . . For example, it was determined that service trades have a gross profits ratio as compared with retail trades of from 3-1 to 5-1. Thus, in fixing rates of taxation, the maximum rate authorized for taxation of service trades has been fixed at .3 of 1% of gross receipts while the maximum rate authorized for taxation of retail trades has been fixed at .09 of 1% of gross receipts—a ratio of about 3-1. . . .” [p. 74]

After deciding upon the general basis for an occupation tax, the Commission considered these four specific plans for dividing taxing powers between the state and local governments:

“Plan A. A state levied and collected occupation tax with a portion of the proceeds from this tax shared with local governments.

“Plan B. A state levied and collected occupation tax with local governments having the power to levy additional local occupation tax rates which would be collected by the state.

“Plan C. A state levied and collected occupation tax with local governments having a separate power to levy and collect local occupation taxes.

“Plan D. A state levied and collected tax on selected occupations and a local power to levy and collect occupation taxes on all occupations not taxed by the state.” [p. 74]

Factors Considered in Selecting a Plan

With four plans before them, the Commission found that a number of secondary decisions had to be made before one plan could be agreed upon. Among the factors considered were these:

1. The undeniable fact that the state is better equipped to collect taxes based on gross sales than local governments. [pp. 74-75]

2. The desirability, in attracting industry to this state, that there be as much certainty as possible in the amount of the occupation tax which a particular business may have to pay to state and local governments. [p. 75]

3. The desirability of protecting businesses with high mobility, such as local and regional distributors, from paying local occupation taxes to several different cities. [p. 75]

4. The fact that in such cases as the manufacture of products undergoing several processing operations

from several different manufactures, the imposition of an occupation tax on each of these manufactures would possibly affect the competitive standing of the final product when it reached the market in competition with similar products manufactured in other states. [pp. 75-76]

5. The need of local governments, particularly cities, for additional sources of revenue if North Carolina cities are to provide the services required to (a) make urban areas in North Carolina attractive to industry and (b) encourage all forms of economic development. [p. 76]

6. The desirability at the local level of leaving the determination as to what taxes are levied and at what rate to the discretion of local governing bodies. [p. 76]

After examining each plan with these factors in mind, the Commission reached this decision:

“Plan D seemed to solve some of these problems. By vesting in the state the power to tax those occupations which have mobility, those occupations on which information is most difficult for cities to obtain, and those occupations which seem to have little relationship to local service needs, this plan would assure better administration of the occupation tax and fewer inequities resulting from mobility and cumulative burdens. By vesting in local units of government the power to tax occupations which are basically fixed in location, which call for greater local services, and which can supply information to local tax collectors more easily, the plan would give local governmental units tax sources which could be administered properly on the local level.

“Plan D requires that the state and local occupation taxes be considered as a single system in order to measure the total impact of the tax on all business activity, a requirement that is not necessarily present in the other plans. Since the state tax is subject to amendment only during sessions of the General Assembly, and since it is levied at the same rate throughout the state, it was necessary to put a ceiling on the taxing power of cities and counties so that businesses in cities which levied the maximum rate authorized would not be penalized in comparison with businesses paying the state tax. *This ceiling also provides a certainty that is not now present in the city tax structure. . . .* The plan sug-

gested will permit every city at least to replace the revenues presently derived from privilege license taxes. . . .” [p. 78]

Specific Recommendations—Cities

Under the plan recommended by the Commission, the state will levy and collect all occupation taxes levied on wholesale businesses (.075 of 1% of gross receipts), a few selected services (.3 of 1% of gross receipts), selected amusements (either at existing rates, as for circuses, carnivals and football games, or at .6 of 1% of gross receipts), vending machine operators (.09 of 1% of gross receipts), selected manufacturers (soft drink bottlers at .4 of 1% of gross receipts, and ice cream manufacturers, newspapers and radio and television stations at .1 of 1% of gross receipts), the larger contractors (.1 of 1% of gross receipts), professions (\$50 per person), financial institutions (at existing rates), and a few miscellaneous businesses (at existing rates). [pp. 62-63; 78-79]

The Commission further recommended that cities have the power to tax those businesses listed in Table No. 1 and at the rates listed in that table.

In addition the Commission made some recommendations concerning administration of the tax by cities.

“The Commission recognizes that many cities and towns will have difficulty in collecting taxes based on gross receipts, and accordingly it recommends that cities and towns have the option of levying either a tax based on gross receipts or a tax based on flat fees or some other methods of measurement. In order to insure equity, however, a business in a town which uses the flat fee basis should be allowed to pay on the fee basis or on the gross receipts basis. . . . In other words, if a grocery store is taxed a flat tax of \$50, and the owner of the store proves that his gross receipts for the previous year were \$40,000, he would pay a tax of just \$36 (.09 of 1% x \$40,000 . . .) by exhibiting his books for that year to the tax collector at the time the tax was due.

“To assist tax collectors in cities where the gross receipts tax is employed, the Commission recommends that the tax collector in each such city, or his accredited representative, be given authority to check state tax returns in order to insure that businesses in his city are making accurate reports to the city. . . .” [p. 81]

Further, the Commission recommended that cities be given the authority to "establish classifications within retail and service categories and to levy different rates of taxation on businesses in such classifications, so long as the rate for the category is not exceeded and so long as no classification is exempt from taxation." [p. 80]

Specific Recommendations—Counties

"The Commission recommends that counties be given authority to levy an occupation tax on all businesses located outside the corporate limits of municipalities in the following categories: retail trade; eating establishments; service activities; manufacturing; amusements. In other words, the counties could tax the same types of businesses that cities can tax and the same limitations imposed on cities would apply to counties, but the county would have

the power to tax only those businesses outside of cities. The Commission recommends, however, that the maximum county rates be one-half the maximum rates authorized for cities except that (1) the rate for taxation of amusement activities would be equal to the city rates and (2) the maximum tax which could be collected from manufacturers would be \$1,250. Counties would have the same choice between a gross receipts tax and a flat fee tax (with a floor) recommended for cities; they would have the same classification power with respect to retail trades and services recommended for cities; they could only tax those intrastate manufacturing sales which the cities would have the power to tax." [pp. 81-82]

Projected Effect

"Careful examination of 1954 gross sales information in a sample

of more than 30 cities and towns shows that every city but one would derive more revenue from the occupation tax if the maximum rate suggested by the Commission is levied than it derived in 1954 from privilege license taxes. Charlotte, for example, would just about replace the revenue it obtained from license taxes, as would Winston-Salem, Wilmington and Raleigh. Greensboro, Durham and Asheville would net an increase of as much as 25%. . . ." [p. 82]

The Commission concluded that just about every city or town could derive at least as much revenue from the occupation tax as they now derive from license taxes.

"If all counties levied the maximum rate authorized, the revenue derived would just about equal collections today from privilege license taxes. This result is not necessarily true in individual counties, for some of the larger counties would collect a smaller amount in license taxes. . . ."

"City and county tax officials would have an easier job in collecting occupation taxes than they now have in collecting license taxes. First of all, within the limits prescribed, governing boards would be able to levy taxes which are equitable as between businesses in the same category, something they have heretofore been unable to do and have wanted to do. Secondly, the governing boards may, if they choose, adopt graduated taxes not strictly based on gross receipts. . . . Tax collectors would have but one tax to collect from each retail and service activity. . . . The number of individual taxes collected by cities and towns would be between one-quarter and one-half of the number of licenses now issued." [p. 83]

Table No. 1

Businesses Taxable by North Carolina Cities under Recommended Plan

<i>Business Category</i>	<i>Rate</i>
1. Retail trades (except gross sales of vending machine operators, taxable by the state)	Up to .09 of 1% of gross receipts attributable to the city or town in which business is located.
2. Establishments selling prepared food	Up to .15% of total gross receipts
3. All services except those taxed by state	Up to .3 of 1% of total gross receipts ^a
4. Moving picture theaters (except drive-in theaters)	Up to .6 of 1% of gross receipts
5. Bowling alleys, amusement parks, swimming pools, skating rinks, and other amusement enterprises and devices	Up to .6 of 1% of gross receipts
6. Billiard and pool tables	From \$10 to \$60 per table, depending on size
7. Contractors and construction trades not taxed by the state	Up to .1 of 1% of gross receipts ^b
8. Local manufacturing activities	Up to .1 of 1% of the gross sales from goods manufactured in the city and sold to North Carolina concerns, but the maximum tax levied shall not be more than \$2,500. Sales to other manufacturers for further processing would be excluded.

^a The following services would be taxed by the state on the basis of high mobility: all laundry, cleaning and pressing services; all advertising agencies and advertising services (newspaper and radio and television advertising would be taxed under the taxes listed in manufacturing); mercantile credit and collection agencies; private employment agencies; news syndicates; and services to dwellings such as exterminating services. All other services would be subject to tax by cities and counties.

^b Contractors and construction trades taxed by the state include any contractor or subcontractor who undertakes or executes a contract for the construction of any item listed in G.S. 105-54 and costing more than \$10,000. In other words, if any business is awarded a contract for either general construction or for installation of plumbing, heating, or electricity or for interior decoration, and the amount of such contract or subcontract is in excess of \$10,000, the state will tax that business for all contract or construction work performed during the year. Cities and counties have the power to tax businesses doing such contract or construction work where no single contract amounting to \$10,000 or more during the year is involved.

New Sources of Revenue for Cities

"In considering revision of all parts of the state's tax structure the Commission has been particularly sensitive to the problems and needs of local units of government. . . ." [p. 76]

"At a time when a program of industrialization is underway in the state, the cities have the positive duty to provide the services that are required to (1) make urban areas in the state attractive to industry and (2) encourage all forms of economic

(Continued on page 14)

Collecting Ad Valorem Taxes from Bankrupt Taxpayers

By JOSEPH B. CHESHIRE, JR., of Harris, Poe & Cheshire, Attorneys-at-Law, Raleigh

[NOTE: This article is based on a lecture Mr. Cheshire delivered at the annual conference of the North Carolina Tax Collectors Association at the Institute of Government, April 18, 1956.]

Property—real, personal, poll, and dog—is listed for taxes each year in January. The tax rate is fixed at a later date, and the taxes become due in October. These taxes carry with them liens which attach:

1. To real estate retroactively as of January 1 of the current year without levy by the collector;

2. To personal property as of the time the property is levied upon or attached, in the manner of a levy under execution. (Levy cannot be made before the tax due unless there is danger of the property being removed from the state.)

Levies for taxes *when they attach* come ahead of all other liens, whether prior or subsequent, and they are not affected by receivership or bankruptcy of the property owner.

This summarizes the state law under which county and municipal tax collectors operate in North Carolina, but it is not so simple as it sounds when complicated by receivership or bankruptcy, particularly when it becomes necessary to face questions of state, county, and municipal taxes competing with federal taxes.

From the beginning it is important to bear in mind that there is a distinction between *taxes due* and a *lien for taxes due*. Taxes are due and, under some circumstances (but not all), the taxing unit has a lien on certain property for those taxes.

This paper pertains to bankruptcy and taxes, so an explanation of just what bankruptcy is will be in order.

Article I, Section 8, subsection 4, of the Constitution of the United States provides that Congress shall have the power to establish uniform laws on the subject of bankruptcies throughout the United States. Under this authority the Congress has passed laws governing the bankruptcy procedures. These laws were rewritten in 1938 in their entirety. It is important for the tax collector to take into account the fact that bankruptcy is always a federal procedure in the federal courts.

In view of the provision for receiverships under state law, what is the reason for bankruptcy?

The main reason is the discharge that can be obtained in a bankruptcy proceeding. In bankruptcy, a debtor generally is discharged from all debts that existed at the time of the bankruptcy, whether or not any part of them is actually paid in the bankruptcy liquidation. State receivership laws, on the other hand, cannot provide for the discharge of any debts not actually paid. Therefore, from the debtor's standpoint, bankruptcy is the most satisfactory method of liquidation of the assets either of an insolvent individual, or an insolvent corporation that expects to continue in business. Actually, taxes are excepted from a discharge to the extent that they are not actually paid in the bankruptcy liquidation. However, from the standpoint of the tax collector, it is generally much better to try to collect taxes in the bankruptcy proceeding, if for no other reason, because thereafter the debtor probably will have nothing with which to pay taxes even if he is still liable for them legally.

Bankruptcy may be either voluntary or involuntary. The insolvent may file a petition on his own or his creditors may file a petition to have him declared bankrupt. From the tax collector's standpoint the net result is the same. The Federal District Court will appoint a trustee whose business it then becomes to take possession of what assets the insolvent has, liquidate them, and distribute the proceeds according to law.

Ordinarily the tax collector's first step is to attend the first meeting of the creditors of the insolvent. If the bankrupt has listed taxes among his obligations, as will ordinarily be the case, the collector will receive a notice of this first meeting. Generally it is held at the county seat of the county in which the bankrupt resides. This will normally be convenient for the tax collector, and he should make it his business to attend.

At that meeting the bankrupt is examined about his assets and his liabilities, and the creditors select the person they want named trustee. This trustee, as already indicated, is

an officer of the court and under its supervision. After liquidating the bankrupt's property it is his responsibility to pay the money out according to the following order of priority prescribed by law:

1. Effective lien holders. Creditors in this class are paid the amount of their claims in full if the property on which they held liens brought a sufficient amount at the liquidation sale. If it did not, they are paid the full amount the property sold for. Some taxes qualify for this class, but they will be discussed later.

2. Costs of administration. The costs and expenses of the bankruptcy proceedings are paid in this class.

3. Wages due employees of the bankrupt which were earned within three months of the bankruptcy, but not to exceed \$600 per employee.

4. Certain expenses of creditors in the proceeding incurred in resisting discharge, obtaining conviction of the bankrupt for crime, etc.

5. Non-lien taxes owed the United States, any state, or any subdivision of a state. In this class all stand on the same footing. For example, if the non-lien taxes amount to \$1,000 and the trustee has only \$500 left with which to pay them, each of the taxing units that has filed its claim is paid 50% of its claim without priority among claimants. In this connection, it should be observed that no taxes on property will be paid in an amount exceeding the value of the interest the bankrupt had in the property taxed.

6. Debts owing to any person who, by the laws of the United States, is entitled to a priority.

7. Unsecured creditors.

Now obviously, in 999 out of every 1000 cases of bankruptcy all creditors are not going to get paid in full, so it is to the tax collector's advantage to obtain the highest priority for his claim that is possible. This, of course, is class one, that of the effective lien holders.

That leads to a consideration of tax liens. Suppose, for example, that John Smith lists for tax purposes certain real and personal property, his poll, and a dog. In the subsequent fixing of the tax rate it is determined that John Smith owes taxes of \$200. These taxes become due in October, 1955,

and the entire amount is a lien on the real estate John Smith owned in the taxing unit as of January 1, 1955. By the time the taxes become due (the first Monday in October, 1955), John Smith is in bankruptcy, and the trustee has all Smith's property in his possession. What should the tax collector do?

He should file a proof of claim in the bankruptcy proceeding, setting forth the exact amount of the taxes owed by Smith plus any applicable interest to the date of bankruptcy. The collector should show what part of the claim is for taxes against real estate, what part is for taxes against personal property, what is dog tax, and what is poll tax. He should then state in the proof of claim that all these taxes constitute a lien against Smith's real estate for their full amount to be satisfied first out of the proceeds of the sale of Smith's land.

In that situation, when the trustee sells Smith's land he will either reduce the purchase price by the amount of the collector's tax claim and let the purchaser assume the taxes, or he will pay the collector directly from the purchase price. Thus, in this situation the taxing unit makes collection of the taxes due.

The collector may ask in a case like this why he should bother to file a proof of claim for taxes, reasoning that the land is not going to move and that the land will always stand for the taxes regardless of the bankruptcy since taxes are not discharged by bankruptcy except to the extent paid. Without going into an exhaustive answer to this view here, it is sufficient to say that such a course is not advisable. If the collector files his claim in the bankruptcy he will thereby facilitate the sale of the land by the trustee by crystallizing the amount of taxes due against it. By filing the claim the collector will certainly get his money without the possible necessity of having to bring foreclosure for the taxing unit at a later time. In addition, by such action the collector may forestall any argument from the purchaser that he owes no taxes because the collector could have gotten his taxes if he had filed a claim in time.

On occasions a bankrupt's real estate will be so encumbered by mortgages, judgments, taxes, and other liens that there is no chance that the trustee can sell it for enough to realize any equity for the non-lien creditors. Under these circumstances the bankruptcy court will simply abandon the property, leaving it subject to

valid liens against it. For example, suppose the property will not bring more than \$18,000; and suppose further that there is a \$16,000 mortgage against it, that the *ad valorem* taxes amount to \$200, that the cash value of the owner's wife's dower is \$2,000, and that the value of the bankrupt's homestead is \$1,000. Those items would amount to \$19,200. There would be no possibility of obtaining any equity for the non-lien creditors. The trustee would abandon that land entirely.

In such a situation where does the tax collector stand? When the land is abandoned and not administered in bankruptcy it reverts to the same status it would have had had there never been a bankruptcy. The collector can look to the land for the tax claim exactly as if there had been no bankruptcy. Or, he may file a claim in the bankruptcy for that part of the claim that represents taxes against the bankrupt's personal property being administered by the trustee. Suppose, for example, that the unit's total claim for taxes is \$200, broken down as follows: taxes against real property, \$150; taxes against personal property \$46; poll tax, \$2; dog tax, \$2. If the real estate is abandoned no claim can be filed for the taxes against the real estate; the dog does not come into the trustee's hands; and the bankrupt's poll is worth nothing to the trustee. So the collector would file a claim for the \$46 taxes against the personalty being administered by the trustee.

Since the collector has perfected no lien against this personalty—not having levied or used garnishment—he is relegated to class five, "non-lien taxes," so why bother to file a claim? Why not seek the whole \$200 tax claim from the real estate against which the unit has a valid lien? Ordinarily such a procedure would be satisfactory. But if there are any federal tax liens against the bankrupt's property they might, together with the local collector's lien, exceed the value of the property. Then, as sometimes happens, it might be adjudged that the federal liens are superior to those of the local taxing unit and the local collector would be left out. If there is any possibility of this happening the local unit's collector had better file a claim for the tax on the bankrupt's personal property.

Collectors are well aware that, generally speaking, it is easy to collect *ad valorem* taxes if a man owns real estate. That situation does not change in bankruptcy. For that reason:

1. If the bankruptcy court releases or abandons the real estate, the collector should seek all his taxes from the real estate outside the bankruptcy unless there are federal liens against the realty that may be ahead of the local unit's lien in sufficient amount to leave the local unit out.

2. If the real estate is administered by the bankruptcy court, the collector should file his claim in the bankruptcy proceedings.

When the collector must attempt to collect from personal property he will ordinarily have more difficulty. The typical case is one in which the bankrupt owns a stock of goods and no real estate. Unless the collector has perfected his lien by an actual levy on the personal property before bankruptcy, then he has no lien to enforce in the bankruptcy and is relegated to priority class five—non-lien taxes.

Under these circumstances what can the collector do? All he can do is file his claim for the *ad valorem* taxes due, plus interest to the date of the bankruptcy, and assert in the proof of claim that the taxes constitute a priority claim. Then if the liquidation of the estate produces enough to pay all the classes ahead of class five, the collector will receive the amount due. If the liquidation does not produce enough to take care of the prior obligations, what is left will be divided pro-rata between the property tax claimant and the other tax claimants standing in the same class.

In this connection, it is understood that, generally speaking, there is a period between January 1 and the first Monday in the following October when the collector cannot levy on personal property for current taxes. If the bankruptcy occurs during that period, then about all the collector can do—insofar as current taxes are concerned—is to file his claim in the way just described.

As a matter of general advice, if the collector has reason to suppose that a particular taxpayer's financial condition is shaky and if he has no real property, the collector would do well to waste no time in levying on personal property as soon as the taxes become due. And when he does so, he should do everything possible to make a valid levy: He should take actual possession of the personal property; he should not be content to stick up a notice; he should padlock the place. Then if bankruptcy later occurs, the collector can keep the property and satisfy his tax claim from it, accounting to the trustee in bankruptcy only for the overage.

Highway Study Commission Recommends Extensive Changes

A special commission appointed to study the State Highway and Public Works Commission has issued a report recommending extensive changes in that department's organization and operations. The study commission's major proposal is a shift to a more centralized approach to highway problems than has been the case under the present organization of 14 more-or-less autonomous divisions.

The study commission proposes that the present 15-member Highway Commission be replaced by a seven-member Commission, all of whose members would represent the state as a whole rather than particular geographic divisions. Members would serve for staggered four-year terms, with the chairman being designated by the Governor to serve a two-year term.

The present full-time chairman of the Commission would be replaced by a Director of Highways to serve as chief executive officer of the Highway Department. He would be appointed by the Commission with the approval of the Governor, and he would be responsible for carrying out the policies fixed by the Commission. He would appoint all other officers and employees of the department.

Secondary Road Procedures

Of particular interest to local governmental officials among the other recommendations of the study commission is a new five-point procedure proposed for additions, construction, and maintenance of secondary or farm-to-market roads;

(1) The Highway Commission would be responsible for establishing state-wide standards for secondary road additions, construction, and maintenance.

(2) The Highway Commission, on the basis of appropriations made by the General Assembly, would allocate funds to each county.

(3) Periodically, representatives of the Highway Department would prepare plans for additions, construction, and maintenance of secondary roads in each county. The plans would be based on the standards and allocation established by the Commission. The plans would be discussed with the board of county commissioners, and that board could recommend

changes in the plan. Final decisions, however, would be up to the Highway Department.

(4) Final plans would be filed with the board of commissioners, and periodic reports of expenditures would be made to that board.

(5) Citizens would continue to petition the board of county commissioners and the Highway Department for additions and construction of roads. The petitions would be forwarded by the county boards to the Highway Department with board recommendations, as at present. Citizens would have opportunity to discuss their petitions with highway representatives.

The study commission points out that similar procedures are now being followed informally in many counties. It also recognizes that county commissioners in some counties will take a greater interest in secondary roads than others will. The commission finds no disadvantage in this, since the goal is to provide opportunity for local review of all secondary road plans. Whether this opportunity is used is a matter for local decision.

Prison Separation

The report states that the study commission did not specifically consider prison separation, since another study commission was working on that problem. But it makes the point that highway funds should pay only for prison labor actually used on highways. The remainder of the cost of prison operations should, according to the report, be supported from the General Fund.

Other Recommendations

Among other recommendations of the study commission are (1) improved and expanded planning activities, to insure adequate long range development of roads and highways; (2) allocation of funds to roads and highways on the basis of needs and traffic, rather than on the basis of formulas which do not consider geographic variations in costs of construction and maintenance; (3) better planning of right-of-way acquisition, including provision for scenic roadside development and limited access right-of-way where needed; (4) improved personnel policies to pro-

vide more incentive to highway employees, better supervision, and greater efficiency in operations; and (5) restrictions on political activity of highway officers and employees.

Commission Members

State Senator Claude Currie of Durham served as chairman of the study commission. Other members were John G. Clark of Greenville, B. T. Falls, Jr., of Shelby, Carroll R. Holmes of Hertford, Mayor Harold P. Makepeace of Sanford, James G. Stikeleather, Jr., of Asheville, and T. Clarence Stone of Stoneville.

Tax Study Commission

(Continued from page 11)

development. Growing cities face the same demands for increasing revenues that are faced by the state, and some of our cities do not have a tax structure that can easily be adapted to the need for expanded facilities. Furthermore, new development is taking place at an increased pace outside of city boundaries, and the property owners in these suburban fringe areas contribute to the demand for municipal services inside the city boundary without contributing in like measure to the revenues needed to provide those services.

"In the growing cities of this state, particularly the cities having a population of more than 10,000, the most pressing service problems seem to be (1) the expansion of water and sewer facilities both inside the city and to service newly-developing areas, (2) the expansion of police and fire and other protective services, and (3) the reconstruction of the city's major street system, apart from the streets constructed and maintained by the State Highway Department. It is becoming abundantly clear, if we assume that the water and sewer expansion can be met from service charges as most cities are doing today, that the problem of revenue is greatest with respect to relieving traffic congestion. Unless our cities can widen and rebuild the streets necessary to take traffic to and from the central business districts, the in-

(Continued on page 27)

Report of the Commission on Reorganization of State Government

The state's second Commission on Reorganization of State Government has made a total of 60 recommendations for improvement in the organization and procedures of state governmental departments and agencies. Under the chairmanship of State Representative David Clark of Lincoln, the Commission has concentrated during this biennium on measures to improve the internal management of the state government.

Probably the major recommendation made by the Commission is that a new Department of Administration be created to centralize the work of several administrative control agencies in a single department. Other recommendations in the area of internal management deal with budgetary procedures, property management, personnel management, and the furnishing of general services to agencies in Raleigh.

In other areas of state government, the Commission made recommendations concerning the organization and procedures of occupational licensing boards, building regulation agencies, agencies making inspections of various types of food products, and agencies dealing with the conservation and development of water resources. Finally, it recommended the creation of a permanent legislative research committee to assist the General Assembly in its duties.

Background

Before the first Commission on Reorganization of State Government was appointed to serve during the 1953-55 biennium, the Institute of Government made an extensive study of all efforts to reorganize state government in states throughout the country. This study [published as *Preliminary Report on Experience of Other States with Attempts to Reorganize State Government* (333 pp.) by Paul A. Johnston] made several significant findings as to factors which tended to enhance the probabilities of acceptance of reorganization proposals which were made.

Among these findings were the following:

(1) The reorganization commissions whose membership included a majority of legislators had much

greater success than those commissions whose membership was composed primarily or completely of private citizens.

(2) The reorganization commissions which made proposals for sweeping, "one-shot" reorganizations commonly failed to have their major recommendations (and frequently their minor recommendations) accepted, frequently because of the consolidated opposition of agencies and departments affected.

(3) The reorganization commissions which attempted to deal simultaneously with the executive, legislative, and judicial branches of state government commonly failed to have their recommendations accepted, particularly where constitutional changes were involved.

On the basis of these and similar findings, which indicated that the most successful reorganization efforts had been made by "permanent" or continuing agencies operating over a period of years, that Reorganization Commission decided to proceed on an area-by-area basis, attacking a number of problems which it believed could be handled in a given legislative session.

Under the chairmanship of State Representative William B. Rodman (now Justice of the State Supreme Court), the 1953-55 Commission made a total of 54 recommendations in 11 areas of state government. Of these, 34 were adopted, including most of the recommendations considered by the Commission to be of primary importance. [For a more complete account of the work of the Commission, see the December, 1954, and June, 1955, issues of *POPULAR GOVERNMENT*.]

The 1953-55 Commission, in the letter of transmittal of its final report stated the unanimous conclusion of its members that the work of state reorganization be continued in the next biennium. It was on the basis of this recommendation that the 1955-57 Commission was created. (Parenthetically, it might be noted that this Commission too has now recommended that the work of reorganization be carried forward on a continuing basis.)

In addition to Chairman Clark, the 1955-57 Commission is composed of State Senator O. Arthur Kirkman of High Point, vice-chairman; Miss Harriet L. Herring of Chapel Hill, secretary; State Senator John Kerr, Jr., of Warrenton; State Representative Roger C. Kiser of Laurinburg; State Senator Robert F. Morgan of Shelby; State Representative Ashley M. Murphy of Atkinson; W. Frank Taylor of Goldsboro; and D. L. Ward of New Bern.

The Commission has proceeded in the same manner as its predecessor, issuing its recommendations in a series of ten reports. Copies of these reports are available from the Governor's Office or the Institute of Government for interested persons.

First Report: Fiscal Information

Because of the support given in the last General Assembly to a bill creating the office of Legislative Comptroller, the Commission examined the question of whether a legislative fiscal office of this or a similar nature was desirable. The Commission found that such an office exists in eight states. In two of these, the office is responsible for developing a separate budget for legislative consideration; in two states, it is primarily responsible for carrying out the post-audit function; and in four states, it is primarily responsible for providing fiscal information for the use of legislators.

The Commission decided that creation of a separate legislative budget would not be an improvement, but on the contrary would damage the existing legislative-executive cooperation that grows out of the budget role played by the Advisory Budget Commission, with its predominantly legislative membership.

The Commission decided that the post-auditing function is satisfactorily handled at present by the State Auditor, who has been independent of the executive branch since 1955. A counterpart of the Comptroller General of the United States (who is primarily a post-auditor responsible to the legislature) would be an unnecessary duplication.

The Commission decided that there is no need for an additional agency

to provide fiscal information for the legislature, because the Budget Bureau staff is currently in a position to do so. However, it felt that the information provided by this staff could be improved, and other purposes served as well, if two proposed changes were made.

First, the Commission noted that its study of this area had led the Budget Bureau to undertake the preparation of a *program budget* in certain areas of the state government. This budget would give information as to the services rendered by the various agencies and some basis for measuring the unit costs of such services. It would enable the General Assembly to shift its attention from the details of how many bottles of ink a particular agency might use to the policy questions of whether particular services should be rendered by the state and what level of service should be rendered; e.g., should the state carry on an agricultural extension program, and if so, how many agents should be provided to serve a given area or number of farms? The Commission expressed the belief that this shift of emphasis was needed in order to make the General Assembly's job one of manageable proportions at a time when the state's budget is increasing greatly. The Commission therefore recommended that program budgeting techniques be used further in preparation of our budget document.

Secondly, the Commission recommended the addition to the staff of the Budget Bureau (or the proposed new Department of Administration) of personnel skilled in the techniques of *management analysis*. These people would have the function of making continuing reviews of the operations of state agencies to insure that those operations are carried on efficiently and economically. In addition, they would acquire detailed knowledge of the functioning of the agencies and could serve as expert advisers to the General Assembly concerning such operations.

Second Report: Department of Administration

A number of states in recent years have created an integrated department of finance or department of administration to bring together the principal staff and house-keeping activities of the executive branch of the state government. The Commission examined very carefully this type of organization and its appli-

cability to the North Carolina situation. On the basis of this examination, it decided to recommend the creation of such a department in North Carolina.

The purposes of such a department, as found by the Commission, would be (1) to free the Governor of minor details of administration and supervision, (2) to furnish the Governor with a strong right-hand man (the Director of Administration) who would direct and supervise the staff agencies now reporting directly to the Governor, (3) to provide greater continuity of personnel in administrative posts in the fiscal area, (4) to permit greater control over the many departments and agencies in the executive branch, through better coordination of the activities of agencies concerned with fiscal operations, (5) to provide an organizational basis for new staff activities, including state planning, management analysis, and property inventory and control.

Basically, the Department of Administration, as recommended by the Commission, would combine activities currently being carried on by the Budget Bureau and the Division of Purchase and Contract, with the addition of the activities listed in item (5) above. Some activities currently being performed would be singled out for greater emphasis. In addition, there would be provision for the eventual assignment to the Department of the activities currently being performed under the direction of the Board of Public Buildings and Grounds.

The Commission suggested that the Department, at its creation, consist of six divisions: (a) a Budget and Accounting Division, (b) a Management Analysis Division, (c) an Architectural and Engineering Division, (d) a Long-Range Planning Division, (e) a Procurement Division, and (f) a Property Control and Disposition Division. The Governor and the Director of Administration would be empowered subsequently to modify this divisional structure.

Figure 1 gives an outline of the proposed department, showing the duties of these divisions and the agencies currently assigned these duties.

The Commission further recommended that the role of the Governor with regard to the budget process remain unchanged. It recommended that the role of the Advisory Budget Commission be increased to include

an advisory role in the preparation of a long-range capital budget by the Long-Range Planning Division. It suggested that the size of this Commission be increased from six to seven members, that the law fixing the terms of members be clarified, and that at least one of the Governor's three appointees have legislative experience.

Finally, the Commission stressed the necessity for physical consolidation of the proposed Department, if its benefits are to be fully realized.

Third Report: Property Management

The Commission examined the full range of property management procedures in the state government, primarily with regard to real property. On the basis of this examination it came forth with a series of recommendations, most of which tie in very closely with the Commission's recommendations for the creation of a new Department of Administration.

First, the Commission recommended that the duty of preparing long-range plans to meet future real property needs of state agencies be assigned to the Long-Range Planning Division within the proposed Department of Administration (or to the Budget Bureau in the event that the Department is not created).

Second, the Commission recommended that property acquisition procedures be standardized with regard to all property other than highway rights-of-way. It suggested that this duty be assigned the Division of Procurement in the proposed Department of Administration (or the existing Division of Purchase and Contract in the event that the Department is not created).

Third, the Commission recommended that new procedures be established under which requests for capital improvements would be submitted by the using agency in terms of space and other physical requirements rather than in terms of estimated costs. This recommendation is designed to prevent the possibility of an agency's acquiring unneeded space simply because falling prices or other factors make it possible to get more building than requested out of the amount appropriated.

Fourth, the Commission recommended that the records currently kept of real property owned by the state be centralized and improved. Specifically, deeds would be filed and indexed in the office of the Secretary of State; detailed inventory of lands

and buildings would be maintained by the Division of Property Control and Disposition in the proposed Department of Administration (or by the Division of Purchase and Contract if the Department is not created); the Attorney General would be directed to help out in the location of swamp and marshlands, etc.; and boundaries of state properties would be clearly marked, preferably by prison labor, to avoid such problems as cutting of state timber by adjacent property owners.

Fifth, the Commission recommended that general authority to assign and reassign property to state agencies be given to the Division maintaining the inventory of real property, subject to the approval of the Governor and Council of State. This would permit transfer of little used property from one state agency to another.

Sixth, the Commission recommended that a greater effort be made to secure profits from growing timber on state lands, using the services of the Forestry Division of the Department of Conservation and Development and prison labor where possible.

Finally, the Commission recommended standardization of property disposition procedures. It suggested that this duty be assigned to the Division responsible for maintaining the inventory of real property, subject to the approval of the Governor and Council of State.

Fourth Report: Occupational Licensing Boards

In the course of its examination of state agencies, the Commission discovered that the state presently has 25 independent licensing boards which control entry into particular professions or occupations. It studied these boards from the standpoint of

their organization and procedures, believing that such study marked the limit of the duties assigned to it.

The Commission considered a variety of organizational forms for these boards, ranging from creation of a single department of licensing to completely separate boards with no vestige of state control. In examining the organization of this type of agency in other states it found that there was no "standard" or "approved" solution—to the extent that reorganization commissions in several states had made diametrically opposite recommendations. It therefore attempted to make recommendations which would improve the North Carolina situation without trying to fit a pattern cut elsewhere.

The Commission was concerned about three problems: (1) the possibility that some boards might use the state's police power primarily for the interests of members of the regulated occupations rather than for the general public, (2) the possibility that some boards might follow wasteful financial practices which would place an undue burden on members of the occupations being licensed, and (3) the possibility of difficulties arising out of varying membership provisions for such boards.

With regard to the first problem, the boards could further their interests (in the absence of state control) by (a) refusing to permit qualified applicants to take an examination, (b) refusing to give a passing grade to applicants who actually pass the examination, (c) giving such a difficult examination that only a very few applicants could pass, or (d) suspending or revoking the license of practitioners who are not in the good graces of the board. These steps would all be designed to limit entrance in the profession or occupation to a very small number and in effect to create monopoly conditions for existing practitioners.

The Commission found that existing statutes in all but a few cases afford adequate protection against a board's refusal to permit qualified applicants to take an examination and against a board's suspension or revocation of a license without proper cause. It found it impractical to afford direct statutory protection against refusal to pass an applicant and against the giving of unduly difficult examinations. To meet these problems it recommended that the boards be required to file annual re-

Figure 1

OUTLINE OF THE PROPOSED DEPARTMENT OF ADMINISTRATION

<i>Functions</i>	<i>Present Agency</i>	<i>Div. in Dept. of Admin.</i>
Budget preparation		
Allotment system		
Pre-audit		
Accounting	Budget Bureau	Budget & Accounting
Efficiency & economy studies	Budget Bureau	Management Analysis
Review & approval of plans for construction, rehabilitation, & repair of state buildings		
Supervision of construction	Budget Bureau (Engineering Div.)	Architectural & Engineering
Fact-gathering & analysis necessary for planning future state activities		
Assistance to Governor, legislature, & state agencies in developing long-range & short-range plans		
Preparation of capital budget	None*	Long-Range Planning
Purchasing & contracting for real & personal property (bids, awards, contracts, etc.)	Division of Purchase & Contract	Procurement
Establishing & maintaining inventory system for real & personal property		
Surplus property disposal or reassignment	Division of Purchase & Contract	Property Control & Disposition
Allocation of space	Bd. of Pub. Bldgs. & Grounds	

* Board of Public Buildings and Grounds does have authority to formulate a long-range building program for state buildings in Raleigh.

Note: In addition, the Governor and Council of State would be empowered to add the activities under the supervision of the Board of Public Buildings and Grounds to this Department.

ports with the Secretary of State which will indicate to the public whether a particular board is being unduly restrictive.

The Commission found that a minor problem could be created by the hiring of board members to perform inspectional or other ministerial services for the board, and it recommended that this practice be forbidden except where specific statutory authority was granted.

With regard to the second problem of concern, the possibility of wasteful financial practices, the Commission recommended that each licensing board receive an annual audit supervised by the State Auditor but paid for out of funds of the board; that detailed reports of such audits be published in at least three daily newspapers of the state; and that an annual financial report be filed with the Secretary of State. It was felt that this public inspection of board records would be the most effective means of preventing waste.

The Commission found that the third problem, of varying membership provisions, had created few real difficulties, and it made no recommendations for changes.

Fifth Report: Building Regulation and Inspection

The Commission's report in the area of building regulation and inspection is largely a restatement of the report made by the 1953-55 Reorganization Commission, whose recommendations in this area were not adopted by the General Assembly.

The Commission found that the state's building laws are currently found in eleven chapters of the General Statutes; rules and regulations promulgated by six state agencies; and ordinances, resolutions, rules, and regulations of County Commissioners, County Boards of Health, City Councils, and sanitary district boards. It found that these laws are complicated and in some cases conflicting, and some of them have been attacked as legally unsound.

As a means of beginning to untangle this maze, it recommended that the Building Code Council be reconstituted in some measure and that the statutory basis for the State Building Code be rewritten. The Council membership would be enlarged to include representatives of several technical professions and representatives of the public at large, and it would be assigned primary

responsibility for recommending changes in the state's building laws and the administrative practices for the enforcement of those laws. The Council would be assigned the services of the engineering division of the Department of Insurance to assist in carrying out these functions.

To clarify the legal status of the State Building Code, the Commission recommended that the General Assembly ratify and adopt the code adopted in 1953; that the Building Code Council be given definite authority to adopt and amend such a code, subject to adequate statutory standards to meet constitutional requirements pertaining to such delegation of legislative power; and that specific statutory procedures be set forth with regard to adoption, amendment, and publication of the code and its amendments.

To clarify the relationship of the State Building Code with local building codes, the Commission recommended that the Building Code Council be given authority to approve local building regulations, which shall thereafter supersede the State Building Code in the local governmental units for which they were adopted; that local governmental units be authorized to make the State Building Code applicable to dwellings within their jurisdiction; and that the Building Code Council be authorized to adopt an abbreviated version of the State Building Code which would be more suitable for use in the smaller towns of the state.

To simplify the search of the citizen looking for the regulations with which he must comply, the Commission recommended that certain regulations promulgated by other state agencies be included as appendices in the published State Building Code and that references be made to regulations not so published.

As a means of improving enforcement of state building laws, the Commission recommended (in addition to requiring the Building Code Council to make a continuous study of this matter) that the General Statutes specify the various enforcement agencies of the Building Code; that all enforcement agencies be required to grant hearings to aggrieved parties; that all appeals from decisions of enforcement agencies with regard to the State Building Code be channeled through the Building Code Council before going to the courts; and that modifications of the Code take the

form of amendments to the Code, rather than individual action by the Building Code Council.

As a final method of improving enforcement, the Commission recommended the creation of a permanent interdepartmental building regulation committee, with the primary duty of establishing procedures for the interchange of building plans among interested agencies, so that the citizen may have "one stop" approval service.

Sixth Report: Food and Related Inspectional Activities

The Commission explored a number of areas in which there appeared to be actual or theoretical overlapping of the functions of the State Board of Health and of the State Department of Agriculture with regard to the making of inspections of food producers and products. These inspections involve dairies, ice cream plants, creameries, cheese factories, slaughterhouses and meat packing plants, poultry processors, rendering plants, bakeries, bottling plants for soft drinks, and the enforcement of pure food, drugs, and cosmetic laws. In each case the Department of Agriculture is currently performing inspection functions; in a number of cases representatives of the State Board of Health or sanitarians of local health departments are making parallel inspections.

The Commission decided that the basic rule to be followed in allocating functions between the two agencies was to assign functions primarily relating to sanitation and health to the State Board of Health, and to assign functions primarily relating to marketing, purity of products, protection against adulteration, etc., to the State Department of Agriculture.

Pursuant to this decision, the Commission recommended that the functions of making sanitation inspections of (and promulgating regulations for the sanitation of) dairies and milk handlers, ice cream plants, creameries, and cheese factories be transferred from the Department of Agriculture to the State Board of Health.

In the case of establishments coming under the voluntary meat inspection and poultry inspection programs of the State Department of Agriculture, the Commission found a possibility of duplicate inspections. It recommended that these establishments be required to have and maintain a "Grade A" sanitation rating from the State Board of Health, and

that the sanitation inspections required to be made by the Department of Agriculture be eliminated.

The Commission further found considerable overlapping in various meat inspection programs, and it recommended that the statutes be clarified to require only one such inspection, setting up a priority system as to which agency's inspection shall have precedence.

The Commission found no overlapping in the inspections of rendering plants, pure foods, drugs, and cosmetics, bakeries, and soft drink bottling plants, even though there is a possibility of such overlapping if the State Board of Health should choose to make such inspections under its general sanitation authority. Because these programs appear to be working well, the Commission recommended no changes in these areas.

Seventh Report: Conservation and Development of Water Resources

In its consideration of the five agencies currently performing duties in the state's water program, the Commission was struck by two major problems: (1) the uncertainty as to the state's future role in this area and (2) the duplication of responsibilities among particular agencies in the area.

As evidence of the uncertainty of the state's future role, the Commission cited the growing demand for water and the drought, which led to consideration by the 1955 General Assembly of a possible shift from the state's traditional riparian rights doctrine to the appropriation doctrine in effect in the western states. If this shift should take place, there would immediately arise a necessity for much more active participation by the state in the allocation of water resources among various users. The Commission found that under present conditions it is not possible to determine whether this shift should be made or what other steps might be taken, due to a lack of adequate information concerning the amount of water available and the amount and types of demand for that water. It felt that a clarification of the responsibilities of the various water agencies would help to make such information available.

The principal duplications of function found by the Commission were (a) between the Department of Conservation and Development and the Board of Water Commissioners, and (b) between the State Stream Sanitation

Committee and the Division of Sanitary Engineering of the State Board of Health.

With regard to the first duplication, the Commission recommended that the Board of Water Commissioners be regarded primarily as a planning and advisory agency, and that the responsibility of the Department of Conservation and Development for planning and making recommendations as to water laws, policies, and administrative organization be transferred to this Board. On the other hand, the present responsibility of the Board of Water Commissioners for conducting hydrological research, maintaining a general source of water information for the public, and publishing such information (all now presently exercised by the Department of Conservation and Development) would be made the exclusive responsibility of that Department.

With regard to the second area of duplication, which is largely the result of having two separate staffs to approve particular types of sewage treatment plans, the Commission recommended that the Board of Health be designated as the administrative arm of the State Stream Sanitation Committee. In effect, this would consolidate the two staffs and eliminate dual inspections.

Eighth Report: Division of General Services

In connection with its study of "staff" agencies of the state government the Commission examined the functions of the Board of Public Buildings and Grounds, which is composed of the Governor, the Attorney General, the Secretary of State, the State Treasurer, and the Assistant Director of the Budget. This Board has certain planning and rule-making responsibilities with reference to state properties in Raleigh. Its most important function, however, is to exercise supervisory control over a staff hired to operate, maintain, repair, and beautify public buildings and grounds in Raleigh.

The Commission reached the conclusion that it is inappropriate to make the latter type of duty the responsibility of an ex officio board of otherwise busy state officers. The Commission also reached the conclusion that certain other functions of the Board should be transferred to other agencies. If these transfers were made, the reason for existence of the Board largely would disappear, and the Commission therefore

recommended that the Board be abolished.

To replace the Board, the Commission recommended that the following steps be taken:

1. The Commission recommended that a new Division of General Services be created, headed by a Director responsible directly to the Governor. This Division would be responsible for "all operational and routine duties connected with the operation, maintenance, and repair of public buildings and grounds in the city of Raleigh not specifically the responsibility of some other institution or agency." In addition, the new Division would have responsibility for establishing and operating a central motor pool, secretarial pools, central mimeographing and duplicating services, and other similar services if they should be found upon study by management analysts to be necessary or advisable from the standpoint of economy and efficiency. The Commission recommended that the Governor and the Council of State be empowered to incorporate this Division of General Services into the proposed Department of Administration when they deem it administratively desirable. The Commission recommended that the Governor have studies made by management analysts to determine how best to establish a central motor pool (which the Commission's studies indicate would result in savings to the state) and whether to establish other centralized services.
2. The Commission recommended that the following responsibilities of the Board of Public Buildings and Grounds be transferred to the Governor and Council of State:
 - a. Promulgating rules and regulations concerning the care, protection, and use of buildings and grounds;
 - b. Making and enforcing parking regulations for all public grounds;
 - c. Repossessing Nash and Moore Squares in the city of Raleigh if they are not properly cared for or if they are needed by the state.

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Turnover in the Membership of the General Assembly

By MRS. CATHERINE M. MAYBURY, *Librarian, Institute of Government*

Current Session Ranks High in Experience

The 1957 regular session of the General Assembly of North Carolina will comprise the most experienced group of legislators of any session during the past half century, with one exception. In addition, it will have less turnover from the previous session than has been customary. Despite these "lows," the turnover rate is still well above what might have been expected on the basis of conjecture.

There are 81 legislators this year who were not among those of the 1955 session, 31 of them Senators and 50 of them Representatives (out of a total membership of 50 Senators and 120 Representatives). As Table I shows, these figures are somewhat lower than the average for the years 1909 through 1957. The turnover in the Senate is almost 16 per cent lower than the average turnover of all 25 sessions, and the turnover in the House is 21 per cent lower than the average. The 1957 Senate figure is second lowest of the 25 sessions covered by this study; in 1943 there were only 30 new faces in the Senate. The 1957 figure for the House is the same as 1945; only the 1955 session, which had 48 new faces, had less turnover during the 25 sessions covered.

The higher percentage of new faces in the Senate than in the House in 1957 (and in every other year covered by this study, with the exception of 1925) results in part from the custom of rotating candidates in senatorial districts composed of more than one county. Although redistricting was responsible for some change in both Senate and House membership during the past 25 sessions, the turnover it produced in the three legislative sessions following reapportionment (1913, 1923, and 1943) was negligible.

In the current legislature, there are 58 legislators who have had no previous experience as members of a regular session of the General Assembly. (See Tables II and III.) Nineteen of these legislators are Senators and 39 are Representatives. The percentage of Senators

lacking legislative experience in 1957 is almost seven per cent lower than the average percentage for all sessions under study, and the percentage of Representatives without experience is 19.4 per cent lower than the average.

Careful scrutiny of Table II shows a lessening in the number of inexperienced Senators in the past ten sessions, as compared with the previous 15. However, the difference is possibly not great enough to constitute a definite trend towards the election of more experienced Senators.

A more obvious decrease in the number of inexperienced legislators

is apparent in Table III, which indicates a steady decline in the House from 75 per cent of the 1909 legislators to 32.5 per cent of the 1957 legislators. The percentage of inexperienced Representatives in the current legislature (32.5 per cent) is considerably less than the average for the 25 sessions (51.9 per cent).

When comparing the average percentage of inexperienced legislators in the two houses, it is noticed that although there is less turnover in the House than in the Senate from one legislature to another (63.6 per cent in the House, 77.9 per cent in the Senate), there is a greater percentage of inexperienced Representatives

TABLE I
TURNOVER IN THE NORTH CAROLINA GENERAL ASSEMBLY,
1909-1957

Year	Senate		House	
	No.	%	No.	%
1909-1911	43	86	86	72
1911-1913	43	86	94	78
1913-1915	43	86	89	74
1915-1917	46	92	94	78
1917-1919	40	80	78	65
1919-1921	47	94	91	76
1921-1923	41	82	87	73
1923-1925	35	70	90	75
1925-1927	41	82	82	68
1927-1929	41	82	85	71
1929-1931	40	80	87	73
1931-1933	45	90	81	67
1933-1935	40	80	89	74
1935-1937	42	84	79	66
1937-1939	36	72	75	63
1939-1941	38	76	69	58
1941-1943	30	60	61	50
1943-1945	38	76	50	42
1945-1947	36	72	66	55
1947-1949	34	68	76	63
1949-1951	35	70	73	61
1951-1953	36	72	52	43
1953-1955	34	68	48	40
1955-1957	31	62	50	42
Average	43	77.9	76	63.2

than of inexperienced Senators (51.9 per cent in the House, 44.9 per cent in the Senate).

Another interesting feature, when comparing experience in the House and Senate by session, is the lack of correlation between the figures. For example, the high figure of inexperienced legislators for the House (75 per cent in 1909) is next to the lowest figure in the Senate (30 per cent) for the corresponding year. Conversely, in the same year in which the Senate had more inexperienced Senators (68 per cent in 1921), the House (61.7 per cent) had fewer inexperienced members than it had had in four of the six previous sessions. Although this apparent lack of any relationship between the Senate and House for any particular legislative session holds true throughout the study, when one takes the whole pic-

ture under consideration, it becomes evident that there is a rise in the number of experienced legislators during the last ten sessions in both houses. The 1943 legislature was the most experienced session, with 64 per cent of the Senate and 65.8 per cent of the House having seen prior service. Following closely is the present session with 62 per cent of the Senate and 67.5 per cent of the House having had previous experience.

It is worth noting again that the turnover from session to session generally followed the same pattern. New faces were fewer in the Senate in 1943, with 1957 in second place. The story in the House, although roughly resembling that of the Senate, varies to the degree that the 1955 session, rather than 1943, contained fewer new faces, with 1945

(Continued on page 26)

General Statutes Commission

(Continued from page 5)

where the rule originated. Our own Supreme Court has criticized the rule from time to time because it defeats the intention of the testator. This bill would abolish the rule with respect to wills of decedents dying on or after July 1, 1957, and with respect to deeds, agreements, and other written instruments executed and delivered on or after that date.

10. A bill to rewrite the statute relating to bulk sales (G.S. 39-23). The present law relating to bulk sales is badly in need of revision. Several of the terms used in the present statute are not defined and the procedure is not sufficiently explicit. Consequently, there has been a great deal of confusion with respect to the requirements of the statute. This bill would provide a much more explicit statute. It defines terms needing definition and sets out in detail the procedure to be followed in order to make a bulk transfer valid. The bill also contains a list of transfers which do not have to comply with the Act in order to be valid. The effect of failure to comply with the provisions of the bill is stated.

11. A bill to clarify the powers of joint personal representatives. When co-executors, co-administrators, or testamentary trustees are appointed, what either of such co-executors, co-administrators, or co-trustees may do individually and what they must do jointly often presents perplexing problems. This bill provides that, if a will expressly makes provisions for the execution of any of the powers of the co-executors, co-administrators, or co-trustees by all of them or by any one or more of them, the provisions of the will shall govern; but, if there is no will, or if there are no governing provisions in the will, the personal representatives or co-trustees may agree that any one or more of them shall exercise any of certain specified powers enumerated in the bill.

12. A bill relating to contracts of wife with husband (G.S. 52-12). The present statute provides in part that:

"(a) No contract between husband and wife made during their coverture shall be valid to affect or change any part of the real estate of the wife, or the

(Continued on page 27)

TABLE II

PREVIOUS LEGISLATIVE EXPERIENCE OF NORTH CAROLINA SENATORS, 1909-1957

Year	No Experience		Experience Senate Only		Experience House Only		Experience Both Houses	
	No.	%	No.	%	No.	%	No.	%
1909	15	30	26	52	8	16	1	2
1911	23	46	13	26	12	24	2	4
1913	22	44	13 ^a	26	11	22	4	8
1915	28	56	6	12	8	16	8	16
1917	32	64	7	14	10	20	1	2
1919	21	42	18	36	7	14	4	8
1921	34	68	2	4	6	12	8	16
1923	28	56	14	28	4	8	4	8
1925	20	40	13	26	9	18	8	16
1927	26	52	11	22	7	14	6	12
1929	24	48	11	22	8	16	7	14
1931	24	48	12	24	10	20	4	8
1933	32	64	5	10	8	16	5	10
1935	27	54	13	26	6	12	4	8
1937	25	50	14	28	6	12	5	10
1939	13	26	21	42	12	24	4	8
1941	17	34	16	32	11	22	6	12
1943	18	36	18	36	3	6	11	22
1945	21	42	17	34	7	14	5	10
1947	16	32	17	34	6	12	11	22
1949	16	32	21	42	8	16	5	10
1951	20	40	18	36	8	16	4	8
1953	19	38	21	42	7	14	3	6
1955	21	42	20	40	4	8	5	10
1957	19	38	21	42	5	10	5	10
Average	22	44.9	15	29.4	8	15.3	5	10.4

^aOne Senator had one year of previous experience in the Oklahoma Senate.

State Board of Public Welfare Proposes Legislation

The State Board of Public Welfare recommends that the General Assembly enact the following legislative proposals which its members feel will improve the state's welfare laws:

1. A bill amending the Uniform Reciprocal Enforcement of Support Act. The first part of this bill would amend the Act by authorizing a county furnishing support to an obligee under the Act to invoke the provisions of the Act. The county would be authorized to initiate actions against the obligor in another state to the same extent as the obligee to whom the county has furnished support. The county's action would be for the purpose of securing reimbursement of expenditures and obtaining continuing support for the obligee. The second part of this bill would amend the Act by making it the duty of the solicitor to represent the plaintiff when this state is the initiating state. Under present law, actions initiated under the Act in this state are initiated in the superior court or in the domestic relations court if there is one in the county. This amendment would require the solicitor of the superior court, or of the domestic relations court, if there is one in the county, to represent the party initiating the action.

2. A bill amending the laws relating to the reporting of the condition of jails. The present law requires that reports be made to the State Board of Public Welfare concerning the condition of county jails and the inmates. This amendment would extend the present law to require that such reports be made on municipal jails also.

3. A bill amending the statutes providing that a parent who has abandoned his child is not a necessary party to an adoption proceeding. This amendment would make it clear that if a juvenile or domestic relations court (as well as a superior court) has declared a child to be an abandoned child, as defined in the adoption law, the parent, parents, or guardian guilty of such abandonment

would not be a necessary party to the adoption proceeding.

4. A bill amending all references to the State Board of Public Welfare as the State Board of Charities and Public Welfare. The words "charities and" would be deleted from all such references.

5. A bill amending the statutes relating to the appointment of guardians for incompetents so as to establish an alternate procedure for the appointment of a guardian for incompetent persons with limited income and property. This bill would authorize the clerk of the superior court, after receiving a duly verified petition, and after due notice and a hearing before the clerk without a jury, to appoint some suitable person as guardian to administer the income and property of an incompetent whose annual income does not exceed \$1500 and who does not own real and personal property with a tax valuation in excess of \$600. The guardian appointed under these provisions would: (1) serve without bond unless the clerk felt that a bond was necessary to protect the interest of the incompetent; (2) receive no commissions for his services; and (3) render only such accountings as the clerk ordered. Upon demand of the incompetent or in the clerk's discretion, the facts would have to be found according to the regular procedure (determination by jury), rather than in accordance with the provisions of this statute. The clerk would be authorized to amend or rescind orders entered under this statute when he deemed such action to be in the best interest of the incompetent, and he would be authorized to direct that any part of the fees and costs incurred in connection with a proceeding under this law be waived.

6. A bill amending the statutes relating to the prosecution of parents for non-support of illegitimate children. This amendment would authorize the prosecution of the reputed father or the mother of an illegitimate child, if said father or mother has wilfully neglected or refused to support such

child, at any time before the child becomes 18 years of age. Under the present law, the mother may be prosecuted at any time before the child becomes 18, but an action against the father may not be commenced (1) more than three years after the birth of the child; or (2) if the paternity of the child has been judicially determined, at any time before the child becomes 18; or (3) where the father has acknowledged paternity by making support payments within three years after the birth of the child, three years after the last such payment but before the child becomes 18.

7. A bill amending the statutes relating to the appointment of juvenile court judges. This amendment would clarify the 1955 amendments to make it clear that the clerk of the superior court is to be the judge of the juvenile court of his county if the county commissioners do not appoint some other competent and qualified individual. It also makes it clear that the county commissioners, when they appoint one other than the clerk as judge of the juvenile court, are authorized to pay the judge such sum as they deem just and proper.

8. A bill amending the statutes relating to the custody of children in divorce cases so as to make it mandatory that the divorce decree contain such provisions for the care, custody, tuition, and maintenance of any minor children of the marriage as the judge deems proper. The present law authorizes the judge, upon the institution of a divorce action, to make orders respecting the care, custody, tuition, and maintenance of any minor child or children of the marriage at any time after the filing of the complaint, whether before or after final judgment. The judge is not required to enter such orders at any time. This bill would preserve the authority of the judge to make or modify orders during the minority of the child, and in addition would require that the judgment of divorce contain some provision for the children.



COUNTY GOVERNMENT

By JOHN ALEXANDER MCMAHON

Assistant Director, Institute of Government

New County Commissioners

There were fewer changes than usual when county officials were sworn into office on the first Monday in December, 1956.

Around 100 new county commissioners took the oath of office—105 to be exact. Since there are 451 county commissioners holding office, this represents a turnover of 23 per cent. This turnover is to be compared with the 130 new county commissioners in December, 1954, and the 103 new county commissioners in December, 1952.

Seven counties had completely new boards of commissioners, the same number of new boards as in December, 1954. Four of the complete new boards are made up of Republicans who replaced Democrats, and in two of these four counties the trend of 1954—when Democrats replaced Republicans—was reversed. Three of these four new boards changed all of their appointive officers, while one board is apparently keeping the appointees of the predecessor board.

The other three of the seven new boards taking office this past December replaced boards of similar political affiliation.

As was previously mentioned, there were seven complete new boards taking office in December, 1954. Three of these new boards were Democrats taking over from Republicans, two were Republicans taking over from Democrats, and two were complete new boards taking over from predecessors of the same political affiliation. The Republican party thus had lost some ground in 1954, but it more than made it up in 1956.

In addition to the seven boards with complete turnover in December, 1956, boards in 11 counties had a turnover of a majority of their members. None of these changes, apparently, resulted in a shift in the party affiliation of the board, although in several counties a different

faction of the predominant party obtained control. In a few cases, this also resulted in changes in the board's appointive officials.

The makeup of boards of county commissioners in North Carolina remains relatively stable. This is indicated in part by the fact that only 105 new county commissioners took office while 346 continued in office. It is further supported by the fact that almost 50 boards had no change in membership last December whatsoever. Of course, not all commissioners stand for election each year, since 36 boards now have staggered terms of one kind or another, and a few boards serve for straight four-

year terms with election in non-presidential years.

Thirty-three boards will have a new chairman during the coming year, while in 67 counties the old chairman will carry on.

Other New Officials

Only six new county accountants took office on the first Monday in December. This is only half of the new accountants that took office in December, 1954, when 13 were new.

Of the six new accountants, three came into office with complete new boards of commissioners of different party affiliation from their predeces-

BOND SALES

From September through December, 1956, the Local Government Commission sold bonds for the following governmental units. The unit, the amount of bonds, the purpose for which the bonds were issued and the effective interest rate are indicated.

Unit	Amount	Purpose	Rate
Duplin County	\$ 87,000	Refunding	4.18
Lenoir County	500,000	School building	3.53
Stokes County	275,000	School building	3.18
Surry County	1,000,000	School building	3.77
Yancey County	300,000	School building	4.28
Aberdeen	40,000	Municipal building	4.75
Burlington	800,000	Water	4.15
Chadbourne	115,000	Water and fire equipment	4.19
Charlotte	5,240,000	Water, sewer, and other	2.99
Durham	1,000,000	Water, sewer, and street notes	2.33
Greensboro	1,700,000	Water and sewer notes	2.88
Hickory	1,576,000	Water, sewer, and municipal building	3.22
Mount Olive	701,000	Water and sewer	3.48
Mount Pleasant	110,000	Water	3.38
Reidsville	1,400,000	Water and sewer	3.05
Roanoke Rapids	70,000	Street improvement	3.06
Robbins	39,000	Water	4.70
Shelby	780,000	Sewer and airport	3.39
Southern Pines	100,000	Municipal building	3.23
Wilson	250,000	Water	3.03
Bethel School Dist. of Pitt County	150,000	School building	3.56

sors. One new accountant took office because of the death of his predecessor; one took office as a result of a change in the makeup of a majority of members of the board (although no change in party affiliation was involved), and one new accountant came into office without any change in the makeup of the board of commissioners.

December, 1956, saw 11 new county attorneys take office, with the possibility of a 12th new attorney being appointed to an office temporarily vacant. This is to be compared with the 15 new attorneys taking office in December, 1954.

Three of the new attorneys were appointed by boards of different political affiliation from their predecessors, and five new attorneys were appointed by boards which had had a substantial change in board membership.

The end of the year found ten new tax supervisors and ten new tax collectors in office, although not all of these new officials came in on the first Monday in December. A few were appointed to fill vacancies unconnected with the change in county organization on the first Monday in December.

While there are ten new collectors and ten new supervisors, the new officials are not found in the same counties. In fact, only in three counties is there both a new collector and a new supervisor, and in all three the new appointees resulted from a change in the party affiliation of the board.

Eleven new registers of deeds took office in December. Apparently only one register went into office as a result of a switch in parties. It has been mentioned above that in four counties, complete new Republican boards replaced Democratic boards and in one of these counties a new register of deeds is now holding office. Most of the other new registers took office because of the death or retirement of their predecessors.

Clerks and sheriffs were not up for election this past year, and terms of office of school, welfare, and health officials do not begin in December.

Reorganization Commission

(Continued from page 19)

3. The Commission had recommended in earlier reports that the following responsibilities of the Board of Public Buildings

and Grounds be transferred to the agencies shown:

- a. Formulating a long-range building program—to the Long-Range Planning Division of the proposed Department of Administration;
- b. Controlling and supervising the location, plan, and construction of all public buildings not otherwise provided for—to the Division of Architecture and Engineering of the proposed Department of Administration;
- c. Allocating space among the agencies in Raleigh and leasing vacant lots owned by the state—to the Property Control and Disposition Division of the proposed Department of Administration, subject to the approval of the Governor and Council of State.

Ninth Report: Personnel Management

In the area of Personnel Management by the state government, the Commission began its studies with a review of the recommendations of the Reorganization Commission of 1953-55, which were not adopted by the General Assembly. The Commission gathered additional information and modified the recommendations of the previous commission in certain particulars.

The Commission made seven recommendations for improvements in this area of state government. First, it noted with pleasure the adoption by the Merit System Council of a continuous recruiting program for certain classes of employees, pursuant to a recommendation of the previous commission; and it recommended that the State Personnel Department and the Merit System Council explore the possibility of expanding this program.

Second, to meet criticisms of the operation of the Merit System which have been advanced by local governmental officials, the Commission recommended (a) that at least one member of the Council be required to have had experience in county government and (b) that local governing boards be given power to modify rules and regulations of state agencies as to annual leave, sick leave, hours of employment, and holidays of local agricultural extension workers, health department employees, and welfare department employees, where such modification is necessary to

bring these employees into conformity with rules and regulations applicable to other local governmental employees.

Third, to alleviate possible conflicts between the Merit System Council and the State Personnel Department, the Commission recommended (a) that the acts establishing these agencies be amended to clarify their respective classification authority and (b) that there be overlapping membership of two members serving on both the Merit System Council and the State Personnel Council.

Fourth, to eliminate possible conflict between the Budget Bureau and the State Personnel Department, the Commission recommended that the Budget Bureau have the responsibility for fixing the number of allowable positions in each agency and that the State Personnel Department have the responsibility for classifying these positions and fixing appropriate salary ranges.

Fifth, the Commission found that there are wide inconsistencies in the procedures for fixing salaries of administrative officers (other than constitutional officers) not covered by the State Personnel Act. It recommended that these salaries be fixed by the Governor, subject to the approval of the Advisory Budget Commission.

Sixth, in order better to coordinate retirement and personnel policies, the Commission recommended that the State Personnel Director be made a member of the board of trustees of the Teachers' and State Employees' Retirement System and a member of the board of commissioners of the Law Enforcement Officers' Benefit and Retirement Fund.

Finally, the Commission recommended that an incentive awards program be established, in order to encourage suggestions by state employees for improvements in governmental procedures and techniques. All awards paid would come from the savings resulting from adoption of suggestions.

Tenth Report: Legislative Research Committee

Out of their own legislative experience, a majority of the members of the Commission came to a conclusion that the state's legislators need help in understanding the complex problems which are presented by the vastly expanded state government of today. The Commission recommended that this help be given through the

THE ATTORNEY GENERAL RULES . . .

CLERK OF COURT

Authority of Assistant Clerk to Act as Judge of Juvenile Court.

To: B. F. McMillan

(A.G.) A clerk of the Superior Court who entered upon a term of office after the effective date of Chap-creation of a Legislative Research Committee, similar in nature to the Legislative Councils which have been established in more than two-thirds of the states since 1933.

The Legislative Research Committee would in effect be a continuing study commission. It would be composed of nine members: the President pro tempore of the Senate; two Senators appointed by the President of the Senate; the Speaker of the House and two Representatives appointed by him; and one Senator and two Representatives appointed by the Governor.

The Committee would be empowered to appoint an executive secretary and necessary clerical assistants and to contract with other agencies for research which could not be performed by the executive secretary. Its total appropriation would approximate \$25,000 per year.

The Commission recommended that the Committee have the following functions:

- (1) Studying matters referred to it by the General Assembly, in areas where the General Assembly had not been able to reach a decision during the previous session or where it wanted a check on the decision which was made;
- (2) Replacing study commissions concerned with problems of less than major significance (but not in areas where a great deal of time or special competence on the part of commission members would be required);
- (3) Undertaking on its own motion the study of matters coming to its attention between legislative sessions, so that recommendations may be presented to the next session of the General Assembly;
- (4) Undertaking limited studies at the request of the legislature during legislative sessions, when the need for information is urgent;
- (5) Answering questions from individual legislators during and between sessions.

ter 10-43 of the 1955 Session Laws (amending G.S. 110-22) would have no authority to serve as judge of the Juvenile Court until the board of county commissioners had taken action to appoint him to act in such a capacity. A clerk who began a term of office prior to this date (May 18, 1955) has the authority to continue to serve as judge of the Juvenile Court without action of the board of county commissioners until his present term of office expires, unless the board of county commissioners takes action before the expiration of such term to appoint someone else to serve as judge. The assistant clerk of the Superior Court, if he has been duly appointed in conformity with the provisions of G.S. 2-10, has the authority to perform the duties of the judge of the Juvenile Court of his county, if the county does not have a separate Juvenile or Domestic Relations Court.

[If the county commissioners appoint the clerk of the Superior Court to act as juvenile judge, under the authority of G.S. 110-22 as amended, then the clerk probably has no authority to delegate this duty. If the clerk, in such a case, desires to have his assistant perform this function, he should notify the county commissioners in order that they may appoint the assistant clerk directly under the authority of the amended law. Ed.]

Authority to Appoint Successor Trustee. Does a clerk of superior court have authority to act under a private trust agreement directing him to appoint a successor trustee in event of the death of one of the trustees named in the instrument?

To: Joseph P. Shore

(A.G.) Yes. I find no statute or decision of our Supreme Court imposing upon the Clerk of the Superior Court any such duties as outlined in the trust agreement in question. However, in the case of *Cutter v. Trust Co.*, 213 N.C. 686, our Supreme Court upheld the validity of an appointment by the clerk under a trust agreement quite similar to the one in question. In that case, Mr. Justice Winborne, for the court, said: "The appointment of the American Trust Company as substitute trustee is in strict compliance with the provisions of section six of the trust agreement, in which the procedure is prescribed by the creator of the trust. A special proceeding is not required. The approval of the court was unnecessary. The appointment is good without it. Nevertheless, the approval gives judicial sanction."

Appointment of administrator d.b.n., c.t.a. Husband died before he completed the administration of his wife's estate. May husband's executor complete the administration of the wife's estate?

To: B. F. McMillan

(A.G.) No. It is the view of this office that G.S. 28-7, as modified by G.S. 28-149(9), applies in only those

cases in which the wife dies intestate leaving surviving her husband and no children or other lineal descendants. Consequently, this office believes that the husband's executor has no right to complete the administration of the wife's estate. An executor d.b.n., c.t.a. should be appointed.

MUNICIPAL CORPORATIONS

Powell Bill Funds. May Powell Bill Funds be used to purchase a street sweeping machine?

To: John H. Zollicoffer

(A.G.) G.S. 136-41.3 provides that Powell Bill funds may be expended for "maintaining" streets. Since street cleaning constitutes "maintaining" streets, Powell Bill funds may be used to purchase street cleaning equipment.

Lease of City Property as Parking Lot. May a city lease municipal property for use as a parking lot, without advertisement and public sale?

To: Ford M. Meyers

(AG) G.S. 160-200, subsection 2, authorizes cities and towns to lease property, assuming such property is not held for a strictly governmental purpose. Inasmuch as a lease is analogous to the sale of real property, the provisions of G.S. 160-59 should be complied with. That section requires a public auction after 30 days notice. Thus, before a city or town could lease property to a private individual for use as a parking lot, there would have to be advertisement and lease to the highest bidder.

SCHOOLS

Amendment of School Budget.

Does a school board have authority to approve expenditures in excess of appropriations as long as the total budget for the particular school fund is not exceeded?

To: J. G. Hagaman

(A.G.) G.S. 153-127, as rewritten in 1955, provides that the board of county commissioners may by resolution amend the budget resolution after its passage "by transferring the unencumbered balance of any appropriation or any portion of such balance to any other appropriation within the same fund or to any new appropriation within the same fund." If it develops that it is necessary to spend more for some items than is approved in the budget and less for other items, it will be the duty of the board of education to submit an adjusted budget to the board of county commissioners, which board has the authority by resolution to authorize all necessary adjustments within the limits of the total approved budget.

Liability of School Board for Street Assessments. Is the school board required to pay street paving assessments levied by a city? If it must pay such street assessments, should payments come from capital

(Continued on page 28)

Judicial Council

(Continued from page 6)

EVIDENCE

Exhibit Evidence to Jury Room in Civil Cases, G.S. 8-92

There are certain cases in which it would be helpful if the jury could take exhibits to the jury room for the purpose of verifying or rejecting a point made. This bill will give the judge the authority to permit the jury to have for inspection such exhibit evidence in civil cases only.

Allow Wife to Testify as to Continuation of Marriage in Cases of Bigamy, G.S. 8-57

It has been pointed out that in prosecutions for bigamy a wife is prevented from testifying as to the continuation of marriage under our statute. The bill proposed remedies this by providing that such testimony is competent against the spouse, adding this to the other exceptions in the statute. The present statute allows evidence to prove the fact of marriage, but no provision is made to show its actual continuance during the alleged bigamy.

CRIMINAL LAW

Make Nonsupport of Children A Crime Without Proving Abandonment, G.S. 14-322

The present law demands proof of abandonment in order to convict the father of nonsupport. This grants an immunity to a father who is living

Turnover in General Assembly

(Continued from page 21)

and 1957 matched for second place.

No significance was found in the particular chamber where the legislator obtained experience, other than what was expected: the majority of the Senators with legislative experience were Senators in the past, the majority of the experienced Representatives were Representatives in the past, and a greater percentage of the Senators obtained experience in the House than did the Representatives in the Senate.

In sum, it should be noted that a steady (if irregular) decline in the biennial turnover in both houses, a slight but perceptible decrease in the number of inexperienced Senators, and a definite decrease in the number of inexperienced Representatives, indicate a significant trend towards a more stable legislative body in North Carolina.

with his children while failing to support them. This bill eliminates abandonment as an element of the crime, making it only necessary to prove wilful failure to support the children.

Burning of Certain Buildings, G.S. 14-67 and G.S. 14-144

This bill is the outgrowth of a suggestion made in a recent opinion of the Supreme Court, *State v Long*, 243 N.C. 393 (1956), pointing out that in certain types of burnings the statutes are worded in such a way as to make the offense of burning certain buildings a misdemeanor and attempting to burn, a felony. It is the purpose of this bill to remove the conflict between the statutes.

G.S. 14-67 is amended to make the actual burning a felony as well as the attempt.

G.S. 14-144 is amended by deleting the element of burning from the provisions of the statute.

The Determination of Paternity, G.S. 49-2

In bastardy prosecutions, it frequently happens that a defendant is clearly shown to be the father but is not guilty of failure to support. Thus he is acquitted of the crime but a finding as to his paternity as shown in the proceeding is not made. The purpose of this bill is to fix the paternity upon the evidence shown, regardless of the outcome of the criminal charge. This is deemed wise because the father's responsibility for supporting the child will continue. A recent case, *State v. Robinson*, 245 N.C. 10 (1956), is decisive on the point, but a statute is regarded as being helpful.

HABEAS CORPUS

Habeas Corpus Applicable to All Custody Cases, G.S. 17-39

The Council is recommending that the remedy of habeas corpus, in the

(Continued on inside back cover)

TABLE III

PREVIOUS LEGISLATIVE EXPERIENCE OF NORTH CAROLINA REPRESENTATIVES, 1909-1957

Year	No Experience		Experience House Only		Experience Senate Only		Experience Both Houses	
	No.	%	No.	%	No.	%	No.	%
1909	90	75.0	26	21.7	-	-	4	3.3
1911	77	64.2	38	31.7	3	2.5	2	1.7
1913	77	64.2	37	30.8	3	2.5	3	2.5
1915	73	60.8	44	36.7	1	.8	2	1.7
1917	78	65.0	37	30.8	2	1.7	3	2.5
1919	60	50.0	52	43.3	3	2.5	5	4.2
1921	74	61.7	40	33.3	2	1.7	4	3.3
1923	78	65.0	36	30.0	3	2.5	3	2.5
1925	78	65.0	36	30.0	3	2.5	3	2.5
1927	64	53.3	46	38.3	5	4.2	5	4.2
1929	65	54.2	41	34.2	7	5.8	7	5.8
1931	62	51.7	46	38.3	5	4.2	7	5.8
1933	62	51.7	49	40.8	3	2.5	6	5.0
1935	74	61.7	41	34.2	3	2.5	2	1.7
1937	71	59.2	46	38.3	2	1.7	1	.8
1939	62	51.7	54	45.0	2	1.7	2	1.7
1941	56	46.7	54	45.0	3	2.5	7	5.8
1943	41	34.2	66	55.0	3	2.5	10	8.3
1945	37	30.8	71	59.2	3	2.5	9	7.5
1947	55	45.8	58	48.3	1	.8	6	5.0
1949	55	45.8	54	45.0	4	3.3	7	5.8
1951	46	38.3	64	53.3	2	1.7	8	6.7
1953	45	37.5	67	55.8	1	.8	7	5.8
1955	38	31.7	75	62.5	1	.8	6	5.0
1957	39	32.5	74	61.6	2	1.7	5	4.2
Average	62	51.9	50	41.7	3	2.2	5	4.1

General Statutes Commission (Continued from page 21)

accruing income thereof for a longer time than three years next ensuing the making of such contract, or to impair or change the body or capital of the personal estate of the wife, or the accruing income thereof for a longer period than three years next ensuing the making of such contract unless such contract is in writing, and is acknowledged before a certifying officer who shall make a private examination of the wife according to the requirements formerly prevailing for conveyance of land."

The purpose of this bill is to remove personal property from the scope of the statute, except insofar as it is included in a separation agreement, without disturbing the application to real property.

13. A bill relating to conveyances between spouses. This bill would codify the case law relating to conveyances between spouses. It sets out in brief language the applicable rules.

14. A bill relating to the expenditure of funds made available for the General Statutes Commission [G.S. 164-13(e)]. This bill would make only a slight revision in the language of the present statute in order to make it clear that the Commission may budget and expend any funds made available to the Commission, by appropriation of the General Assembly, by allotment from the Contingency and Emergency Fund, or otherwise, for utilizing the services of persons specially qualified to assist in the work of the Commission and for necessary clerical assistance.

15. A bill to permit a surety when sued by the holder of the obligation to require the joinder of the principal debtor. A surety is entitled to all the legal and equitable defenses of his principal which are connected with the debt sued on. He may not take advantage of other defenses of the principal debtor unless the principal debtor is a party. At present there is no provision of the law which would permit a surety to require the joinder of the principal debtor. The purpose of this bill is to enable the surety to require such joinder and thereby have the advantage of any defenses which the principal debtor might have.

16. A bill to amend G.S. 26-3 relating to contribution among sureties. Under the present law a surety, in order to maintain an action against a co-surety after paying the principal obligation, must show that the principal debtor is either insolvent or out of the state. This places an unjust burden upon the paying surety, and it is the purpose of this bill to permit the surety to recover a proper proportion of the amount which he has been required to pay without first showing that the principal debtor is either insolvent or out of the state.

17. Omnibus bill. (To clarify and make miscellaneous minor changes in the statutes.) To amend the catch line of G.S. 31-47 to provide better English; to amend G.S. 1-121 by correcting an outdated reference therein; to repeal G.S. 12-1 which has been held to be unconstitutional; to amend G.S. 47-42 relating to the attestation of conveyances of banking corporations by the secretary or cashier.

COMMISSION MEMBERS

The Commission is presently composed of the following nine members: Robert F. Moseley, Chairman, appointed by the president of the State Bar; Henry A. McKinnon, appointed by the president of the North Carolina Bar Association; A. P. Godwin, Jr., appointed by the Lieutenant Governor; James H. Pou Bailey, Buxton Midyette, and E. K. Powe, appointed by the Governor; Frank W. Hanft, Vice-Chairman, appointed by the Dean of the University of North Carolina Law School; E. C. Bryson, appointed by the Dean of the Duke University Law School; and James E. Sizemore, appointed by the Dean of the Wake Forest College Law School. The author, as Revisor of Statutes, is *ex officio* secretary.

Tax Study Commission (Continued from page 14)

dustrial areas, and other commercial centers, unless these same cities can provide the traffic control and traffic enforcement services necessary to insure effective use of the streets, our growing urban centers may be strangled by the resulting congestion. In order for our cities to finance the work which must be done quickly, either property tax rates must be raised or revenues must be withdrawn from other needed services or new revenue must be made available.

"Some of the cities in the state

cannot raise property taxes any further. They are already at the statutory limit. Other cities hesitate to increase property taxes to pay for street construction which benefits not only the residents of the city but thousands of persons living outside the city who work and shop in the city. Other cities hesitate to raise property tax rates for fear new industry will be discouraged from settling in the city.

"The needs of the counties are not so immediate. There are problems, and the need for further assistance in the construction of new school buildings may become great in the next few years, but at the present time the basic structure at the county level appears to be adequate." [p. 76]

". . . The Commission recommendations do not make it possible for cities to meet needs for additional revenues from business taxation. The Commission believes, however, that those cities where the need is great, and where additional property tax revenues will be difficult or impossible to obtain, should have some additional authority to raise revenue. . . . Accordingly the Commission recommends that cities be given the following authority to levy additional taxes:

"1. That G.S. 20-97 be amended to permit each city to levy a tax of up to \$10 per year on each motor vehicle resident within the city and to permit each city to levy a tax of up to \$25 per year upon vehicles operated in the city as taxicabs.

"2. That each city be permitted to levy a tax of up to \$10 upon every individual earning salaries and wages in the city. This tax is a variation on the so-called payrolls tax and would insure contribution to governmental expenditures from persons employed in the city wherever they might live. It is anticipated that the bill authorizing such a tax would provide for a minimum wage (such as \$2,000 per year) below which the tax would not be levied and would provide suitable administrative powers and procedures." [p. 81]

"Of course, the granting of these limited powers does not mean they will or must be exercised. The checks and balances of government in our democracy are more direct and more immediately effective the smaller the taxing unit and the lower the level of government. It is also thought that the existence of these additional limited taxing powers should operate

to slow down the possible generation of desires to request additional shares of state revenues as a first resort to solve local problems of finance." [p. 18]

Total Impact on Cities, Counties

While it is theoretically possible for total occupation tax collections by all cities and towns to exceed present city privilege license tax collections by as much as one-third, it is probable that total collections by cities and towns will not far exceed present license tax collections. How much each city *can* derive will depend on economic conditions in that city, and while sales information available indicates that most cities can exceed present license tax collections, whether any city will fix occupation tax rates to produce additional revenue from this source will depend on such factors as these:

1. The need of the city for additional revenue;
2. The extent to which the city would employ the maximum rates permitted;
3. Whether the gross receipts measure of taxation is employed; based on experience, it is likely that most of the smaller cities and towns will use some other and simpler measure such as a flat fee;
4. The extent to which the city will use the power to classify retail and service trades and levy lower rates on some businesses than are levied on others;
5. The extent to which the city may depend on the new sources of taxation for additional revenue in lieu of occupation taxation.

The same conclusions can be forecast in each county. Each county will present a different situation, and the amount derived from the occupation tax will depend upon the tax policy adopted by the county board of commissioners. Thus while the 100 counties conceivably could collect about \$600,000 in occupation taxes, it is likely that total collections will not greatly exceed present collections which, together with revenues from marriage licenses and beer and wine taxes, amount to about \$500,000.

Any city or county, therefore, can measure the impact of the Commission's report by taking 25 per cent of its present intangibles tax share, deducting from that amount the total tax revenues now derived from the

Books of Current Interest

IOWA'S WATER RESOURCES: PAPERS PRESENTED AT THE SEMINAR ON IOWA'S WATER RESOURCES — SOURCES, USES, AND LAWS, edited by John F. Timmons and others. Ames, Iowa: The Iowa State College Press, 1956. 225pp. \$3.00.

Because of the ever-increasing need for water and the consequent diminishing supply, many states are devoting serious and extensive study and thought to the problem of water use control. Although this volume is devoted exclusively to the problem in Iowa, it adds much to what constitutes a rather limited body of knowledge in print. The book is divided into five parts: sources and supplies of water, economics of water use and control, multiple demands for water, water laws, functions of governmental agencies regarding use and control and some possible solutions to Iowa's water problems.

PERSPECTIVES ON ADMINISTRATION, by Dwight Waldo. University, Alabama: University of Alabama Press, 1956. 143pp. \$2.50.

An internationally known scholar, Mr. Waldo, in a series of five lectures delivered at the 1954 Southern Regional Training Program in Public Administration, presents to the public administrator stimulating and daring ideas which should do much to diminish the inferior feeling of the social scientist when his achievements are compared with those of the physical scientist.

READY FOR THE PLAINTIFF: A STORY OF PERSONAL INJURY LAW, by Melvin M. Belli. New York 17: Henry Holt and Company, 383 Madison Avenue, 1956. 338pp. \$6.50.

For layman and lawyer alike is the tragic story of that particular branch of civil law which comprises three-fourths of all the cases in our courts today—tort law, or personal injury law. Mr. Belli, the lawyer LIFE magazine called the King of Torts, writes from personal experience gained from thousands of personal injury suits in which he has had to attach price tags to legs, arms, spines,

bank share tax and personal property valuations listed by banks, and adding or subtracting the probable net increase or decrease in occupation taxes.

families, years of misery and pain.

MR. JUSTICE, edited by Allison Dunham and Philip B. Kurland. Chicago 37: The University of Chicago Press, 1956. 241pp. \$3.75.

Here are nine short "essays in legal biography," authoritative and stimulating excursions into the profoundly influential lives of Marshall, Taney, Hughes, Stone, Bradley, Holmes, Brandeis, Sutherland, and Rutledge.

PLANT LOCATION, by Leonard C. Yaseen. New York: American Research Council, 2 East Avenue, 1956. 226pp. \$10.00.

Management will find in this book a complete working manual to all the factors entering into the selection of a satisfactory community—including raw material sources, labor supply, nearness to markets, utilities, taxes, climate and all the other complex facets of location planning. Equally important are the standards formulated by the author from analysis of competitive offerings of thousands of communities. This work makes it possible for civic and business leaders to evaluate their own communities so as to create a more favorable environment for industrial growth.

THE GOVERNMENT AND ADMINISTRATION OF DELAWARE, by Paul Dolan. (American Commonwealth Series volume 7). New York 16: Thomas Y. Crowell Company, 432 Fourth Avenue, 1956. 396pp. \$4.95.

The Attorney General Rules

(Continued from page 25)

outlay funds approved by the county commissioners?

To: Dr. Charles F. Carroll

(A.G.) Our Supreme Court has held that while property belonging to the State or its subdivisions is exempt from taxation, assessments on school property for special benefits caused by the improvement of the street on which it abuts are not embraced within the exemption. In *Raleigh v. Public School System*, 228 N.C. 316, the court held that a school board was liable for paying street assessments. A city has authority to levy paving assessments against school property, under Article 9, Chapter 160 of the General Statutes. I am inclined to the opinion that the cost of street assessments should probably be included in the capital outlay budget, rather than in the current expense budget.

Judicial Council

(Continued from page 26)

discretion of the judge, be made available in all controversies respecting custody of children. It is considered that this will be of help to the legal profession by providing the flexibility that is desirable in certain cases and unusual circumstances. The provision as to the discretion of the judge is to prevent the entire domestic and juvenile court load being diverted to the superior court. The remedy under the present statute is not changed. In a contest between the husband and wife as to custody, the judge has no discretion but to receive the application and proceed with it as before. The amendment also provides that the award of the children may be to the husband or wife or to any other person, organization, or institution.

COSTS

Amend G.S. 6-18 to Allow Plaintiff Costs as of Course in Contract and Tort

Where there is a counter-claim to plaintiff's action and the counter-claimant loses, there is no provision under the present statute for costs to be allowed as of course to the plaintiff. The purpose of this bill is to make statutory what has long been the custom.

Clearinghouse

(Continued from page 4)

City Notes

A concrete company has selected **Kernersville** as the site of a new plant which may cost nearly \$250,000. This is the second business that the Kernersville Industrial Development Corporation has brought in to help strengthen the town's economy.

A three-million dollar bond issue was recently approved by **Greensboro** voters. The bond issue will be used to finance the building of the War Memorial Auditorium on the 45-acre Greensboro Fairgrounds. The project includes a 2,500-seat auditorium, a 400-seat memorial foyer and civic room and a 9,000-seat recreation unit.

Notes from Here and There

Two 24-hour deposit boxes have been installed in **Kalamazoo, Mich.**, for use by citizens in paying parking fines and water and other city bills. The saving in fees formerly paid to

Purchasing School To Be Held

A special school for local government purchasing officials will be held at the Institute of Government in Chapel Hill. February 21-23, 1957.

the drug store that had served as a city collection agency is expected to pay for the deposit boxes over a period of five years. The boxes can be used for payment of fines for all non-moving traffic violations and all other city bills.

West Miami, Fla., has completed a program of interdepartmental training of policemen and firemen. Police patrolmen have been taught certain fire duties, including the operation of a 500-gallon pumper, hydrant connection, ways to assist firemen during a fire, how to use fire extinguishers, and conditions that cause fire hazards. Fire personnel have been trained in certain police duties, including law enforcement, public relations, answering accident calls, how to make an arrest, and the difference between felonies and misdemeanors.

The first world-wide history of city planning is about to be written. The **University of Pennsylvania** has announced that it will undertake a three-year history-writing project that will review the history of city development in each of the world's major regions. It will be financed by a \$54,000 grant from the Rockefeller Foundation.

Serving on the program as panelists will be purchasing agents, city managers, county managers, county accountants, fire chiefs, water works superintendents, and members of the Institute of Government staff.

Six "buying" panels devoted to the purchasing of insurance, uniforms, sanitation equipment, water and sewer equipment, fire equipment and automotive equipment are planned. Other panels will consider the securing of federal and state surplus property, central warehouses and service centers, forms and financial control in the purchasing office, and service contracts. In addition, there will be sessions on municipal contract law and statutory provisions controlling purchasing by local governments.

The school is jointly sponsored by the Institute of Government and the Carolinas' Chapter of the National Institute of Governmental Purchasing. Plans for the school were made by a planning committee which met in Chapel Hill in December. Serving on the committee were A. C. Shepherd, President of the Carolinas' Chapter of NIGP and City Purchasing Agent for Winston-Salem; C. E. Beatty, City Purchasing Agent for Charlotte; A. T. Crutchfield, City Purchasing Agent for Durham; Sam Gattis, Orange County Accountant; J. McDonald Wray, City Manager for Beaufort, S. C.; and Alex McMahon and Jake Wicker of the Institute of Government.



Pictured above is the Municipal Building in Franklin. This modern building was erected in 1955 and has housed all city departments since November of that year.



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