

POPULAR GOVERNMENT

MAY 1961



County Officials Register for Institute of Government School

Published by the Institute of Government
UNIVERSITY OF NORTH CAROLINA • CHAPEL HILL



POPULAR GOVERNMENT

Published by the Institute of Government

Contents

Dennis v. Raleigh: A Recent Case on Public Purpose and Necessary Expense by Robert G. Byrd	1
Notes from Cities and Counties	5
County Commissioners and County Accountants Attend '61 Sessions	6
Committee at Work by Elmer Oettinger	3
Corps of Engineers Flood Plains Studies	9
Native Tar Heel	5
The Distaff Side of Government	10
Reports from Raleigh and Washington by Elmer Oettinger	11
The Attorney General Rules	15
Arrest of British Nationals by Roy G. Hall, Jr.	Inside Back Cover



This registration scene is a familiar one to officials attending Institute of Government schools, meetings, and conferences. Here county officials register in the Knapp Building this spring for the schools described and pictured on pp. 6-8.

Vol. 27

May, 1961

No. 8

POPULAR GOVERNMENT is published monthly except January, July and August by the Institute of Government, the University of North Carolina, Chapel Hill. Editorial, business and advertising address: Box 990, Chapel Hill, N. C. Subscription: per year, \$3.00; single copy, 35 cents. Advertising rates furnished on request. Entered as second class matter at the Post Office in Chapel Hill, N. C. The material printed herein may be quoted provided proper credit is given to POPULAR GOVERNMENT.

Editor

ALBERT COATES

Managing Editor

ELMER OETTINGER

Staff

CLYDE L. BALI
MARION W. BENFIELD, JR.
V. LEE BOUNDS
ROBERT G. BYRD
GEORGE H. ESSER
NEAL FORNEY
PHILIP F. GREEN, JR.
ROY G. HALL, JR.
DONALD B. HAYMAN
MILTON S. HEATH, JR.
HENRY W. LEWIS
RODNEY M. LIGON
RUTH L. MACE
JOHN ROBERT MONTGOMERY, JR.
JOHN L. SANDERS
ROBERT E. STIPE
L. POINDEXTER WATTS, JR.
WARREN JAKE WICKER

"Public purpose" and "necessary expense" are familiar phrases to city and county officials. These are legal phrases, which are full of meaning—and uncertainties.¹ A recent case² decided by the North Carolina Supreme Court will help to remove some of these uncertainties. Because of this, the case seems significant enough for special comment.

DENNIS V. RALEIGH:

A RECENT CASE ON PUBLIC PURPOSE AND NECESSARY EXPENSE

by Robert G. Byrd, Assistant Director, Institute of Government

In recent years, North Carolina cities and counties have become increasingly active in industrial promotion and development. More and more public funds are being spent for these purposes.

Before a city or county can make any appropriation for industrial promotion, it must have statutory authority to do so. Chapter 158 of the North Carolina General Statutes is the only state-wide authority given to cities and counties to appropriate and spend money for local development, encouraging industry, etc.³ This Chapter is effective in a particular city or county only after it has been adopted by the voters of the city or county in a referendum held for that purpose.⁴ The approval of a majority of those voting is required. Thus, unless Chapter 158 has been approved by the voters of a city

or county or unless there is a local act authorizing the city or county to appropriate money for these purposes, it is doubtful that the city or county would have any authority to do so. There have been over a dozen local acts enacted in the last three sessions of the General Assembly granting particular counties authority to call elections on the question of levying a special tax for industrial promotion purposes.⁵ A number of local acts giving cities similar authority have also been enacted.

Until *Dennis v. Raleigh*⁶ was decided there was some question as to whether any expenditure for industrial promotion would be for a public purpose. Most of this doubt grew out of the case of *Horner v. Burlington Chamber of Commerce*⁷ decided in 1935. In that case the City of Burlington had made the following appropriation: "Publicity: Chamber of Commerce, \$2000." The appropriation was made under authority of Chapter 158. The Court held that this appropriation permitted the

money to be spent to carry out the general activities of the Chamber of Commerce, and that such activities would not come within the purposes authorized by Chapter 158. The decision also left in doubt the question of whether such an appropriation, even if authorized by statute, would be for a public purpose for which the city could spend public money.

The *Dennis* case, at least in part, answered this question. It held that an appropriation "to be used exclusively for the purpose of advertising the advantage of the City of Raleigh in an effort to secure the location of new industry in the city" was for a public purpose. It should be emphasized that this decision holds only that *advertising* the city to promote industrial development is a public purpose. Of course, advertising is only one of many potential activities that a city or county might engage in for the purpose of industrial promotion. The authority granted in Chapter 158 is very broad: "for the purpose of aiding and encouraging the location of manufacturing enterprises, making industrial surveys and locating industrial and commercial plants in or near such city . . . or in such county; encouraging the building of railroads thereto, and for such other purposes as will, in the discretion of [the governing bodies] increase the population, taxable property, agricultural, industrial and business prospects of any city . . . or any county."⁸ The grant of authority in most local acts is patterned after this language.

Other activities which are often considered in connection with industrial

1. For a general discussion of necessary expense, see Coates and Mitchell, "Necessary Expenses' Within the Meaning of Article VII, Section 7 of the North Carolina Constitution," 18 *N.C.L. Rev.* 93 (1940). For a general discussion of public purpose, see Coates, "Tarboro Hotel v. Public Purpose," *Popular Government*, June, 1947, p. 12.
2. *Dennis v. Raleigh*, 253 N. C. 400 (1960).

3. G.S. § 153-11.2 authorizes counties to spend nontax funds to build water and sewer lines from the limits of municipalities within the county to communities and locations outside the municipalities "where large groups of employees live in and around factories and mills and where said water and sewerage is necessary to promote industrial purposes."

4. G.S. § 158-5 authorizes cities with less than 3,000 population to come under Chapter 158, without a vote, upon petition of at least three-fourths of all

registered voters. As will be seen, however, levy of a tax by such cities for industrial promotion would probably violate Article VII, section 7 of the North Carolina Constitution.

5. A typical local act is Chapter 212 of the 1959 Session Laws. Most local acts authorize counties to levy special purpose taxes, whereas Chapter 158 authorizes a tax within the 20 cents limitation. A bill is now pending before the General Assembly to amend Chapter 158 to provide for levy of a special purpose tax by counties. S.B. 88 (1961).

6. 253 N.C. 400 (1960).

7. 235 N.C. 77 (1952). The same case was before the Supreme Court earlier, 231 N.C. 440 (1950).

SALES TAX REFUNDS

Sales tax refunds for counties, cities, and towns are provided for in the amended Revenue Bill, as approved by the Senate and House in June deliberations. The legislators cut over nine million dollars from Governor Terry Sanford's proposed eighty-three million dollars in additional taxes for education purposes, striking from the original measure provisions that would have extended the state's three per cent sales tax to prescription medicines, poultry and livestock, seeds, feeds and insecticides, and commercial fertilizer and lime as well as crutches, artificial limbs and orthopedic supplies, and approving sales tax refunds to churches, orphanages, local governmental units and other nonprofit institutions.

Legislative approval for the essential parts of the Sanford appropriations and Revenue measures signaled ultimate victory in the 1961 General Assembly for most of the administration's education budget proposals and broke a threatened legislative deadlock.

promotion are tax concessions;⁹ provision of water and sewer facilities to industrial site areas; construction of buildings and plants which are made available to particular industries free or at low rentals; providing capital to particular industries free or at low interest rates; conducting industrial surveys to show what resources, labor force, etc., are available in the area; and making contributions to private groups which are formed to promote industrial development.¹⁰ Whether any or all of these activities are public purposes is not decided in the *Dennis* case. Although we can make an informed guess on many of these, the final answer as to whether they are legitimate activities for which cities and counties may spend public money must come from the Court.

A problem closely related to the public purpose question is that of turning over public funds for industrial promotion to agencies outside the normal governmental organization for expenditure by such agencies. In this area, perhaps, more than in any other area, cities and counties have utilized such agencies to carry out activities for which public funds have been appropriated. Cities have relied heavily on

chambers of commerce and counties have utilized various types of industrial development commissions.

We have seen from the *Horner* case that public funds probably cannot be turned over to such agencies to be used indiscriminately by them in any way they see fit for industrial promotion. On the other hand, the *Dennis* case indicates that such agencies may be used if proper safeguards are set up to control the expenditure of public funds turned over to them. The *Horner* case, in holding an appropriation to the chamber of commerce invalid, stressed the fact that the city had turned the money over to the chamber of commerce without specifying how it was to be spent and without reserving any right in the city to control and direct the use of the money. The *Dennis* case, in upholding an appropriation to the chamber of commerce, stressed that the resolution of the city council making the appropriation specified exactly what the money was to be used for, required the chamber of commerce to account fully to the city for all funds turned over to it by the end of the fiscal year in which the appropriation was made, and required each specific purpose for which the chamber of commerce was to spend the money to be approved by the city council as to purpose and amount. The Court in the *Dennis* case emphasized that these factors distinguished it from the *Horner* case.

What can we learn from these cases? First, all expenditures for industrial promotion should be made under the direction and control of the governing

body of the city or county to the greatest extent possible. Secondly, in no case should appropriations be made to private agencies, no matter how good or worthy their motives, to be spent in the unlimited discretion of such agencies. Where such agencies are to be used in spending public funds for industrial promotion, the safest procedure would be for the governing body of the city or county in the resolution making the appropriation to spell out the exact purposes for which such money is to be spent, to provide for control over individual expenditures made by the agency, if feasible, and, in all instances, to require the agency to which the funds are turned over to account for them to the governing body annually or oftener.

NECESSARY EXPENSE

Article VII, section 7 of the North Carolina Constitution prohibits a city or county from levying taxes and incurring debt for other than necessary expenses except upon approval of the voters of the city or county in a referendum held for that purpose. In the past there has been considerable doubt as to what taxes, if any, other than ad valorem taxes, this limitation applied.¹¹ In *Dennis v. Raleigh*,¹² the North Carolina Supreme Court defined the application of the rule more clearly than it had at any time in the past and removed much of the doubt which had existed.

The city council of Raleigh adopted a resolution making the following appropriation: "That the sum of \$500 is hereby appropriated from surplus funds of the City derived from sources other than *ad valorem* taxation to the

11. Certainly, the decisions of the Court had not made the answer to this question completely clear. In *Airport Authority v. Johnson*, 226 N.C. 1 (1945) an appropriation for airport purposes was made from "funds derived from sources other than *ad valorem* taxes." The Court held: "In this situation no question of credit or taxation in violation of Article VII, section 7, is involved. . . ." Again, in *Re-development Commission v. Bank*, 252 N.C. 595 (1960), the Court apparently felt that an appropriation of funds from sources other than *ad valorem* taxes did not raise the necessary expense question, although the issue was not argued by attorneys. On the other hand, in *Greensboro v. Smith*, 241 N.C. 363 (1954), the Court upset a finding of the trial court that the city could appropriate funds "derived from sources other than *ad valorem* taxes." The Court said: "No adjudication is appropriate in the absence of factual data as to the source and character of the 'available funds derived from sources other than *ad valorem* taxes.'"

12. 253 N.C. 400 (1960).

8. G.S. § 158-1.

9. Chapter 835, Session Laws, 1959 illustrates this approach. This act provides that valuations on new industrial property will not be increased for a period of ten years. This probably violates the uniformity provision of Article V, section 3 of the North Carolina Constitution.

10. The Attorney General has ruled that in his opinion a city may not act as a collecting and spending agent for a private group soliciting contributions to build industrial plants, to pave and grade industrial sites, and otherwise to encourage the location of industry in the county. Letter from Attorney General to Kyle Hayes, 9 January 1961.

Raleigh Chamber of Commerce to be used exclusively for the purpose of advertising the advantages of the City of Raleigh in an effort to secure the location of new industry within the City. . . ." After stating the well established rule that what constitutes a necessary expense is for the determination of the court, the Court said: "An expenditure for the purposes set forth in the resolution of the Raleigh City Council is not a necessary expense within the meaning of this constitutional provision. *Ketchie v. Hedrick*, *supra*. Hence, no tax may be levied or collected for such purpose unless approved by a majority of the qualified voters."¹³ The *Hedrick*¹⁴ case held that an appropriation by the City of High Point to the chamber of commerce to be expended "under the direction and control of the Chamber of Commerce" was not for a necessary expense.

The Court then directed its attention to the question of what taxes come within the limitation of Article VII, section 7. "The resolution of the Raleigh City Council . . . purports to make the appropriation from funds derived from sources other than *ad valorem* taxation. But the provisions of Art. VII, Sec. 7, are not limited to *ad valorem* taxation. They apply with equal vigor to all taxes a municipal corporation may levy or collect. Hence, the appropriation, insofar as it purports to authorize the use of tax funds other than those derived from *ad valorem* taxes, is void."¹⁵

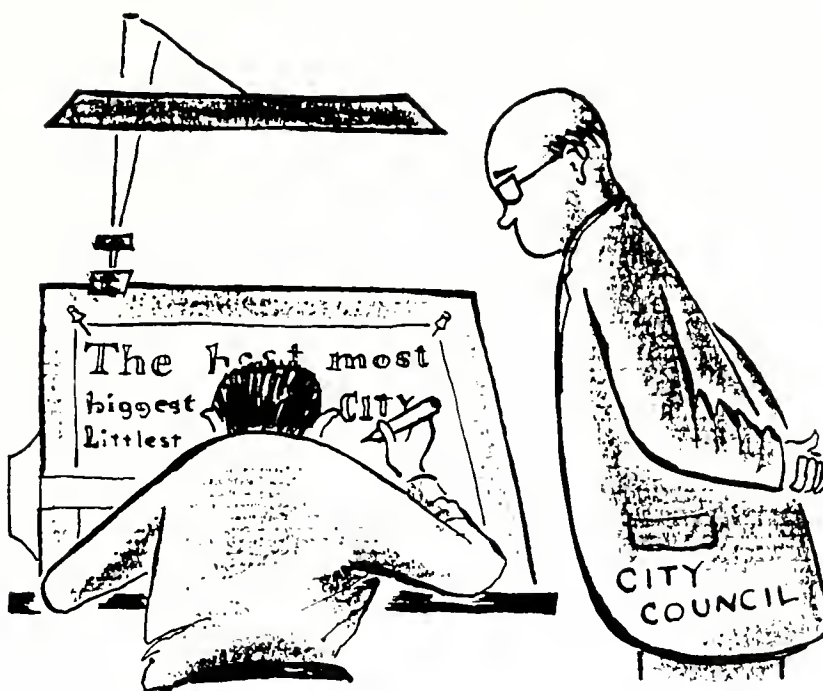
This decision means that all locally levied and collected taxes are subject to the limitation of Article VII, section 7 and can be used for nonnecessary expenses only after approval by the voters. Poll taxes, privilege license taxes, franchise taxes, and dog taxes would presumably be included. It should be emphasized, however, that taxes which are levied and collected by the State and shared with local units would not be included. These are State, not local, taxes and Article VII, section 7 expressly applies only to local taxes.¹⁶ Thus, these shared taxes could still be

used for any public purpose permitted by law. It should also be emphasized that nontax revenues are not subject to Article VII, section 7 and can be used, without a vote of the people, to finance authorized functions which are public purposes, even though they are nonnecessary expenses. The *Dennis* decision does not affect the use of these revenues. ABC profits, utility revenues, and fees and charges are all nontax revenues.

If a city or county decided to use any of these local taxes for nonnecessary expenses, whether specific statutory authority would be needed to hold an election on the question of such use is not completely clear. Two early decisions¹⁷ of the North Carolina Su-

act¹⁸ for conducting the election. The safer course, however, would be for the city or county to obtain the enactment of special or general legislation authorizing the holding of the election and providing machinery for conducting it. Such legislation might authorize the use of election machinery already provided in some other law, such as the finance act, for this purpose.

With such legislative authority, there would seem to be no reason why a city or county could not call an election on the question of using any of these local taxes for nonnecessary expenses. For example, if a city or county decided that it would be advantageous to use privilege license taxes to support libraries, it could call an election on



preme Court indicated that where adequate machinery for holding an election on the question of the use of tax funds for nonnecessary expenses existed in the general election laws or other laws, further legislation providing either specific authority to hold such an election or the machinery for holding it was not necessary. In each of these cases, however, the elections had already been held and the approval of the voters had been given. It is possible that, under these decisions, the governing body of a city or county could call an election on the question of the use of tax funds for nonnecessary expenses and utilize the election machinery set out in the appropriate finance

the question of using all privilege license taxes, a fixed percentage of such taxes, or a stated amount of money from such taxes annually for library support. Presumably, each year thereafter it could apply the amount of privilege license taxes approved for library support.

This case also clarifies another problem around which some uncertainty has existed. The officials of many cities and counties have felt that "surplus funds" could be used to finance any function which is a public purpose, whether such function is classed as a necessary or nonnecessary expense. In applying

13. *Id.* at 403.

14. *Ketchie v. Hedrick*, 186 N.C. 392 (1923).

15. 253 N.C. 400, 403. (1960)

16. "No county, city, town, or other municipal corporation shall contract any debt, pledge its faith or loan its credit, nor shall any tax be levied or collected by any officers of the same except. . . ." (Emphasis added.)

Whether the intangibles tax, which is levied and collected by the State and, after deduction of the cost of levy and collection, turned over to local units, is a State or local tax is debatable.

17. *Hailey v. Winston-Salem*, 196 N.C. 17 (1928) and *Bank v. Oxford*, 116 N.C. 339 (1895).

18. The County Finance Act is found in Article 9 of Chapter 153 of the North Carolina General Statutes. The Municipal Finance Act is found in Article 27 of Chapter 160.

this rule many made no distinction between "surplus funds" which arise from tax and nontax sources. Thus, any legitimate surplus¹⁹ was considered available for financing nonnecessary expenses.

The *Dennis* case makes it clear that surplus funds derived from tax revenues cannot be used for nonnecessary expenses. The appropriation of the Raleigh City Council was from "Surplus funds . . . derived from sources other than *ad valorem* taxation." The Court held that surplus funds derived from local taxes of any kind could not be appropriated for a nonnecessary expense without approval of the people. Appropriations of "surplus funds not derived from taxes of any kind" were upheld.

The decisions of the North Carolina Supreme Court on the "surplus funds" rule before the *Dennis* case were somewhat confusing. Language in early cases, beginning with *Adams v. Durham*,²⁰ enunciated the rule to be that Article VII, section 7 "has no application . . . where . . . the funds to be applied are already on hand and the proposed expenditure will impose no further liability on a municipality, nor involve the imposition of further taxation upon it. . . ."²¹ This language sounds as if the Court viewed Article VII, section 7 as applying prospectively only and, therefore, as not prohibiting the use of any surplus, whether arising from tax or nontax sources, to finance nonnecessary expenses. However, in most of these cases the source of the surplus was nontax revenues and the intent of the Court's language was uncertain.

The decision in *Goswick v. Durham*²² was more definite. In this case, a taxpayer, alleging that the City of Durham had used tax funds for the purchase of land for an airport site, asked that the purchase be held invalid and that the city be ordered to sell the land

purchased and restore the tax funds to the city's treasury. The Court held: "But we cannot hold that the purchase of the land was invalid or decree its sale. If it be conceded that a portion of the funds from which the [purchase price] was paid for the property was derived from *ad valorem* taxes, this was an executed contract for the purchase of property, for an admittedly public purpose. . . . The acquisition of the land from surplus funds was not beyond the power of the city and it in no way offended the provisions of Article VII, section 7, of the Constitution."²³ The Court cited the *Adams* and *Nash* cases for support of this holding. The rule at this point, then, seemed to be that surplus funds, whether from tax or nontax sources, could be used for nonnecessary expenses.

Perhaps, in *Sing v. Charlotte*,²⁴ decided in 1938, the present rule, as announced in the *Dennis* case, began to evolve. The Charlotte City Council made an appropriation to a general contingency fund and levied a tax in the amount of the contingency appropriation. Later in the year, the city council adopted a resolution transferring \$5000 from the contingency fund and appropriating this amount for airport purposes. The Court held that the appropriation of this money for airport purposes violated Article VII, section 7: "Not being a necessary expense, the levy of a tax directly or indirectly to be expended for the purpose of the operation, maintenance and improvement of a municipal airport without a vote of the majority of the qualified voters, is violative of Article VII, section 7 of the Constitution of North Carolina. While the good faith of the governing body of the City of Charlotte is not here impugned, the effect is no different in an indirect appropriation and tax levy than in a direct appropriation and tax levy for an unauthorized purpose. The money collected pursuant to a tax levy for an undesignated purpose under the name of 'contingent fund' is, nevertheless, money derived from an *ad valorem* tax. Giving it the name of 'contingent fund' does not strip it of its qualities of tax money, nor can it thereby be transformed magically into the character of money 'in the treasury' or 'money on hand' unappropriated and subject to be used for a purpose for which a direct tax cannot be levied. This patently would authorize to be

done indirectly that which the Constitution forbids to be done directly."²⁵

It is possible that the Court was holding that all tax derived funds, whether in the nature of surplus funds or current levies, come under the limitation in Article VII, section 7. On the other hand, the Court may have been holding only that the funds involved were not in fact surplus funds. Would the Court's decision have been the same if the funds in question had resulted from actual tax collections in excess of estimated collections, when the estimates were made in good faith? A concurring opinion by Devin quoted, seemingly with approval, the earlier cases discussed, including the *Goswick* case.²⁶ Clarkson, dissenting on several grounds, stated, "I think the facts in the present case similar to those in the case of *Adams v. Durham*, 189 N.C., 232."²⁷

Airport Authority v. Johnson,²⁸ decided in 1945, held that an appropriation for airport purposes from "surplus revenues from sources other than the levy of *ad valorem* taxes which are not pledged or otherwise applicable by law to the payment of the existing debt of the City . . ." did not violate Article VII, section 7. This holding probably did not aid in determining the scope of the "surplus funds" rule, because the facts of the case, as interpreted by the court, did not present this issue.²⁹ However, in separate concurring opinions, Denny³⁰ and Barnhill³¹ clearly stated that surplus funds must be derived from sources other than taxation if they are to be expended for nonnecessary expenses without a vote of the people.

Actually, the issue was probably decided in 1954 in *Greensboro v. Smith*,³² although doubts continued to exist. In this case the trial court ruled that "the City of Greensboro now has the lawful right to supplement the funds [for construction of an auditorium] by appropriations from available funds, not otherwise appropriated, and derived from sources other than *ad valorem* taxes."³³ The Supreme Court, in setting aside this finding of fact, said: "The City Council . . . may determine whether it has and will appropriate

(Continued on page 14)

19. The phrase "legitimate surplus" is used to describe a surplus which arises from normal governmental operations. Where revenues and expenditures are estimated in good faith, and collections exceed estimated revenue or payments are less than estimated expenditures, the resulting surplus would be a legitimate surplus. However, where revenues are intentionally underestimated or expenditures are knowingly overestimated, the resulting surplus would not be a legitimate surplus.

20. 189 N.C. 232 (1925). The cases following the *Adams* case are *Nash v. Monroe*, 198 N.C. 306 (1930); *Newborn v. Kinston*, 199 N.C. 72 (1930); *Burleson v. Spruce Pines*, 200 N.C. 30 (1930).

21. *Adams v. Durham*, 189 N.C. 232 (1930).

22. 211 N.C. 687 (1937).

23. *Id.* at 689.

24. 213 N.C. 60 (1938).

25. *Id.* at 65.

26. *Id.* at 68.

27. *Id.* at 71, 78.

28. 226 N.C. 1 (1945).

29. As pointed out in footnote 11.

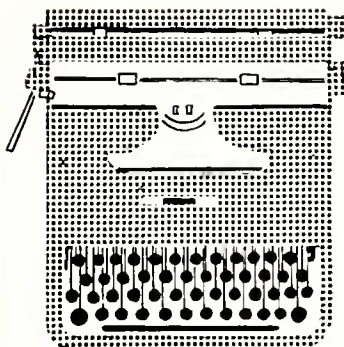
in this case the Court seemed to restrict the necessary expense limitation to *ad valorem* taxes only.

30. *Id.* at 20.

31. *Id.* at 14.

32. 241 N.C. 363 (1954).

33. *Id.* at 366.



● NOTES FROM . . .

CITIES AND COUNTIES

Cities and Towns

Can you imagine a town with no government? No mayor, no aldermen or commissioners, no clerk, no one with governing responsibility? Beginning June 1, the Town of **Severn** may fit that description.

Severn has no candidates for public office. Mayor Rufus Johnson and the five present commissioners alone showed up for a "mass meeting" to nominate candidates. They refused to nominate themselves. At last information the ballot was bare.

Said Mayor Johnson: "It just showed how dead the interest in local government is. I don't know what the procedure is in a situation like that, but I expect I'd better get in touch with the Institute of Government in Chapel Hill."

So far the Institute's elections expert, Henry Lewis, hasn't heard from Severn. Possibly another meeting has been held and brought forth some candidates. If not, Severn voters could write in their choices on the ballots at voting time. It isn't likely that the batting average will remain none for Severn.

Two committees of the **Winston-Salem** Board of Aldermen have recommended that the city deed to the State a site on Link Road for a proposed new National Guard Armory.

For years **A.C. Hall** has been the elected Auditor of Wake County. Now he's the appointed Auditor of Wake County. Wake changed the office from elective to appointive in this General Assembly.

The **Raleigh-Durham** Airport Authority re-elected its incumbent officers recently. Returned for another term are: James R. Patton, chairman; J. Elvey Thomas, vice chairman; G. P. Geoghegan, Jr., secretary; and Dillard Teer, treasurer.

The Town Board of **Dallas** has accepted a gift of some eight acres of land on the northwest side of town which will be converted into a public park with the help of a \$2,000 ap-

propriation for permanent improvements. Also in the planning stage is a municipal pool which is expected to be in operation by summer.

Raleigh's City Council turned thumbs down on a proposal to make it a misdemeanor to fail to pay a taxi fare. The action came after City Attorney Paul Smith reported to the council that the State's Attorney General had ruled such an ordinance invalid.

The **Smithfield** Board of Commissioners has approved the appointment of Thomas J. Lassiter as a member of the Board of Trustees of the Smithfield Public Library. He fills a vacancy created by the resignation of W. A. Hooks.

Gastonia's senior citizens have been given a "free ride" at the city's swimming pools and municipal golf course—with free golf lessons as a bonus.

The city council voted to extend the free privileges to those retired persons over age 65 at the suggestion of Councilman Dan Gunter Jr., who borrowed the idea from Memphis, Tenn.

Mrs. Marshall T. Spears Jr., E. T. Rollins Jr. and Dr. Benjamin Powell were named to three-year terms on the **Durham** Public Library Board of Trustees at a joint session of the City Council and the Board of County Commissioners last month.

* * *

The **Charlotte** City Council has decided to put some new teeth in an old law—and some 50 employees of the Queen City may get "chewed" if they don't move into Mecklenburg County by September 1.

Section 29 of the city charter requires that all city employees, including department heads, live within **Mecklenburg** County. The council approved a recommendation by City Manager William Veeder that the charter provision be enforced, setting a September 1 deadline for compliance. Veeder reported to the council that about 50 of Charlotte's 2,000 employees

live outside the county, some in South Carolina, some with as much as nine years' service to the city.

Selma's town commissioners have given unanimous approval to a plan for redevelopment of the main business district which will include construction of a canopy over the sidewalks and the installation of recessed lighting of the walks. The plan was submitted by the Selma Chamber of Commerce.

The **Greensboro-High Point** Airport Authority has voted to sell two \$100,000 notes through the Local Government Commission, part of which will go toward paying off an existing debt, and parts of which will be used to finance an addition to the airport restaurant and pave runway extensions. The addition to the terminal building will double the size of the restaurant, while the runways will be extended to 6,500 feet each.

Private gifts totalling a quarter of a million dollars have been made to the City of **Winston-Salem** to help develop Winston Lake Park as a Negro recreation facility. Included in the plans for the 494-acre park surrounding the lake once used for the Twin City's water supply, are the construction of a swimming pool and the laying out of a second nine holes for the park golf course.

Almost half a million people are expected to board commercial planes at **Charlotte's** municipal airport in 1970, a prominent New York consultant has reported. The estimate is part of a preliminary report to city and airport officials who will later be presented with a detailed master plan to guide expansion of the air facility.

Durham's City Council has appointed three men to its newly-created Examining Board for Authorized Heating Contractors. They are: J. C. Parrish, Roy T. Gardner, and Joe E. Bell. The board was set up recently with the enactment of a municipal heating code.

(Continued on page 14)

COUNTY COMMISSIONERS AND ACCOUNTANTS ATTEND '61 SESSIONS



← *Registration
a moment of concentration and greet-
ing of friends . . .*

*Welcome
. . . and let's get started . . .*



*Class Sessions
Institute speakers and attentive officials . . .*



The picture story of the 1961 Schools for County Commissioners and County Accountants appears on these pages. It is not a complete story. No picture story could be. It takes us from the moment of arrival and registration in the Knapp Building through greetings, classes, coffee breaks, and after-class discussions to the final banquet and farewells. But it cannot catch all of the flavor of the occasion. It only hints at the warmth of relationships, the value and tradition of the meetings. It reveals none of the classroom content: the heart of the schools. Nowhere in these photographs or their captions will you find what the Commissioners or Accountants heard, said, or learned. It remains for their home folks to gain from their added skills and knowledge.

You won't even find the general topics discussed at the various sessions. You wouldn't know from the pictures that the County Accountants heard and participated with Pitt County Accountant H. R. Gray and the Institute's Jake Wicker on "County Purchasing—A Case Study of Pitt County's Operation," the Institute's George Esser on "County-City Financial Relationships: Problems and Possibilities of Joint Action and Functional Consolidation," the Institute's Don Hayman on "Employee Classification and Pay Plans," the Institute's Bob Byrd on "Recent Developments in Public Purpose, Necessary Expense, and Special Purpose," and the Local Government Commission's W. E. Easterling and Gordon Bell on "County Indebtedness and Accounting." You wouldn't know that the Commissioners heard and participated with Institute Director Albert Coates on "The Place of the County in the Government of North Carolina," the Institute's Henry Lewis on "Organization, Powers, Functions, and Administration of County Government," and "The Property Tax:



*Making a Point
to an interested study group*



*After Class
a time for exchange of ideas . . . and information*



*Coffee Break
good conversation about old times and new . . .*



Listing, Assessing and Collecting," Bob Byrd on "Financing County Government," and "Budget Making," and Don Hayman on "Problems of County Personnel Administration." Nor would they know that both Commissioners and Accountants heard and participated in joint session with the Commissioners' General Counsel Alex McMahon on "Current Legislation of Interest to Counties," the Institute's Roddey Ligon on "Public Health Programs" and "Public Welfare Programs," and the Institute's Marion

Benfield on "County Commissioners and the Public Schools."

The pictures cannot reveal the spirit of the meetings. At the banquet Albert Coates, Director of the Institute of Government, pointed out that the County Commissioners and Accountants were among the first officials to support the Institute and attend Institute training schools. He noted that the present schools marked a dedication of the Institute's Knapp Building to county officials. Jim Garrison, Buncombe accountant and former presi-

dent of the Accountants' Association, responded, observing that he had been present at the 1932 meeting when plans for the Institute were first announced by Mr. Coates and endorsed by the officials and expressing appreciation for the Institute services through the years. The photos and text on these pages cannot adequately show these bonds. Yet they do represent clear and convincing evidence of a lively, meaningful occasion, vital association, and continuing growth of Institute and officials alike.



In the Hallways

a recollection of the three busy, worthwhile days and anticipation of seeing each other again at the next one . . .

Exhibits

a picture record of past Institute sessions . . . memories of other schools in other years . . . a look at Institute publications for county officials, including the latest . . .

Final Banquet

A feast of food, fellowship, and felicitations following busy class sessions . . . (left to right at head table: Hugh Ross, Guilford; Bryan Aycock, Wayne; Miss Lillian Ross, Burke; Fred M. Hauser, Lincoln; Albert Coates; Mrs. Coates; Mrs. J. C. Spencer, Caldwell; Max Hamrick, Cleveland; Henry W. Lewis; Miss Mary T. Covington, Richmond; J. C. Ellis, Nash; and James C. Garrison, Buncombe. Hauser is president of the N. C. County Accountants Association. Ross, Aycock, Miss Ross, Mrs. Spencer, Hamrick, Miss Covington, Ellis, and Garrison all are past presidents of the Accountants Association. Coates is Director and Lewis an Assistant Director of the Institute of Government.)



CORPS OF ENGINEERS FLOOD PLAIN STUDIES

The U. S. Army Corps of Engineers expects to have some funds available during the coming fiscal year for local flood plain studies. The studies will furnish technical data on flood frequencies in particular localities, and will provide much needed information for planning future development and protection of flood-prone areas.

The studies will be conducted at the expense of the Corps of Engineers. Applications will be reviewed and handled first come-first served, since only limited funds will be available. Interested cities and towns should apply immediately to the District Engineer of the Engineers District for their area, or through Colonel Harry Crown, Director of the North Carolina Department of Water Resources in Raleigh. Priorities for the entire nation on these studies will be assigned before July 1st, 1961, so time is of the essence if you wish to apply for a project in your area.

NATIVE TAR HEEL

Kent Mathewson's face is on the cover of the March issue of *Mayor and Manager* (The Magazine of Municipal Management) and his name is affixed to the lead article entitled "Blueprint for Regional Cooperation." Kent is the city manager of Salem, Oregon, recently chosen as All-American city. What makes his recent honors and article of much interest in our area is the fact that Kent is a Raleigh native, a graduate of the University of North Carolina, a former city manager of Asheboro (and Martinsville, Virginia), and a past president of the North Carolina, Virginia, and Oregon Sections of the International City Managers' Association. He is at present a national director of the American Society for Public Administration. In his five years in Oregon he has originated a "Massive Cooperation" program which led to Salem's national recognition. Although he is three thousand miles across the continent, he keeps up with North Carolina and its governmental affairs as is illustrated by his reference in his article to the Research Triangle (as an organization utilizing private and public financing to plan a region's future).

COMMITTEE AT WORK!

THE REAL LABOR OF YOUR LEGISLATOR COMES BETWEEN DAILY SESSIONS

by Elmer Oettinger, *Assistant Director, Institute of Government*

The House and Senate met at noon and adjourned at one. John Q. Public reads the one-hour session in his morning paper and shakes his head. He compares the apparent legislative hours with his own work day. What he often does not know is that his own State Senator and Representative attended Committee meetings from nine in the morning till noon and again from two-thirty in the afternoon until five-thirty. His legislator serves on half a dozen or more committees, each meeting from one to five times a week to consider bills introduced, hold hearings, and report back to the legislative body with recommendations for action—favorable; favorable as amended, unfavorable as to bill, favorable as to committee substitute; or unfavorable. The Committees meet in various buildings on Capitol Square and the legislator is kept hopping trying to meet his committee obligations. In advance of the meetings he reads the bill itself, which may be statewide or local, and the analysis of the bill in the Institute of Government Daily Legislative Bulletin. He may also talk with constituents about the measure. Every day he receives calls, letters, telegrams, personal visits from the folks back home. It all takes time. Sometimes time he does not have. But it's a part of the legislative process in a democracy. Sometimes he has to consult others about drafting legislation he wants to introduce. He talks with the Attorney General or his staff, local or state officials or agencies, or the Institute of Government legislative research and drafting staff. There are night discussions and conferences and meetings. Week-ends he tries to get home to ascertain further the wishes of those he serves. And there are always those Committee meetings, the heart of his work. A legislator's life is not a lazy one. But John Q. Public, reading his paper, may not know the nature or extent of these demands and drains on his time. And he envies the man who had only an hour session to attend.

Meetings Galore

It would be interesting to get his reaction if he could follow his elected representative through the maze of Committee meetings and hear and see the mass and morass of proposed law he is called upon to consider and take a stand on. He would become acutely aware that membership in a half dozen committees is a challenge in itself. Let us say his man is a member of the Appropriations or Finance (every legislator serves on one or the other), Banks and Banking, Agriculture, Education, Wildlife Resources, and Congressional Districts Committees. He has successive committee meetings on the same day in the Capitol, the Revenue Building, the Health and Welfare Building, and the Justice Building. Sometimes they overlap. There's no easy way to catch them all. But he tries manfully and usually succeeds. One hour day? Not this year, or any.

Volume of Bills

In the 1959 session 1363 bills and resolutions were introduced in the House and 517 in the Senate. The Institute of Government legislative services had an analysis of each of these 1880 bills on the desks of each legislator the morning following its introduction. Even so, it is impossible for a General Assembly member to become expert in the contents of every measure introduced. He does have an opportunity to become thoroughly familiar with the provisions of bills considered by committees of which he is a member. Here again is an example of the prime importance of the committee system. Actually, it is difficult, though not impossible, to obtain passage of a bill which has been given an unfavorable report by the committee to which it was assigned, but it is axiomatic that most bills which have obtained committee approval eventually are passed on the floor and become law. The reason is, of course, that legislators have to rely

(Continued on page 14)



THE DISTAFF SIDE OF GOVERNMENT

The four ladies pictured above are members of the 1961 North Carolina General Assembly. They are Mrs. Grace T. Rodenbough of Stokes County, Dr. Rachel D. Davis, III of Lenoir, Mrs. Tressie Pierce Fletcher of Alexander, and Mrs. W. N. Cook of Macon. Mrs. Rodenbough, serving her fifth term, and Dr. Davis, in her second, are Democrats. Mrs. Fletcher and Mrs. Cook, both first-termers, are Republicans. Dr. Davis is a physician, Mrs. Fletcher an attorney, and Mrs. Rodenbough and Mrs. Cook former school teachers. All four serve in the House of Representatives. Together they represent one-third of the total number of women ever to serve in the State Legislature. Ten distaff members have been elected to the House, two to the Senate. The first woman legislator was Miss Lillian Exum Clement from Buncombe County, elected in 1921. In the nation 318 feminine lawmakers are presently serving

while some 30,000 women currently are elective officials in federal, state, and local government.

The State Department has announced the appointment of Mrs. Emil T. Chanlett of Chapel Hill as U. S. delegate to the Inter-American Commission of Women. She is the wife of a University of North Carolina faculty member.

The commission, which met recently at the Pan American Union in Washington, has as its purpose the studying of women's problems and the extension of women's political and civil rights.

* * *

Earlier President Kennedy had announced appointment of Mrs. Gladys Tillet to an important United Nations post, marking new recognition for a career of distinguished service to North Carolina and the nation. Mrs. Tillet, from Charlotte, was named to the Un-

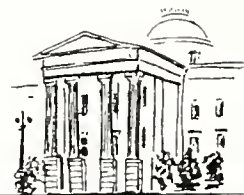
ited Nations Commission on the Status of Women. She began her duties right away at a three-week session of the Commission in Switzerland. President Kennedy said he also expects to name Mrs. Tillet as an alternate delegate to the fall session of the United Nations.

Mrs. Tillet served for ten years as vice-chairman of the North Carolina Democratic National Committee and has been active in political affairs for thirty years. A pioneer in women's political activities, she was the organizer of the first North Carolina branch of the League of Women Voters. Working for the adoption of the U.N. charter, she organized some 2,000 women's meetings throughout the nation. An observer in San Francisco when the U.N. charter was signed, she later served as a member of the United States delegation to the 1949 UNESCO conference in Paris.

REPORT FROM WASHINGTON



REPORT FROM RALEIGH



by Elmer Oettinger, Assistant Director, Institute of Government

Probably no one was entitled to a greater feeling of satisfaction at the first successful American flight into space by astronaut Alan Shepard than a North Carolinian, Space Administrator James S. Webb. Appearing on a nationwide radio broadcast within hours after the event, Webb observed that the people of the world could take note of this new evidence of American potential in space.

A recent report has U. S. Information Agency director Edward R. Murrow referring to Secretary of Commerce Luther Hodges as "Cousin." Murrow, born in Guilford County, recently named Robert Evans, son of Durham Mayor E. J. Evans, as his administrative assistant. Another report, unconfirmed, has it that Tar Heels appear to be second only to Harvardians in numbers employed by the Kennedy Administration in Washington.

The Kennedy-backed minimum wage bill, enacted into law early in May, brought a split vote in the North Carolina Congressional delegation. In the Senate, Senator Ervin voted for the administration measure, Senator Jordan against. In the House, Congressmen Alexander, Cooley, Fountain, Kornegay, Taylor and Whitener voted aye; Congressmen Henderson, Kitchin, Lennon, and Jones voted no. Not voting, but on record against the bill was Congressman Bonner. The North Carolina delegation's vote reflected a trend among Southern delegations toward substantially greater support for minimum wage legislation than in the past.

The seven-point federal program to help the textile industry, announced by President Kennedy, has significance for North Carolina. Textiles has long been a primary industry and a prime factor in the State's economy. The special cabinet study committee which came up with the aid plan was headed by Secretary of Commerce Luther H. Hodges, a former textile executive himself, who took the occasion to point out that, in the six-year period from 1953-1959, textile industry expenditures for research and development had lagged far behind those of other manufacturing companies while American textile mill machinery generally is older than that of competitors abroad.

A key part of the proposed textile aid plan will be directed by Hodges' Commerce Department: a research program, carried on with management and union cooperation, to develop new processes, products and markets. The President also revealed plans for an international conference of nations engaged in large textile import or export programs, looking to possible establishment of a system of voluntary quotas on textile imports into the United States. Implementing his statement that it is "time for action" on "serious and deep-rooted" textile problems, Kennedy said: "I believe

(Continued on page 13)

Municipal election results made an impression on busy legislators and other State officials in Raleigh. One index gave new pause to politicians of both parties: Republican gains in local office holders in some Piedmont communities. Notable gains were recorded by the GOP in High Point which elected two Republicans to the city council, in Asheville which elected two GOPsters to the commission, and in Winston-Salem which chose three Republican aldermen and gave the Democratic candidate for Mayor only a 600 vote margin. The Republican leader in the House, William Osteen of Greensboro, was vastly cheered by the vote results. The over-all picture however, left the Democrats in firm control of the great majority of city halls and county courthouses.

Another development was the election of Negro members to a larger number of town and city governing boards, including those of Raleigh, Chapel Hill, Wilson, Lumberton and Greensboro.

It was the first time for Raleigh and Lumberton, fifth straight for Greensboro. One newspaper reported that its community was the first in eastern Carolina to elect a non-white to the governing body. Actually, individual Tar Heel towns and cities from east and west have had Negro aldermen or council members for more than a decade.

As always, the municipal elections brought embarrassments and extremes. In Kernersville, a voting machine went kerflooey, giving a candidate 228 votes although only 136 voters had voted. In Spray, 1421 persons or 95 per cent of the registered voters, cast their ballots; in Statesville, 129 persons or less than two per cent of the registered voters, went to the polls. Ninety-three per cent of Gibsonville's eligibles voted, but only 56 voters turned out in Roxboro. Everetts reelected veteran Mayor J. W. Peel by 38 write-in votes, even though his name did not appear on the ballot. Chapel Hill's woman alderman, Adelaide Walters, won her fight for re-election, and Mrs. Fred Harper became the first woman member of the Wake Forest Town Commission. But Macclesfield turned down the bid of its first woman candidate for the city board. Departing from the usual political script, one campaign hopeful in Rutherford County suggested to the folks around city hall on the day of the election that they could vote for him if they wanted to, but if not, they could put an "X" in front of his name and that would cross it off the ballot.

Recommendations from North Carolina's new federal judgeships are in the hands of President Kennedy for the three additional district judgeships. Senators Sam J. Ervin and B. Everett Jordan recommended John Larkins of Trenton for the Eastern District, Malcolm B. Seawell of Chapel

(Continued on page 15)

MUNICIPAL ELECTIONS BRING A CHANGE

"The old order changeth, Yielding place to new . . ."

From Manteo to Murphy, amid the blooming landscape of May, newly elected or re-elected officials took over the reigns of city and county government. Sometimes the changeover was painless or virtually non-existent: experienced board members were returned to office. In other cases brand new officials were beginning "shake-down cruises" in the sea of official responsibility. And this May, even more than most, some outstanding pub-

lic servants were retiring or resigning, leaving behind them long and notable careers of public service and distinctive contributions to the success of the democratic process. To list and pay proper tribute on these pages to all the distinguished officials who are leaving office at this time is impossible. Inevitably, worthy men and women would be omitted. We cannot, for example, do justice to the career and achievements of a man like Wilmington's City Manager James R. Benson, retiring after many years on the job. Nor do space and time per-

mit individual mention of the capable officials who have died during the year or been slain in the line of duty, as was Southern Pines Police Chief C. Ea Newton, father of five and friend of all youngsters, after 33 years on the force. Instead, elsewhere on this page, we have tried to symbolize the debt owed to these many fine officials through citing the achievements and press and public recognition of one, feeling that in his public career is reflected the glory of the many who have served the people in elective office long and well.

GENERAL TOWNSEND RETIRES

The General spoke with his familiar cogency and vigor. The purchasing agents gathered together at the Institute of Government in mid-March, listened intently and with obvious appreciation and gain, just as had countless groups of city, county, state, and federal officials before them. As recently as last November, national leaders seeking to solve intricate urban problems at a metropolitan seminar in the Knapp Building had listened with similar attention to him and had marked their gratitude with a notable burst of applause at the conclusion of his remarks. Now, watching his active presence and listening to his vital comments, it was difficult for the observer to realize that he had announced his retirement. Former Army General James R. Townsend, city manager of Greensboro for the past 13½ years, would be missed.

Possessing a notable record of military service, General Townsend since 1947 had acquired a distinguished service record as a public official. Unlike the prophets who are known save in their own home towns, General Townsend was appreciated perhaps most of all at home. The editorials in the Greensboro papers, following his announcement, revealed an understanding of the man and his career as a city official. So did the tribute from the neighboring Winston-Salem paper. We reprint parts in the conviction that they illustrate an exemplary relationship between official and the community he has served and that they will interest greatly our readers—the vast body of city, county, state, and federal officials of North Carolina—many of whom have had occasion to know and benefit from knowing the General.



General James R. Townsend addresses 1961 school for municipal officials at Institute of Government shortly before his recent retirement as City Manager of Greensboro.

GENERAL TOWNSEND'S SERVICE

A city, like an individual, has a personality, a character, a mind and a heart.

What Greensboro has been and become in 13½ postwar years has been mirrored, to a great extent, in the personal qualities and dedicated service of its city manager, James R. Townsend.

In 1947 it seemed unlikely that a retired Army General, with no civilian experience in city management, would fit smoothly into the fabric of local government. The transition was marked; both a general and a city manager may be concerned with command decisions, but there is a difference. In one job public opinion is almost nonexistent; in the other it is virtually controlling.

General Townsend made the transition with ease. He established his own philosophy that city managers, generally, should work behind the scenes, leaving the glory and credit to others, but taking the hard knocks when they came.

Greensboro's city manager had the qualities of the good administrator, but he had something else: He had vision

along with practicality. He looked beyond the present. He planned for the future. He saw the problems of a Greensboro almost doubling in size and confronted by enormous growing pains.

To lead well is no easy job. It requires stepping on some toes. It demands tough decisions and a tough hide to take criticism often coming from individuals concerned only with a narrow view.

Jim Townsend, the ex-brigadier general, learned to take it. He got it on many occasions in unpleasant midnight telephone calls, in letters, in personal abuse.

In spite of hard knocks, the basic soundness of Jim Townsend's leadership got through to the public. When a questionable political faction threatened to take over the city, the electorate came to the rescue. It put a good City Council in office and continued a tradition of responsible government . . .

Greensboro will miss the steady Townsend hand at the wheel. But the inevitability of change has been one of Town-

(Continued on page 16)

REPORT FROM WASHINGTON

(Continued from page 11)

this program will assist our textile industry to meet its basic problems, while at the same time recognizing the national interest in expansion of world trade and the successful redevelopment of less developed nations."

* * *

Tobacco, another foundation stone of Tar Heel economy, also has been in the limelight. The charge first raised by State Representative Byrd I. Satterfield of Person, was that the ninety per cent parity support price, required by law, had not been maintained in recent years in payments to tobacco growers. The answer, given by director Joe R. Williams of the tobacco division of the Department of Agriculture's Commodity Stabilization Service, was that the quality of tobacco has declined, justifying lower support levels. The result was a hearing by Congressman Harold Cooley's Agriculture Committee.

* * *

REPORT FROM RALEIGH

(Continued from page 11)

Hill for the Central District, and Baxter Craven for the Western District. Senator Jordan nominated Judge J. Will Pless of Marion for the new circuit federal judgeship while Senator Ervin submitted the names of both Pless of Marion and State Senator J. Spencer Bell of Charlotte. Some newspapers immediately pointed out that it pays to run for Governor, noting that both Larkins and Seawell had been candidates for the Democratic nomination in 1960. Several county bar associations in the Central District announced their preference of Supreme Court Judge L. Richardson Preyer for the Central District judgeship post.

* * *

Governor Terry Sanford continues to make news. In recent speeches and news conferences he has (1) deferred any proposal of school building bonds in the hope that the federal school funds program will pass, (2) promised a special session of the General Assembly in late summer or early fall if made necessary by failure of the federal program to materialize, (3) recommended an 8-hour work day to school teachers, (4) endorsed an auto mechanical inspection bill, (5) promised a conference of traffic court judges "to draw out their ideas," a tightening up of driver's license tests and license reinstatement conditions, and thinking "in terms of the victims, not the unrestrained driver," (6) approved court reform legislation passed by the 1961 General Assembly, (7) made clear that the State does not want new industry which is interested in moving here only to obtain cheap labor, and (8) made known his ideas on small loans and redistricting legislation to the General Assembly prior to final action.

* * *

Dr. Frank P. Graham, United Nations mediator, former U. S. Senator and ex-President of the University of North Carolina, told a Greensboro audience that "in the present crisis for freedom and peace in the world it is urgent (1) that the United Nations take under consideration the dispute in Laos; (2) deal with the cases of the Congo and Cuba; (3) assert and maintain UN consideration of the violation of basic human rights and fundamental freedoms carried on by any government as a national policy and (4) deal with any dispute which threatens international peace and security.

Adjournment in late June, probably about June 17-24, has been facilitated by the recent speedup in passing and substantial agreement on major issues in the 1961 North Carolina General Assembly. Notable among the keys to winding up the session was approval by both Senate and House Finance Subcommittees of seventy-three million dollar additional revenue proposal including the Sanford Food Tax to pay for "quality education." Decisions on auto inspection, small loans, redistricting, and other controversial legislation further hastened the end of the General Assembly, as did the introduction and rapid disposition of new bills. In the week ending May 19 members introduced one hundred twenty-five new measures, the first time the number had exceeded one hundred in any week, and on May 24 forty-eight more bills hit the hopppers. This rapid action changed the complexion of things. Up to early May, bill introductions lagged far behind the usual number.

* * *

The Institute legislative service reported that the 1961 General Assembly continued to trail other recent sessions in volume of bills introduced and handled. As of April 28, here was a comparative box score:

<u>Session</u>	<u>Total Bills Introduced</u>	<u>Public Bills</u>	<u>Local Bills</u>	<u>Bills Ratified</u>
1961	850	462	388	343
1959	979	549	430	403
1957	1243	540	730	500

* * *

House Speaker Sam Rayburn, speaking at the Democratic Party's Jefferson-Jackson Day Dinner in Raleigh, predicted that the present Congress will prove to be one of the most productive in all history. Mr. Sam said: "Our people are beginning to stir, our friends are being reassured, our sinews of defense are being bolstered, and our economy is being reinvigorated."

* * *

Nicky made the front pages recently. Nicky is a miniature black poodle who strayed from home. Eleven year old Arlene Mansell took Nicky home after a Capitol Square peanut vendor had told her he was a stray. Then Arlene read in *The Raleigh News and Observer* that Betsy Sanford, the Governor's daughter, was looking for her missing poodle. She called the executive mansion. Now Nicky is back home, and Arlene can buy her own dog, if she wishes, with the \$25 reward the Governor gave her.

* * *

The State's top mapmaker has retired after 39 years in state government, 19 of which were spent preparing black-and-white highway maps for the State Highway Department. William L. (Willie) Hobbs, 64, a Clinton native, will spend the first few weeks of his retirement in a round of visits to his family in South Carolina, Maryland and Florida.

* * *

Senate passage of a congressional redistricting bill by vote of 35-11 would result in the matching of Tenth District congressman Charles R. Jonas, the state's only Republican congressman, against Eighth District congressman A. Paul Kitchen for one congressional seat. The bill would put eight counties—Lee, Moore, Montgomery, Richmond, Anson, Union, Mecklenburg, and Lincoln—in one district. Governor Sanford told his news conference that he did not consider any redistricting plan which retained Mecklenburg, the center of Jonas strength, unfair to the Republican congressman. Piedmont claims that the plan might result in additional minority party congressmen getting a thorough hearing in the House where stronger opposition is expected.

NOTES FROM CITIES AND COUNTIES

(Continued from page 5)

The newest addition to Fayetteville's park system has been dedicated recently. Named for the late Congressman, the J. Bayard Clark Memorial Park, is located between the Veteran's Hospital and the Cape Fear River on property leased by Cumberland County commissioners to the city.

A. C. Jackson and G. M. Casper have been re-elected as chairman and vice chairman respectively of the Thomasville Recreation Commission. City Recreation Director J. D. Foust will continue to serve as secretary of the commission.

The Hertford Town Board has approved a rate reduction of about 10 per cent for residential electric power consumers. The new rate was effective last month.

Jacksonville's city council has voted to retain its present set of fees for privilege licenses through June 30, pending the completion of a study and the discussion of the merits of setting the fees on a flat rate or gross income basis.

The civic-minded citizens of Mooresville were rewarded last month for their continuing efforts in community development projects, with the announcement that the Tar Heel city was awarded honorable mention as an All-American City. Competition among the more than 100 contestants was co-sponsored by the National Municipal League and *Look* Magazine.

The long-standing problem of police jurisdiction outside corporate limits has finally been solved for Burlington, with the passage of a new city charter in the General Assembly. The charter now provides that city police may make arrests up to one mile outside the city limits and on any property owned by the city in Alamance County.

Dunn's city board has applied for some \$70,000 in federal funds to help finance the improvement of sewage plant facilities. Total cost of the project will be about \$240,000. Deadline for completion as set by the State is January 1, 1965.

A comprehensive development plan, charting the orderly growth of Chapel Hill for the next 20 years has been completed by the town's Improvement Commission. Appointed by Mayor O. K. Cornwell in 1959, the commission has spent two years working out the plan.

Counties

Moore County Commissioners have given their approval to a plan which would establish a countywide radio network in cooperation with the county's Civil Defense set-up. Equipment for tying in the sheriff's department, State Highway Patrol, ABC officers, the State Forest Service, and civilian agencies will cost some \$2,800, CD Director Donald Madigan reports.

Privilege license tax collection in Buncombe County has been transferred from the office of the county attorney to the tax collector's office. In authorizing the change, the county commissioners named Harry C. Morgan of Stony Knob as the privilege license tax collector for the county.

J. Murray Thornton has been selected to head the Greensboro-Guilford County Civil Defense organization to succeed Maj. Gen. James L. Frink who retired recently after more than 10 years as director. The post of executive director, held by Thornton for the past several years, will be vacant temporarily.

The dredging of the Pamlico River from Washington to the Inland Waterway, paving the way for increased commercial navigation in that area, has been recommended for top priority action by the U. S. Corps of Engineers. The proposal is to dredge a full 12-foot depth and 200-foot width.

Pitt-Greenville and Wilson Airport Commission members have reaffirmed their stand favoring a joint airport to serve the area. Long-range plans of the commission include the construction of a new air facility equidistant from the two cities.

All tax collecting duties in Durham County have been transferred to the office of the tax collector, relieving Tax Supervisor H. T. Warren of such duties. To further assist Warren, whose office has handled the recent property revaluation in that county, staff member Karl Allen has been added to keep current the new tax maps recently turned over to the office.

Marshville banker Allyn S. Park has been named industrial recruiter for Union County—a post that has been vacant since last October. The Pennsylvanian, appointed by Dr. Budd E. Smith, chairman of the Union Industrial Development Commission, assumed his duties May 1.

The Wayne County Board of Commissioners has accepted the resignation of Civil Defense Director R. D. Godwin. The resignation was effective April 1.

Hoke County is putting a new face on its office building this spring at a cost of about \$10,000. Included in the renovation project are the installation of a new heating system, the remodeling of the front entrance, and the addition of a conference room.

DENNIS V. RALEIGH

(Continued from page 4)

surplus municipal funds and property, derived from sources other than taxation or a pledge of its credit. . . . The general conditions under which the City . . . may supplement the donated funds . . . are sufficiently indicated. No adjudication is appropriate in the absence of factual data as to the source and character of the 'available funds derived from sources other than *ad valorem* taxes'."³⁴

At any rate, now it is clear that surplus funds arising from tax sources cannot be used for nonnecessary expenses. This means not only that city and county officials must refrain from expending known surplus tax funds for nonnecessary expenses, but also that tax funds must be adequately accounted for from year to year so that they can be identified as tax funds. The expenditure for nonnecessary expenses of surplus tax funds that have lost their identity as tax funds because of lack of adequate accounting records would violate Article VII, section 7 just as much as would the expenditure of known surplus tax funds for these purposes.

34. *Id.* at 369.

COMMITTEE AT WORK

(Continued from page 9)

in considerable degree on the judgments of the committees composed of their fellow members who have had time to study the specific legislation before them.

If you want to obtain some idea of the committee load your own Senator or Representative carries, find his name in the Committee lists below and add up his total commitments. It will help you to appreciate his job and what it means to you in terms of his primary fields of endeavor in this session of the General Assembly. And, if you, too, have reason to take a little of his time, here is where he is serving you day by day and where you can find him—if you can keep up with the pace he has to maintain.



THE ATTORNEY GENERAL RULES

PROPERTY TAXATION

Exemption of Real Property. *The question of whether exemption is justified has recently been raised in the following factual situations, with the results indicated:* (1) A religious organization owns a building which it allows an art museum to use without payment of rent. The museum is supported solely by voluntary contributions. Is the building entitled to exemption?

(A.G. to Eddy S. Merritt, February 22, 1961)

No. Although owned by a church or religious body, the building is not being used for one of the exempting uses described in G.S. 105-296 (3) and (5), that is, it is not used wholly and exclusively for religious worship or as the residence of a minister, nor is it actually and exclusively occupied by a religious body. Further, since the building is not owned by the museum, it does not qualify for the exemption granted museum property by G.S. 105-296(4) despite the fact that it is used for museum purposes.

(2) A private non-profit non-stock corporation issues memberships and operates a swimming pool exclusively for its members. Is the pool taxable?

(A.G. to Eugene A. Gordon, February 14, 1961)

Yes. The North Carolina Constitution (Art. V, §5) does not authorize, and the General Assembly has not attempted to grant, exemption in a case of this kind.

(3) A private non-profit corporation with stock issued owns a swimming pool that is open to the public. Charges for use are limited to what is necessary for upkeep. In another case, three local civic clubs formed a non-profit non-stock corporation to operate a civic center with a club house open for youth activities three days per week and a tennis court available at all times for youth activities. There is no charge for use of the facilities. Are these properties or any of them taxable?

(A.G. to Eugene A. Gordon, February 14, 1961)

From the facts as stated here, all of these properties are taxable. There is no exemption in G.S. 105-297 for non-

profit corporations of the kind described, although Subsection (9) provides exemption for "Real property falling within the provisions of §55-11, appropriated exclusively for public parks and drives." G.S. 55-11 was repealed in 1955 but a similar provision is contained in G.S. 55A-16. The non-profit corporations described in this inquiry may come within the terms of the exemption cited, but the facts given are not detailed enough to justify that opinion.

Exemptions of Personal Property.

What is the tax status of personal property of business colleges, beauty colleges, and charm schools which are privately owned and presumably organized and operated for profit?

(A.G. to John Sharpe Hartsell, February 22, 1961)

Business colleges, beauty colleges, and charm schools are educational institutions. If the personal property of such institutions is (1) "... furniture, furnishings, books, and instruments . . .," (2) "... contained in buildings wholly devoted to educational purposes . . .," (3) "... belonging to and exclusively used by . . ." such schools, then the personal property is exempt. [The Attorney General noted that his opinion is contrary to one expressed in a discussion of 1959 changes in the law contained in 38 N. C. L. Rev. 226 (1960).]

Place at Which Personal Property Should be Listed for Taxation. Certain storage tanks of various sizes owned by a gas company with its principal office in County A are located on the property of various individuals in County B. These tanks are refilled from time to time on location by the owning gas company. Are they to be listed for taxation in County B?

(A.G. to E. B. Grant, February 23, 1961)

No. Under the general rule found in G.S. 105-302(a) tangible personal property of a corporation, partnership, or unincorporated association is to be listed at the place of its principal office in this state unless, in connection with its property, the owning company hires or occupies one of the locations listed in G.S. 105-302(d). I do not find

that any of the exceptions apply in this situation. The tanks should be listed in the township in which the owner has its principal office in North Carolina.

No Tax Lien Created Against Restaurant Fixtures When Owner Quits Business When Fixtures Sold Under Chattel Mortgage. In 1954 a restaurant operator borrowed money giving as security a chattel mortgage on the fixtures and equipment used in the business. (He did not own the building.) In 1959 he borrowed additional sums and gave a second mortgage on the same chattels. In August 1960 the second mortgage was foreclosed; the first mortgage was paid in full, and the second mortgagee became the purchaser of the fixtures and equipment. The mortgagor went out of business, and the purchaser at the foreclosure sale continued to operate the restaurant at the same location. Do unpaid local taxes for 1959 and 1960 on the fixtures and equipment constitute a lien against those items of property in the hands of the purchaser under the provisions of G.S. 105-340(b) and G.S. 105-385 (a) (2) and (g)?

(A.G. to W. W. Speight, February 8, 1961)

No. G.S. 105-340(b) provides that as a general rule "taxes, interest, penalties and costs shall be a lien on personal property from and after levy or attachment and garnishment of such property." It is my opinion that public sale of personal property on foreclosure of a chattel mortgage prior to levy by a tax collector would pass good title to the property free and clear of any lien for taxes assessed on the items sold. I do not believe the proviso contained in this section nor the provisions of G.S. 105-385(a) (2) or (g) with regard to going-out-of-business sales encompass a foreclosure under a mortgage even though the net result of the foreclosure sale is that the mortgagor does actually go out of business. The sections referred to depend upon sale or quitting of business *by the owner*. Here the owner did not make the sale; it was held under the terms of the mortgage.

MUNICIPAL CORPORATIONS

Municipal Ordinances Requiring Removal of Weeds and Trash from Vacant Lots. A town has an ordinance requiring the owners of vacant lots to have weeds and grass cut on such lots in July and August of each year, with an additional proviso that, if such lot owners do not cut the weeds and grass on the lots, the town will do so and add the

charges to the property owner's taxes or collect the same along with taxes. The town board has found that having the lots cleared twice a year is insufficient to keep down the grass and weeds, and it desires to amend its ordinance to require that property owners cut the weeds and grass on their lots twice a month during the months of May, June, July, August, and September. Would a correctly drafted ordinance embracing an amendment requiring the grass and weeds on the lots to be cut twice a month be constitutional?

(A.G.) G.S. 160-200(8) gives a municipality specific authority to provide for the destruction of noxious weeds and for the payment of the expense thereof by assessment or otherwise. G.S. 160-55 provides that municipalities may pass laws abating or preventing nuisances of any kind and for preserving the health of the citizens. G.S. 160-234 grants power to the governing body of a municipality to summarily remove, abate or remedy or cause to be removed, abated or remedied everything in the city limits which is dangerous or prejudicial to public health, and provides that the expense of such removal shall be borne by the person in default.

Under these sections, there is no doubt that the municipality may pass an ordinance requiring property owners to cut noxious weeds on their vacant lots, and, if the property owners do not do so, the city may cut such noxious weeds and make an assessment

or otherwise collect the costs from the owners.

Your specific question, as to how often the requirement to cut weeds and grass from vacant lots may be required, has never been decided on by our courts. It appears to me that it is a question of reasonableness and providing a proper standard. Some municipalities require that the lots be cleared when such noxious weeds reach a height of more than eight, twelve or twenty-four inches.

You might check the recent case of *Rhyne v. Mt. Holly*, 251 N.C. 521, with regard to the possibility of a municipality condemning certain trees and shrubs in the exercise of its authority under G.S. 160-55.

CRIMINAL LAW

Criminal Liability for Post-Dated Checks. Where merchandise is sold, delivered, and installed on July 30 and payment is made by the purchaser on that date by means of a check dated August 3 of the same year, is the drawer of the check (the purchaser) guilty of issuing a worthless check under G.S. 14-107?

(A.G.) The Supreme Court has twice decided that giving a post-dated check for a past account does not import criminal liability. Since the latest decision was in 1933, this leads me to believe that the superior courts are ruling that any issuance of post-dated checks does not incur criminal liability. However, if a check is written with current date and the drawee

agrees to hold the check until a future date, when the drawer will have deposited funds to cover it, and the check is then deposited and returned as bad, our Court ruled in *State v. Levy*, 220 N.C. 812, that this is a criminal offense.

Search and Seizure. Where a motorist who is not under arrest has consented to the search of his vehicle, but the trunk compartment is locked and the motorist does not have the key, and an officer goes to procure a search warrant leaving officers at the scene, and the motorist drives away without waiting for his return, can the motorist be charged with any offense?

(A.G.) No. The motorist was not under arrest at the time and none of the officers were serving arrest warrants or other court process. (Hence, he is not guilty of resisting or obstructing an officer in the performance of his duties.)

NEW DIRECTOR

The new director of the Extension Division of the University of North Carolina is Paul A. Johnston. The former assistant director of the Institute of Government and director of the Department of Administration under Governor Hodges will assume his new duties effective January 1, 1962. Johnston, now an assistant to the Secretary of Commerce in Washington, also will serve as Associate Professor in the University Law School.

(Continued from page 12)

send's guiding principles. Greensboro is a better city because he has been around for the last 13½ years.

—From the *Greensboro Daily News*.

TOWNSEND'S RETIREMENT

We hoped that the rumor that City Manager James R. Townsend would announce his retirement to the City Council yesterday would prove untrue. But it was a false hope.

The fine hand of Townsend is found in the record of what has happened in municipal government and in Greensboro's growth since 1947 when he became city manager. It is a notable record of growth and progress. We think of the leadership given by Townsend in the expansion of the city water supply, improvement of the sewage disposal system, establishment of a sound traffic system and paving plan, the installation of a new personnel system for city employees and the extension of the city's corporate boundaries.

City manager Townsend has been a stabilizing influence in City Hall affairs. He has shown vision in planning and working for a better municipal government and a more at-

tractive and progressive city. It is noteworthy that he has escaped many disagreeable experiences which all too often characterize a city manager's official life. We think another explanation of his fine service is the deep personal interest he has in the welfare of his hometown, to which he returned after long and distinguished service as an Army officer.

... let there be no mistake about the fact that it will not be easy to find a worthy replacement.

—From the *Greensboro Record*

GREENSBORO'S LOSS

As the city manager of Greensboro for the past 13½ years, General James R. Townsend has amply demonstrated that a military man with energy, civic vision and imagination can serve with distinction in civilian posts of responsibility. Under his direction that city has met wisely and well the problems of steady municipal growth.

... while Greensboro as a community loses by General Townsend's decision, the state as a whole may gain a great deal through his increased activity in directing plans for the more effective use and conservation of water supplies.

—From the *Winston-Salem Journal*

Credits: The cover picture and photographs on pages 6, 7, 8, 12, and back cover are by Bob Kneeland, Institute of Government staff photographer. The photograph on page 10 is from the *Raleigh News and Observer*. Drawings and layout are by Joyce Kachergis.

This is an unusual bit of information about the law of arrest . . .

ARREST OF BRITISH NATIONALS

Here is a message of interest to the law enforcing officers of the State, and it comes by way of the British Embassy in Washington, to the United States State Department, to the Governor of North Carolina, to the Institute of Government for transmission by way of *Popular Government*:

Under Article 16(1) of a consular convention (treaty) signed in 1951, State and local law enforcing officers *must* inform the nearest British consular official whenever a national of the United Kingdom is taken into custody.

The attention of all State and local law enforcing officers is directed to the following quote from the consular convention:

"(1) A consular officer shall be informed immediately by the appropriate authorities of the territory when any national of the [United Kingdom] is confined in prison awaiting trial or is otherwise detained in custody within his district. A consular officer shall be permitted to visit without delay, to converse privately with and to arrange legal representation for, any national of the [United Kingdom] who is so confined or detained. Any communication from such a national to the consular officer shall be forwarded without delay by the authorities of the territory."

Also relevant is the second paragraph of Article 16.

"(2) Where a national of the [United Kingdom] has been convicted and is serving a sentence of imprisonment, the consular officer in whose district the sentence is being served shall, upon notification to the appropriate authority, have the right to visit him in prison. Any such visit shall be conducted in accordance with prison regulations, which shall permit reasonable access to and opportunity of conversing with such national. The consular officer shall also be allowed, subject to the prison regulations, to transmit communications between the prisoner and other persons."

Officers will want to know

(1) *Where is the nearest British consular office?*

North Carolina is in the consular district served by Her Majesty's Consul General in Washington, D. C., Charles Peter Scott. There are also consular offices in Norfolk, Virginia, at Suite 719-721, National Bank of Commerce Building.

(2) *How can I tell whether I've arrested a citizen of the United Kingdom?*

He or she will be in possession of a passport or visa. If the arrested person has no passport or visa but states that he is a British subject and asks that the British consul be notified, the officer should do so.

(3) *Does this mean that British subjects are immune from arrest?*

Not at all. Only ambassadors, consuls and their staffs and families may claim "diplomatic immunity." The treaty is merely to ensure that prompt notice be given to consular officials. According to the British Embassy in Washington "as long as these [municipal, county and State police] authorities remain unaware of their obligations, British Consular Officers will be seriously handicapped in carrying out their duty to protect and render assistance to British subjects within their districts."

(4) *Who is a national of the United Kingdom?*

In the language of the 1951 Treaty: "... all citizens of the United Kingdom [England, Scotland, Wales and Northern Ireland] and colonies [Hong Kong, Gibraltar, Malta, Jamaica, Singapore, Bermuda, for example], all citizens of Southern Rhodesia, and all British protected persons belonging to territories of [Her] Majesty. . . ." For example, Canada, while a member of the British Commonwealth, is *not* a part of the United Kingdom; therefore, Canadians would not be covered by the 1951 treaty.

(5) *When must the consul be informed?*

The treaty says "immediately." If the consular official won't accept a collect telephone call, the officer should wire him right away. A post card or letter would not be considered "immediately."

(6) *How can this be binding on me—this is a matter for the Federal Government?*

The United States Constitution, Article VI, § 2, makes a treaty the supreme law of the land, along with acts of Congress. *Missouri v. Holland*, 252 U.S. 416, 64 L. Ed. 641, 40 S.Ct. 382 (1920). Therefore, it ranks higher than any provision of state law, even the State's Constitution, and must be obeyed.

BUT here is the whole story about the law of arrest in North Carolina . . .

UP TO DATE . . . Off The Press Soon

THE LAW OF ARREST, SECOND EDITION

by Roy G. Hall, Jr., Assistant Director, Institute of Government

For the past decade *The Law of Arrest* by Ernest Machen has been used by law enforcement officers, and cited by attorneys and judges as authority in North Carolina.

Now the Institute of Government has brought this work, prepared at the Institute *up to date*, with a new Guidebook, *The Law of Arrest, Second Edition* by Roy G. Hall, Jr.

Every law enforcement officer in North Carolina will be able to use this guidebook with profit.

7,500 OFFICIALS ATTENDED

Institute of Government

SCHOOLS, MEETINGS, AND CONFERENCES IN 1960

Here are some of the groups scheduled to meet in the Institute's Knapp Building in Chapel Hill this summer:

Industrial Development Representatives Conference (June 1 and 2)
N. C. Sewage and Industrial Waste Commission Conference (June 5-9)
Boys State (June 18-25)
New Mayors and Councilmen Meeting (June 25-27)
School Bus Rodeo (June 15 and 16)
North Carolina Highway Patrol Basic Patrol Schools (May 25-August 18)
Driver License Supervisors School (July 9-28)
Conference of Assistant Clerks and Deputy Clerks of Superior Court Association (August 3-5)
Conference of City and County Court Clerks Association (August 4-6)
School of Public Health Vital Statistics (August 6-18)
N. C. Bar Association Practical Skills Course (August 26-September 2)



Mark your calendar and plan to attend your meeting.

Look in *Popular Government* for reports and articles on vital governmental subjects.

Watch for the new 1961-62 Calendar of Duties for City and County officials.

Write for new Institute guidebooks, special studies, bulletins, articles, etc.

Be ready for the Institute of Government legislative summary following the adjournment of the 1961 N. C. General Assembly.

Make use of the Institute consultation service.

THIS IS YOUR INSTITUTE OF GOVERNMENT SERVING NORTH CAROLINA