POPULAR GOVERNMENT

MAY 1962

SALISBURY: NORTH CAROLINA'S ALL-AMERICA CITY

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

POPULAR GOVERNMENT

Published by the Institute of Government

Contents

Reapportionment of State Legislative Seats
by *Clyde L. Ball* 1

Downtown North Carolina Scoreboard
by *Ruth L. Mace* 6

Showing Probable Cause on Information From Confidential Sources
by *Roy G. Hall, Jr.* 14

Mecklenburg Moves to Collect Auto Tax Revenues
by *Robert P. Alexander* 17

Recent Cases Interpret Driver License Law
by *Thomas M. Tull, Jr.* 18

Editor's Perspective
by *Elmer Oettinger* 19

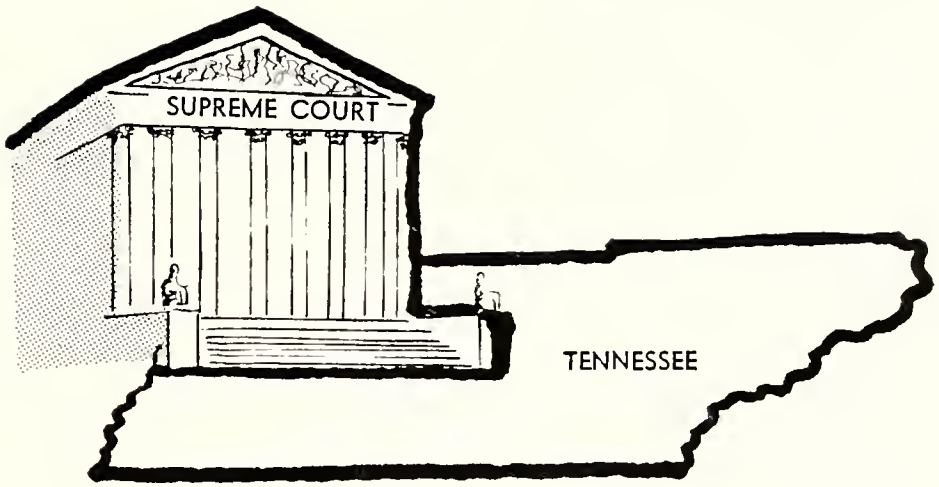
Book Reviews 20

Bond Sales 20

Vol. 28 May, 1962 No. 7

This street scene of mother and child has a special significance because it was captured in Salisbury, the only North Carolina community to be accorded recognition in 1961 as an "All-America City." (See page 19.)

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, Chapel Hill, N. C.



REAPPORTIONMENT OF STATE LEGISLATIVE SEATS

Supreme Court Decides Tennessee Case . . .

by Clyde L. Ball

Assistant Director,
Institute of Government

On March 26, 1962, the Supreme Court of the United States handed down its decision and opinion in the case of *Baker v. Carr*, the "Tennessee Legislative Reapportionment Case." No decision since the school segregation cases has aroused such widespread interest and occasioned such general discussion. The demand for copies of the Court's opinion was so great that the opinion was reproduced as a committee print for the use of the Judiciary Committee of the United States House of Representatives. All of this is simply to say that there was general agreement that a very important development had occurred—that *Baker v. Carr* will join that small group of cases which are true landmarks in the history of American political development.

There is not, however, nearly so general agreement as to precisely what the development is, and what it means. This disagreement is not surprising, in view of the fact that there was substantial disagreement among the members of the Court itself as to just what the Court was doing. Of the eight Justices who participated in the decision, only Mr. Chief Justice Warren and Mr. Justice Black found it unnecessary to write individual opinions. The Opinion of the Court was prepared by Mr. Justice Brennan. Justices Douglas and Clark concurred in separate individual opinions which go substantially further than does the Brennan opinion in justifying the intervention of the federal courts in matters of state legislative structure. Mr. Justice Stewart, in his concurring opinion did not go beyond the Brennan opinion, but rather emphasized the limits of the Court's holding to refute the broader statements and implications contained in various other concurring and dissenting opinions. Mr. Justice Frankfurter dissented in a 64-page opinion which is a full statement of the principles which have hitherto influenced the courts in refusing to deal with questions of legislative apportionment. Mr. Justice Harlan dissented, and added to the Frankfurter opinion the suggestion that the plaintiffs were not entitled to relief because they had not shown any injury sufficient to require redress.

Much will be written in the months and years to come on the correctness or the error of the holding—whether it is a necessary or highly desirable extension of existing

principles of law and government or whether it is an insupportable usurpation of power on the part of the courts. This article will leave the question of the quality of the decision to the law reviews and will confine itself to the twin questions: (I) What did the case hold? and (II) What judicial remedies are available?

I. WHAT DID THE CASE HOLD?

A. *The Factual Background*

1. *The General Assembly of Tennessee.* The General Assembly of Tennessee consists of a Senate of 33 members and a House of Representatives of 99 members. The Constitution of Tennessee requires that seats in both houses be apportioned among the various counties and districts in rough proportion to the number of qualified voters. There is no provision guaranteeing at least one legislative seat to each county.

The 99 House seats are classified as either "direct" or "floterial". A direct representative is elected from a single county to fill a seat allocated to that county solely. A floterial representative is elected from a district made up of two or more counties. Under the present apportionment of House seats, only 59 of the state's 95 counties elect direct representatives, so that there are 36 counties which get a representative only when they happen to be the home of a floterial representative. Some of the floterial districts include counties which have one or more direct representatives; where this is the case the "floater" may, by party agreement, go regularly to the county which has no direct representative. For example, Floterial District Number 23 includes Madison County, which has two direct representatives, and Henderson County, which has none; the floterial representative always comes from Henderson, which in return leaves to Madison the senate seat which is allocated to a district composed of Madison, Henderson and Chester Counties.

The state is divided into 33 Senate districts, each of which elects one senator. The largest district in area consists of seven counties. There are several one-county districts, and two counties—Davidson (Nashville) and Shelby (Memphis)—elect two senators each. In addition to the two senate districts which belong to it alone, Shelby is also a part of a third senate district which includes the adjoining county of Tipton.

2. *Reapportionment and Redistricting Since 1901.* The Constitution of Tennessee requires that seats in both houses of the General Assembly be reapportioned among the various counties and districts at the time that a decennial census of qualified voters is made. As neither house has permanently fixed district lines for all available seats, redistricting—the process of determining which counties shall be grouped in senate and floterial representative districts—and reapportionment—the process of allocating the proper number of seats to each county or district—are both required every ten years.

Originally the state made its own enumeration of qualified voters, but it has come to rely upon the United States census figures of persons 21 years of age or older residing in the various counties and districts. Thus, "qualified voters"—the basis of House seats—and "qualified electors"—the basis of Senate seats—have, for reapportionment and redistricting purposes come to mean residents who are of voting age, without regard to whether or not these residents can satisfy other prerequisites to voting.

It is commonly said that Tennessee has not reapportioned legislative seats since 1901. This statement is not precisely true. It is true that there has been no general reapportionment and redistricting since that time, but there have been seven changes in the 1901 statute. Only one of these changes occurred in the year immediately following a United States census. The changes did not necessarily contribute to a more equal representation. For example, in 1955 a floterial district was abolished and the seat was awarded to Chester County as a direct seat; at that time Chester had less than 1/5 of the full voter ratio required for a direct seat.

Even the 1901 act did not reflect perfectly the number of qualified voters in each county and district. Eleven counties were allocated seven direct representatives instead of the 18 to which they were entitled under the Constitutional formula. Six of the 11 seats which these counties should have had went as excess direct representatives to six favored counties, and the other five seats were added to the number of available floterial seats. Senate districts in 1901 varied from a voting population of 9,466 to 19,992.

Population growth and shifts have aggravated the situation since 1901. In 1961, ten underprivileged counties were allotted 21 direct representatives when they were entitled to 49, and 29 favored counties were allotted 31 direct seats when they were entitled to only two. In 1901 the ratio of voters in the most populous House district as compared to least populous was 2.8 to 1. By 1961 this disparity had increased to a ratio of 22 to 1. Voting population of senate districts in 1961 varied from a high of 121,467 to a low of 23,444.

All of the six counties which had an overage of direct representatives in 1901 were still over-represented in 1961. Five of the counties which were under-represented in 1901 were still under-represented in 1961, some to a substantially greater extent. For example, Shelby, which had a deficit of one representative in 1901, was short nine representatives in 1961.

The ten counties which were under-represented in the 1961 House accounted for 84.9% of the total population increase in the state since 1901; these counties have had a population increase of 253.73% since that date. In the same period the over-represented counties have had a decrease of 1.54%.

Bills to reapportion have been introduced repeatedly in the General Assembly, and all except the seven minor adjustment bills have failed. Application to the courts has, until now, also failed. In 1955 a Tennessee Chancery Court, in the case of *Kidd v. McCanless*, ruled that the 1901 Act was unconstitutional, but declared that the then existing legislature had power, as a *de facto* body, to enact a reapportion statute which would meet the constitutional requirement. Without attempting to analyze the legal principles involved, or to differentiate this case from *Baker v. Carr*, suffice it to say that the Tennessee Supreme Court reversed the Chancellor, and the United States Supreme Court dismissed the appeal to that court.

B. *Details of the Case*

1. *The Complaining Parties.* The present suit was filed by residents of Davidson, Hamilton, Knox, Montgomery and Shelby Counties. Each of the plaintiffs was qualified to vote for members of the General Assembly. Davidson County, which includes the City of Nashville, has six direct representatives; it is entitled to 11. Hamilton County, which includes the City of Chattanooga, has three direct representatives; it is entitled to six. Knox County, which includes the City of Knoxville, has three direct representatives; it is entitled to seven. Shelby County, which includes the City of Memphis, has eight direct representatives; it is entitled to 17. Montgomery County has one direct representative and is part of a 2-county floterial district; apparently it has the proper number of seats. The average number of voters per state senator in the entire state is 33,421. In Davidson this figure is 121,467; in Hamilton it is

142,979; in Knox it is 110,782; in Shelby it is 124,815; and in Montgomery it is 46,823.

The plaintiffs sued "on their behalf and on behalf of all qualified voters of their respective counties, and further on behalf of all voters of the State of Tennessee who are similarly situated." These original plaintiffs also sued "on behalf of all other voters in the State of Tennessee." The Mayor of Nashville, suing on his own behalf and on behalf of all residents of his city, and the Cities of Chattanooga and Knoxville, each suing on behalf of its residents, were permitted to intervene as parties plaintiff.

2. *The Parties Defendant.* The defendants in the case are the Tennessee Secretary of State, the Attorney General, the Coordinator of Elections, and the State Board of Elections. The defendants were sued in their representative capacities, and the members of the State Board of Elections were sued as representatives of the county election commissioners whom they appoint. Each of the defendants has some duty with respect to supervising, planning, conducting, reporting, or certifying elections and their results.

3. *The Complaint.* The complaint alleged that because legislative seats were apportioned under the 1901 statute, "plaintiffs and others similarly situated, are denied the equal protection of the laws accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of debasement of their votes." There was a further allegation that the malapportionment had resulted in the enactment of tax statutes which amounted to a taking of the property of the plaintiffs without due process of law.

4. *The Relief Prayed.* Plaintiffs sought a declaration that the 1901 apportionment statute is unconstitutional. Further, they sought an injunction restraining the defendants from acting to conduct any further elections under the 1901 act, and providing that, until the legislature is reapportioned according to the Constitution of Tennessee, primary and general elections for members of the legislature be from the state at large. In the Supreme Court the plaintiffs suggested a step-by-step approach: (1) Remand the case to the district court with directions to vacate the order dismissing the complaint and to enter an order retaining jurisdiction; if this action provided "the necessary spur" to legislative action reapportioning seats in conformity to the State Constitution, the case could then be dismissed, without having to determine what other relief might be appropriate. (2) If step (1) should not bring about the desired result, the court could then enjoin further elections under the 1901 act, or declare that act unconstitutional, or do both. (3) If step (2) should fail to result in appropriate legislative action, the district court could itself, or through a master, redistrict and reapportion the legislative seats.

5. *The Action of the District Court.* A three-judge district court dismissed the suit on the grounds that the court lacked jurisdiction of the subject matter and that the complaint failed to state a claim upon which relief could be granted.

C. *The Holding of the Supreme Court.*

The Supreme Court reversed the district court. In the process the Supreme Court held four things:

(1) Debasement of a person's vote by malapportionment of state legislative seats is a denial by the state of the equal protection of the laws and is, therefore, a violation of the Fourteenth Amendment to the Constitution of the United States.

(2) The question as to whether or not a person's vote has been so debased is a question which the courts can properly hear and determine; that is, the question is a justiciable one.

(3) The question is a matter which is within the jurisdiction of the district courts of the United States.

(4) Any qualified voter whose vote has been debased in this manner has standing to sue for redress.

The meaning and import of the last three points seems relatively clear. The Court's holding that the question as to whether or not state legislative seats are properly apportioned is one which a court can properly consider and determine marks a sharp departure from precedent, but it clearly establishes that the question is justiciable. It is now established law that state legislatures are no longer immune from judicial scrutiny of their apportionment actions or inactions.

Once it is determined that legislative malapportionment resulting in debasement of votes is a denial of a Federal Constitutional right, and that the question is a justiciable one, it logically follows that the federal courts will have jurisdiction to hear and determine cases raising the question. This does not mean that the state courts are ousted of jurisdiction. In *Scholle v. Hare*, a case from Michigan decided by the United States Supreme Court on April 23, less than a month after *Baker v. Carr*, the Court expressly affirmed the power of the Michigan state courts to hear cases invoking the Federal right.

Baker v. Carr makes it clear that a qualified voter resident in a district which is afforded less than its proper share of representation in a state legislature may bring suit to challenge the apportionment statute. The Court expressly left open the question of whether the Mayor of Nashville and the Cities of Chattanooga and Knoxville had standing to sue in their representative capacities. In view of the fact that the individual voter may sue, the question of the right of a public official or a municipality to sue in a representative capacity becomes relatively unimportant. A more interesting question arises out of the fact that the plaintiff from Montgomery County is apparently not suffering any debasement of his vote as against the state average, but only as against the over-represented counties. This fact, together with a footnote by the Court noting, but expressly failing to decide, the question as to whether or not voters in over-represented counties have standing to complain, suggests that the Court may be on the threshold of announcing a new doctrine; to-wit: "Any qualified voter who is a resident of a state in which 'the political institutions are awry' (to quote Mr. Justice Frankfurter) has standing to sue to bring the judicial process to bear to correct the situation, and his standing does not depend upon a showing that he personally is adversely affected by the existing defect." Indeed, if one accepts the premise that there is a judicial remedy for every political ill, it would seem that any public-spirited citizen should have the right to invoke the judicial process, without being required to show that his interest is selfish.

It is clear that a qualified voter in an under-represented district may bring the suit, but it is not clear who are the necessary or sufficient parties defendant. This issue was not reached by the district court, and it remains open for determination by that court on remand of the case. The defendants in the case include apparently all state officials except the Governor who have any duties with respect to the biennial elections for members of the General Assembly. Whether or not they are sufficient parties would seem to depend upon whether or not the court can fashion relief which can be enforced through appropriate orders to these officials.

The first point in the Court's holding—that debasement of a person's vote by malapportionment of state legislative seats is a violation of the Equal Protection Clause raises the question: What is malapportionment which results in debasement of one's vote?

Although the question is not answered with certainty, the holding seems to set forth two elements, both of which must be present, in order to justify a judgment for the complaining voter: (1) the state action, that is, the action or inaction of the state legislature, must be arbitary or capricious; and (2) it must result in gross disproportion of representation to population (or voting population, in the case of Tennessee). The possible meanings of these two elements determine the possible scope and ramifications of the Court's holding in *Baker v. Carr.*

(1) *Arbitrary or capricious action by the state legislature.* The plaintiffs sought to have the court take action to induce the legislature to reapportion its seats in compliance with the Constitution of Tennessee. The case does not, however, hold that failure to follow the State Constitution is a fatal defect. Clearly the Court is not holding that every failure on the part of state agencies to observe the requirements of the State Constitution is a violation of the Federal Constitution. As Mr. Justice Brennan says for the Court: "Since we hold that appellants have . . . a cognizable federal constitutional cause of action resting in no degree on rights guaranteed or putatively guaranteed by the Tennessee Constitution, we do not consider, let alone enforce, rights under a State Constitution which go further than the protections of the Fourteenth Amendment."

If it is not the violation of the State Constitution *per se* which is the basis of the federal right, does it follow that observance of the State Constitution would not necessarily eliminate the breach of the Federal Constitution? The answer may be that if the apportionment scheme set up by the State Constitution is based upon any reasonable factors —geographic, economic, demographic, or other—and the factors are applied in a consistent and non-capricious manner, observance of the state constitutional formula would satisfy the Federal Equal Protection Clause even though the result is substantial inequality of representation in terms of the number of persons represented by each legislator.

If, however, the state constitutional scheme is not based upon logical or reasonable factors, the State Constitution itself may offend the Equal Protection Clause. This suggestion is not spelled out in the Court's opinion, but it is a permissible implication which is not negated in the opinion. Mr. Justice Clark, concurring, states: "However, the root of the trouble is not in Tennessee's Constitution, for admittedly its policy has not been followed." This statement implies that it is possible for the State Constitution to contain, in its legislative apportionment provisions, the roots which cause violation of the Equal Protection Clause in applying the state policy. [Obviously this could be true if the State Constitution discriminated against voters by reason of race or other factors proscribed by the Federal Constitution; the discrimination discussed in the present context has nothing to do with this type of factor.] The possibility that State Constitutional provisions may themselves fall before the Court's interpretation of the Equal Protection Clause in the present context is demonstrated by *Scholle v. Hare,* the Michigan case referred to earlier in this article.

That case presented the question as to whether or not the Michigan Constitutional Amendment which was approved by the voters of that state in 1952 violates the Fourteenth Amendment. The Michigan Constitution establishes Senate districts by geographic areas drawn generally along county lines, and it results in substantial inequality of voter representation. The Michigan Supreme Court dismissed the suit attacking the provision. The United States Supreme Court vacated the judgment and remanded the case to the Michigan Court for further consideration in the light of *Baker v. Carr.* Apparently a majority of the United States Court interpreted the Michigan Court's action as a dismissal on the grounds that the question was non-justiciable. Mr. Justice Harlan, dissenting, sharply disputed this interpretation. Further proceedings in the case will be necessary before its meaning is finally determinable.

The Maryland Court of Appeals interprets *Baker v. Carr* to mean that compliance with the State Constitution is not necessarily enough to avoid the Equal Protection question. On April 25, 1962, that court, in the case of *Maryland Committee for Fair Representation v. Tawes,* ordered an equity court to examine the composition of both houses of the Maryland legislature, as established by the State Constitution, to determine if suburban voters are being subjected to the "invidious discrimination" which is prohibited by the Fourteenth Amendment. In Maryland 24% of the voters can elect 51% of the lower house and 66% of the upper house.

The Idaho Constitution is similar to that of North Carolina in that it provides for every county to have one representative, and then allocates additional representatives on the basis of population. The number of people represented by a member of the lower house varies from a high of 15,576 to a low of 915. In the case of *Caesar v. Williams,* the Idaho Supreme Court on April 13, 1962, held that this situation did not offend the United States Constitution.

Baker v. Carr gives very little clue as to what permissible factors, other than population, are available. Apparently the purely historical factor—apportionment based on retention of what was satisfactory at some past time—will be classed as arbitrary, rather than as reasonable.

(2) *Resulting in gross disproportion of representation to population.*

To repeat, the Opinion of the Court seems to say that disproportionate representation, in terms of number of constitutents per seat, does not of itself offend the Equal Protection Clause. The disproportion must result from arbitrary or capricious action, and it must be gross. Mr. Justice Douglas, concurring, indicates that disproportionate representation without more amounts to a denial of equal protection: "And so the question is, may a State weigh the vote of one county or district more heavily than it weighs the vote of another?" But Mr. Justice Clark, concurring, does not agree with this thesis; and Mr. Justice Stewart, concurring, states "And contrary to the suggestion of my Brother Douglas, the Court most assuredly does not decide the question 'may a State weigh the vote of one county or district more heavily than it weighs the vote in another?' ".

Assuming that the disproportion must result from arbitrary or capricious action, what amounts to "gross disproportion?" "Judicial standards under the Equal Protection Clause are well developed and familiar", says Mr. Justice Brennan for the Court. Where and what are these well-developed and familiar standards in the present context? One House member in Tennessee represents 22 times as many voters as does another. In the light of other relevant factors, Mr. Justice Harlan does not consider this disproportion necessarily irrational, and apparently not gross. What would be his view in North Carolina, where one Senator represents six times as many people as another, and where one House member, in strict compliance with the State Constitution, represents 19 times as many people as another?

Probably no one would question that there is gross disparity in California, where one senator represents more than 400 times as many persons as does another. But this disparity results from the state constitutional limitation that no county may have more than one senator, and that not more than three counties may be combined in a senate district. Will the question of what amounts to gross disproportion depend in each case upon the validity of the factors

which are taken into account in establishing the scheme? The use of the county as a basic unit of representation, and the limitation of the number of seats available to any one county is a very common factor in state legislative apportionment policies. If the disproportion in representation results from using this factor, will the result be acceptable, regardless of the degree of disparity? Or will the acceptability of geographic units as the basis of representation depend upon the degree of disproportionate representation which it causes? In other words, may North Carolina properly allocate one representative to each county because its most populous county contains far fewer than half a million people; whereas California may not give equal effect to the same geographical factor because its most populous county contains more than 6,000,000 persons?

On the other hand, where as in Tennessee the state constitutional policy requires rough equality of qualified voters per legislator, is the permissible disproportion caused by the consistent application of other factors—factors permissible under the Equal Protection Clause— much more limited than it would be if the State Constitution had authorized the application of these other factors? Finally, what effect, if any, does the existence of a direct political remedy —the initiative—by which the people can move to accomplish reapportionment without being wholly dependent upon the state legislature, have upon the permissible degree of disproportion? Will the availability of this remedy affect the legal right of a voter to have the courts act, or will it affect the willingness of the courts to exercise their jurisdiction?

These questions are not answered by *Baker v. Carr*.

II. WHAT JUDICIAL REMEDIES ARE AVAILABLE?

In the ordinary case where the constitutionality of a statute is successfully attacked, the statute falls. Action under the statute which was causing or threatening harm to the plaintiff ceases. The judgment of the court may direct a public official to act or not to act in a particular manner. This simple remedy is not enough in the reapportionment case. Mr. Justice Douglas stated that "The District Court need not undertake a complete reapportionment. It might possibly achieve the goal of substantial equality merely by directing respondent to eliminate the egregious injustices." The difficulty with that solution is that none of the respondents has any power in his official capacity to eliminate the injustices. It would be a strange doctrine indeed which would empower the courts to order an executive official to do a job, specifically given by the State Constitution to the legislature, particularly where there is any element of discretion involved. Where the voting districts are fixed, and the constitutional formula is precise, as is the case with the North Carolina House of Representatives, the determination of proper representation under the Constitution is a matter of simple arithmetic which can be accomplished with mathematical certainty. But this is not true where district lines may vary, as is the case with the North Carolina Senate and with both houses of the Tennessee General Assembly. An element of discretion is present in fixing the boundaries of multi-county senatorial districts and floterial house districts. The number of possible county groupings which would achieve substantial equality of representation is considerable. It would be possible to act in perfect good faith and still come up with a number of different solutions. The choice among these solutions is a matter of political policy, entrusted by both the State and Federal Constitutions to the political branch of government—the legislature.

If the nature of the problem makes it impracticable for the court to order a government official to perform the duty, can it order the legislature to do so? This approach has not yet been tried, and it does not appear to be a promising one. No officer or member of the legislature was made a party defendant in the Tennessee case.

Assuming—without being certain that such is the case—that the court will not, except in the case where apportionment may be done with mathematical certainty and without the involvement of a discretionary factor, order any officer to reapportion a state legislature, and assuming that the court will not attempt to order the legislature itself to act, What other remedies are available?

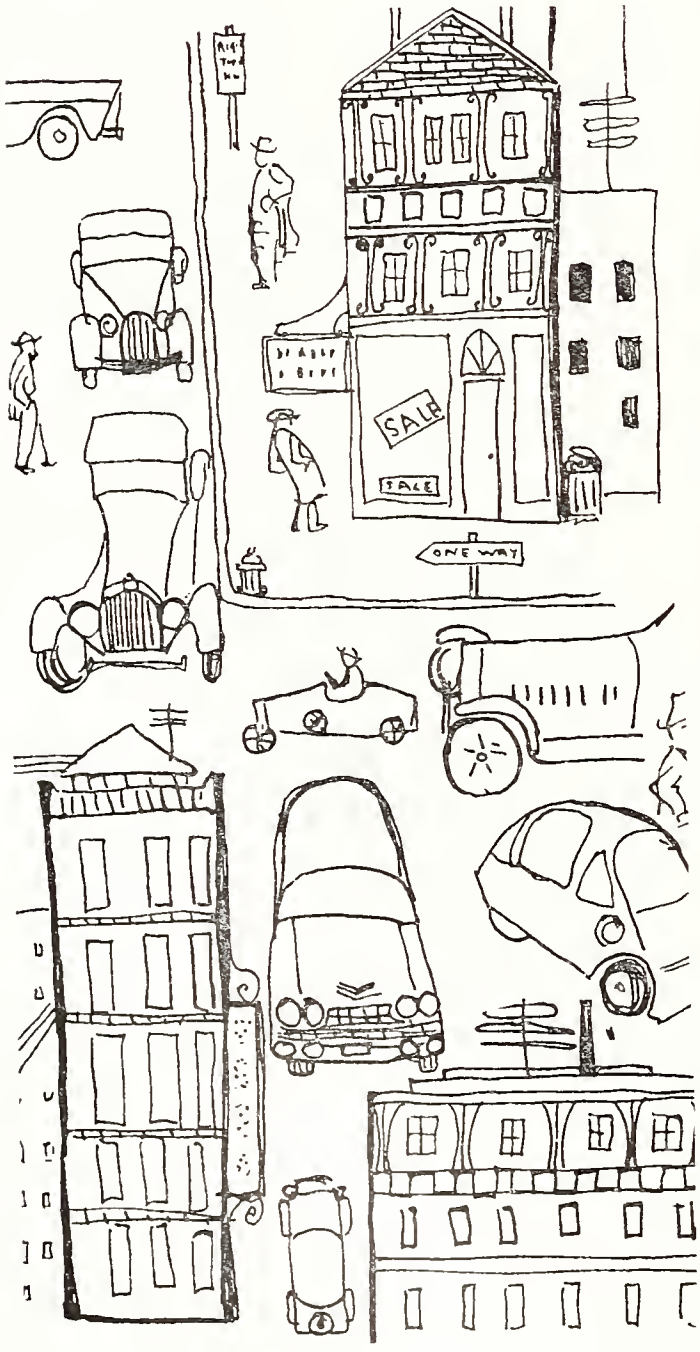
The court could declare acts of the legislature invalid. The Tennessee Supreme Court in *Kidd v. McCanless* equated this suggestion to a destruction of the State itself, since the existing legislature would be invalid and incapable of setting up a valid scheme, and no one else would have authority to act. The Maryland Court of Appeals, in *Maryland Committee for Fair Representation v. Tawes* stated that if the apportionment provisions of the Maryland Constitution are found to violate the Federal Constitution, the Maryland legislature could reapportion in a manner consistent with the federal requirement, as that legislature has plenary powers except as limited by the United States Constitution and valid provisions of the State Constitution. The United States Supreme Court was careful not to get into discussion of the Due Process argument made by the plaintiffs, for if it held that revenue statutes enacted by a malapportioned legislature were a violation of Due Process, the Court would be moving toward a decision which could cause the whole State Government to collapse.

The court itself could reapportion the legislative seats. Mr. Justice Frankfurter regards this as an impossibility. "Surely" he says, "a Federal District Court could not itself remap the State". The court, which is supposed to be the non-political branch of government would find itself involved in the most political of actions—the fixing of legislative representation districts and the allocation of legislative representation to those districts. The doctrine of separation of powers, already offended by the mere action of the courts in considering the reapportionment question, would be gravely injured by such action by the Court. Whatever the theoretical difficulties in the way of this approach, it is noteworthy that it is the one first suggested by a district court following the Tennessee case. In Alabama a 3-judge district court in the case of *Sims v. Frink*, on April 14, 1962, notified the Alabama legislature that unless the legislature acted in comformity with the State Constitution (which apportions seats in both houses on a population basis) prior to the next hearing in the case on July 16, the court will act. The court suggested that it would not undertake a final apportionment, but would limit itself to elimination of the worst abuses and would leave it to the legislature elected from the court-revised districts to complete the job of reapportionment. This procedure was suggested by Mr. Justice Clark. Of course, the Supreme Court may not approve of the action of the district court when the case in appealed. If it does not, the district court will have been directed by *Baker v. Carr* to act, and then will have been told that the remedy it selected as being the most feasible if not the only feasible one may not be employed. If the Supreme Court upholds the threatened action of the district court, we may then have a judicial doctrine as follows: "Where any branch of state government is charged with a duty by the State Constitution, and it fails to perform that duty with the result that a Federal constitutional right is infringed, the federal courts have the power to perform the duty themselves, regardless of its nature, if no other feasible means appears by which the desired result can be obtained".

Another suggestion made by Mr. Justice Douglas is that the court's conclusion that reapportionment should be made

(Continued on page 16)

DOWNTOWN N. C. SCOREBOARD



Large-scale downtown improvement is a live concern to business and civic leaders in upwards of two dozen North Carolina towns, and measurable action has been taken in at least a dozen of these communities. Much of this action still amounts to the early talking, floundering stage prevalent at the time of our last report.[1] Some cities, however, are well advanced organizationally, and planning money in excess of half a million dollars has been, or shortly will be, committed to North Carolina's city centers. News accounts from around the state indicate a considerable stirring of interest in this issue during the four years since, in the face of a general lack of awareness among community leaders of the existence of a downtown problem, we suggested in these pages that "Main Street wake up to the need for action." Certainly enough has occurred for it to be worth-while to take time for stock taking. This we have done, and the results of our efforts are here offered in a two-part series, the first of which appears below. This is a straight and stripped down report of central city action in North Carolina from the time of our last scoreboard report in November 1959 through December 1961. In the second article (presently scheduled for the September *Popular Government*) we will bring the story up to date and hazard editorializing to look closely at progress, problems and prospects for the more advanced of the central business district improvement programs.

One noteworthy and perhaps influential event, or series of events, does not show up in the body of the scoreboard presentation. This was the Central Business District Seminar Series sponsored and conducted by the Institute of Government, with support from the Ford Foundation, in the Spring of 1960. Five one-day sessions were held at weekly intervals for the top community leaders (manufacturing executives, bank presidents, newspaper publishers, leading merchants and city officials) of seven North Carolina cities—Burlington, Chapel Hill, Durham, Greensboro, High Point, Raleigh, and Winston-Salem. Aiming to telescope and bring together the experience of many people and many cities, the Institute selected and invited to North Carolina a group of recognized specialists of varied professions but with common competence in the new and challenging field of downtown revitalization. Over a period of weeks they filled in a comprehensive outline covering the problems of downtown and the fundamentals of the revitalization process. The papers presented during this series have been edited and published as a primer or beginning text for business and civic leaders on the fundamentals of the downtown revitalization process.

[1] Previous articles relating to North Carolina downtown problems and improvement programs appeared in the February and May 1958 and the March and November 1959 issues of *Popular Government*.

[2] These seminars were described in some detail in *Popular Government*, May-June 1960, pp. 16-17. The volume containing the seminar papers, *Guidelines for Business Leaders and City officials to a New Central Business District* is available at $3.00 from the Institute of Government.

by RUTH L. MACE, *Research Associate, Institute of Government*

AHOSKIE

Faced with a serious store vacancy problem, Ahoskie's city government, with strong support from the local newspapers, undertook an intensive campaign to reverse the trend of downtown deterioration. Following an organizational meeting in January 1960, "a merging of minds and pocketbooks took place." The ensuing months brought much activity in property improvement and modernization spurred on by the town government through building inspection and threat of condemnation. Suggestions and encouragement from the local planning board further guided and stimulated these efforts. By early 1961 the vacancy problem in downtown Ahoskie was a thing of the past. New developments to make parking more convenient accompanied property improvements. Parallel on-street parking replaced angle parking, and additional off-street parking facilities (both private and public) were provided. Also brightening downtown Ahoskie is a plan and schedule for improved street lighting (devised with Virginia Electric Power Company's assistance) now being put into effect. City Manager Ed Hulse, a prime mover in this effort, has just left Ahoskie for a new post in South Carolina. (For a detailed account of this program see *Popular Government*, December 1961, pp. 4-6)

ASHEVILLE

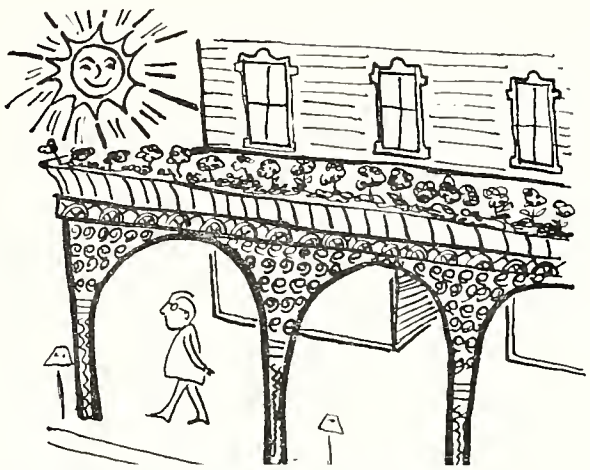
The Central Asheville Association, formed on November 18, 1960 at the recommendation of the Greater Ashville Council, has Julian A. Woodcock as its president and E. M. Salley, Jr. (local civic and industrial leader, and formerly manager of the American Enka Corporation Asheville plant) as full-time executive director.

Upon organization the Association had in hand a detailed survey, prepared by the office of the Asheville city engineer, of land uses and assessed valuations in the downtown area. Since its organization, the Association (1) Has promoted and assisted in the development of a city-operated 115 car downtown parking lot; (2) Has undertaken plan-making for remodeling the rear entrances of stores immediately adjacent to the parking lot; (3) Has, with Boy Scout aid, surveyed downtown parking facility use. On the basis of this survey the establishment of a "park and shop" program is being recommended, and, in this connection, Asheville business leaders have visited other communities where such programs exist; and (4) Has promoted an agreement (publicly announced in November 1961) among property owners on one side of a single block in the central area (east side of Haywood Street) to erect an "arcade-type canopy and to tear out the present sidewalk and replace it with red brick."

Asheville's first urban renewal project (the Civic Center Redevelopment Project No. 1, scheduled for a 53 acre tract north of the city-county plaza), now in the planning stage, is expected to have a salutary effect on business property values in the whole eastern end of the downtown area. According to the *Asheville Citizen Times* (July 31, 1950), "The project can confidently be expected to revitalize the adjoining downtown section centering around Pack Square, Broadway and Biltmore Avenue."

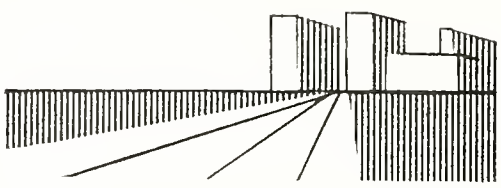
CHAPEL HILL

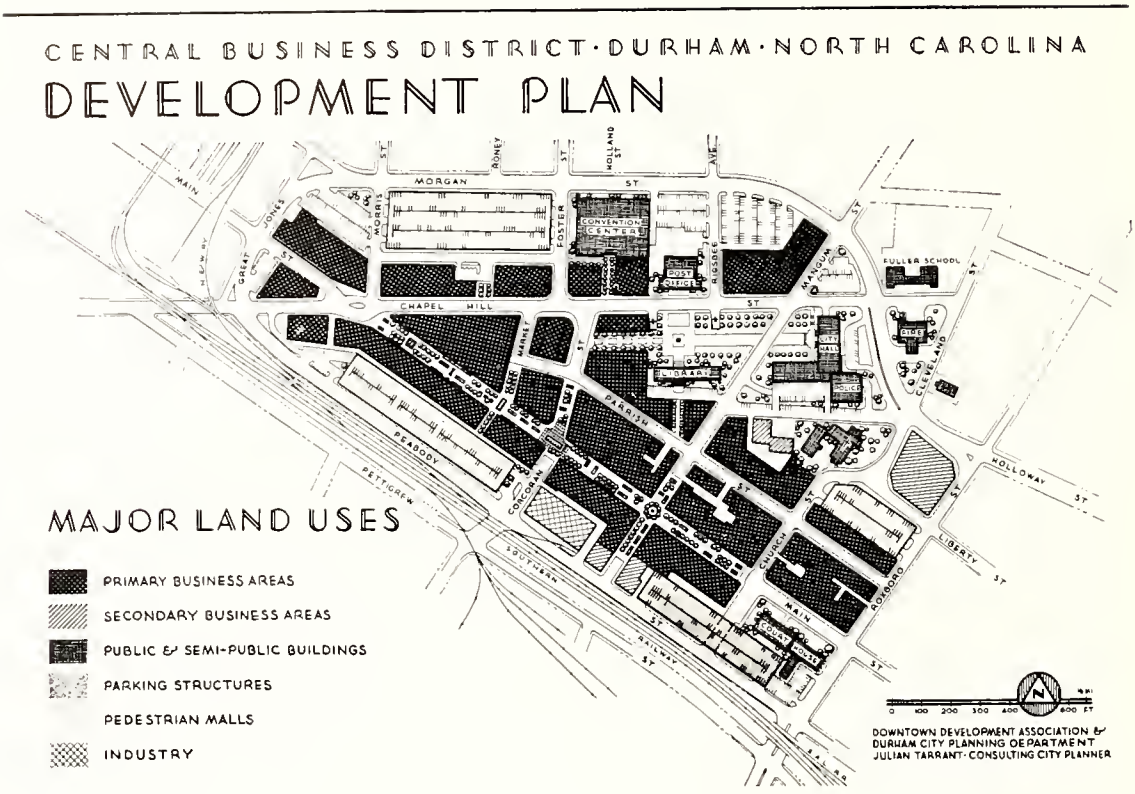
Chapel Hill's Improvement Commission (a semi-official body, appointed by the town mayor in the fall of 1959, to study the growth and development of the downtown area) published its report, *A Twenty Year Development Plan for Downtown Chapel Hill, 1961 to 1980*, in April 1961. Two years in preparation, this study represents an investment of $2,500 by Chapel Hill merchants and businessmen. Extensive store front improvements, including the installation of several metal canopies, have been made on an individual basis in downtown Chapel Hill. Efforts at getting merchants together for joint installation of a ten-foot wide canopy along one side of the main downtown shopping street have been unsuccessful.



CHARLOTTE

F. Earl Crawford replaced Walter Camper as full-time executive vice-president of the Charlotte Downtown Association in the summer of 1961. A Joint Committee for Downtown Planning, consisting of representatives from the City-County Planning Commission and the Downtown Association, was organized in September 1961 to "develop a planned approach to some of the problems of the central business district". Temporarily chaired by Walter B. Toy (local architect and planning commissioner) the Joint Committee will sponsor a three-part plan for downtown Charlotte consisting of an economic analysis of the downtown area, a physical plan, and an action plan. The Committee's work is to be financed cooperatively by the City and the Downtown Association, the possibility of obtaining a federal grant for these studies having been rejected. In the case of the lead-off economic study, to cost approximaetly $30,000, the exact method of financing has not as yet been determined. Consideration is currently being given to selection of an economist consultant and to ways and means of paying for his work.





DURHAM

Modernization has been the order of the day in downtown Durham over the last two years with extensive improvements to a major department store and two banks. A new large department store is currently under construction. Durham experimented with a mall for a few days in September 1960 during its annual "Fall Spectacular." And shortly thereafter the *Downtown Development Plan*, more than a year in the making, was submitted to Mayor Evans and to the Downtown Development Association by their planning consultant.

The city government has moved ahead along several lines suggested by the consultant. With council approval of the development of a specific city block as a city governmental center, land acquisition has been under way over the last year and more than half the property has been acquired. Demolition is scheduled for March 1 on the site of the proposed new police and fire headquarters. Extension of Morgan Street through this block, as a key link in the downtown portion of the major thoroughfare plan, is also scheduled for this spring, to begin "as soon as the weather permits." Plans to deck the city's CBD parking lot have, however, been abandoned for now, since it was felt that the present street pattern could not accommodate the anticipated increased traffic.

Other actions following from the consultant's recommendations come from the private business sector. "Operation facelift" (a project of the Business Appearance Committee of the Durham Merchants Association, under the chairmanship of Southgate Jones, Durham business leader and former city councilman) began in the spring of 1961. Contemplated improvements for one block at the very heart of the CBD are wider sidewalks, continuous canopies, new lighting, and "second-story beauty." A local architect has been retained for preliminary planning of the project. His work is being financed by contributions from Main Street merchants in the affected block.

A marked change in the pace and conduct of Durham's CBD improvement program may result from the latest development, an application submitted on January 16, 1962 by the Redevelopment Commission to the federal Urban Renewal Administration for a planning advance of $204,000 in connection with a proposed federally-aided project to rehabilitate Durham's *entire* central business district. The Redevelopment Commission undertook this project at the request of the Durham Downtown Association. Federal approval of the application for planning funds is anticipated by mid-March.

GREENSBORO

Under the leadership of the local Chamber of Commerce, a substantial amount of groundwork has been laid for improvements to the Greensboro central business district since our report of November 1959. Currently serving as staff man for the Downtown Improvement Committee of the Chamber is Jeff Warner, Manager of the Civic Affairs Division. Warner replaced Millard Souers in this position in the summer of 1961. McNeil Smith, Greensboro attorney, is chairman of the Committee.

An unusual feature of the Greensboro program is its strong emphasis on education and public relations. Among such efforts in the fall of 1960 was a series of seven informational presentations to more than 200 central business district property owners and tenants. Constructed jointly by the City Planning Department and the Chamber, these sessions were built upon information and materials presented during the Central Business District Seminares noted above. (For details on the Chamber series see its publication, *Glimpses of Greensboro*, November 1960, p. 4.) Still another effort at self education was a visit to Hartford and New Haven, Connecticut, in March 1961 to view CBD revitalization accomplishments in these two cities. Sponsored by the Downtown Improvement Committee, this expedition consisted of a party of some 20 Greensboro business and civic leaders.

The Downtown Improvement Committee has to its credit two completed CBD improvement studies and a third in the offing. Design proposals for an 80-acre area adjacent to the business district were developed by the Greensboro Registered Architects at the request of the City Beautiful Committee of the Chamber. Building upon these, the City Planning Department retained a local firm of landscape architects to develop a specific planning proposal for the area, named Blandwood Gardens (after the old Morehead home which is located there). This specific proposal (officially designated as "a phase of the downtown improvement program for Greensboro") was completed and published in August

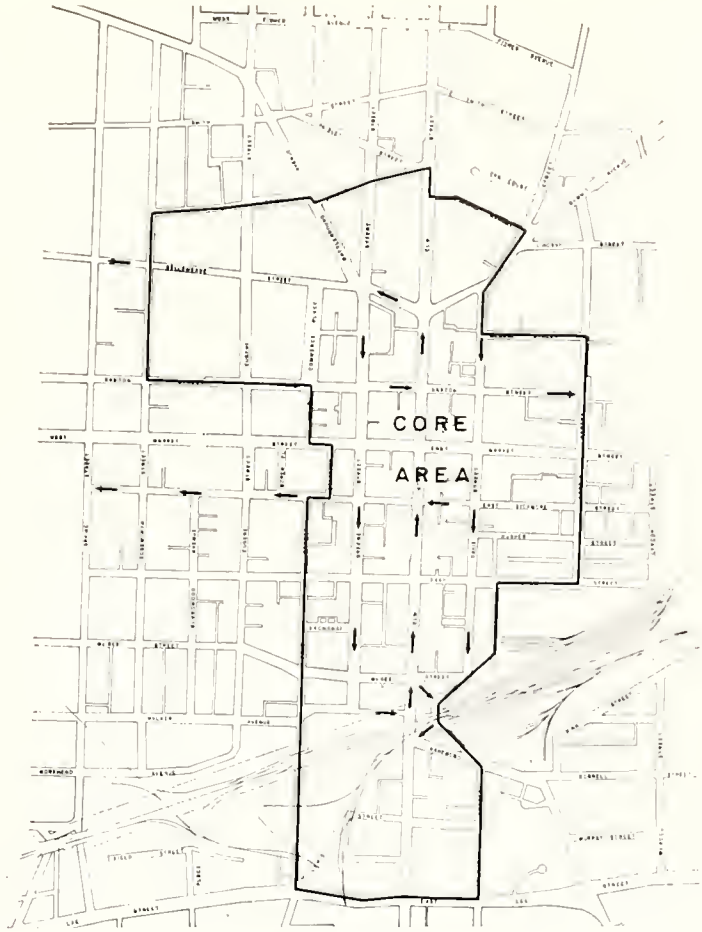
GREENSBORO (Continued)

1961. (See the Greensboro Planning Department's *Planning Notes*, no. 16, Sept. 15, 1961, for details on this plan.) In November 1961 a firm of economic analysts submitted its report, *Downtown Dynamics, An Economic Analysis of the Expansion Potential of Downtown Greensboro.* This study, which was contracted for late in 1960, was jointly financed by the Greensboro city government and downtown merchants and property owners acting through the Chamber of Commerce.

As of this writing, the Downtown Improvement Committee is engaged in a drive to raise $40,000 to pay for physical plans for CBD revitalization to be constructed on the base of the economic analysis. Funds are being raised by contributions equal to one-fourth of one per cent of the 1961 real property valuation on each tract of land in the 42-block downtown area.

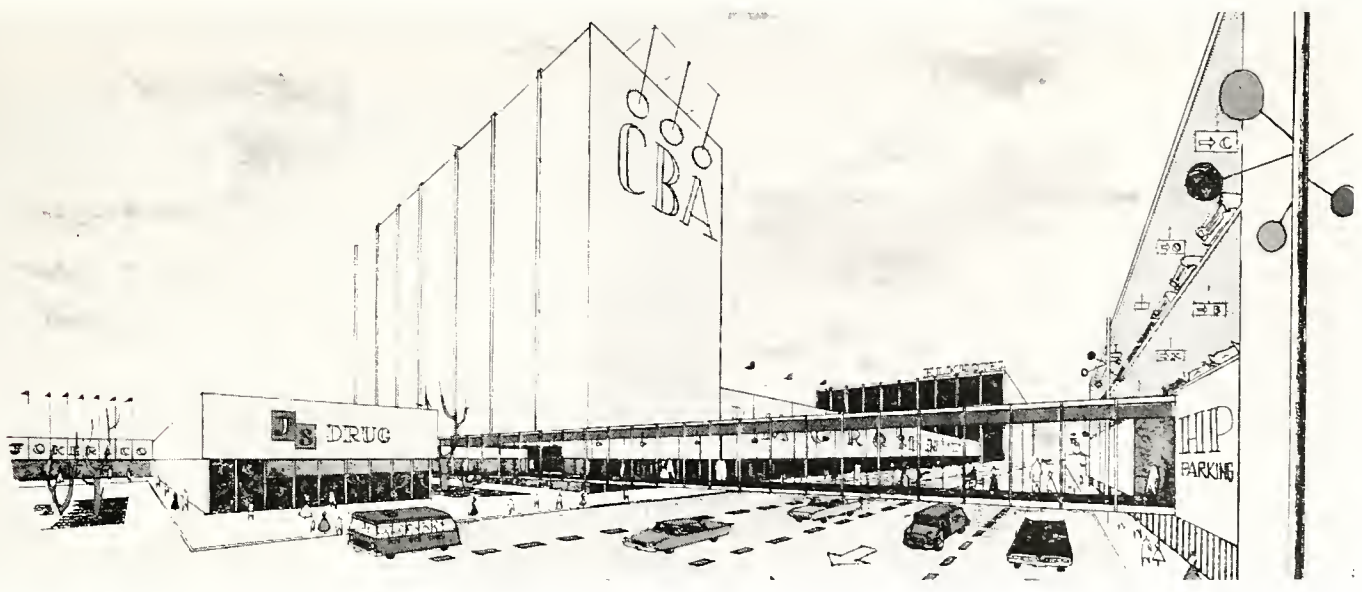
To keep the pot boiling, the *Greensboro Daily News* closed out 1961 with a four article series (December 6th through 9th (1961) titled "What's Wrong with Downtown Greensboro?" This series reported comments of local business and civic leaders on the question of downtown deterioration and improvement. Among those interviewed were the late J. Spencer Love, president and chairman of the board of Burlington Industries; N. P. Hayes, president of Carolina Steel Corporation; Federal Judge L. Richardson Preyer, Guilford County Commissioner Carson R. Bain, Poet Randall Jarrell, member of the Women's College faculty, and many others.

The very latest development is an announcement that this year's Greensboro Chamber of Commerce Businessmen's Tour of Europe, scheduled for March 10-26, 1962, will have as its major purpose an inspection of the central business districts of European cities which have been rebuilt since World War II.



HIGH POINT

A preliminary study and plan for downtown High Point, *Highpoint* CBD (reported as in preparation by the City Planning Department in our November 1959 article) was completed in December 1959 and submitted to the Planning Commission and the Downtown Development Committee in January 1960. The following June, acknowledging the need for "a big selling job" to acquaint merchants, city officials and the public with the urgency of CBD revitalization, the Downtown Development Committee enlisted the help of the local Architects Guild and the City Planning Department in the preparation of a promotional brochure. This brochure, the *Plan for Action*, issued as a joint policy statement of the Downtown Development Committee and the City of High Point and endorsed by the Board of Realtors, the Chamber of Commerce, and the Merchants Association, was presented to the public in March 1961. In addition to describing problems, goals and possible solutions, the *Plan for Action* outlined a six "step" program, set up a timetable, and designated areas of public, private and joint public-private responsibility in carrying through the various "steps." In succeeding weeks the Downtown Development Committee reorganized as the Downtown Development Corporation and named Dick Culler, local industrialist, full time executive director. Ed Mendenhall continued as president of the group The *Plan for Action* was publicized still further in a special supplement to the *High Point Enterprise* (April 25, 1961) where proposed details as to the financing of the planning phase of the program were described. Suggested at that



HIGH POINT (Continued)

time was a fifty-fifty split between business interests and city government, with merchants and property owners assessing themselves on the basis of property valuation. A successful fund-raising campaign followed during the summer of 1961 along with an announcement in late July of plans for the development and operation by local interests of a major new downtown department store. Funds for this venture are currently being raised by stock subscription. Also completed during this past summer was a detailed downtown space inventory. This study was conducted by the staff of the City Planning Department with the advice of a firm of consulting economists.

New possibilities and directions in planning for the downtown area emerged in September 1961 with the appointment by the Redevelopment Commission of a full time executive director. Subsequently an application was filed with the federal Urban Renewal Agency for a grant of $222,000 for study and plan of a project area (the East Central Project) encompassing a sizable portion of the central business district. A planning grant in the amount of $218,398 was approved in late December. As of this writing the Downtown Corporation and the city, through the Redevelopment Commission and the Planning Department, are jointly sponsoring planning studies of the CBD. Traffic engineering, economic analysis, and urban design consultants have been retained with varying contract periods running through June 1962. This coming summer should see the unveiling of detailed plans for the revitalization of downtown High Point.

LAURINBURG

With approval from the federal Urban Renewal Administration in late November 1961, a capital grant allocation of $464,840 (representing 3/4 of the estimated total project cost), and a loan of $709,888, the City of Laurinburg moved ahead into the execution stage of its nine acre Downtown Urban Renewal Project. Land acquisition is expected to begin in early February 1962. In planning since the fall of 1959, major improvement is now scheduled for the heart of the central business district. In addition to 26 slum dwellings, some half dozen stores (occupying approximately 175 feet of Main Street) and the county courthouse-welfare-jail building are included in the clearance project. The reuse plan for the area calls for a new county courthouse, commercial facilities (including a multi-story shopping center), three new municipal parking facilities, and street improvements to form a new city block and give needed access to Main Street from the east.

MOORESVILLE

Well ahead of schedule in 1959 and 1960, carry-through on the Mooresville Plan (reported on in detail in the May 1958 issue of *Popular Government*) largely marked time during 1961, a lean year for the town and much of the rest of the nation. Accomplished to date through the joint efforts of city government, the merchants and the garden club have been:

(1) Installation of a block-long canopy, ten feet wide and running 250 feet down one side of Main Street,

(2) Modernization, paint up and improvement of store fronts, rear entrances and interiors on and off Main Street,

(3) development of three new municipal free parking lots, (4) opening of service alleys behind all Main Street stores, and (5) introduction by the town of a new and improved trash collection system. Responsible leadership for the implementation of the Plan resides in the Civic Action Committee for the Development of a Greater Mooresville, presently chaired by Jim Mack Morrow, local automobile dealer.

Photos from Mooresville City Manager
Phin Horton III

RALEIGH

Raleigh has been talking Mall for going on four years now, and a number of steps have been taken to convert talk to action. The chronology of events may be summarized as follows:

1959

Summer -- Citizens Central Business District Committee, composed of representatives from city and state governments, the Raleigh Merchants Bureau, Chamber of Commerce, and Architects Council, organized under the chairmanship of Lee Covington, Wachovia Bank official.

1960

Summer -- Under the auspices of the Citizens CBD Committee and working with the Raleigh Council of Architects, Architect Donald Jackson formulated preliminary design studies exploring revitalization possibilities for downtown Raleigh. Jackson's $1,600 fee was met through voluntary donations from local merchants.

September -- Forty-four Raleigh business leaders visited Kalamazoo mall, and 35 recommended a mall for Raleigh.

November -- Citizens CBD committee reported to the City Council on the work of Jackson and the Architects Council and recommended that several committees be set up to study circulation, parking, finance, etc. The Council responded by approving the mall idea "in principle" and establishing a Mall Commission. The Citizens Committee disbanded, and an eight-man Mall Commission, under the chairmanship of Karl K. Hudson, local department store executive, was named by the Mayor. Most Fayetteville Street merchants and property owners agreed to assess themselves at $3.00 per front foot to pay for architectual services in connection with mall planning and cost estimating.

1961

February -- Merchants Bureau voted to raise money for architects' fees. Local architectual firm, McKimmon and Etheredge, was retained by the Mall Commission "to draw up a mall plan for a typical block of Fayetteville Street" as a basis for cost estimation.

August -- Architect Etheredge presented preliminary design to the Mall Commission.

November -- Council and Planning Commission began exploring revision of zoning ordinance to permit high density residential structures downtown with a view toward reinvigorating the central city. In the words of Planning Commissioner J. O. Stanton, "We must get high income groups back downtown with shopping dollars."

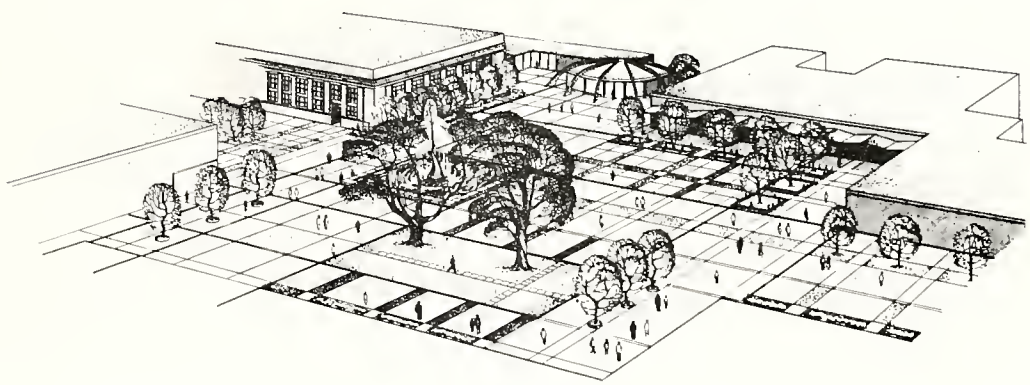
-- Mall Commission received cost estimates of $250,000 per block or $753,723 for the three blocks of Fayetteville Street included in the plan.

1962

January -- Mall Commission Chairman Karl Hudson requested the city's permission for his store (Hudson-Belk) to erect a canopy over the Fayetteville Street sidewalk fronting the store. The City Council's Public Works Committee agreed to approve the store's canopy construction plans "provided architects can work out a plan to keep the canopy in line with those proposed in the plan for the Fayetteville Street Mall;" and decided, in line with the Mayor's suggestion of the need for a local ordinance to assure uniformity in canopy design, "to appoint a special committee to work up plans and specifications governing future canopies that might be constructed by private firms along the route of the proposed mall."

As of this writing doubt has been expressed as to whether the Mall will ever become a reality in view of the high cost estimates. On a more positive note, however, Raleigh's Mayor Enloe (speaking as a Fayetteville Street businessman) has said, 'We're still going to have a mall . . . But we're going to have to get a little more realistic in cost."

ROCKINGHAM



With a bad vacancy situation shaping up in their area, as a result of a shifting trend in the location of commercial uses in the Rockingham central business district, merchants on South Lee Street seized on the mall idea as a possible solution to their difficulties and asked the Planning Board to present the matter to the Town Board. While the Planning Board's recommendation for a "trial of the idea on a temporary basis'" was not carried through, the city did subsequently contract with the Community Planning Division of the North Carolina Department of Conservation and Development for a detailed study and plan for the entire central business district. Issued in the Spring of 1961, this study was one of a series of five planning studies prepared for the town financed in part through an urban planning assistance grant from the federal Housing and Home finance Agency. More recently, a Committee for a Strong Central Business District has been formed, with Dave Gibson as temporary chairman; and an urban renewal project, involving a portion of the central business district and including the west side of Lee Street, is currently under consideration by the Town's newly constituted redevelopment commission. Construction by private investors of a 110 car parking lot in downtown Rockingham is one tangible and immediate result of the discussion and study of the need for improvement in Rockingham's central business district.

SALISBURY

A central business district study plan, prepared for the Planning Board by the Community Planning Division of the North Carolina Department of Conservation and Development under an urban planning assistance grant from the federal Housing and Home Finance Agency, and issued in the Summer of 1960, met with an enthusiastic response from the Salisbury business community. A number of conspicuous improvements in the downtown area have followed. The Downtown Improvement Committee, organized in July 1960, under the chairmanship of H. E. Isenhour with Henry Bernhardt of the Merchants Association serving as secretary and staff man, has been responsible for the direction of the various improvement activities. In April 1961 the Downtown Improvement Committee recommended and received approval from the Salisbury, Spencer, Rowan County Area Planning Board of the Community Planning Division's over-all preliminary plan for the downtown area as a basis upon which to develop further more detailed plans.

In the same month, the Committee received proposals for downtown building modernization from local architect John Ramsay. It is anticipated that the Committee will consider as a pilot operation adoption of plans for building improvement in one block. Over the past summer and fall five blocks of Main Street were given a "beautification treatment" involving the setting out of trees, benches and planting boxes. Merchants were given the option of paying for any one of these three landscaping elements. The field office staff of the Community Planning Division, resident in Salisbury, has been furnishing much of the design service and advice in connection with this successful program which has been influential in stimulating interest in planning activities throughout the area. A city survey of parking in the downtown area is under study by the Downtown Committee and the City Council, and the city, at the request of the Downtown Committee, is negotiating for property on which to construct a small metered municipal parking lot. Recently prepared for the city by the Community Planning Division is a leaflet *(Downtown—Salisbury—1980)* designed for wide public distribution explaining the total plan for the downtown area.

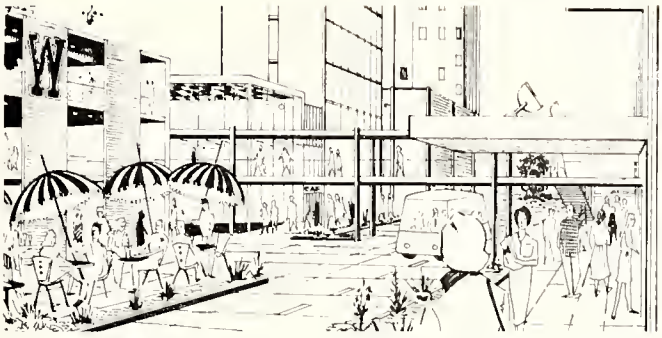
Photos courtesy Division of Community Planning, N. C. Department of Conservation and Development

SELMA

Reporting to the Selma Board of Commissioners that "We must do something or die," J. H. Wiggs (speaking for the town's chamber of commerce) last April presented plans for the redevelopment of the main business district. Erection of a canopy over the sidewalks and new and improved street lighting were the principle proposals. Wiggs added that "the program will not stop once the canopy has been installed" further commenting that an effort to attract new businesses requires solving many problems. Ultimate success he continued depends on a continued plan of promotion. The Commission unanimously approved the plan as submitted, agreed to consider furnishing electricity for the proposed recessed lighting, and to "lift the restrictions of town employees removing debris from the four main business district blocks, during the development program." A six member Central Business District Improvement Committee chaired by John Shallcross, local industrialist and chamber vice-president, sponsored a meeting in late June for local merchants, at which the three stage plan—involving (1) canopy construction, (2) renovation of store fronts, and (3) acquainting the people of the area with Selma's advantages as a retail outlet—was explained. As of this writing, the immediate objective of the Committee is canopy construction over 1200 lineal feet in the two block area of the main shopping section. It is hoped, when this improvement has been accomplished, "that many merchants and store owners will continue the face lifting program by improving and modernizing their store fronts." Canopy construction will get under way as soon as enough businessmen have agreed to move ahead so that 300 lineal feet can be constructed. The Central Business District Improvement Committee has visited several towns in the state "to see what has been done and how these other communities are solving almost the same problems."

Of particular interest to municipal officials in connection with the Selma program is an opinion that the Town obtained from the State Attorney General (August 15, 1961). He stated that the costs of installing the canopy with integral lighting could legally be assessed against abutting property as a "local improvement" under Article 9 of Chapter 160 of the General Statutes.

WINSTON-SALEM



A team of three consulting firms—economic analysts, traffic planners, and urban designers—is currently engaged in developing a program to rejuvenate the Winston-Salem central business district. These experts are working under the general supervision of the City-County Planning Board whose staff is coordinating the project. Consultants fees, amounting to approximately $80,000, are being met locally on a joint public-private basis, with the city paying for the work of economists and traffic experts, and private interests picking up the tab for the work of the urban designers. Completion of the consultants' work, including a recommendation for the first project to be undertaken as part of the comprehensive plan, is scheduled for late spring of 1962. Several years of intensive work at self education and promotion on the part of downtown interests, city officials, and the Total Development Committee of the Chamber of Commerce lie behind the comprehensive plan study now in progress. Included in this effort have been trips to other cities around the country and invitations to and hearings of several national experts on downtown improvement. The Total Development Committee, which has provided leadership in this program, is chaired by Meade S. Willis, Jr. Admiral T. J. Van Metre, Manager of the Chamber's Civic Affairs Department, is serving as staff man for the Committee. As noted in our last "Scoreboard," the Committee in the Summer of 1959 sponsored a preliminary study and plan of the CBD to provide "a starting point for discussion." A promotional brochure, *Downtown Core, Winston-Salem*, published in 1960 under the joint sponsorship of the City-County Planning Board and the Total Development Committee, made use of some of the materials developed in the preliminary report. The brochure received wide public distribution. As the work of the consulting team moves into its wind-up phase, two major downtown construction projects have been announced—a multi-story, 50,000 square foot office building, to house Wachovia's Trade Street branch, and a motor hotel which is also to contain luxury apartments, restaurant, and various shops. Also recently announced is a project by the Beautification Committee of the Chamber of Commerce involving the development of "a guide of good taste which merchants . . . [can] follow on a voluntary basis" in modernization and redecoration of shop exteriors.

AND . . .

In *Goldsboo* (August 1960) and *Thomasville* (May 1960) planning consultants' reports (financed in part through federal urban planning assistance grants), which recommended extensive CBD improvement action, received cool local receptions.

Recently organized (or considering organizing) for downtown improvement programs are groups in *Hickory, Lexington, Statesville, Sylva*, and *Wilmington*.

In *Wilson, Maxton, Littleton*, and *Mount Airy*, the Community Planning Division of the state Department of Conservation and Development has planning studies under way, financed in part through federal urban planning assistance grants, concentrating to a varying degree on central business districts. *Canton's* application for a planning grant is presently in process. About one-third of the total funds to be expended for the Canton planning studies will be devoted to study and plan for the CBD. Canton civic and business leaders have been interested in initiating a downtown improvement program for several years now, and, in this connection, visited Mooresville in May 1960 to observe accomplishments there.

LOCAL PUBLICATION RELATING TO NORTH CAROLINA CENTRAL BUSINESS DISTRICTS

CHAPEL HILL

Chapel Hill Improvement Commission. *A Twenty Year Development Plan for Downtown Chapel Hill 1961 to 1980. Report of the . . . Commission.* Prepared by Samuel C. Hodges, Jr. April 1961. 86 pages.

DURHAM

Julian Tarrant. *A Downtown Development Plan, Durham, North Carolina: A Final Report to the Downtown Development Association and the Durham City Council.* November 9, 1960. 39 pages, plus.

GOLDSBORO

City Planning and Architectural Associates. *Preliminary Plan for the Central Business District, Goldsboro, N. C.* July 1960. 43 pages.

The preparation of this report was financed in part through an urban planning grant from the federal Housing and Home Finance Agency.

GREENSBORO

Hammer and Company Associates. *Downtown Dynamics: An Economic Analysis of Downtown Greensboro's Expansion Potential.* Prepared for the City of Greensboro and the downtown merchants and property owners through the Greensboro Chamber of Commerce. November 1961. 102 pages, plus.

Also *Planning Notes* (Greensboro City Planning Department), nos. 14, 16-19, 1961.

HIGH POINT

"Downtown High Point: Key to a Greater City. A Special Report on . . . Central Business District Revitalization Program." *High Point Enterprise*, April 25, 1961. 12 page special supplement.

Downtown Development Committee and the City of High Point. *Revitalization, High Point Central Business District, Plan for Action.* 1961. 17 pages.

High Point City Planning Department. *A Preliminary . . . CBD Core Study.* December, 1959. Unpaged.

MOORESVILLE

Mooresville City Manager and the Traffic and Planning Associates. *The Mooresville Plan: A Future for Downtown Mooresville.* July 1, 1957. Unpaged.

Urban Land Institute . . . . *Findings and Recommendations* by a Panel of the . . . Institute. April 14-16, 1958. 49 pages.

RALEIGH

Raleigh Department of Planning. *Study #1 of the Central Business District . . . An Analysis of Land Use Space Requirements.* July 31, 1957. 99 pages.

Raleigh Department of Planning. *Study #2 of the Central Business District . . . A Beginning—A Collection of Possibilities.* January 9, 1959. 37 pages.

ROCKINGHAM

North Carolina Department of Conservation and Development. Division of Community Planning. *Rockingham . . . Central Business District Study.* 1961. 28 pages.

The preparation of this report was financed in part through an urban planning grant from the federal Housing and Home Finance Agency.

SALISBURY

Downtown—Salisbury—1980. 1961. Folder (Write the Salisbury City Manager for information about the availability of this publication)

North Carolina Department of Conservation and Development. Division of Community Planning. *Preliminary Central Business District Plan 1980, Salisbury, North Carolina.* 1960. 30 pages.

The preparation of this report was financed in part through an urban planning grant from the federal Housing and Home Finance Agency.

WINSTON-SALEM

Winston-Salem Forsyth County Planning Board. *Down-Town Core, Winston-Salem, 1890, 1960, 1980. Toward a Program.* 1960. [9] pages.

* * * * * *

In addition to the studies noted above, the reader may be interested in a group of Master's theses, developed for the Department of City and Regional Planning of the University of North Carolina, devoted to the CBD's of Chapel Hill, Durham, Raleigh and Winston-Salem.

SHOWING PROBABLE CAUSE ON INFORMATION FROM CONFIDENTIAL SOURCES

by Roy G. Hall, Jr.

Assistant Director,
Institute of Government

The United States Constitution (Amendment IV), North Carolina Constitution (Art. I, § 15), and North Carolina statutes (G.S. 15-25 through 15-27.1) place the magisterial official with authority to issue search warrants between the law enforcing officer and the privacy of the home and other places protected by the Constitution from unreasonable searches and seizures. The officer seeking to obtain a search warrant must produce evidence sufficient to satisfy the warrant-issuing official that the illegal objects of the search are *probably* where the officer wishes to search. This is called a showing of "probable cause to believe", which is the same as "reasonable ground to believe." Only when this is done may the magisterial official issue his warrent. The decision to issue a search warrant is the magistrate's, not the officer's; the magistrate may not abdicate this judicial function to the officer, no matter how well he knows the officer to be conscientious, no matter how much the officer assures the magistrate that the prospective defendant is sure to be guilty.

Suppose the officer has no first-hand experience of his own to relate to the magistrate in demonstrating probable cause. Does this mean he cannot obtain a valid search warrant? It does not. But, while it is settled law that search warrants based solely upon hearsay may be valid, *Jones v. United States*, 362 U. S. 257(1960), it is also clear that the officer applying for the warrant (hereinafter referred to as the applicant) does not make out a showing of probable cause by swearing only that he believes or suspects that there is contraband at the place he wants to search. *Nathanson v. United States*, 290 U. S. 41(1933). Nor has the applicant made a sufficient showing of probable cause if he states nothing more than that he has information (and belief) that the illegal goods are where he wants to search. *Baysden v. United States*, 271 F.2d 325(4 CIR 1959).

It seems that the applicant who has only hearsay evidence with which to obtain a search warrant must, if the warrant is to be valid, do at least two things, and if he wants to be on the safe side, must do at least three: First, give the issuing magistrate the full benefit of everything he has been told; that is, put the magistrate as nearly as possible in his shoes. Give the full, exact, complete, and unembellished *CONTENT* of the information (hearsay) to the magistrate. Second, demonstrate the reliability of the *SOURCE* of the information to the satisfaction of the magistrate. In other words, show the magistrate that the content of the information (which amounts to probable cause) is likely to be true because it comes from a source which, if not unimpeachable, is nevertheless reliable. Third, support the hearsay with other information to the same effect, or with the applicant's personal knowledge of the prospective defendant's reputation or past record of the same criminal conduct. That is, *CORROBORATE* the information if at all possible.

Affidavit Upheld in Jones v. United States

Affidavit:

(362 U. S., at page 276, footnote 2)

Affidavit in Support of a U. S. Commissioner's Search Warrant for Premises 1436 Meridian Place, N. W., Washington, D. C., apartment 36, including window spaces of said apartment. Occupied by Cecil Jones and Earline Richardson.

In the late afternoon of Tuesday, August 20, 1957, I, Detective Thomas Didone, Jr. received information that Cecil Jones and Earline Richardson were involved in the illicit narcotic traffic and that they kept a ready supply of heroin on hand in the above mentioned apartment. The source of information also relates that the two aforementioned persons kept these same narcotics either on their person, under a pillow, on a dresser or on a window ledge in said apartment. The source of information goes on to relate that on many occasions the source of information has gone to said apartment and purchased narcotic drugs from the abovementioned persons and that the narcotics were secreated [sic] in the above mentioned places. The last time being August 20, 1957.

Both the aforementioned persons are familiar to the undersigned and other members of the Narcotic Squad. Both have admitted to the use of narcotic drugs and display needle marks as evidence of same.

This same information, regarding the illicit narcotic traffic, conducted by Cecil Jones and Earline Richardson, has been given to the undersigned and to other officers of the narcotic squad by other sources of information.

Because the source of information mentioned in the opening paragraph has given information to the undersigned on previous occasion and which was correct, and because this same information is given by other sources does believe that there is now illicit narcotic drugs being secreated [sic] in the above apartment by Cecil Jones and Earline Richardson.

Det. Thomas Didone, Jr.,
Narcotic Squad, MPDC

Subscribed and sworn to before me this 21 day of August, 1957.

James F. Splain,
U. S. Commissioner, D. C."

Comment:

Here, the officer gives the CONTENT of the information. This paragraph could be improved upon by stating exactly what the source said; e.g., "that he had seen the narcotics removed by the aforementioned Jones from underneath a pillow when he asked to buy a portion . . ." etc. How does he know they kept them there?

These next two paragraphs are to insure compliance with decisions that a warrant based solely upon information from a confidential source cannot be upheld unless there is other evidence to support the finding of probable cause.

Here the officer is swearing that the informant has demonstrated his RELIABILITY in the past. More than this very simple, half-sentence statement will be required by the conscientious magistrate. How many times has he given information before? Was he ever wrong? Etc.

The first requirement should present little, if any difficulty. However, the applicant should avoid stating conclusions and nothing more. For example, if the source of information says "Mary Brown is selling nontax-paid liquor at her house. I know this is so because I went there and bought a drink for 50 cents, and saw two other men in the kitchen at the same time, drinking and paying just as I did," the applicant should not stop with stating to the magistrate that the source of his information "said Mary Brown is selling nontax-paid liquor at her house."

The second step may, and always does if a confidential source is involved, give some difficulty. When the source is known by the magistrate to be a person of honesty and integrity and with no "axe to grind," or if he is a person likely to be such because of his position in life, there is no problem. But this is never the case when the officer feels he must not, or has promised not to, divulge to anyone the name or circumstances of the informant. What can be done to show that the "faceless informer" is a reliable source of information? The time-honored and court-tested way is, if such is truly the case, for the officer to swear that this informant has demonstrated his reliability in the past by giving information which proved to be true. *Jones v. United States*, 362 U. S. 257 (1960); *Draper v. United States*, 358 U. S. 307 (1959). It would seem, then, that an informant cannot be used effectively the first time he gives information except to check out his reliability for future use!

The third requirement is based upon federal court de-

cisions that a warrant based upon information from a confidential source is not valid unless there is other evidence to support the finding of probable cause. See *Roviaro v. United States*, 353 U. S. 53,61(1957). There are a number of ways to do this, it seems. There may be *two* (instead of one) informants who both report the same thing; the officer applying for the warrant may have some knowledge of his own to bear out (i.e., corroborate) what the informants have said; the prospective defendant may have a record or reputation for the same criminal offense as is involved in the present proceeding; and so on.

To demonstrate what has been said, the box on page 15 contains a copy of the affidavit upon which a search warrant was upheld by the United States Supreme Court in *Jones v. United States*, above. For federal search warrants, the facts constituting probable cause must be set forth in the supporting affidavits. Rule 41(c), Federal Rules Criminal Procedure. The same evidence, given orally under oath to the magistrate, would support a state search warrant. (Except for North Carolina warrants for barbiturate drugs and stimulant drugs, the evidence amounting to probable cause need not be set out in the affidavit.)

In upholding officer Didone's sworn statement as sufficient proof of probable cause, the Supreme Court said, 362 U. S. at page 271:

> . . . The Commissioner need not have been convinced of the presence of narcotics in the apartment. He might have found the affidavit insufficient and withheld his warrant. But there was substantial basis for him to conclude that narcotics were probably present in the apartment, and that is sufficient. It is not suggested that the Commissioner doubted Didone's word. Thus we may assume that Didone had the day before been told, by one who claimed to have bought narcotics there, that [defendant] was selling narcotics in the apartment. Had that been all, it might not have been enough; but Didone swore to a basis for accepting the informant's story. The informant had previously given accurate information. His story was corroborated by other sources of information. And [defendant] was known by the police to be a user of narcotics . . .

[*NOTE: This brief paper is to afford some guidance to law officers and to magistrates (and other court officials with authority to issue search warrants) in the issuance of search warrants, and more specifically in the matter of showing probable cause to justify the warrant. It does* NOT *deal with the matter of when state court trial judges may, can, or ought to compel the officer to disclose the name and identity of his source of information. See* ROVIARO V. UNITED STATES, *353 U. S. 53 (1957) for a discussion of the federal rulings in this regard. While federal decisions under the Fourth Amendment are binding on State courts and govern State searches, under* WOLF V. COLORADO, *338 U. S. 25(1947), and* MAPP V. OHIO, *81 S.Ct. 1684(1961), federal decisions concerning the divulgence of the name of an informant at the trial, in order to enable better preparation or conduct of the defense, are procedural decisions, and the state courts are governed by their own rules of evidence and procedure in this regard.*]

REAPPORTIONMENT OF STATE LEGISLATIVE SEATS

(Continued from Page 5)

may in itself stimulate legislative action. It is submitted that if the Supreme Court once indicates that it has not found any effective means of forcing the state legislatures to reapportion seats, and that it will not approve of the courts themselves performing the apportionments, the state legislature will ignore the courts as they now ignore the state constitutions. It is naive to suggest that the reason for state inaction is a lack of certainty as to the moral duty involved; and it is hardly likely that members of the state legislatures have any greater respect for the Supreme Court than they have for the State Constitutions.

If the courts themselves undertake anything short of complete redistricting and reapportionment, what is to prevent the legislatures from revising the incomplete court-revised scheme, and moving back to the status quo ante? Of course, this would not be nearly so easy as it is to retain the existing status. Is there a substantial danger of a sort of political fan-dance wherein the districts are shifted one way by the legislature in their session-years, and the other way by the courts in the off-years? Such a possibility is not as remote as it might seem. The very heart of the legislative prerogative has been stricken, and the defense of the prerogative will not be limited to the demagogues and the lunatic fringe.

The decision in *Baker v. Carr* must be confusing indeed to a foreign student of the American political system. On the one hand we see a 9-judge court, appointed for life, completely out of reach of the ordinary citizen through established political processes. On the other we see a state legislature, elected by the people for two-year terms, and directly in touch with the people as a routine principle of their official life. Yet it is to the court that the citizen has gone for redress of a political grievance, despite the fact that in the very instrument of government under which the state operates, the legislature is charged with the duty of affording redress.

The unfortunate aspect of the case is that a matter involving the most direct and delicate aspects of the separation of powers doctrine and the federal-state relationship has had to be decided in a situation where the moral basis of the traditional status has been completely undermined by the persistent failure of the state legislatures to discharge their constitutional duty. It is one thing to say that the state legislatures have got no worse than they deserve. The more important question is, has the individual citizen suffered more, in the modification of the governmental scheme which results from this decision, than he has gained from a more even distribution of legislative representation?

[*Note: Since the text of this article was set into type, the Governor of Tennessee has called a special session of the General Assembly of Tennessee to convene on May 29 to consider reapportionment. In the call, which limits the matters which the special session may consider, the Governor authorized the legislature to order a referendum on the question of calling a limited convention to rewrite these sections of the Tennessee Constitution dealing with the legislature. The call also authorized the legislature to consider dividing urban counties into representative districts, each of which would elect a single representative, as opposed to the existing practice of having all of the voters of the county vote for all of the representatives; this device would tend to minimize the cohesiveness of the urban county delegations.*

The three-judge federal district court has set June 11 as the date for further hearing in the case following the remand from the Supreme Court. Thus, the court hearing and the legislative session may run concurrently, with each watching the other carefully, to see what action each may have to take.]

MECKLENBURG MOVES TO COLLECT AUTO TAX REVENUES

by Robert P. Alexander
Mecklenburg County Tax Supervisor

Delinquent in listing personal property, mainly motor vehicles, for taxation has been an annual problem in Mecklenburg County

Each year Mecklenburg County purchases from the Motor Vehicle Licensing Division of the North Carolina Department of Motor Vehicles, a copy of the title registrations on vehicles registered in Mecklenburg County. These registrations are compared with the personal property tax listings to determine if all motor vehicles have been listed for the current year's property taxes. In 1955, there were approximately 5000 motor vehicles which were not listed. In 1961, the number had grown to over 10,000. Investigation revealed that approximately 10% of these had been delinquent for three years.

In prior years, Mecklenburg County had been sending out notices of "Assessment Pending" on these motor vehicles. The taxpayer was given an opportunity either to list the property or to give an explanation as to why the property should not be listed for the current year's property taxes. The response to those notices was poor and several thousand motor vehicles had to be arbitrarily assessed by the county commissioners.

After these tax charges were placed upon the school scrolls and bills were sent, it frequently turned out that the motor vehicle should not have been assessed due to some reason, such as "already listed in another name," "vehicle the property of a non-resident service man," or "purchased after January 1st," the assessment date. Removing these tax charges from the tax scrolls for good cause, resulted in a tremendous amount of paper work and became very burdensome to the tax supervisor's staff and to the tax collector.

After consultation with the county attorney and the board of county commissioners, it was decided to summons into court those persons who had been delinquent for three or more years and to charge them with failure to list property for taxes, as provided for under the General Statutes. A great deal of newspaper publicity was given to this plan prior to its being put into effect, and the results of these court trials was most gratifying.

To date, Mecklenburg County has tried 527 persons and has convicted all but three. The revenue collected from the court trials amounted to $34,040.83. In addition to the revenue from the courts, the late automobiles, voluntarily listed, numbered about 6,500 and will produce $179,482 in revenue.

The public as a whole has received this program very enthusiastically and they think that it is something which should have been done long ago. Very few persons who were summoned into court showed any resentment over the fact that they were being tried for failure to list their property. Most of them readily admitted that they had been grossly negligent.

Mr. Harold P. Garrison, assistant tax supervisor, was in charge of the program and did a most remarkable job of assembling the necessary data and evidence to efficiently prosecute the cases in Mecklenburg County Recorder's Court. Judge Winifred Erwin, Solicitor Joe Travis and Court Clerk Robert Hinson cooperated to the fullest extent and insured the success of this effort.

Recent Cases Interpret Driver License Law

by Thomas M. Tull, Jr.

Research Assistant, Institute of Government

The drastic actions of suspension and revocation of drivers' licenses have measurable effects on highway safety. In 1956-58, a study based on 40,000 North Carolina drivers showed that one group of drivers, whose licenses had been suspended for traffic convictions, had fewer accidents after regaining their licenses than a similar group, whose licenses had not been taken away. The results of this study, due to the statistical procedures followed, would not have differed substantially, even if all North Carolina drivers had been included.

The effectiveness of these driver improvement tools in deterring *accidents*, however, has not deterred *litigation* concerning their propriety.

ANALYSIS OF LEADING CASES BY SUBJECT MATTER

1. *Limitations On Freedom to Drive*

The operation of a motor vehicle on a public highway in this State is a conditional privilege, not a contractual or constitutional right, and is subject to reasonable restriction under the police power by the Legislature in the interest of safety. *Honeycutt v. Scheidt*, 254 N.C. 607 (1961); *Justice v. Scheidt*, 252 N.C. 361 (1960). An example of a legislative restriction of the driving privilege held valid by our court is the 1957 act requiring proof of financial responsibility before a license plate is issued. *Justice v. Scheidt*, 252 N.C. 361 (1960).

The Legislature has authority to designate the court or agency through which, and the conditions upon which, a driver's license may be suspended or revoked. *State v. McDaniels*, 219 N.C. 763 (1941). When the Legislature designates such an agency, it must supply the agency with standards or guidelines for controlling its discretion; otherwise, there is an unconstitutional delegation of power. *Harvell v. Scheidt*, 249 N.C. 699 (1959), (condemning the former "habitual violator" provision.)

In North Carolina, the Department of Motor Vehicles has been delegated exclusive power to suspend or revoke drivers' licenses. Thus, a provision in a *judgment* that defendant surrender his license and not operate a motor vehicle for a specified period is void and will be stricken on appeal. *State v. Warren*, 230 N.C. 299 (1949). On the other hand, a judge may, with the defendant's consent, *suspend execution of a judgment upon condition* that defendant not operate a vehicle upon the highways for a specified period *State v. Green*, 251 N.C. 141 (1959). A court may also *continue a judgment* upon payment of costs, and in such cases there is no final conviction for which the Department may suspend a license. *Barbour v. Scheidt*, 246 N.C 169 (1957).

2. *General Rules for Both Suspensions and Revocations*

Suspensions and revocations are not punishment for violation of traffic laws, but are ordered primarily to protect the public. Secondarily, they impress the offender with the necessity for obedience to traffic laws, for the safety of all. *Harvell v. Scheidt*, 249 N.C. 699 (1959); *Harrell v. Scheidt*, 243 N.C. 735 (1956).

The court cannot impose the more severe punishment permitted for a second offense of drunken driving unless the warrant charges a second offense. But the Department must impose the lengthier period of revocation required for a second offense of drunken driving, even though the warrant does not charge a second offense, the revocation procedure not being any part of the punishment imposed by the court. *Harrell v. Scheidt*, 243 N.C. 735 (1956).

Upon restoration of a license or driving privilege suspended or revoked for conviction of a traffic offense, any *points* previously accumulated in a driver's record are canceled. G.S. 20-16(c). However, when the Department suspends a license for speeding, it may consider a prior *conviction* for speeding, even though the same conviction has been used as the basis for a prior suspension. *Honeycutt v. Scheidt*, 254 N.C. 607 (1961).

When the statutes give the Department authority to revoke or suspend a license, the decision of the Department must be obeyed, or an appeal made. As in the case of a court order, the Department's ruling may not be disregarded, even though based on a mistake of liaw or fact. The licensee's remedy is through a Departmental hearing, and therefore, if necessary, though appeal and trial *de novo* in the Superior Court. *Beaver v. Scheidt*, 251 N.C. 671 (1959). A Departmental hearing is a prerequisite to an appeal. *In re Wright*, 228 N.C. 301 (1947).

3. *Mandatory Cases*

When the Department revokes a driver's license under the mandatory provisions of G.S. 20-17, a hearing is not authorized. Nor is the licensee entitled to appeal to the Superior Court. An attempted appeal in such a case is void from the beginning since the court never acquires urisdiction. *Mintz v. Scheidt*, 241 N.C. 268 (1954).

A plea of *nolo contendere* to one of the offenses listed in G.S. 20-17 is equivalent to a plea of guilty in that case and for the purpose of that case only. The court which accepts such plea must, under G.S. 20-24(a), enter a conviction on the court records, compel surrender of the license, and forward it along with a report of conviction to the Department of Motor Vehicles, whose mandatory duty under G.S. 20-17 it then becomes to revoke the driver's license. Since the foregoing is held to be "one continuous transaction," *Fox v. Scheidt*, 241 N.C. 31 (1954), the Supreme Court thus avoids application of the general rule that a plea of *nolo contendere* in one case cannot be used as evidence of guilt in another.

G.S. 20-16.1, requiring suspension for exceeding by over 15 m.p.h. certain enumerated speed limits, does not mention speed limits in specially posted zones. However, the court has held that a conviction of speeding 75 m.p.h. in a zone specially posted for 45 m.p.h. requires suspension for exceeding by over 15 m.p.h. the "general" speed limit of 55 m.p.h., which is mentioned by G.S. 20-16.1. *Shue v. Scheidt*, 252 N.C. 561 (1960).

4. *Discretionary Cases*

G.S. 20-16(d) provides for a hearing in the Department, either before or after suspension of a license, and upon application of the licensee, which procedure must be followed and made to appear in any petition for review in the Superior Court. *In re Wright*, 228 N.C. 301 (1947). This case further holds that the appeal provided by statute is through trial *de novo*, at which the judge is not bound by findings of fact or conclusions of law made by the Department.

G.S. 20-16 authorizes the Department to suspend a driver's license upon "satisfactory evidence" that the licensee has committed, among other offenses, an offense for which mandatory revocation is required upon conviction. If allowed by the court trying

(Continued on page 19)

EDITOR'S PERSPECTIVE

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

Salisbury's All-America City Award: A Suggested Meaning

A city, like an individual, does not stand still. It grows or it shrinks. It advances or it declines. Its life is not static, but dynamic and flexible. In essence, however, a city's directions depend primarily upon the initiative, vision, desire, and leadership of its citizenry.

In this light, the selection of Salisbury as one of eleven cities, towns, and counties from the entire United States to win an "All-America" label and award takes on meaning. The award is made specifically "for outstanding community's progress through citizen-led programs." It is given by the National Municipal League and *Look* magazine. It is "designed to inspire and guide others who wish to stimulate similar citizen action." The competition is open to all communities in the nation without regard to size or geographic location.

In a special "All-America City Edition" the *Salisbury Post* included this most interesting and revealing comment:

"The municipal operation in Salisbury was a bright spot. Salisbury has been blessed by honest government for many years. Politicking, inefficiency and backwardness have not been foreign to some administrations; yet, over-all, municipal government has been good for a long time.

"The employment of C. L. Lineback as city manager during the 1950's sparked a move toward excellent government, a condition which has continued to this day. He has been given strong support by capable and reasonable councils.

"Emphasis of the city administration has been on a more efficient operation through the use of more efficient machinery and better training of city officials."

Undoubtedly, the factors which go into making good government played a vital and compelling role in Salisbury's achievement. It is likely that the co-ordinated effort of the people in the community was equally necessary and important to the results obtained.

In the words of the paper:

"These have been busy years for a great many citizens, involved in one way or another, in this upsurge of interest in community improvement.

"While many of the principal objectives have been attained, many more are still goals. At the present time, the momentum achieved in the last few years has shown no sign of slowing down."

It is worth noting that Winston-Salem won similar recognition last year and that Laurinburg also received "All-America" recognition in 1956. In each instance the achievement should serve as a spur, not only to the communities so recognized, but to all others looking forward to increasingly efficient and conscientious government and growing citizen participation.

One Candidate's Insight . . .

It is not unusual for a candidate who runs for reelection for public office to tend to feel that lack of opposition may constitute an endorsement of his work and procedures. The following letter was sent recently by a well-known Clerk of Superior Court in a North Carolina county to all the employees in his office. His thoughts contain perspective worthy of consideration by officials and public alike. Here is his letter:

"The fact that I do not have opposition in the forthcoming Primary and General Election should not be interpreted as an endorsement of all our office procedures as having reached maximum efficiency. The public rightly expects and demands that we continue to improve efficiency and to further modernize our office. We cannot afford the mistake of complacency, indifference and apathy in the performance and discharge of our dties. It must be our purpose to increase our efforts in rendering efficient and courteous service to the public.

"Bear in mind that people who have business to transact with our office consider it of utmost importance and they are often confronted with personal problems of grave and serious concern to themselves and their loved ones. We must at all times use patience, tolerance and understanding in our service to them.

"I wish to thank each of you for your faithful and diligent work. I will welcome suggestions and ideas you may have at any time regarding improved methods of serving the public. Our goal must be sincere and courteous service and a more efficient office operating upon the most possible economy in cost to the public."

RECENT CASES

(Continued from page 18)

him for such an offense, however, the licensee may plead *nolo contendere* ("I do not contest it") to the charge, and thereby prevent the Department from proceeding under G.S. 20-16. Reason: A plea of *nolo contendere* is not satisfactory evidence of guilt except in and for the purposes of the case in which pleaded. *Winesett v. Scheidt*, 239 N.C. 190 (1953).

G.S. 20-16 also provides for suspension upon satisfactory evidence that the licensee has committed an offense in another state which if committed in this state would be grounds for suspension or revocation. *In re Wright*, 228 N.C. 584 (1948), holds that G.S. 20-23 reinforces G.S. 20-16(a) (7) by adding the power of revocation and providing a rule of evidence that the Department's notice of such an offense need not be from official sources.

The Department *must* revoke a driver's license upon notice of his final conviction by a North Carolina court of an offense listed in G.S. 20-17. Its action is merely discretionary, however, as to out-of-state offenses. The licensee may show, at a trial *de novo* in the Superior Court, that the out-of-state conviction was irregular, invalid, and insufficient to support the reported conviction. *Carmichael v. Scheidt*, 249 N.C. 472 (1958).

BOOK REVIEWS

THE FEDERAL GOVERNMENT AND THE CITIES. From a series of lectures delivered at The George Washington University, The School of Government, Business, and International Affairs. Washington, D. C., 1961. 72 pp. $2.50-cloth, $1.00-paper

A group of distinguished public administrators and governmental officials, including Louis Brownlow, Roscoe C. Martin, Robert E. Merriam, Robert C. Wood, Mayor Ben West of Nashville, and Senator Joseph S. Clark of Pennsylvania, contributed to this series on federal government-city (metropolitan area) interrelationships. David S. Brown, Professor of Public Administration at The George Washington University, was largely responsible for the series. His paper, "Prospects for Action," sums up the volume.

REAL ESTATE ANALYSIS. by Richard U. Ratcliff. New York 36: McGraw-Hill Book Co., 330 West 42nd Street, 1961. 342 pp. $7.50.

Governmental officials, particularly those concerned with real property, will find enlightening this clearly written analysis of the various fundamental determinants of real estate productivity and values. The volume is actually designed as a "first book for professional training in real estate," but chapters devoted to the physical foundations and locational basis of real estate value, the real estate market, and urban dynamics, will be of some considerable interest to our readers. The author is professor of land economics at the University of Wisconsin.

MODERN GOVERNMENT. A Survey of Political Science. by Dell G. Hitchner and William H. Harbold. New York: Dodd, Mead & Company, 1962. 718 pp. $7.50.

The authors describe as their purpose "to spell out the political context of modern life." Convinced that old approaches to the introduction to political science have not been adequate, they undertake to "introduce the full sweep of political science as a discipline, furnishing some depth of analysis along along with reasonable breadth of information." The result is an interesting and rather comprehensive presentation of theory and ideas, as well as historical fact, designed to get at "the meaning of political life in the modern world, and . . . some of the ideas behind its non-democratic forms." This design is consciously calculated to help the student in "systematic and comparative study of political structures, institutions, behavior, and processes."

But the authors have achieved more. They have written an analysis of modernment government transcending national lines and ideas, and a text relevant to the fuller understanding by officials and public of the forces and thought at work in politics and government throughout the world.

ENDS AND MEANS OF URBAN RENEWAL (Papers from the Philadelphia Housing Association's 50th Anniversary Forum). Philadelphia: Philadelphia Housing Association, 1717 Sansom Street, 1961. 102 pp. $2.

This slim volume represents thoughts and second thoughts concerning urban renewal by a group of outstanding persons in the field: Paul Ylvisaker, Louis Winnick, David A. Wallace, William L. C. Wheaton, Chester Rapkin, and Cushing N. Dolbeare. A number of familiar assumptions are damaged beyond repair in the process. Anyone seriously interested in the intricacies of renewal will find these papers penetrating and provocative—and well worth the small investment of time required to read and re-read them.

JUVENILE DELINQUENCY, DEVELOPMENT, TREATMENT, CONTROL, by Ruth Shonle Cavan. Lippincott Co. 1962. $9.

This book offers a masterly discussion of the different aspects and problems of juvenile delinquency: the development of delinquency; the patterns into which it falls; its control, treatment and prevention; and the various legal methods of dealing with young offenders. Comprehensive bibliographies after each chapter contribute to the authoritativeness of the study.

The author planned her book as a textbook for college students, but it should be stimulating and useful also to various professional groups working with delinquent children, as well as to the general public.

BOND SALES

From 21 November, 1961, through 17 April, 1962, 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 given.

Unit	*Amount*	*Purpose*	*Rate*
Cities:			
Fuquay Springs	$ 361,000	Sanitary sewer	3.61
Graham	500,000	Water	3.64
Jacksonville	845,000	Water	4.04
Kinston	440,000	City hall, recreation facilities	3.07
Newport	35,000	Water, town hall	4.35
Rowland	37,000	Water	3.86
Waxhaw	10,000	Water	3.73
Wilson	2,040,000	Water, gas system	2.95
Counties:			
Davidson	300,000	Refunding school	2.84
Lee	307,000	Hospital	3.18
Martin	215,000	Hospital	2.78
Randolph	1,750,000	School building	3.40
Other:			
Grifton School District, Pitt County	155,000	School building	3.81
Stanly County Administrative Unit	750,000	School	3.27

Credits: The cover picture and the photo top-right on page 12 are courtesy of the *Salisbury Post*. Photos on p. 10 are courtesy of Mooresville City Manager, Phin Horton, III; on p. 12, courtesy Division of Community Planning, N. C. Department of Conservation and Development. Maps and sketches are from Julian Tarrant. *A Downtown Development Plan, Durham, N. C.* (p. 8); Hammer and Company Associates, *Downtown Dynamics: Economic Analysis of Downtown Greensboro's Expansion Potential* (p. 9, upper right); Downtown Development Committee and the city of High Point, *Revitalization, High Point's Central Business District Plan for Action 1961* (p. 9, bottom); North Carolina Department of Conservation and Development, Division of Community Development and Planning, *Rockingham . . . Central Business District Study 1961* (p. 11); Winston-Salem - Forsyth County Planning Board, *Downtown Core Winston-Salem, 1890, 1960, 1980 Toward a Program* (p. 13). Other drawings and layout are by Joyce Kachergis.

SCHOOLS TO BE HELD AT THE INSTITUTE OF GOVERNMENT

June, 1962—August, 1962

Name of School	*Dates*
	JUNE
Wildlife Recruit School	3 - 23
Prison Supervisors School	10 - 15
State Highway Patrol Basic School	1 - 30
Boys State	17 - 24
N. C. Sewage and Industrial Waste Treatment School	4 - 8
Law Enforcement Conference	26 - 27
Governor's Conf. on Education Beyond High School	15
Committee to Study Welfare Program	5
School of Public Health—Sanitarians	27 - 28
	JULY
State Highway Patrol Basic School	5 - 31
Delinquency Training Program	23 - 29
Driver Improvement Clinic (this is tentative)	9 - 13 & 16 - 20
Training Institute in Mental Health Statistics	29 - 31
	AUGUST
State Highway Patrol Basic School	1 - 10 & 13 - 23
Delinquency Training Program	1 - 11
Practical Skills Course	26 - 31
Training Institute in Mental Health Statistics	1 - 10

IN A YEAR . . .

MORE THAN 8,000 COUNTY, CITY, AND STATE OFFICIALS . . .
ATTEND INSTITUTE OF GOVERNMENT . . .
SCHOOLS, MEETINGS, AND CONFERENCES

THIS SUMMER . . .

YOU MAY BE ATTENDING . . . ONE OF THE SCHOOLS NOTED ABOVE

The Institute of Government Serves Officials and Citizens of North Carolina

RECENT INSTITUTE PUBLICATIONS

Now Available to You . . .

CRIMINAL LAW AND PROCEDURE

1. *Changes in Criminal Law and Procedure Enacted by the 1961 General Assembly* by L. Poindexter Watts. $2.00

ELECTIONS

2. *Conducting Municipal Elections* by Henry W. Lewis. $1.00
3. *Primary and General Election Laws and Procedure*—1962 Edition by Henry W. Lewis. $1.00

HEALTH AND WELFARE

4. *Public Welfare in North Carolina* by Roddey Ligon

INDUSTRIAL DEVELOPMENT

5. *Guidelines for usiness Leaders and City Oweials to a New Central usiness District* by Ruth L. Mace. $3.00

LAW ENFORCEMENT

6. *Law of Arrest* by Roy G. Hall, Jr. $2.00

LEGISLATION

7. *Summary of 1961 Legislation* by the Institute of Government Staff. $3.00

LOCAL GOVERNMENT

8. *Calendar of Duties for City Officials—1961-62* by Bob Byrd and Robert Page. $1.00
9. *Calendar of Duties for County Officials—1961-62* by Byrd and Page. $1.00
10. *County Salaries and Fees* by Elizabeth Pace. $1.00
11. *Justice of the Peace Materials* by Roy G. Hall, Jr., $1.00
12. *Misdemeanors Within the Trial Jurisdiction of Justices of the Peace* by Roy G. Hall, Jr. $.50
13. *Register of Deeds Bulletin #4* by Allan W. Markham.

MOTOR VEHICLES AND TRAFFIC SAFETY

14. *Driver's License Law* by C. E. Hinsdale. $2.00
15. *Size, Weight and Equipment of Motor Vehicles in North Carolina* by Thomas Tull. $2.00

PERSONNEL

16. *Personnel Administration in North Carolina Cities* by Donald Hayman. $.25

PLANNING AND ZONING

17. *City Planning in North Carolina* by Philip P. Green, Jr. $.25
18. *Planning Legislation in North Carolina* by Philip P. Green. $2.00
19. *Urban Renewal Programs in North Carolina Cities* by Ruth L. Mace.

STATE GOVERNMENT

20. *Data on North Carolina Congressional Districts, State Senatorial Districts, and Apportionment of the State House Representatives* by John L. Sanders.
21. *Maps of North Carolina Congressional Districts, 1789-1960* by John L. Sanders.

TAXATION AND FINANCE

22. *Local Improvement Financing* by Warren ake Wicker. $.25
23. *Municipal Cost-Revenue Research in the United States* by Ruth L. Mace. $3.00
24. *Property Tax Bulletin #23: Tax Reduction for Wind Damage* by Henry W. Lewis. $.50
25. *The List Taker's Guile* by Henry W. Lewis. $1.00

WILDLIFE RESOURCES

26. *Acts of the 1961 General Assembly Affecting the Game, Fish or oat Law of North Carolina* by L. Poindexter Watts. $1.00

PLEASE SEND ME THE FOLLOWING INSTITUTE PUBLICATIONS:

Institute of Government
University of North Carolina
Box 990
Chapel Hill, North Carolina

(Please indicate the number of copies desired to the right of the publications number)

1	2	3	4	5	6	7	8	9	10	11	12	13
14	15	16	17	18	19	20	21	22	23	24	25	26

Name .....

Address .....

Amount enclosed $ ..... Make check payable to INSTITUTE OF GOVERNMENT