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1936

«G-Man» to Aid in Organizing Local, District, and State-Wide Police Schools



POLICE TRAINING PROGRAM FOR NORTH CAROLINA

Law Enforcing Officers' Division—The Institute of Government

- I. *Annual statewide training school* of at least ten days duration for officers picked by local law enforcing units for intensive training as instructors.
- II. *District schools* to be conducted quarterly each year in different sections of the state for larger numbers of officers.
- III. *Local schools in counties, cities and towns* throughout the state where an hour and a half or two hours of instruction can be given four days each week for at least four two-month periods throughout the year, reaching every law enforcing officer in the state.

Copy of News Release from Federal Bureau of Investigation Making Announcement

THE DIRECTOR of the Federal Bureau of Investigation has granted a three months' leave of absence to one of the Special Agents of the Bureau, Edward Scheidt, to cooperate with The Institute of Government of the State of North Carolina in instructing the law enforcement officials of that State and coordinating their activities. This is the first time such action has been taken by the Federal Bureau of Investigation.

The Institute of Government, through its Director, Albert Coates, has been one of the pioneers in the instruction of State and local officials and the improvement of law-enforcement conditions throughout

North Carolina has the honor of being the first state in which the Federal Bureau of Investigation has supplied one of its special agents to a state organization (The Institute of Government) to help organize a system of local, district, and state-wide police schools. Pictured at left is J. Edgar Hoover, Director of the Bureau, who has frequently commended the state-wide Police schools previously held by the Institute of Government and extended to them the full cooperation of the "FBI" from the beginning.

the State of North Carolina. Because of this endeavor on the part of The Institute of Government to improve such conditions, the Fed-
(Continued on page two)

BELOW: Ed Scheidt, the Special Agent selected by The Institute to head up the program, is a North Carolinian with five years' experience in all phases of police work with the Bureau of Investigation.



eral Bureau of Investigation has been glad to make available a specially trained investigator to assist in this work. Professor Coates is also a member of the training faculty of the FBI National Police Academy, lecturing on the subject of criminal law. The Institute includes among its functions the coordination of the work performed by the law-enforcement officers of the State; it conducts research work as to the functions of the various officials of the State Government, and provides instruction in the field of law-enforcement.

Among the duties to be assigned to Special Agent Scheidt by The Institute of Government will be the preparation of a Manual of Rules and Regulations and a Manual of Instruction to guide the activities of the law-enforcement officers of North Carolina and to establish uniformity of procedure in the fundamental requirements of enforcement and regulatory work. He will likewise lend active assistance in establishing a state-wide training

school for police chiefs and police instructors, district schools for the purpose of coordinating the activities of law-enforcement officers on a broad scale, and local schools to be operated in each of the police departments of the State. The Federal Bureau of Investigation hopes through this medium to secure even closer cooperation between the law-enforcement officials of the State of North Carolina and the Bureau.

Special Agent Scheidt is a graduate of the law school of the University of North Carolina and is a native of that State. His assignment was specifically requested because of his knowledge of North Carolina law-enforcement procedure. Special Agent Scheidt entered on duty in the Federal Bureau of Investigation as a Special Agent on November 16, 1931, and has since served in the Kansas City, New York, Washington, and Charlotte field office districts and for a time served as an Administrative Assistant to the Director of the Bureau at Washington, D. C.

looking to the adoption of uniform revenue and expenditure classifications and uniform practices in financial reporting. These would give North Carolina cities the benefit of comparing the cost of various municipal services with those in other towns, and through this a check on the relative cost and efficiency of each in their own unit.

In addition to the instructional side, the law-enforcing officers took their gathering as the occasion to go over the plans and work out the details of The Institute's new and expanded system of local, district, and state-wide police schools described elsewhere in this issue. The program was given the enthusiastic endorsement of each gathering, and resolutions were passed thanking the Federal Bureau of Investigation and its Director for their splendid co-operation and assistance in the past and particularly for their present action in granting Special Agent Scheidt a leave of absence to help work out their training program.

Mr. Scheidt, together with Albert Coates, Director of The Institute, are going ahead now with the work of preparing the Police Manual and Course of Instruction. Mr. Brandis and Mr. Grice are also preparing additional Guidebooks on License Taxes, Special Assessments, and Budgeting. F. N. Lowden, Federal Agent in charge of the Charlotte bureau, and F. N. Littlejohn, Charlotte Detective Chief and President of the State Association of Police, also made large contributions to the instruction and discussion at the conferences of law-enforcing officers.

Officials Hold District Meets

THE Institute of Government's District Conferences this month for the discussion of new developments and practical problems and the clearing up of troublesome questions confronting public officials in their day-to-day work brought together a total of 500 officials, representing 71 counties and 127 towns, and were uniformly termed by those attending to have been a real aid and a distinct success. One-day meetings were held at five centers, Tarboro, Fayetteville, Charlotte, Hendersonville, and Graham, for three separate groups—city and county attorneys and tax officials, city accountants, clerks, and other fiscal officials, and city and county law-enforcing officers.

One of the outstanding developments of the tax meetings, which featured discussion of important recent decisions and covered almost every type of problem arising in tax administration, was the need that was uniformly voiced by officials for simplified tax collection and fore-

closure machinery. Henry Brandis, Jr., of The Institute staff, who led the discussion, has been asked and is now assisting a Committee appointed to draw up a new tax foreclosure law for submission to the next Legislature. The city accountants and clerks, meeting with T. N. Grice, made another significant move when they took the first steps



Three members of The Institute of Government staff took prominent parts in the program and discussions at the District Conferences of Officials. Left to right: Albert Coates, the Director (Law Enforcement), T. N. Grice (Accounting), and Henry Brandis, Jr. (Tax Administration).

Roads and Debts — State or County?

By M. R. ALEXANDER

Of the Staff of the Institute of Government

SEVENTY-NINE of North Carolina's 100 counties have filed 61 million dollars in claims with the State Road Debt Commission for highways to the cost of which they made "contributions" or "advances" or which they built entirely before the State Highway System was formed. This is roughly 46% of the total bonded debt of all 100 counties of the State and would obviously be a tremendous help to the finances of those counties filing claims.

On the other hand, this sum is roughly 37½% of the present State Debt, which, due to decreases in tax valuations in recent years, is already dangerously close to the 7½% limitation imposed by the Constitution on the State Debt that may be incurred by the General Assembly without a vote of the people. Suppose, however, that the State assumed the county road claims by vote of the people, or that the Legislature made appropriations to pay the claims out of gasoline taxes without assuming them as State Debts.

Interest on 61 millions at 4% amounts to around 2½ millions a year, and principal repayments, if spread over roughly a 30-year period, as is the rest of the State Debt, would require another 2 millions annually. To repay principal and interest out of present highway funds would take approximately 30% of the sums appropriated by the State for highway construction, betterments, and maintenance in 1936-37 (about 15 millions). Or to repay them by increasing the amount of the gasoline tax would take a 1½¢ tax on 300 million gallons, the approximate amount sold in the State annually, and raise the State tax from 6 to 7½¢ a gallon.

What are the stakes and the issues involved, and what are the merits and the arguments on the side, first, of the State; secondly, of the 79 counties filing claims, and thirdly, of the other 21 counties? It has been 160 years since the Declaration of Independence, and for the first 139 of those years the construction and maintenance of streets and highways in North Caro-



Judge Guy Elliott of Kinston has taken a leading part in the counties' fight for road refunds from the beginning, first as President of the Eastern Carolina Chamber of Commerce and now as chairman of a Steering Committee appointed by a bloc of counties to press their claims.

lina was left to the individual counties and communities. It is to this period and system that we must look for the background and explanation of the present fight between the State and its counties over highway costs and debts.

From Local to State Highways

The "State Highway System" of today is much like Topsy; it "just grew," and the State and Counties are still suffering from the growing pains. Until the last 15 years each county and local unit improved and kept up—or neglected—its streets and roads as it pleased. Indeed, there was little need for the present network of paved highways in the horse and buggy age, as long trips were taken by train and farm-to-market roads were about the only requirement. The coming of the automobile brought with it a demand for streets and roads and ushered in a period of street and highway improvements. However, this was still by the counties and their subdivisions. One county might have good roads and another muddy trails, and it frequently happened that one county would build a good road to its line only to come to a dead end for the reason that the neighboring unit had selected a different location or built no road at all.

The State Highway Commission was organized in 1915 to supply the central planning and control necessary to the development of a uniform and unified system of connect-

ing highways throughout the State. However, this was mainly an advisory body in the beginning, and the counties continued to provide and control the roads, but with increasing advice and assistance from the State, until 1921. That year saw the State take over the main or trunk roads and form a "State Highway System" supported and controlled by the State. In the meantime the Federal Government, with a view to developing a national as well as state highway systems, had begun making subsidies to state highway construction programs which jumped from 5 millions in 1917 to 125 millions in 1931. Thus encouraged, the State then took over the "County Highway Systems" or secondary roads which had been left to the counties 10 years before, and highways, for reasons of commerce, convenience, and national defense, changed from matters of local to state and national concern.

That the highway burden has been saddled on the State and Federal governments to stay, so far as North Carolina is concerned, is now an accepted fact. But what of the cost of and the debts still owing on the roads that the counties built and turned over to the State and of the roads subsequently constructed by the State to which the counties made heavy "contributions" and "advances"?

It is necessary to a proper understanding of the issues at stake to keep in mind the post-war clamor for more and better roads, the smallness of State highway funds and appropriations in the beginning, and the corresponding desire of State and counties to secure the most roads with the least delay.

"Contributions" and "Advances"

The result was inevitable. "We need and want a paved road from the county seat to the line," one delegation might petition the Highway Commission. And back would come the answer: "Sorry but we'll have to wait until our funds and program permit." Or maybe another county would say: "We want a wide, concrete road." And the

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Agriculture Building, Escuriburg, Scotland



Grading Runways - Charlotte Airport



Raleigh Negro Park, Swimming Pool And Bath House



Pouring Seats - Charlotte, N.C.



Sewing Room Durham County

WPA at work



A Message to Local Units from the W.P.A.

By **GEORGE W. COAN**
State Director, Works Progress
Administration



THESE past few years have been difficult ones for the heads of local governmental units. Not only have they had to run and solve the increasingly intricate business of managing city and county affairs, which is enough alone, but there has also devolved upon them the duty of seeing that an unprecedented number of our citizens be protected from hunger, cold, and disease.

As a former mayor and participant in prior relief programs, the problems confronting them were already known to me. An added understanding of their needs has been attained through the past year in my present work. Instead of being "on the firing line" with them, I am now with the division which furnished the supplies and ammunition without which a successful campaign could not be waged. As you know, Congress, in May, replenished our commissary. The Works Progress Administration continues to permit local governmental agencies to draft supplies in accordance with their needs.

We are located in the same place and we are there to continue helping with local relief needs. That phraseology is carefully chosen, for the purpose of our work program is not for the individual local governmental unit to assist the WPA in providing work for its needy unemployed. Quite to the contrary, the responsibility has ever been on their door step. The Works Progress Administration exists to help public officials discharge that responsibility. The people for whom work is provided live in their cities. The projects placed in operation with WPA's assistance are originated and selected by them, and when they are completed it is their cities, towns, and counties which have been enriched. Also, in our new program, the local representative of the State Department of Public Welfare determines which of our people are eligible for employment on a work Relief Project.

Never let us lose sight of the fundamental purpose of the WPA program—creation of employment for persons in need of work who are

able and willing to work. When it has been determined that the need exists in a particular place, the WPA's only restrictions are that such a public subdivision has a sufficient number of eligible persons of the skills needed to properly prosecute the proposed project; that the project is permanent and useful. We are stressing that point in the new WPA program. As heretofore, chief regard is given to the permanency and usefulness of a project, and priority as to which of a governmental unit's projects are to be operated is in accordance with the preferences suggested by the city or county. Lastly, due consideration must be given to the man-year labor cost involved and the amount of money the local government agency proposes to put into its undertaking. This combination of effort results in the fact that no project may be properly called the WPA's. It is the joint enterprise of the Works Progress Administration and the sponsor. For example: the airport being built in Greensboro. To name it properly, we must say that the airport construction is a Greensboro-WPA project.

For a particular illustration of how we have interpreted WPA projects, we may take any one of 1800 odd work relief projects in this state. For instance the City of Charlotte selected a stadium to be constructed. I mention that because it is nearly complete and is typical of so many WPA constructions. It consisted of levelling and grading the athletic field and the ground where the concrete seats were to be placed. Unskilled workers were given employment in the grading and in the many other phases of work calling for that class of labor. Skilled and semi-skilled workers were needed for the construction of the stadium itself. This project has been operated because of its usefulness, it being desired and selected by the officials of Char-

lotte and because, from an examination of our records, we knew that it was particularly adapted to the skills of persons in that locality who were on the relief roll, eligible for WPA employment, and who needed work.

There will come out of that project a needed, useful, and permanent benefit to that community; and the workers, besides earning a living for themselves and their families, are enthusiastic about their jobs because they know that their own home town is being enriched by a creation which they and their neighbors will enjoy soon and in years to come.

You will pardon me for using bad taste in mentioning money—we all know that the need for taking care of unemployed thousands still exists and, at least, for the time being it is the chief concern of the local officials. It must be faced—no covering or shellacing can hide it. The Federal Government through the WPA offers a proper and workable solution. To properly meet that duty the National and local governments must share the burden in properly worked out proportions. Neither can nor should try to bear it alone.

In the new WPA program, the cities, towns, and counties will have to expend larger proportions of money on their projects than heretofore. Moreover, as in the past, whether or not a particular city's project is on as large a scale as the same type of project in a neighboring place, depends principally on the amount of support such a city is willing to give.

It is not amiss to survey some of the things we are getting in North Carolina for our money. Here is a bird's-eye view of the WPA improvements gained by North Carolina during the past year:

Begin with WPA's contribution to aviation — North Carolina gave birth to flying, but she has been in the position of Mama and Papa Dionne, when they permitted somebody else to "steal the show." The WPA is helping redeem that birthright. Together, we are spending

(Continued on page twenty)

Notes from the Cities and Counties

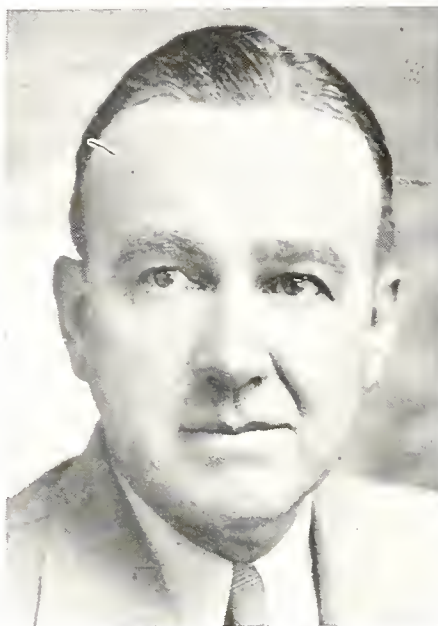
MID-SUMMER brought with it a round of enjoyable conventions for municipal officials, county commissioners, accountants, clerks, sheriffs, and other groups, but not all was play by any means. Officials swapped notes, formulated legislative programs, and girded themselves for the legislative fights to come. In addition to such old and familiar bones of controversy as the gasoline tax and relief costs, two such new fights in the offing this year are those over A.B.C. store revenues and county road refunds.

A strong effort by the State to secure a "cut" on whiskey store profits was seen as certain after the announcement that total sales in the 18 "A.B.C." counties last year were around three million dollars and the net profits in excess of six hundred thousands. However, commentators split as to the form the ultimate arrangement would take, whether State stores, local option with State-sharing of profits or county control with heavy State taxes.

The County Road Debt Commission had received claims totalling \$61 millions from 79 counties on August 25, the deadline for counties to file their claims. The total amount of refunds involved in the bill introduced in the 1935 Legislature was \$8,500,000 covering 44 counties. Hearings are now being held in the East, Piedmont, and West. The important question is how many counties will fight the refund proposal for the reason that such action would deprive them of new road construction or would cost them more in taxes than they would receive in return.

In addition to the Road Debt Commission, Governor Ehringhaus recently appointed similar groups to make studies of liquor legislation and the advisability of State-owned gasoline terminals and report their findings to the next Legislature. The Chairmen of the three groups, respectively, are Senator Carl L. Bailey of Roper and Representatives Victor Bryant and O. G. Barker of Durham.

Back home, officials struggled with budgets and tax rates, and in addition, struggled among themselves to iron out the cost of joint enterprises and services. In one of the principal readjustments Mecklenburg agreed to bear half the cost of health work, tax listing, industrial home, weights and measures regulation, and certain minor repairs, whereas Charlotte had borne a much larger share of the cost in the past.



CITIES' LEGISLATIVE PROGRAM

George A. Iseley, veteran Mayor of Raleigh, is the new President of the North Carolina League of Municipalities, which is now engaged in completing the formulation of its Legislative Program for the 1937 Assembly. A discussion and analysis of this program has been promised by one of the members of the Legislative Committee, and will be a feature of the October issue.

On the more pleasant side was the praise accorded to efficient administrations on many sides for a year's job well done. A few headlines picked at random indicate the sound basis of municipal administration in North Carolina. Thus, "All Bills Paid, Sampson Out of Red Once More"; "Cleveland again within Budget"; "Pay as You Go Motto Put into Practice in Nash"; "A Hand for Gastonia Employees," and "Johnston Adds New Services De-

spite Tax Reduction." Nor were the rewards limited to praise as several units reported restorations of depression pay cuts and a few even announced salary increases.

* * *

Public works notes: Pittsboro (PWA) water system completed. Asheville-Hendersonville (WPA) airport expected to be finished in October. Marion to have new \$25,000 (WPA) City Hall. Union Commissioners vote \$61,000 to School (PWA) program. Southern Pines appropriates \$27,000 for paving, water, and sewer improvements.

* * *

Financial flashes: Buncombe's re-financing program moves a step nearer to completion as Local Government Commission approves issuance of \$18,009,123 in refunding bonds. Another unit moves to clear up default as Dunn Commissioners authorize issuance of \$156,438 in refunding bonds. Meanwhile two other cities report substantial savings on debt service through refunding operations, Gastonia selling a \$773,000 issue at 4 $\frac{1}{4}$ % and 4 $\frac{3}{4}$ % and Burlington a \$451,000 issue at 4 $\frac{1}{2}$ % and 5%.

Institutional Exemptions

The North Carolina Supreme Court's recent decision that city or county property, to be exempt from taxation by the other unit, must be used for public purposes, raises an interesting question as to property of religious, educational, and fraternal organizations in the exempted class. Does the property of such institutions have to be actually used by the organizations for their own purposes, or is it enough if it be used for another purpose and the rent or proceeds devoted to the work of the organization? A sister state, Tennessee, tightened up on institutional exemptions last year, imposing the requirement of actual use for purposes for which the institution was created. Result: Addition of \$2,500,000 to the tax roll in Nashville alone, including property of institutions used for such various purposes as commercial parking lots, apartments, office buildings, and stores.



The 29th annual convention of the State Associations of County Commissioners and Accountants, held in Asheville August 11-13 and attended by more than 300 officials, was generally pronounced to have been one of the most successful and enjoyable yet held. A group of the delegates, caught between sessions, is pictured above.

**LEGISLATIVE PROGRAM
COUNTY COMMISSIONERS**

This convention hereby goes on record in opposition to the Thousand Dollar Homestead Exemption from taxation. If this amendment is passed, it will work irreparable damages to the smaller counties of the State, and a great hardship to all of the home owners.

We oppose any attempt to increase the public debt for any purpose not absolutely necessary.

We oppose any increase by the Legislature of the expenses of any county without notice to the County Commissioners.

We sincerely request that the Legislature provide an increased Mother's Aid fund, and endorse a reasonable old age pension fund plan, and request that an early effort be made toward this great relief.

We go on record as favoring the passage of such laws by the next General Assembly of North Carolina as will put the control and sale of all alcoholic beverages in North Carolina under the supervision of the County Commissioners of the several counties operating A. B. C. Stores with the net profits to go to such counties.

Highlights of the Convention of Commissioners and Accountants

OUTSTANDING among the features of the meeting of County Commissioners and Accountants was the address of Hon. Clyde R. Hoey, Democratic nominee for Governor, who stressed the need for reasonable social security, for improved welfare work, and for other services grounded on the preservation of human values in the State. While recognizing the necessity for close scrutiny of budgets and for the keeping of County financial houses in order, he urged the Commissioners, as "keepers of the conscience of the counties," to promote and support measures looking to the reduction of crime and particularly juvenile crime, the relief of poverty, the protection of the public health, and the care of the aged.

A highlight of an entirely different sort was the banquet given by Buncombe County and featured by the remarks of Dr. D. W. Daniels, of Clemson College, which were, of necessity, delivered in short spurts between rafter-raising guffaws. Other speakers on the program included Dr. John D. Robinson, retiring President of the Commissioners' Association; Frank Parker, State Statistician; T. H.

Woodard, Chairman of the Wilson County County Commissioners; M. F. Morgan, of Nash County; R. T. Shaw, of Guilford County; Hon. Charles M. Johnson, State Treasurer; and Henry Brandis, Jr., of the staff of The Institute of Government.

The Buncombe County Commissioners, headed by Chairman Grady Reagan, were unanimously endorsed as hosts and held up as examples to the New Hanover Commissioners, who will be hosts to the 1937 convention.

The final business session featured the election of officers and adoption of resolutions. New officers for the Commissioners' Association are T. R. Wolfe, of Stanly County, President; W. W. Watson of Hyde, Vice-Pres.; and John L. Skinner, Secretary and Treasurer. The Accountants' Association re-elected its officers as follows: John A. Orrell, New Hanover, President; W. J. Boykin, Wilson, Vice-President; and J. G. Garrison, Buncombe, Secretary.

The Commissioners' program for the coming year, as reflected in the resolutions adopted, is set forth in the accompanying box. Other reso-

lutions adopted included that approving the County Membership Plan of The Institute of Government and commending The Institute on its past services; resolutions endorsing the Federal and State Democratic administrations,

and particularly the fiscal record of the Ehringhaus administration; a resolution commending the work done by Director Johnson, Secretary W. E. Easterling, George Adams, and the entire force of the Local Government Commission; and

resolutions of appreciation for the faithful work of the Association's officers and of Mr. F. W. McGowen, County Accountant of Duplin County, who prepared much valuable material for the convention.

HERE AND THERE

—With Progressive Officials

A Florida resident in winter, a Michigan resident in summer, and always a resident of the other at tax listing time. Detroit, Mich., has broken up the "legal residence" racket by the simple expedient of a prompt check with the assessing officers of the other state or district. One such check resulted in adding \$600,000 in taxables to Detroit's books.

* * *

Fort Atkinson, Wisc., reports excellent results and substantial savings by purchasing used street and public works equipment and reconditioning it in the city's well equipped repair shop. Among the items that have been successfully procured at low cost in this manner are oil and tar distributors, graders, steam rollers, air compressors, and snow plows.

* * *

Berlin, Germany, police single out and hold the noisy, reckless, dangerous driver up to public opprobrium by branding his car with large and vivid yellow spots. The yellow-spotted cars quickly become rare, it is reported.

* * *

Sierra Madre, Cal., has invited Los Angeles County to make a survey of its departments with a view to consolidating certain city-county functions that are practicable under the contract method. Separate contracts are contemplated for each department or service which it is adjudged feasible for the county to take over. The county already performs three functions for the city—tax assessment and collection and health administration.

* * *

How many inmates of State and County charitable institutions are able, personally or through their legally responsible relatives, to pay

their keep? Wisconsin decided that there were hundreds of them escaping charges for the want of proper collection efforts, and set up a State agency to investigate all cases and handle all collections for both the State and the Counties. Results of first year's operations: 700 added to pay list with collections of \$218,596; total cost \$20,000.

* * *

The city and county of Pasadena, California, have co-operated in arranging their tax payment dates so that the taxpayer's obligations will fall due at regularly spaced intervals and not in one lump sum.

MUNICIPAL BANKRUPTCY

The future of federal municipal bankruptcy or debt adjustment legislation awaits the reconvening of Congress and the Supreme Court. After the Court had ruled the Sumners-Wilcox Act unconstitutional by a 5-4 vote, petition was filed for a re-hearing, and the Court granted a stay of execution until action is taken thereon this autumn. This means that further court actions against cities invoking the Municipal Bankruptcy Act have been stayed in the meantime. The fact that the stay order was signed by Justice Roberts, who sided with the majority, has given rise to the hope in some quarters that there will be a change of sentiment on the Court leading to a reversal of the former decision. A substitute bill, designed to overcome the Court's objections, was also introduced in the last Congress and favorably reported by the House Judiciary Committee only to die with adjournment.

Sheriff's Convention

A four-year term for Sheriffs and a plan for peace officers' pensions are the principal items in the legislative program adopted by the Association at its annual Convention at Wilmington, August 20-22. The group, after an extended discussion, decided against taking a definite stand on the question of local option. Judge J. Paul Frizzelle of Snow Hill and W. D. MacMillan, Chairman of the New Hanover A. B. C. Board, were the chief speakers from the outside. All officers were re-elected as follows: Sam A. Whitehurst of Pitt, president, O. D. Barrs of Lenoir and C. A. Robinson of Gaston, vice-presidents, and John R. Morris of New Hanover, secretary-treasurer.

The Sheriffs also voted resolutions commending the State Prison Department for its good work in reducing the number of escapes, thanking Warden Honeycutt for his courtesies and close co-operation, expressing appreciation of the work of President Whitehurst, and endorsing the program of The Institute of Government. The latter particularly commended the district schools for law enforcing officers to be held throughout the State from August 31 to September 4.

The proposals for a longer term and for a statewide pension system for sheriffs met with practically unanimous approval. Efforts will be made to secure a state-wide law permitting \$1 to be taxed in all criminal cases in which the defendant is convicted and ordered to pay the costs, the funds to be used for the benefit of officers and their families in cases of death or injury to officers in the line of duty. In the event that a state-wide law can not be secured, it seems certain that many counties will seek local laws for this purpose, as several counties already have such laws which appear to have operated satisfactorily over a period of years.

«TVA» Program and Services



Fowler Bend, first "TVA" dam to come to North Carolina will rise between these wooded cliffs on the Hiwassee below Murphy. A temporary access road has just been constructed on the north bank, and foundations for a construction bridge are now being laid.

Spread to North Carolina

THE BEGINNING of construction last month on the \$15,000,000 Fowler Bend dam on the Hiwassee River in western North Carolina brings another New Deal program home to North Carolina. The "TVA" had previously extended its activities in certain spheres, and particularly the conduct of test farms and agricultural demonstration projects, into certain western counties. However, its program of national defense, navigation and flood control, and agricultural and industrial development had been centered in Tennessee and Northern Alabama, where are located the three dams already completed and the four others now under construction. Fowler Bend is the first "TVA" navigation and flood control project to come to North Carolina, and it is a gigantic project of far-reaching importance to the State.

The dam, which will be 1,250 feet long, 220 feet thick at the base, and almost 300 feet high, will back water 22 miles up the river to Murphy and create a reservoir with an area of 10 square miles, a shoreline of 150 miles, and a normal storage capacity of 440,000 acre-feet. The entire project lies within the boundaries of Cherokee County. Fowler Bend will be used primarily as a storage dam, reducing flood damage in the valley and aiding naviga-

tion in months of low flow. Although no equipment for producing electric power will be installed at the time the dam is completed, provision is being made for a future powerhouse to contain generating capacity of between 80,000 and 100,000 kilowatts. The "TVA" has indicated that it is "not planning to extend power service to municipal plants in North Carolina for some time." When and if this should be done, "TVA" and Fowler Bend with its vast storehouse of cheap power would take on an added significance to western North Carolina towns desiring to operate municipal power systems and to farm areas interested in co-operative power projects.

The Supreme Court's decision in the "TVA" case this winter, of course, upheld the Authority's right to sell surplus power created incident to the operation of Wilson Dam. However, this was erected during the War for the production of nitrates and is maintained in peace-time as an emergency measure. The Court did not pass upon the TVA's right to sell power generated at other dams nor upon some of its other activities. The question of the possibility of "TVA" power in Western North Carolina in the future, therefore, is left hanging.

In the meantime, the "TVA's" influence is being felt more and more

widely through the extension of its activities in the conduct of test farms and agricultural demonstration projects and the assistance of farmers in North Carolina. This work is carried on in co-operation with the State-Federal Extension Service and other agricultural institutions through the County Farm Agents. Farmers agreeing to follow farm-management programs designed to check erosion, prevent silting of streams, rehabilitate soil, and provide a balanced agriculture are furnished "TVA" superphosphate fertilizer at the cost of freight. To April 1, phosphate demonstrations were being conducted on, or had been approved for, more than 1,000 farms in North Carolina with a total area of 175,000 acres. Until this season, demonstration farms had been located in 14 of the 15 North Carolina counties, lying in the watershed drained by the Tennessee River and its tributaries. Recently demonstrations were extended into 28 out-of-watershed counties, scattered over the State. Since this work began 3,500 tons of phosphate have been used by demonstration farmers in North Carolina. Farmers and rural communities in western North Carolina desiring to avail themselves of these services should communicate with their County Farm Agent.

Case for the Amendment for Relief of Supreme Court

OFFICIAL STATE BAR NEWS AND VIEWS

Editorial Committee: Julius C. Smith, President; Henry M. London, Secretary; Charles A. Hines, Councillor, and Dillard S. Gardner of the staff of the Institute of Government.

By CHARLES G. ROSE



Mr. Rose, a prominent Fayetteville attorney and former President of the State Bar Association, is chairman of the committee appointed to present to the people of North Carolina the amendment with respect to increasing the membership of the Supreme Court.

THE "Old North State," with its wide range in topography and in geological formations, with its diverse climatic conditions, and with such varied species of flora and fauna, might successfully claim to be the most interesting state in the Union; but some of its most interesting qualities are the characteristics of its citizenship. Inherently conservative, doggedly tenacious, not to say stubborn at times, it won for itself the sobriquet of being the "Tar-Heel" State.

It was the last state, save one, to enter the American Union, and likewise it was the last, save one, to secede from the Union. With only one-half of one percent of its citizenship being foreign-born, it is more nearly 100% American than any of the other forty-seven (47) states.

The State's present constitution has not been rewritten since the reconstruction days of 1868; and at that time it took the arbitrament of four years of civil strife to recast its fundamental law, and only a very small part of its real citizenship had a voice in making the change then. That constitution has been amended several times since its adoption, but its frame-work has not been changed. When changes have been found to be essential, the citizenship of the state has usually voted for the needed amendments, and this was especially true as to the Suffrage Amendment, adopted some thirty or more years ago.

Article IV, relating to the Judicial Department, is now in need of amendment, and the General Assembly of North Carolina, at the Ses-

sion of 1935, passed an act (Chapter 444 of the Public Laws of North Carolina of 1935) directing that an amendment be submitted to the voters at the election in the fall of 1936, which would authorize the General Assembly to add two Associate Justices to our highest Appellate Court. That Court now consists of a Chief Justice and four Associate Justices, and the present amendment would authorize the addition of two more Associate Justices. No amendment more vital to the welfare of the people of the state has been voted on in many years.

The Presidents of the North Carolina Bar Association and the North Carolina State Bar have appointed a joint Bar Committee, which is charged with the duty of putting on a campaign to convince the people of the state that this amendment

should be adopted, and that our Supreme Court urgently needs additional help in transacting the important business that comes before it.

No Change Since 1889

A similar amendment to our constitution was adopted in the election held in the fall of 1888, by which the Court was increased from three to five members, and since the February Term, 1889, the membership of our Supreme Court has not been changed, although the business of the Court has more than doubled, and this in spite of the present stringent rules which do not encourage appeals.

In 1889 the state had no highways worthy of the name, no automobiles, no trucks nor busses, and no filling stations nor tourist camps, while at the present time our Court dockets are crowded with cases, both civil and criminal, which have arisen solely by the introduction and use of these modern machines, and their concomitant evils, as well as their conveniences. The population of the state in 1890 was 1,617,947; in 1930 it was 3,170,276, and the officially estimated population of 1935 is well over 3,300,000, showing an increase in forty-five years of more than 100%.

In 1889 the state had only twelve Superior Court Judges, whereas there are now twenty regular Superior Court Judges, three Special Judges, and three Emergency

Southeastern States			
COMPARATIVE RATIO OF APPELLATE COURT JUDGES TO POPULATION			
(Number of judges include all appellate Courts)			
STATE	No. Appellate Judges	Population	Ratio Population per Judge
North Carolina	5	3,170,276	634,055
N. C.—If it had 7	7	3,170,276	452,896
N. C.—If it had 9	9	3,170,276	352,253
Kentucky	7	2,614,589	374,941
South Carolina	5	1,738,765	347,753
Virginia	7	2,421,851	345,979
West Virginia	5	1,729,205	345,841
Mississippi	6	2,009,821	334,970
Louisiana	7	2,101,593	300,228
Alabama	10	2,646,248	264,624
Georgia	12	2,908,506	242,375
Florida	7	1,468,211	209,745
Maryland	8	1,631,526	203,940
Tennessee	14	2,616,556	186,897

STATE BAR TO MEET

Officials of the State Bar are leaving no stone unturned in their preparations to make the 1936 Meeting, which has been set for Raleigh on Friday, October 16, the best and most enjoyable yet held. A strong program is being arranged, featuring among the principal speakers Hon. Frederick L. Stinchfield, new President of the American Bar Association; Col. O. R. McGuire, General Counsel to the Comptroller-General; Judge J. Will Pless, Jr., of Marion, and Gordon Gray of Winston-Salem. Local bar associations and individual members are urged not only to attend themselves but to pass the word along and join in getting out a record attendance.

Judges—a total of twenty-six Superior Court Judges. All of these Judges are kept busy each week trying civil and criminal cases, a part of which must be finally passed upon by our highest Appellate Court. In short, although our state has practically doubled in population, business, and commercial life, and although the personnel of the Superior Court Judges has been increased more than 100%, the State has provided no assistance to our Supreme Court in order that it might properly hear, thoroughly consider, and intelligently pass upon the increased number of important cases which are brought before that Court on appeal.

At the spring term of the Court in 1889, the Court handed down 133 written opinions, or an average of about 26 opinions per Judge. At the spring term 1930, there were 265 written opinions handed down by the Court, or an average of about 53 opinions per Judge; and at the spring term 1936, the Court passed upon 272 cases coming before it on appeal, writing 243 opinions, and disposing of 29 appeals without written opinions.

The following tabulation of the total cases disposed of by the Court definitely shows the amount of business disposed of for several years past:

Date	Written Opinions	Average Opinion per Judge	Without Written Opinions	Total
1889	283	56	10	293
1930	536	107	49	585
1931	466	93	57	523
1932	527	105	88	615
1933	510	102	54	564
1934	506	101	50	556
1935	456	91	42	498
1936 (6 mo.)	243	48	29	272
1936 (12 mo. on same ratio)	486	96	58	544

These figures, as furnished by the present Clerk of the Supreme Court, show beyond the shadow of a doubt that the arduous labors of the five diligent and learned members of our Appellate Court have almost doubled, and no additional help has been provided these faithful public servants. That they have carried on

the work to the best of their ability, and that they have worked faithfully and well under the heavy burden, no one can successfully deny, but it is not fair to have people of the state see them overcrowded with work, and at times to see some of the members of the Court break under the physical strain, and not provide sufficient help in the administration of justice in our highest Appellate Court.

County Law Library

The building of a central Law Library in the Court House is a worthy and useful enterprise which is meeting with increasing favor on the part of local Bar Associations and one which, in spite of certain handicaps, is practical for many of the larger counties. It can readily be seen how some such central collection of standard works and authorities is a life-saver to younger attorneys with limited libraries, but it is no less a source of service and convenience to the older lawyers and to the Court, if we are to accept their testimony, in the production of references and authorities at trials. Buncombe County's Law Library may be cited as an example.

"I can hardly see how we could get along without a Law Library now that we have one," states one of the members of the local Bar. "Under former methods lawyers had to carry, or have sent, to the Court House vast and burdensome numbers of books. All we have to do now, when a book is desired by a judge or lawyer, is to make out a slip and have the Sheriff take it to the Library and bring back the desired book."

The Bar Library in Buncombe is situated on the sixth floor of the Court House, between the Superior Court on the fifth and the County Court on the seventh. There is in both courts constant need for books, the Superior meeting three, and the County court four, weeks a month. Supported first by "dues" and donations of books, and later by an allocation of one dollar out of the fees in each case, criminal and civil, the collection of books has grown to approximately 1,000 volumes. Some of the donated books are old, but the collection includes the principal re-

United States Circuit Court of Appeals
Fourth Judicial Circuit

Chambers of
John J. Parker
U. S. Circuit Judge
Charlotte, N. C.

Aug. 17, 1936

Hon. Charles G. Rose,
Attorney at Law,
Fayetteville, N. C.

Dear Mr. Rose:-

I am glad to know that you have accepted the chairmanship of the committee of the Bar Association for presenting to the people of North Carolina the amendment to the state Constitution with respect to increasing the membership of the Supreme Court. This amendment will make possible a great improvement in our state judicial system and I sincerely trust that it may be adopted by the people. Our state Supreme Court has been greatly overworked; and this amendment will not only afford needed relief to the judges of that court, but will also make possible the adoption of a flexible appellate system which ought to take care of the needs of the future. There is nothing more important in the domain of government than the administration of justice; and I feel that this amendment is of great importance to the people of the state for that reason.

Yours very truly,

(s) JOHN J. PARKER.

JJP/B

cent sets such as Corpus Juris, Ruling Case Law, A. L. R., and Century, together with a number of the North Carolina Laws, the North Carolina and the United States Reports and Digests, a number of the Reporter series, and an increasing number of the newer texts.

An added feature of the Library in Asheville is the collection of portraits of distinguished members of the Buncombe Bar who have achieved distinction as advocates and on the bench. Between forty and fifty such portraits already adorn the walls, and the number is being added to continually. Such a collection not only adds to the attractiveness and historical interest of the Library, but also serves to perpetuate the memory of the outstanding members of the local Bar.

A special local law is necessary to enable a County Bar to receive a part of the costs for the use of a Library. For anyone who is interested, the law in Buncombe's case is found in Chapter 137, Public Local and Private Laws of 1929, as amended by Chapter 356, Public Local Laws of 1931. James G. Merrimon, who is Chairman of the Library Committee, reports that this plan is infinitely superior to the initial method—\$1 a month dues on each member—which met with an enthusiastic reception at first, but proved unsuccessful due to the volume of work connected with collecting so many small sums each month.

The Library's share in the costs amounts to approximately \$60 a month. The whole amount is now available for the purchase of books, as the Bar has secured the services of one of the Superior Court deputy clerks, engaged in the copying of records, for an attendant. Second-hand books are purchased when they can be found in good condition, which makes the money go still further. The Library is being run on a pay-as-you-go basis. The last of its debts were recently paid off, and its collection of books is growing so rapidly that plans are already under way to add to its quarters.

Such a Library is most satisfactory where the county-seat town is by far the largest town in the county. In another western county, in which there are two large towns,

lawyers who do not reside in the county seat are insisting that the Library is of little use to them except at terms of court. They cite figures showing that most of the Library fees come from their end of the county, and take the position that the fees ought to be divided for the use of two Libraries or that the Library fee ought to be eliminated altogether.



Milton E. Hogan

Born 1888, Died Aug. 8, 1936

Cashier of the Bank of Chapel Hill, President of the North Carolina Bankers' Association, and Treasurer of the Institute of Government, Mr. Hogan began the career which carried him to the top of his profession in the humble post of janitor and errand boy.

Born in Orange County, a few miles out of Chapel Hill, Mr. Hogan moved to the university seat as a young man and early merged himself with the life therein. He knew exactly what he wanted to do. After a year's work behind the counter of the community's first cafe, he applied for work in the bank. There was no place, he was told, but that did not stop him. He would make a place, work for nothing, do anything around the bank that needed to be done.

He swept the place and ran errands for awhile, although the rec-

ord keepers have something to say of his having been an accountant from the outset. That matters little; he drew next to no wages for months. But he grew, if not in stature, in wisdom and in a relatively short time he was the bank's cashier. There was no pull extended in his behalf. He was honestly and respectably connected, but he did not have a college degree and was a Republican, at least nationally. Steadily he won his way through merit into the first position as financial agent and adviser of the community.

Ergo the Bank of Chapel Hill, which all agree is as staunch a bank of its inches as is to be found anywhere, and the Orange County Building and Loan Association, than which no similar association in the State matures its stock in a shorter time.

Mr. Hogan's sudden death of a heart attack at Wrightsville Beach came as a distinct shock and a heavy blow to his community and to the State. His loss is felt particularly keenly by The Institute of Government. Ever active in civic, community, and governmental affairs, Mr. Hogan had been Treasurer of the organization from its simple beginnings, and every cent of money paid into or out of its treasury was by his hands and sound judgment. It is characteristic of the man, however, that he left institutions and staffs in each case which were capable of carrying on. And it is regarded as highly fitting that The Institute's selection for its new Treasurer is W. E. Thompson, who also follows in his footsteps as Cashier of the Bank of Chapel Hill.

AID WITH SAFETY DRIVES

The National Safety Council has added a staff of eight field representatives, one of whose duties is to assist any police chief in his efforts to stop the mounting toll of street and highway deaths. Police departments desiring such assistance may address requests to Sidney J. Williams, Director, Public Safety Division, National Safety Council, 20 North Wacker Drive, Chicago.

Rule that \$500,000 Appropriation Covers All Highway-Street Work

"It shall be the intent and purpose of this Act that the funds set up herein for the maintenance and improvement of the streets within the cities and towns shall not be construed as affecting the present powers of the State Highway Commission as to constructing, maintaining, and improving the streets of cities and towns having a population of less than 3,000 people . . . but shall be construed in addition thereto."

* * *

The interpretation of the above paragraph, written by the 1935 Assembly into the first Act to make an annual appropriation to the maintenance of city streets traversed by State highways, makes exactly \$150,000 difference to the units involved. Did the Legislature mean for the \$500,000 authorized by the Act for each year of the biennium to be in addition to the funds, estimated at \$150,000 a year, which the State Highway Commission was already spending, on its own volition, for this type of work, chiefly in the smaller municipalities? Or did it mean for the \$500,000 appropriation to cover all street maintenance work and grants by the Commission, including that previously done, in both the smaller and larger towns?

Legal counsel to the Commission ruled, and was supported by the Attorney General, that the \$500,000 appropriation covered all highway-street maintenance. The line of reasoning appeared to be that no definite appropriation had been made previously, that any expenditures had been discretionary, and that another fund had now been provided for this purpose. However, they agreed that the Commission was not limited to this amount, but might in its discretion expend additional sums from its general maintenance funds, as previously, on streets in towns of less than 3,000, if in its judgment conditions justified this action. The ruling apparently turned on the words, "affecting the present powers of the State

Highway Commission," interpreted to mean that street maintenance previously carried on was a discretionary power but not a duty or obligation of the Commission.

Certain cities and officials feel that there is strong support for the view that the 1935 Legislature intended the \$500,000 appropriation to be in addition to the amounts previously expended by the Commission for the maintenance of highways in municipalities. However, under the Commission's practice in

1935-36 and under its ruling for 1936-37, it would seem that they are left with only two alternatives: to persuade the Commission that additional expenditures are needed for the proper maintenance of highway-streets or to urge the next Legislature to clarify the Act making the appropriation for this purpose.

(The Highway Commission and representatives of the cities originally agreed to an allocation of the 1936-37 funds on the following basis: Population 42½%, Mileage 42½%, and Need 15%. However, the Commission subsequently reported that this basis resulted in some cases in injustice and inconsistency. Grants are now being revised accordingly, and will be announced in the newspapers shortly.)

States Come to Aid of Their Local Units in Depression

New Jersey has made state funds amounting to \$7 million available to its municipalities, beginning August 1, to meet emergency relief needs. The provision for state aid culminates a bitter fight since the state turned the relief burden over to its municipalities. The funds will be administered by a State Financial Assistance Commission, which is now taking applications from municipalities and surveying their needs. Under present rulings cities must meet relief costs and then ask for reimbursement, but efforts are being made to provide for advances to municipalities which would otherwise be forced to borrow.

Massachusetts is another example of a state which came to the rescue of its municipalities during the depression. When welfare costs went up and tax collections down the state stepped in and lent its municipalities \$25 million for ordinary maintenance expenses, the loans being based on the amount of property which each had taken in for taxes. This not only released frozen assets and maintained municipal credit but also provided relief to the taxpayer. Municipalities were also

permitted to borrow to meet rising welfare costs, but loans were limited to the excess of expenditures for this purpose in 1932 over those in 1929. How successfully the plan worked may be seen from the fact that Massachusetts municipalities have already repaid \$18 million from tax redemptions and, notwithstanding all welfare and public works loans, have reduced their net funded debt in the past three years from \$311 million to \$298 million.

Not many states, of course, were in a position to come to the rescue of their municipalities as Massachusetts did. However, that state's experience, as *Municipal Finance* sees it, proves that "a safe and sane policy of indebtedness for municipalities can be established in normal times and . . . that modifications of the policy can be provided for abnormal times and still retain a sound municipal structure."

There are 171,689 governmental units in the United States, including counties, cities, towns and townships, school districts, and other special districts. This is a 2% decrease from the 1931 figure of 175,000.

Practical Planning for Traffic Safety

By GEORGE EICHHORN

Any discussion of the problem of safety in motor vehicle traffic begins very much like the first book of Caesar, "All traffic problems are divided into three parts, the first Engineering, the second Education, and the third Enforcement." Among students of the problem there does not seem to be any agreement as to the relative importance of these three divisions of the traffic trinity but there surely can be no doubt as to which should come first.

Unfortunately, until quite recently, there has existed in this State, and I believe that it can be said with truthfulness about the majority of other States, very little engineering activity and only meager efforts toward the last two of these divisions; education and enforcement. They have been very much like a gang without a leader. A hit here and a miss there and the sum total of the activity thus far has been practically nil insofar as genuine safety on our streets and in the public mind is concerned. Our cities have awakened on occasions to find that traffic fatalities have increased to alarming proportions and that things generally are "in a mess." In comparatively rare instances this realization has come about in the minds of the public officials themselves, but more often it has been brought about by a clamoring public and press, demanding that something be done.

When this stage has been reached, the distracted public official casts about for something to do. Two things usually seem possible. There is the police department, normally supposed to control the traffic problem. They can be told to bear down, and an increased degree of enforcement comes into the picture as a safety measure. Then there is that medium which is always willing to cooperate with the local government, the daily papers. They are pressed into service and asked to give publicity to the increased enforcement and a warning to the public that they must improve their driving habits if the terrible toll is to be reduced. And thus the second phase of the triumvirate is born, Education.

I do not mean to belittle these two

activities in any way; on the contrary, I plead for them as the handmaidens of the first, but I do say that such a course as I have just described is the usual course and I submit that it is doomed to failure for lack of the first named quantity in the equation, Engineering. There must be an analytical and methodical mind with a plan, and that plan carried throughout the other two activities if a reasonable degree of safety is to be brought to the streets of our cities.

Far too often local governing bodies make so-called traffic improvements because "so-and-so" wanted it done. The average citizen who professes interest in the problem, although his interest is genuine and he has a sincere desire to help, really knows only a section of the average city; his route to his place of business from his home is usually the portion of the street which includes the "worst intersections" and the corner visible from his front porch is one of the "most dangerous" in the City. Again, for fear that I may be misunderstood, I repeat that he is sincere in his belief but he does not have all of the facts. He cannot relate his intersection to the accident picture from a city-wide standpoint and any action taken on his recommendation without fitting it into the general plan is almost inevitably predestined to failure.

Too many traffic signals have been installed and too many ordinances have been passed in North Carolina for the above and one other reason. And that reason is just about as far away from engineering principles as anything can be—political expediency. Whether the need for the thing exists is never determined. It may be "no parking" or it may be "all day parking" that is "needed" or it may be a "Stop and Go" light, but it is granted for the reason given.

Traffic safety activities are destined to be like "Topsy," who just grew and grew, until there has come about in the minds of public officials a recognition of the fact that

the real solutions of the many perplexing problems can be found only after getting the true facts and from them planning a program which has an intelligent co-ordination with education and enforcement. No other term can be as successfully applied to define this process as Engineering.

I hasten to say that I do not believe that there are more than two or three cities in North Carolina today who can afford to employ an all-time planner of recognized ability to devote his talents exclusively to this problem. The principle is the main thing, and when that has been firmly established, employment will come, partial at first, but as our cities grow and cars multiply and increase, there will be created a definite place for the engineer in the safety problem.

Recently Dr. Miller McClintock, the director of the Bureau of street traffic research at Harvard University, addressed the annual convention of the Society of Automotive Engineers at Detroit, and gave the following list of objectives which he said would be necessary before the engineer's job of producing a safe roadway would be accomplished: "Complete physical separation of traffic moving in opposite directions, instead of the painted center line in general use now; segregation of passenger cars and trucks; grade crossing elimination for all intersectional traffic and lanes for deceleration approaching all exits from the highway." These are truly the ultimate in safe roads, but if the average community or even state waits until it has the funds to do this before they recognize safety as a problem demanding engineering skill, I fear very much that it will be too late for many of our citizens.

It is quite easy to talk in terms of tearing down the old barns and building new ones from an engineering standpoint as he proposes, but when it comes to making the old barns hold more and doing it safely, then a kind of skill and ingenuity is called for which is not to be found haphazardly. And that is precisely the problem facing the average city in North Carolina today. We can
(Continued on page sixteen)

The Lessons to Be Drawn from the Clevenger Case

By CLAUDE RAMSEY

SATISFACTION over the solution of the problem which confronted Asheville and Buncombe county in the tragic death of Miss Helen Clevenger should not cause forgetfulness of some lessons emphasized by that case. These lessons should be taken to heart not only by the city and county affected but by the people of the state as a whole. The 1937 General Assembly should apply in legislation some of the principles that can be deduced from the story of the search for the culprit in a crime which shocked the state and nation.

One of the difficulties which the officers faced from the outset grew out of the fact that the hotel management failed to notify the proper authorities within a reasonable time. More than one hour had elapsed be-



Mr. Ramsey is an Asheville newspaperman and veteran legislative correspondent and commentator on public events in North Carolina. He speaks for both City and County and draws from this shocking case a number of graphic lessons for the whole State as well.

tween discovery of the body and the call to the sheriff's department; the city police were never officially notified of the crime by the hotel. The hotel management explained that a part of this time was spent in trying to locate the coroner and in waiting for an examination by the house physician. Whatever the reason, the fact remains that whereas the crime was known to the hotel employees about 8:30 o'clock on the morning of July 16, the sheriff's office was not called in until 9:55 o'clock.

At least four persons had been in the room before the sheriff's deputies arrived. Many of the guests had checked out before the sheriff's investigation began. The names of a number of departing guests, registered only as members of a touring party, were not even available immediately. It cost a great deal of money to locate these people later in distant cities. Even then the local officers had to rely on police in those cities to question them.

It is at least an open question whether, if the officers of the law had been called in more promptly, the solution of the crime would not have been rendered far easier. A first lesson that stands out in this crime is the imperative importance of all crimes being reported promptly to the proper authorities.

Some way also must be devised to assure, without friction induced by rivalry or ambition in itself commendable, the co-operation of county and municipal law enforcement officers. A sheriff is the ranking police officer in a county, but a chief of police in a town or city naturally

feels that he has primary jurisdiction within the municipal boundaries. It, therefore, often happens that sheriffs and police chiefs do not work together very closely, even on capital cases. The Clevenger case possibly could have proceeded faster had both police and sheriff's departments co-operated on it from the start.

It is said by some that the remedy for the over-lapping of jurisdictions is consolidation of county and city police departments. Yet possibly through the co-ordinating efforts and instruction of the training schools for law enforcing officers conducted by the Institute of Government throughout the state, an effective measure of voluntary co-operation can be attained without legislative action. However, there should be some definite interpretation of the functions of both departments, and steps should be taken to eliminate overlapping of duties which tend to promote confusion.

State Crime Detection Laboratory

The sense of pity, outrage, and helplessness which pervaded the state in the days of fruitless search for the murderer of Miss Clevenger burned into many minds the conviction that the state must be equipped with modern laboratory equipment and trained men for the detection of crime. The advice of the sheriffs and police chiefs should be sought, and there should be developed in the state a crime laboratory with adequate facilities for chemical analyses and the other scientific aids in pursuit of criminals. A central and highly efficient state bureau of toxicologists, ballistic experts, etc., would have speeded work on this case, and obviated necessity of sending to New York and Washington for these services. This phase of the investigation alone cost Buncombe county more than \$1,000.

Just as the state board of health co-operates with the various city and county health departments without conflict or confusion, this crime laboratory would lend assistance to the city and county law enforcement agencies in a consolidated fight against crime. In such crime laboratory there should also be a

One of the foremost lessons to be drawn from the Clevenger Case is the fact that patience and persistence solve more crimes than brilliant story-book detective work.

Sheriff Laurence E. Brown, of Buncombe County, by comprehensive routine investigation, a slow, painstaking process that took up many suspects and eliminated them one by one through hours of checking, finally "cracked" the case. This is not the first time that patience has been rewarded in the investigation and apprehension of criminals in North Carolina, nor will it be the last. It is well to remember that the initial curiosity and interest following a crime soon wear off and that the drudgery of checking every trivial detail is what finally produces results.

In this particular case the solution was supported by scientific study and analysis, an all-important factor where a man's life hinges upon a confession. The Clevenger case rests not only upon confession, but upon sound, scientific proof to support it.

small number of men trained and experienced in piecing together the jig-saw clues of crimes who would be available instantly on notice anywhere in the state where a major crime does not immediately lend itself to solution. Great natural talent among local officers in the apprehension of crime is no substitute for the knowledge and practice of modern detective methods.

Hotel Protection and Super Keys

Some law enforcement agency, whether it be state or local, should be charged with periodic checking-up on the system employed in hotels of the state to protect the lives and property of the guests. All hotel employees should be fingerprinted; many hotels follow this practice, but it should be made mandatory by statute. That might help in tracing hotel crimes. Too, it might deter employees from committing offenses in the hotel because of fear their fingerprints would give them away. The police records of all employees should be checked. At least one of the negroes at the hotel had a criminal record; it just happened that the record of Martin Moore, who was convicted of murdering Miss Clevenger and now awaits the death penalty in the state prison, was not serious.

Although later investigation revealed it had no relation to the crime, officers were puzzled and the public shocked to learn that several negro employees owned super-master keys which open guests' doors though locked from the inside and the key left in the door. There were supposed to be 11 such keys at the hotel; 12 were found. Most hotels, a survey disclosed, restrict the number of super-master keys to one or two, usually in possession of the manager or his direct representative. Legislation regulating the number of "super" keys and prohibiting locksmiths from duplicating them without express permission might be advisable in view of this disclosure.

Strict Regulation of Fire-Arms

One of the strongest lessons brought out by the complicated investigation was the need for stringent regulation of weapons. Martin Moore bought the death weapon from a pawnshop without permit or registration being required. At least four persons whose presence

in the vicinity made them candidates for investigation were found to possess some kind of gun. Other states have found merit in the strictest kind of regulations for the sale and possession of firearms. The casual ownership of such weapons has been the real cause of many fatal crimes. A sneak thief is not necessarily a dangerous person but a sneak thief who carries a gun is as deadly as a rattlesnake.

In drawing conclusions from the various situations growing out of the investigation, there is no disposition on the part of the writer to cast any reflection whatever upon the excellent investigation work of Sheriff Brown, members of his department and their associates. Sheriff Brown, who has accomplished a great deal in modernizing his department both in training and equipment, would probably be the first to agree with most of the conclusions in this article. He knows the value of science as an aid to crime detection and realizes that a crime laboratory for the whole state would provide facilities that no one county could afford to maintain.

The proper legislative committees, The Institute of Government, and law-enforcement officers of the state should take counsel over these questions of crime detection with these objectives before them:

Co-ordination of activities among law-enforcement agencies; the use of trained men; the provision of laboratory facilities for crime-detection; and last but not least, supervision of hotels in the matter of protection of guests. Just as fire departments inspect buildings for fire hazards, police should check hotels, business buildings, and larger apartment houses for crime hazards.

When and if such principles become common practice among our law-enforcement officers, there should be an end to sensational methods—such as ill-timed publicity, the unconstitutional and abhorrent third degree, the indiscriminate detention of innocent persons remotely suspected of crime—in an effort to apprehend and punish the guilty.

TRAFFIC SAFETY PLANNING

(Continued from page fourteen)
not go out and overnight revamp

our street systems or undertake widening projects even though they are badly needed, but we can intelligently survey the system of streets which we have and learn the true picture which they present.

Until such time as our cities realize this need, traffic accidents, costly congestion and parking stagnation will increase, largely for want of adequate facts and a trained mind to devise workable control measures, regulations and street improvements.

This necessary attitude on the part of public officials having once been created and the definite responsibility for improvement placed on the shoulders of a traffic planner, although it may be only part-time in cities of the size found in North Carolina, the first requirement becomes an inventory of existing conditions. This inventory should include: (1) Accident analyses; (2) a survey of street usages; (3) a study of existing methods of control; and (4) an investigation of the extent of law observance which exists.

The traffic planner having organized and obtained the data possible from the foregoing activities is then ready to undertake the formation of a program for future development and improvement. While there are various local problems peculiar to each community, there are certain angles or subjects which should be embraced in any plan for improvement. I would summarize them briefly as follows: (1) Correction of hazards discovered at high-accident locations; (2) consideration of the arterial system of streets in which certain heavily-traveled streets are made through streets; (3) determination of intersections requiring signalization and the development of a system of co-ordination for them; and (4) the parking problem in the congested districts. In this summary I have not included the revision of local ordinances, for this is a responsibility of the legal department although it must be predicated on the requirements which are found to be necessary by the planner.

NOTE: The next installment will take up in detail and evaluate separately each item of the traffic program which Mr. Eichhorn has described above.

County Takes Its Place in American Government

By D. S. McCHESNEY

The background of development and growth of the county as we find it in the United States forms an interesting story. The county is one of our purest Anglo-Saxon heritages. It is confined to the United Kingdom, the British Dominions and the United States of America. The county as a political entity grew out of the ancient Anglo-Saxon kingdoms and tribal divisions.

From the earliest date the county has been regarded as a community—a feeling that still persists here in the United States. To my mind the development of representative popular government can be traced directly to the old English County. Later on I shall consider the development of some of the functions of county government which, I think, tend to bear out this theory.

As soon as the earliest Colonial settlers had established any sort of orderly government in this new country, they turned, naturally enough, to what they knew best—the county organization as it existed in England—and we find that that political unit was transplanted almost bodily to the United States.

Even the county names in New England and the South reflect the part of England from which these early settlers came. Massachusetts has its Bristol, Essex, Berkshire, Hampshire, Middlesex, Norfolk, Plymouth and Worcester. Virginia also has Norfolk, Middlesex and Essex, as well as such ruddy old names as Warwick, Southampton, Buckingham, Gloucester, Northumberland, Surry and Sussex. Here in North Carolina you have Halifax, Durham, Cumberland, Surry, Northampton, Scotland and others.

Royal Names in Virginia

Virginia went a bit further and covered the royal family in pretty good shape with King George, King William, King and Queen, Prince Edward, Prince George, Prince William, and Princess Anne.

Later there grew up the custom of using the names of prominent early patriots and local gentry. Thirty-two states have a Washington County. Jefferson, Franklin, Adams, Madison, Monroe, Hamilton and Marshall all appear frequently.



As the frontier moved west many of these names were repeated and, just as we find the earliest settlers using the names of their familiar English counties, so we find these frontiersmen carrying with them the names of the eastern counties from which they came.

Some interesting digressions—largely found in the newer West—are Custer County at Broken Bow, Jim Wells County whose county seat is Alice—and some wondering as to just who Alice was and what she meant to this old Texas cowboy. Swedish Minnesota interpreted the good French of Mille Lacs County into their best Scandinavian and the county seat became Milaca.

A One-Woman County

Kennedy County, Texas, is the private domain of one old lady who owns the King Ranch. She is probably the largest landowner in the United States. Her ranches cover most of three counties one of which (Kennedy) she owns outright. Her front driveway, from the public highway to her door is just twenty-seven miles long. For years the main automobile highway into Mexico made an awkward detour around Kennedy County. She finally consented to the building of a new road through the county on condition

that the state pay all costs of construction and maintenance, that they fence both sides of the road and that they provide cattle underpasses every thousand yards.

Cochise County, Arizona, had for its first county-seat the boom town of Tombstone, whose only newspaper was the virile Tombstone *Epitaph*. The lead mines ran out, and Tombstone is now another deserted western mining town. The County seat is at Bisbee.

Idaho has the confusion of Lewis County at Nez Perce with Nez Perce County at Lewiston. That goes back to the Lewis and Clark Expedition.

Kansas did well by the Abolitionist days with Greeley County at Tribune and then by the War Between the States when the county seat of Grant County was named Ulysses.

Louisiana is our only state with parishes and the only state where a county court by law hears its cases and conducts its business in French.

Development of County Functions

To go back to the county as a political subdivision, all of us know that the functions of county government fall into several categories. The police function survives from the independent fighting force of the earldom. The Sheriff was one of the earliest shire officers. Incidentally the Coroner is another of the elder county officers. That office was created in the 12th century. The judicial function of the English county, at first important, gradually fell into disuse and was later revived by the County Courts Act of 1846. It is now of major importance in England as is evidenced by the growth—after 1846—of the Circuit Courts. These County and Circuit Courts are found throughout the county organization in the United States. In addition to Civil and Criminal Actions they usually handle testamentary and probate work.

One of the most interesting manifestations of the close link between the English counties and the American Counties is the survival of Early English Common Law in the State of West Virginia. The first

settlers who moved across the mountains from Virginia to settle in the isolated valleys of West Virginia have held practically unchanged for three hundred years the English Common Law that came up the James River in 1607. This West Virginia Common Law Procedure has remained so static that it is now very different even from current common law practice in England.

Another function of county government is taxation and finance. Assessment of taxes by Commissioners appointed by the County Court developed before the thirteenth century. At about the same time there grew up the custom of representation of the counties by two knights of the shire elected to sit in Parliament. That survives to this day in that most state assemblies are made up directly on a basis of county representation.

The Justice of the Peace was first heard of in the 14th Century. Miscellaneous functions developed later as the needs arose. Such functions are highway, welfare, grange and home economics, state and county welfare work, and the preservation of records.

COUNTY ROAD CLAIMS

(Continued from page three)

State would have to reply: "Sorry but we can build only narrow, macadam roads if we are to make the available funds go around." The next step generally was for the authorities of the State and of the county in question to get together, and out of such negotiations came frequent agreements by which the county was to "contribute" or "advance" a part of the cost.

These agreements and terms, which form the basis of the controversy today, varied as widely as the situations, and it is open to question how many of the counties expected the State at the time to repay their "contributions" or "advances" in full or in part. For complete State support of both State and County roads was still unthought of except perhaps by a handful of people. And the counties, like people generally in an era of expansion, development, and good times, were thinking more of needs and wants than of costs, debts or the day of reckoning.

However, a number of counties were to be heard demanding repayment as far back as 1927. In fact, the Legislature of that year passed an Act giving the Highway Commission authority, under which awards were made and paid to a handful of counties, to use its discretion in adjusting claims. What followed the onslaught of the depression in 1930 is fresh in memory. The counties suddenly awoke to find themselves saddled with highway (and other) debts, faced with heavy reductions in valuations, and hard pressed to meet their obligations as creditors clamored for payment on the one hand and taxpayers for relief on the other. The number of counties claiming repayment jumped and soared accordingly, and the State's action in 1931 in coming to the relief of the counties by taking over the added burden of county roads only served to give them new hope and incentive.

The Case for the Counties

"We built some of these roads completely and turned them over to you," is what the counties have told the State in effect. "We made large contributions to the cost of others, and now you have taken them over. You specifically agreed to repay us in some instances, and in the cases where you did not, the contracts were one-sided and bad bargains because of our over-anxiety to secure good roads. The State now has taken over the complete responsibility for highways, and these are no longer county but State highways. Now pay us what you owe us."

The argument against payment is that, although the State took over the highways, not a mile of them has been taken up, but they are still maintained for the benefit of the counties and their citizens as they were before. It is further pointed out that the State has done its part to relieve its counties by taking from their shoulders the burden of constructing and maintaining highways (not to mention public schools) and, in fact, has gone further in this direction than any other commonwealth.

The total amount of refunds asked in the unsuccessful bill introduced in the 1935 Legislature was \$1½ million dollars covering 44 counties. These figures jumped to 79 counties

and 61 million dollars with the call for the filing of formal claims with the Road Debt Commission by August 25.

If the legislators of the 79 counties to file claims presented a united front in the next Legislature, there would be little doubt of the result. However, some of these counties as well as those in the other group have not pressed their claims heretofore because of the feeling that payment by the State would either deprive them of needed road construction and maintenance or would cost them more in taxes than they would receive in return. A question exists, therefore, as to how many counties filed claims only to be on the safe side, and how many will support their demands to the finish. The increase in the average amount of the claims from approximately 200 thousand dollars in 1935 to 800 thousands this year also raises the question of whether some counties have for the same reason included claims on which they little expected refunds but thought there was a bare possibility.

Issues and Stakes

Suppose that the State did not refund the whole amount, but did acknowledge and repay certain types of claims. Which should come first—claims for roads built prior to the establishment of the State Highway System and later turned over to the Highway Commission, or claims for roads to which the counties made contributions on condition that the State would take them over or in order to expedite construction or to secure a higher type of road? Should the refunds be limited to claims where the State made a binding agreement with the county or extended to all claims of the same type regardless of agreements? And should the refunds be for relief or reimbursement, that is, should they be limited to the debts which the counties still owe for such roads or should they cover the total cost of their construction?

These are the questions with which the Road Debt Commission and then the Legislature must wrestle. And so the issues are drawn, the lines of battle are set, and on the outcome depend 79 counties' claims for 61 million dollars and 3 million citizens' stake in state and local debts and tax rates.

There was a time when a married man enjoyed many privileges in his capacity as a *husband* with reference to his wife's property. Prior to 1868, he managed his wife's lands, reaping the profits as if the land were his own, except for the statutory requirement after 1848 of the wife's consent in leases of her land.

But in the role of *husband and father*, he enjoyed additional privileges. On the birth of a child, he became in a limited sense an owner of his wife's lands in his own right. This ownership was divided into two stages: *first*, from the birth of a child until the death of the wife during which time the husband was entitled to the use of his wife's lands as tenant by the *curtesy initiate*; *second*, from the death of the wife until the death of the husband, during which time the husband was entitled to the use of the wife's lands as tenant by the *curtesy consummate*.

The Requisites

To create an estate by curtesy, it was necessary that the wife should have borne a child, born alive, capable of inheriting property from the wife.

Whether a child was in fact born alive was often difficult to prove. A mere moment of living after birth—independent of the mother—evidenced by breathing or the beating of the heart was sufficient to create a curtesy estate. In many instances in old English cases, the husband would offer evidence gained from listening at the bed-room door, or by peeping through the key-hole. And small wonder! The rights involved were worth peeping for. To be able to prove a child had been born alive might mean the difference between, on the one hand giving up the wife's lands the day she died, or on the other hand, continuing to remain in possession for the rest of the husband's life—perhaps an additional five, ten, twenty-five or even fifty years.

Before statutory changes were rung in, the estate by curtesy initiate, that is, during the life-time of the wife, added little to what the husband already enjoyed. He already had the right to manage his wife's lands and reap the profits during their joint lives. The birth

Curtesy Is Not Dead

---The Widower's Rights in His Wife's Lands

By HARRY W. McGALLIARD
of the Staff of the Institute of Government

of issue merely assured him that his privileges would not be cut off on his wife's death, but would last as long as he lived.

Curtesy Consummate

If the husband died before his wife, that ended the matter so far as curtesy was concerned. But if the wife died first, the husband's estate by *curtesy consummate*, similar to dower, arose. It was similar to dower in that it deals with the rights of one spouse in the lands of the other after the owner's death. But whereas the *widow's dower* was not dependent on the birth of any children, and was limited to *one-third* of the husband's lands, the *husband's curtesy* was dependent on the birth of issue alive and it included *all* the wife's lands. The husband's rights in lands held by curtesy were, like dower, similar to those of a tenant for life who was not required to pay any rent.

Under this state of the law, the husband not only exercised dominion over his wife's lands during their married life together. The law courteously allowed the widower to continue in control after the wife's death for the rest of his life, while the wife's heirs cooled their heels at the front gate waiting for him to die!

The Statute of 1848

In 1848, a statute was enacted subtracting from the husband's rights and returning them to the wife. The law provided that the husband could not lease his wife's lands without her consent, and that the wife's lands could not be sold for the husband's debts. This represented a distinct gain for women. True, the husband continued to own any crops raised, and if the wife consented to a lease, the rents be-

longed to the husband. But no longer could he lease the property alone. No longer could he obtain credit on the strength of the wife's lands. If the law fell far short of all that married women might have desired, yet it was a step in their favor. The statute had no effect on curtesy consummate, that is, the husband's rights after the wife's death.

The Constitution of 1868

Not till twenty years later with the Constitution of 1868 did women really gain a decisive victory. Under the provisions of Article X, Section 6, the husband was stripped of all control over the wife's lands during her lifetime. Furthermore, despite contrary statutes enacted in 1871-2, a wife could cut off the husband's right of curtesy after her death by disposing of her property by will. The husband does not share the wife's privilege of dissenting from a will. If she cuts him off, he stays cut off. In that respect, a married woman at last attained a position superior to a married man. A wife today can deprive the husband of curtesy, but the husband cannot deprive the wife of dower. The husband still retains one mighty weapon—the necessity of his signature in order for a wife to sell her lands. If he withholds his signature, the wife is unable to sell her property.

As expressed by the court, the husband's only right today in his wife's lands during her life-time is the right to come and go (ingress and egress). She cannot avoid his presence, unless he has furnished grounds for a legal separation. This husk of ownership—*curtesy initiate*—is also sufficient to permit a husband to serve on a jury.

However, curtesy consummate remains unchanged, unless the wife has disposed of her property by will.

Relinquishment and Forfeiture

The husband may relinquish all claims to curtesy by (1) a pre-nuptial agreement, (2) a post-nuptial agreement, (3) a separation agreement or (4) joining with his wife in a deed of sale, which, since 1935, is effective even though the husband is under twenty-one years of age. The husband forfeits his rights to curtesy if the wife sells her land either (1) after her husband has

abandoned her or (2) after her husband has left her and is living in adultery provided such sale takes place before a reconciliation. The husband forfeits his rights also if he has (1) abandoned the wife and is not living with her at the time of her death or (2) left the wife and is living in adultery at the time of her death or (3) maliciously turned his wife out of doors and they are not living together at the time of her death or (4) if the husband is convicted of murdering his wife or (5) of being an accessory before the fact of murder of his wife.

Even as in the case of dower, so also curtesy has been attacked. Its abolition and the substitution of a more satisfactory form of inheritance arrangement has been frequently urged. The use of land for life is not entirely satisfactory either to the husband or the heirs. The heirs must wait till the husband dies. At the same time the right to use land during one's life is not as satisfactory under modern economic conditions with its complex industrial set-up as it was in the days when most men looked to the soil to gain their sustenance. Law teachers and some members of the bar have repeatedly suggested a revamping of the law, but once again the Legislature has turned a deaf ear to the demands of changing times.

A MESSAGE FROM WPA

(Continued from page five)

about \$625,000 on our airports, and the WPA anticipates spending \$20,000 more to place proper air-marking signs all over the State for the guidance of the aviation world.

A total of thirteen armories are being built to house National Guard units of as many cities and towns. The total expenditure will be about \$425,000. We know how useful those buildings will be to the cities and towns erecting them with WPA's aid. The WPA will be willing to cooperate with about a dozen more towns to build as many more armories in the state under our continued program.

Twenty-six counties with our organization are spending \$260,000 to provide each of those counties with

an agricultural building to house their home demonstration agents and other officials, to serve as a better market place, and for many other civic purposes.

More than a million dollars has gone to lift farmers out of the mud. There have been built, repaired, or are now under construction, 2,723 miles of Farm-to-Market roads, and many bridges. On a similar endeavor, such is being done on 2,182 blocks of streets and alleys, calling for one-half million dollars.

Dozens of letters from health officers attest the fact that the \$460,000 set up for malaria control, \$180,000 for sanitation, and \$650,000 on sewers and sewage disposal plants, are being well spent in our help in the fight against the South's greatest health and economic drawbacks, malaria, typhoid, and insantiation.

Our aid in constructing recreation and community centers totals around one-half million dollars. These range from simple play areas on school grounds to such comprehensive enterprises as the Monroe recreation project where many acres are being transformed into an outdoor paradise for sports-loving people, with picnic grounds, lakes, a baseball diamond, tennis courts, swimming pools, bath houses, a club house and many other things incident to spending leisure time wisely and joyfully. In all, we are building separately or including in recreation projects, nine golf courses. The one in Farmville has been dedicated recently. In Raleigh, a large swimming pool and bath houses for Negroes is nearly finished. And so it goes all over the state. Working hours are becoming less in number—the WPA is bringing about many contrivances with which to properly use the additional hours, made available for recreation, in wholesome, health-promoting fun.

Cities, towns, and counties with the WPA have constructed \$185,000 worth of water supply systems. Our schools and public buildings have received more than one million dollars in additions, repairs, and other attentions.

North Carolina and the WPA have just cause to boast over the excellence of the remainder of our

more than 1800 North Carolina projects. The Women's and Professional projects, besides providing employment for needy white-collar workers, have given subsistence to thousands of women who are the bread-winners of their families. Hundreds of thousands of items of clothes have been made and distributed to our needy persons. County records have been indexed and brought into better shape. Thousands who were denied that privilege in their youth have been taught to read and write. School books have been repaired. Hundreds of thousands of school lunches have been served to under-privileged school children. The recreational projects, besides delighting and developing our youth, have saved us money by being the main factor in reducing juvenile delinquency. The writers' project has thoroughly catalogued North Carolina and soon the North Carolina section of the American Guide will be delivered to the state—and so on with hundreds of worthwhile endeavors. Training courses in home-making, domestic service, sanitation, and personal hygiene have been introduced into the sewing rooms. That, to me, is a fine step forward in the betterment of living conditions.

In addition to giving work to about 50,000 in North Carolina and obtaining for our State useful and needed improvements, the WPA has had three main objectives. The WPA is the first universal program which has endeavored to preserve skills of workers, to rehabilitate others through project training by teaching skills of which they were not formerly possessed, and to avoid competing with private industry.

I am, indeed, grateful for the splendid cooperation extended towards the President's plan to alleviate suffering and privation as that plan is formulated in the Works Progress Administration of North Carolina. As the Administrator of the WPA in this state, I can assure local public officials that the WPA will continue working harmoniously and aggressively with them to give employment to the many thousands in North Carolina who are eligible, able, and willing to work; and, in so doing, to give our state needed and worthwhile improvements.

Recent Cases

ATTACHMENT

When Ownership of Realty Vests. (Devisee received realty under will. Before will was probated, attachment levy was made on devisee's interest.) **Held**, devisee's interest did not vest before the probate of the will so as to be subject to attachment, and after the probate devisee's interest was a valid spendthrift trust not subject to execution. *Chinnis v. Cobb*, 210 N. C. 104.

AUTOMOBILES

Excessive Speed as Negligence. (Evidence that the defendant drove his car at from 50 to 55 miles per hour. The judge charged that this was negligence *per se*.) **Held**, as Pub. Laws, 1935, Ch. 311, changed the earlier law, driving in excess of 45 miles per hour is not negligence *per se*, but is only *prima facie* evidence that the speed is unlawful. *State v. Webber*, 210 N. C. 137. Also *State v. Spencer*, 209 N. C. 827.

Stopping on Highway. (Truck and trailer, with lights, stopped on the right side of the highway because two cars ahead were interlocked in a wreck. The highway to the rear of the truck was straight and level for a hundred yards. An instant later a third car, in trying to avoid still another approaching car, drove into the trailer.) **Held**, the truck driver was not negligent. *Stallings v. Transport Co.*, 210 N. C. 201.

Contributory Negligence of Child. (Twelve-year child playing in street skated across an intersection and was struck by a truck driven at excessive speed on the wrong side of the street.) **Held**, it is a jury question whether this amounted to contributory negligence on the part of the child, and in passing upon this question the child is only to be held to the degree of care which a child of such age may be expected to possess. *Hollingsworth v. Burns*, 210 N. C. 40.

Selecting a Reckless Driver as Negligence. (Evidence that the person driving the car was a reckless, incompetent driver given to the habitual and excessive use of liquor, and that both the owner, who permitted the driver to operate the car, and plaintiff's intestate, who was in the car, knew these facts about the driver.) **Held**, whether the owner was negligent in turning the car over to the driver, and whether plaintiff's intestate was negligent in getting into the car, were questions for the jury. *Taylor v. Caudle*, 210 N. C. 60.

Speed with Trailer. (In a manslaughter case it was not clear whether there was a trailer attached to the truck, but the judge charged that the lawful speed of defendant's truck was limited to thirty miles per hour.) **Held**, the State must prove that a truck has a trailer before the lawful speed of the truck is reduced to thirty miles per hour under C. S. 2621 [46a]. *State v. Brooks*, 210 N. C. 273.

COURTS

Trial on Appeal from Inferior Court. (Instead of remanding the case for trial on the issue of damages, to to which error was found, the Superior Court remanded the case for a new trial on all issues.) **Held**, this was in the Superior Court judge's discretion. *Brown v. Lipe*, 210 N. C. 199.

Clerk's Order. (Findings of fact and or-

der of Clerk as to motion to remove were approved by the judge at term.) **Held**, the order was determinative and no other judge of the Superior Court, at a later term, could change the order. *Rutherford College v. Payne*, 209 N. C. 792.

CRIMINAL LAW

Criminal Offense Must Be Declared Clearly. (Defendant convicted of buying and selling scrap tobacco without a state license.) **Held**, the statute—Pub. Laws, 1935, Ch. 360—is void in that it (a) fails to declare the act a crime, (b) is uncertain and vague in not stating when the license is to be paid or how long it is to run, and (c) violates due process of law. *State v. Merrimon*, 210 N. C. 117.

Killing in Self-Defense. (Defendant who provoked the assault claimed he had withdrawn from the fight and killed only in self-defense.) **Held**, in killing in self-defense if more force than was necessary was used it is manslaughter, and one who has provoked an assault may not claim self-defense, even for a necessary killing, unless he had withdrawn from the combat and already given notice of his withdrawal. *State v. Koutro*, 210 N. C. 144.

Conviction Must Be of a Definite Offense. (Conviction under indictment in the words of the statute: "did possess, manufacture, etc., or dispense a narcotic drug, to wit: cannabis.") **Held**, reversed, as it charged many offenses and the verdict does not show which offense was committed. *State v. Williams*, 210 N. C. 159.

Possession of More Than Gallon of Liquor Prima Facie Guilt. (Defendant had 12½ quarts in automobile. Judge directed that if jury believed evidence beyond a reasonable doubt to find "guilty.") **Held**, error, as there must be supporting evidence as well as a *prima facie* case (under C. S. 3379) for a directed verdict; the jury must determine whether the presumption of innocence is overcome by the *prima facie* case. *State v. Ellis*, 210 N. C. 166.

Conditional Plea under Pub. Laws, 1933, Ch. 23. (Judge on conditional plea convicted.) **Held**, jury must pass on guilt of accused. *State v. Ellis*, 210 N. C. 170.

Former Jeopardy. (On trial for robbery plea of acquittal of murder of companion of deceased. Convicted.) **Held**, murder and robbery were distinct offenses directed against different persons. *State v. Dells*, 210 N. C. 178.

Force in Making Arrest. (Constable having ill-feeling against deceased, in seeking to arrest him, without a warrant, killed him as deceased retreated, backing across the highway.) **Held**, evidence of manslaughter for the jury either (1) on the theory of revenge, or (2) on theory of unnecessary and excessive force. *State v. Eubanks*, 209 N. C. 758.

Evidence of Knowledge of Stolen Goods Received. (On trial for receiving stolen goods, evidence was offered to show that other stolen goods from which the consignee marks had been removed had been in the possession of defendant on three separate occasions within two weeks of the receipt of the goods for which the indictment lay.) **Held**, the evidence was competent to show guilty knowledge. *State v. Ray*, 209 N. C. 772.

Dying Declaration. (Victim of abortion, who had not been informed of the probability of impending death and who had not formerly stated that she regarded death as near, stated before the declaration that she thought she was going to die.) **Held**,

the statement was not sufficient to make the "dying declaration" competent. *State v. Stewart*, 210 N. C. 362.

Restitution of Money as Defense. (Defendant charged with embezzling funds proved restitution of the money.) **Held**, restitution is no defense in a criminal action for embezzlement though it may be in a civil action for the funds. *State v. Pace*, 210 N. C. 255.

EXECUTION

Supplemental Proceedings. (Defendant, before the proceedings, assigned a recovery to an intervenor, and, after the proceedings were instituted, made a record assignment of the judgment. Plaintiff sought to attach the recovery.) **Held**, at the time of the judgment defendant had no legal or equitable title to the recovery and plaintiff here could not reach it. *Fertilizer Works v. Newbern*, 210 N. C. 9.

EXECUTORS AND ADMINISTRATORS

Liability for Money Lost in Closed Bank. (Administrator left funds of an estate in a bank. He had at the time no actual or constructive knowledge that the bank was of unsound condition.) **Held**, he and his bond are not liable. *Martin v. McPherson*, 210 N. C. 194.

Clerk Ordering Accounting. (Will created a trust, but named no trustee, leaving the trust to be executed by the executor. Clerk ordered the executor to file a final account at the end of two years and turn over the assets to itself as trustee.) **Held**, the Clerk has no such power, as a matter of law, and the executor may continue to act as trustee without settlement, or appointment as trustee, during the life of the trust. *In re Trust Co.*, 210 N. C. 385.

HOMESTEAD AND EXEMPTIONS

Conveyance and Re-conveyance. (After judgment, debtor conveyed land. After execution but before sale, the land was re-conveyed to debtor, who claimed homestead.) **Held**, when originally conveyed the homestead was released, but when re-conveyed before the sale, the debtor again became entitled to a homestead. *Assurance Society v. Russos*, 210 N. C. 121.

Exemption in Mortgaged Property. (Homestead and personal property appraisal valued only the *equity* in the mortgaged realty and personalty.) **Held**, this was wrong. Homestead should be allotted in all land, subject to mortgages. Personalty free of mortgages should be first exempted. Personal property exemption may be demanded any time before the court orders final payment of the funds. *Crow v. Morgan*, 210 N. C. 153.

MORTGAGES

Trustee Bidding in Property for Beneficiary. (At sale the trustee announced a bid privately made to him by the beneficiary, and this being the sole bid, the sale was confirmed at that price.) **Held**, the sale was valid, as the trustee was not bidding for himself. *Elkes v. Trustee Corp.*, 209 N. C. 832.

Deficiency Judgments. (At foreclosure under power the property was sold to a third person for less than the debt. On suit for deficiency, Pub. Laws, 1933, Ch. 275 was pleaded in bar of any recovery beyond the fair value of the land.) **Held**, this statute limiting deficiency recoveries applies to actions for deficiencies after sales under power, but does not apply to foreclosures by action. The statute applies in foreclosures under power only when the creditor, directly or indirectly, bids in the property. *Loan Corp. v. Trust Co.*, 210 N. C. 29.

Bulletin Service

Opinions and rulings in this issue are from rulings of Attorney General and State Departments from July 2 to August 15



Prepared by
M. R. ALEXANDER

I. Ad valorem taxes.

A. Matters relating to tax listing and assessing.

4. Exemptions—property of Federal agencies.

To I. C. Moser. Inquiry: Please advise if preferred stock of State Banks held by the Reconstruction Finance Corporation is taxable in North Carolina? It appears from Public Act 482 (S-3978) Federal Laws March 20, 1936, that shares of stock in National Banks held by the R.F.C. are not taxable.

(A.G.) Under the present state of the law it appears to be the safest opinion that shares in State Banks owned by the R.F.C., a Federal agency, are not subject to State, county or municipal taxation.

5. Exemptions—city and county property.

To Julius Banzet. Inquiry: Please give me your opinion as to whether stocks of goods and fixtures of County A.B.C. stores in our town are liable to the town for ad valorem taxes?

(A.G.) In our opinion the town is entitled to tax such property on an ad valorem basis, but would not have the right to levy a privilege or franchise tax on the operation of the business. Our opinion is controlled by the decision in *Benson v. Johnston County*, 209 N. C. 751. 20. Valuation of real estate.

To W. H. Hammond. (A.G.) The statute provides that the tax list for municipal ad valorem taxes shall be taken from the county list. The town is legally bound to accept the assessments fixed by the county, and has no power to value property for ad valorem taxes.

51. Nature of property.

To J. A. Henderson. Inquiry: Is the good will or "going concern" value of a corporation required to be listed for ad valorem taxes?

(A.G.) You will find a discussion of this question on page 30 in the booklet, "The Listing and Assessing of Property for City and County Taxes," prepared by Henry Brandis, Jr., of the staff of the Institute of Government.

The rule is stated in *Corpus Juris*, Vol. 61, p. 199, as follows: "In the absence of express statutory authority, good will is not taxable, and it has been held not taxable under statutes providing broadly for taxation of all property, nor under statutes providing generally for taxation of 'intangible property' or 'other personal property.' Good will may, however, properly be considered as an element of value in connection with the assessment of tangible or intangible property to which it appertains."

In my opinion, the Legislature has not made any specific provision in the law for listing good will for ad valorem taxes. It is in no sense a solvent credit and, in my opinion, is not included within the phrase, "other personal property," as the phrase is used in Sections 305 (10) and 507 (24) of the Machinery Act.

79. Deductions from solvent credits—debts and liabilities.

To T. D. Warren, Jr. Inquiry: Are the following items deductible from solvent credits in listing property of an estate by the executor for the years 1935 and 1936: (1) Debts of decedent; (2) Inheritance taxes due the State; (3) Expenses of administration?

(A.G.) (1) Yes. (2) No. (3) Only if they have been approved and are unpaid debts at the listing date.

B. Matters affecting tax collection.

10. Penalties, interest, and costs.

To W. A. Devin, Jr. Inquiry: What is the correct rate of interest on tax sales certificates?

(A.G.) Under C. S. 8037 the interest and penalties on tax sales certificates is 10% for the first year and 8% thereafter. However, Chapter 560, Public Laws of 1933, provides that the interest and penalties shall be 8%. We have construed this to mean that only 8% can be charged after May 15, 1933, the date of the ratification of that Act.

50. Tax collection—acceptance of bonds for taxes.

To J. R. Wollett. (A.G.) In the absence of a special local act permitting it, the town is not empowered to accept its past due bonds and interest coupons in payment of municipal taxes.

76. Tax collection—date lien of taxes attaches.

To J. E. Caldwell. Inquiry: In requests for financial statements from securities dealers we are frequently asked when the tax year ends and when taxes become delinquent. Please advise the correct answers?

(A.G.) Assuming you refer to ad valorem or property taxes, under *State v. Fibre Co.*, 204 N. C. 295, the tax year is made to coincide with the fiscal year, running from July 1 to June 30 inclusive.

The term "delinquent," as applied to taxes, does not have a specific meaning which is precisely the same in all cases. However, although taxes are due October 1, we do not consider such taxes delinquent until the date at which, by law, real estate is permitted to be advertised for sale to pay such taxes, to wit, the first Monday in May.

C. Levy of special taxes.

14. For forest fire control.

To W. C. McCormick. Inquiry: Has a County authority to levy special taxes for forest fire control which would result in the County's exceeding the constitutional limitation of 15c on the \$100 imposed by Art. 5, Sec. 6, of the State Constitution?

(A.G.) The State Supreme Court has held that for special purposes, with the special approval of the Legislature, a County's Commissioners may exceed the limitation without a vote of the people, provided those special purposes are for the necessary expenses of the County. See *Glenn v. Commissioners*, 201 N. C. 233.

However, a careful search fails to reveal either a special or general act of the Legislature authorizing a special tax in excess of the constitutional limitations for the purpose of forest fire control in any of the counties. It is the opinion of this Department that in the absence of such special approval of the Legislature the County in question could not lawfully impose a tax which would exceed these limits.

II. Poll taxes and dog taxes.

B. Collection of poll taxes.

5. Levy on real estate.

To I. H. Blair. Inquiry: May real estate be held for poll and personal property taxes (1) if the county has sold the land under a tax sale but no judgment has been taken or final sale held, or (2) if a judgment has been taken and a final sale held, the county bidding in the property at the sale?

(A.G.) The answer is the same in both cases. If the poll and personal property taxes were included in the tax for which the property was sold at the tax sale, it would be collectible out of the real estate. If the land was sold only for the tax upon the land, you could not now proceed against the land to enforce a lien for the poll and personal property taxes.

III. County and city license or privilege taxes.

A. Levy of such taxes.

15. Privilege license on businesses, trades, and professions.

To J. G. Merrimon. (A.G.) A town has power under its charter or under the general law (C. S. 2677) to levy annually a tax on all trades, professions, and franchises carried on or enjoyed within the city unless otherwise provided by law. As you state, many restrictions are imposed under the Schedule "B" taxes levied by the General Assembly, and the general authority of the municipality is subject to these restrictive provisions, in the absence of which the general law applies.

To R. M. Lilly. Inquiry: Are merchants now liable for a merchandise tax as provided by the 1931 Revenue Act?

(A.G.) No. This was repealed by the provisions of the Emergency Revenue Act of 1933, which substituted therefor the sales tax. However, a merchant would be liable for any such tax which accrued during the period that the 1931 Act was in effect and which remains unpaid.

40. License tax on peddlers.

To H. L. Lyon, Jr. Inquiry: An ice company maintains a warehouse outside the city limits but peddles ice therein. May the town tax such operations under Section 121 of the Machinery Act?

(A.G.) No. Subsection (e) exempts persons, firms or corporations who sell ice among other things from the provisions of the tax on peddlers.

47. License tax on slot machines.

To W. P. Kelly. Inquiry: The injunction against the collection by the Commissioner of Revenue of the State license tax on music slot machines will be dissolved as of July 22. It is not our understanding that any of the municipalities of the State were restrained, but that only the State was involved in this suit.

Section 130 (f), Revenue Act of 1935, provides that counties, cities, and towns may levy a tax not exceeding that levied by the State. The schedule of taxes that the State may levy is as follows: A slot machine requiring a deposit of less than 5c carries a tax of \$10; 5c and less than 10c—\$20; 10c and not more than 20c—\$40; more than 20c—\$80.

IV. Public schools.**B. Powers and duties of counties.****17. Apportionment of funds.**

To J. W. Jennette. Inquiry: Which unit levies and collects taxes for a city school district—city or county?

(A.G.) Section 4 of the School Machinery Act, Chapter 562 Public Laws of 1933, abolished all Special Charter Districts except for the purpose of levying and collecting taxes for vocational training and for levy and collection of special taxes theretofore voted in the unit for the payment of bonds issued and other obligations assumed.

In short, the city levies for the payment of bonds and obligations of the district and the county for operating expenses of the district, and in those counties which have assumed the bonded debt of local school districts the levy for debt service is made by the county instead of the city.

To B. H. Perry. Inquiry: If a county has assumed the burden of Debt Service and Capital Outlay for a city administrative unit, is the county still required to allot per capita for these purposes to such unit? (A.G.) We think not, as such an allotment would be unnecessary and in effect a duplication of payment.

C. Powers and duties of city administrative units.**4. Property.**

To R. H. Latham. Inquiry: Who should hold title to school property in a city administrative unit, the city school board or the county board of education?

(A.G.) Since all school districts, including Special Charter Districts, were abolished by Section 4, School Machinery Act of 1933, except for the purpose of levying debt service tax therein where the district was in debt, no authority now exists for the purchase of school property by a city administrative unit. Such property may be purchased by the county at the instigation of the county board of education alone.

F. School officials.**10. Trustees of city administrative units—election.**

To F. M. Waters. (A.G.) In our opinion, City Commissioners are authorized to elect school trustees residing anywhere in the boundaries of the school district and would not be confined to persons residing within the limits of the city. Extension of the school boundaries carries with it the selection of trustees residing anywhere within the district.

50. Principals and teachers—election and contracts.

To J. O. Wells. Can a County Board of Education disapprove a teacher arbitrarily, or must charges be preferred?

(A.G.) Under the 1935 School Law the Board of Education has a discretion which it may exercise as to the approval or disapproval of any teacher so selected. It has this discretion independently of any charges which may be preferred. While it is not expected to abuse the discretion, no court would be authorized to inquire into its reasonable exercise or to compel the Board of Education to accept a teacher of which it did not approve.

To F. S. Dennis. Inquiry: The County Board of Education passed a rule that "no high school principal's wife be employed as a teacher. . . ." Is this valid?

(A.G.) No. The School Machinery Act of 1935 provides: "In the employment of

teachers no rule shall be made or enforced on the ground of marriage or non-marriage."

51. Teachers—duty to notify teachers not re-elected.

To C. A. Erwin. Inquiry: Please construe the section requiring notice within 30 days after the close of the school term to teachers failing of re-election.

(A.G.) Failure to furnish notice does not give the teacher the right to continue in his position, and election of another person is valid. However, this does not mean that the requirement of notice is not a mandatory duty upon county boards of education. In my judgment, such teachers may have redress against the members of the county boards individually if failure to give notice was the result of gross negligence or bad faith, and the teacher was injured thereby. Also, it is my opinion that members of boards of education who negligently fail to perform this duty may give cause for inquiry as to misconduct in office.

58. School bus drivers.

To J. J. Tarlton. (A.G.) The pay of school bus drivers is regulated by Section 27, Chapter 455, Public Laws of 1935. County Commissioners have no authority to levy taxes to supplement the salaries of drivers.

1. School property.**10. Disposition.**

To J. J. Tarlton. Inquiry: Does the County Board of Education have power to convey old school grounds in exchange for larger school grounds without advertising the transaction? (A.G.) We think it necessary to go through the form of a public auction with advertising. However, this might be done by pre-arrangement.

V. Matters affecting county and city finance.**I. Issue of bonds.**

To F. H. Perry. Inquiry: What laws govern a town's right to issue and sell bonds to meet its part of the cost of a W.P.A. water and sewer project?

(A.G.) A town may issue bonds either under the Municipal Finance Act or the Emergency Municipal Bond Act of 1935, provided same are duly authorized and approved by the Local Government Commission. We suggest you write to Mr. W. E. Easterling, Local Government Commission, Raleigh, who will give you full advice and suggestions how to proceed under the provisions of these laws.

VI. Miscellaneous matters affecting counties.**A. Contractual powers.****10. Competitive bids.**

To H. P. Taulor. Our Board of County Commissioners considers that an emergency exists at one of the schools, so acute is the need for additional rooms. Is there any prohibition against the county's engaging a competent contractor and constructing the addition without the formality of advertising and letting the contract to the low bidder?

(A.G.) Chapter 400 as amended by Chapter 552, Public Laws of 1933, requires advertising and public letting in the case of construction of which the estimated cost exceeds \$5,000. However, if the total does not exceed this figure, it is our opinion that there would be no prohibition against the Commissioners' going ahead and engaging a competent contractor and accomplishing the construction of the building described by you.

B. County agencies.**10. A.B.C. stores.**

To Guy Elliott. Do A.B.C. Boards elect their chairman for the full four-year term or elect a new one each year, as in the case of Boards of County Commissioners? (A.G.) This officer is, in my opinion, elected for the full term of his membership. I do not think the analogy in the law relating to the selection of County Commissioners is applicable.

To F. G. JACOBS. Inquiry: The Pasquotank Liquor Act provides that 5% of the profits of A.B.C. stores shall be set aside "for the enforcement of this Act." The Act does not state who is to receive or spend this fund. Please give us your opinion as to its proper disposition.

(A.G.) The law is so incomplete in this respect that my advice to you is to retain the 5% fund in the Treasury of your Board until proper legislation may be had at the coming Legislature directing its disposition.

20. Electric membership corporations.

To A. J. Maxwell. Inquiry: Is a county electric membership corporation liable for the franchise tax imposed by Section 203, Revenue Act of 1935?

(A.G.) Subsections 4 and 5 provide that all property owned by such corporations and used exclusively for their purposes shall be held in the same manner and subject to the same taxes and assessments as property owned by any county or municipality of the State.

VII. Miscellaneous matters affecting cities.**A. Water rents.****10. General rules governing.**

To W. O. Gardner. Inquiry: C. S. 2808 gives a town the right to cut off water for non-payment. (1) Does this apply equally to out-of-town customers? (2) Is there any limitation on the rates the town may charge out-of-town customers for water?

(A.G.) (1) We think a town has the same right as to out-of-town customers as it has to its town customers, except where a contract is made with the out-of-town customer, the contract would have to include a recognition or plain inference of this right of the town for it to be exercised.

(2) See C. S. 2807-8. I assume that matters that are arbitrary or done in bad faith on the part of the Governing Body of the town would be subject to review in the courts.

K. Appropriations and grants.

To R. S. Jackson. Inquiry: May a town legally make a small appropriation to provide music teaching in the schools of the local administrative district? (A.G.) No. The School Machinery Act expressly provides that a town may now make no levy except for debt service and for vocational education under certain conditions. See Chapter 562, Section 4, Public Laws of 1933.

Q. Town property.**10. Sale.**

To A. C. McIntosh. Inquiry: A city is desirous of swapping certain governmental property for a Federal building which is suited for offices for the city administration. Does the town have such authority?

(A.G.) The general provisions contained in your charter and in C. S. 2688, if fully complied with, would not authorize the sale of this type of property. The General Assembly would have to authorize by special enactment the exact transaction which is being negotiated.

VIII. Matters affecting chiefly particular local officials.

A. County Commissioners.

To C. B. Atkinson. (A.G.) In our opinion, members of the Board of County Commissioners, under the salary law, Chapter 7, Public Laws of 1931, are not entitled to any extra pay by reason of sitting on the Board of Equalization, as they are on such Board ex officio.

B. Clerks of Superior Court.

1. Salary, costs, and fees.

To C. B. Skipper. Inquiry: Is the Clerk entitled to collect fees on money paid into his office for the support of a wife or child?

(A.G.) We think not. C. S. 3903, setting the fees of Clerks, exempts monies placed in their hands in certain cases, including those as a result of a court order or decree, as in the instant case.

To J. E. Griffin. (A.G.) C. S. 5059 requires payment to the Clerk of a reasonable compensation for his services as Judge of Juvenile Court. While the County Commissioners are required to determine the amount of compensation, it should be reasonable and not nominal, and it is "independent of any compensation which may come to him as Clerk of Superior Court." We also think the Clerk might apply for mandamus against the County Board upon refusal to fix and pay such compensation.

10. Collection of process tax.

To W. I. Cochran. (A.G.) This Office has formerly ruled that process tax should not be assessed in a bill of costs in criminal actions in Recorder's Court nor in special proceedings. We have also ruled that process tax is charged in tax suits only in cases where the action has been brought to a full conclusion.

36. Deputy Clerk—powers.

To O. L. Williams. Inquiry: May a Deputy Clerk issue a summons and sign an order in claim and delivery or an order that summons be served on a party by publication?

(A.G.) We think that such acts are ministerial and not judicial in character and might, therefore, be performed by a deputy.

50. Costs.

To W. H. Young. Inquiry: I understand that the statute provides that when a county pays the costs in a criminal case it is liable for only one-half the amount but when the Defendant does he pays the full amount. Is there any statute which vests in any official the authority to permit the Defendant to pay half costs or the same as paid by the county? (A.G.) No.

60. Legal notices.

To R. E. Little. Inquiry: Does an advertisement of a legal sale comply with the statute if publication is in a local paper which is mailed through the local post office but printed in another county and brought here by car?

(A.G.) The majority and better view is that a newspaper is published in the county wherein it is first circulated, from which it is first mailed out.

82. Decedents' estates—administrator's and guardian's bond.

To Fred F. Church. Inquiry: Is it necessary for (1) an executor to give bond before qualifying where the will did not specify that he was to act without bond? (2) A trustee named under a will to administer a trust as provided by Section 51 of the Code?

(A.G.) (1) An executor is not required to give bond except in cases provided by the statute. It is not necessary that the testator should provide in the will that executors shall act without giving bond. The matter is entirely controlled by the statutes. See C. S. 33-7.

(2) C. S. 51 provides only that testamentary trustees shall file in the Clerk's Office an inventory of assets and annual and final accounts thereof, such as are required of executors and administrators. There is no provision in law, as pointed out in 210 N. C. 385, requiring a testamentary trustee to qualify and give bond prior to receiving the assets of a trust estate.

L. Local law enforcement officers.

3. Prohibition law—transportation into state.

To J. W. Selig. Inquiry: Does carriage of a bottle of A.B.C. whiskey (seal broken) from one wet county to another through a dry county make a person guilty of illegal transportation?

(A.G.) No person has a right to transport intoxicating liquor in a dry county where the state-wide prohibition law is still in effect. The only exception is that where whiskey is transported in *inter-state* commerce it may be carried through the State without molestation.

25. Prohibition—Wine Law.

To P. G. Crumpler. (A.G.) The Supreme Court has not passed on the section of the Wine Law giving Boards of Commissioners power to prohibit the sale in their counties.

To H. H. Tate. Inquiry: What is the maximum alcoholic content of (1) beer and (2) wines legal in North Carolina?

(A.G.) (1) 5% by weight. (2) Such as natural fermentation produces, and then only as to wines manufactured in this State from native grown fruits.

30. Slot machines.

To W. F. Anderson. Inquiry: Please give me your interpretation of the Supreme Court's recent decision on slot machines and advise me as to my duty thereunder.

(A.G.) In the case of State v. Humphries, 210 N. C. 406, the Supreme Court dealt with the subject of slot machines and held that certain machines, including the ordinary form of pin table, etc., to be illegal and to be gambling devices. The law directs the seizure of gambling devices and arrest of those in whose possession they are found and by whom they are being operated. See C. S. 4535 et seq.

31. Lotteries.

To R. L. Hefner. Inquiry: A local merchant makes a \$2.50 cash daily refund to a customer whose name is selected by a drawing each day at the place of business of the merchant. Is this a violation of the State's lottery law? (A.G.) Yes, directly.

38. Automobile Drivers' License Act.

To A. B. Carter. Inquiry: Several situations have given us trouble with regard to the application of the drivers' license law. For instance, one man we arrested had bought his car the day before and claimed he had not had time to get a license. Please advise.

(A.G.) The fact that the man had not had time to get a license does not suspend the law nor give him a right to drive at all without such license. The question as to the severity of punishment might, of course, appeal to the court.

To C. H. Whedbee. (A.G.) This Office has ruled in an official opinion to the Director of the Drivers' License Bureau

that the State Highway Patrol has no authority to suspend or revoke a driver's license. Such suspension or revocation is the responsibility of the Department of Highway Safety.

We interpret Section 11, Subsection (a), as a police measure enacted purely for the safety of the driving public and giving the Highway Safety Division authority to suspend the license of an operator or chauffeur from such evidence as may be presented to it concerning the ability or ineligibility of the operator to drive an automobile upon the highways of this State.

Subsection 8 (b) of this Section provides that an operator so suspended may be given a hearing before the Director. Section 18 (d) specifically provides that pending an appeal the court from which appeal is taken shall make such recommendation to the Department relative to suspension of the license until the appeal shall have been finally determined. It is our information that the Highway Safety Department in practically all cases follows such recommendation.

M. Health and Welfare officers.

1. Selection.

To R. G. Anders. Inquiry: (1) Where the stipulated county officials fail to select a County Board of Health as required in C. S. 7064, does the old Board hold over? (2) Would the Board of County Commissioners have authority to select a county health officer or physician without action by the County Board of Health?

(A.G.) (1) In my opinion, the old Board does not hold over, as the law provides that the "terms of members of County Board of Health shall terminate on the first Monday in January of the odd years of the calendar."

(2) C. S. 7067 provides that if the health officer is not selected within two months from the second Monday in January of the odd years, the Secretary of the State Board of Health shall appoint a Health Officer to serve the remainder of the term and shall fix his compensation.

P. Judges of Recorders' and County Courts.

To A. R. Crisp. (A.G.) In our opinion, it is not necessary for the State to make deposit for costs of the jury in trials in Recorders' Court where the jury trial is demanded by the State. This statement applies only to cases in which the State is officially represented by prosecuting attorneys in Recorders' Courts. If the State is not officially represented by a prosecuting attorney, in my opinion, a prosecuting witness in the case would have no right to demand a jury trial. This right is confined to the prosecuting attorney representing the State in the Justice's Court and Recorder's Court and not to any witness prosecuting the case or to any private counsel representing prosecution. However, no demand could be made upon any prosecuting witness for the deposit of jury fees. The County would be responsible for such costs as in other cases.

50. Audits.

To L. L. Davis. (A.G.) The financial audits of the offices of the Recorders' Courts are under the jurisdiction of the Boards of Commissioners in the various counties of the State. The audits of your office should, therefore, be controlled under the law by the Board of Commissioners of your county and your records submitted to them as may be directed by that Board.

MUNICIPAL BOND TRENDS

Quotations on State of North Carolina and municipal obligations: Prices will vary with coupon rates, maturities, and market conditions.

<i>Security</i>	<i>Bid</i>	<i>Asked</i>
Charlotte, 4s, 1954	3.35-1	3.25%
Durham, Water, 4 $\frac{1}{2}$ s, 1955	3.30-1	3.25%
W-Salem, 4 $\frac{1}{2}$ s, 1948	3.35-1	3.30%
Catawba Co., Sch. 4 $\frac{3}{4}$ s, 1943	3.40-1	3.30%
Forsyth Co., Refdg. 4 $\frac{3}{4}$ s, 1953/55	3.35	3.30%
Pitt Co., R.&B. 5s, 1945/48	4.10-1	4.00%
Wake Co., Road, 4 $\frac{3}{4}$ s, 1950	3.85-1	3.75%
Salisbury, St. Imp., 6s, 1940	99	102
N. C. Gen. Fund 2 $\frac{1}{2}$ s, 1945	2.15%	2.10%
N. C. Gen. Fund 3 $\frac{1}{2}$ s, 1946	2.60%	2.55%
N. C. Hwy., 4s, 7-1-50	3.00%	2.90%
N. C. Hwy., 4 $\frac{1}{4}$ s, 1-1-51	3.05%	2.95%
N. C. Hwy., 4 $\frac{1}{2}$ s, 1-1-58	3.10%	3.00%

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tem in 1911—90,000 h.p.

Generating capacity of Duke Power sys-
tem in 1936—1,000,000 h.p.

Number of spindles driven by Duke
Power system in 1911—1,000,000.

Number of spindles driven by Duke
Power system in 1936—7,000,000.

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