

IN THIS ISSUE



THE CAROLINA INN, SITE OF RECENT
POLICE SCHOOL (COVER)

IDEALS AND ETHICS IN LAW
ENFORCEMENT--By Hugh H. Clegg

UP TO NOW WITH THE LEGISLATURE
By Henry Brandis, Jr.

ON THE JOB WITH NYA
By M. R. Alexander

THE PROPOSED CHANGES IN THE
ELECTION LAWS--By Raymond Maxwell

A WIFE'S PERSONAL PROPERTY
By Harry W. McGalliard

STATE AND FEDERAL SERVICES TO
LOCAL UNITS--By M. R. Alexander

TRIAL CALENDARS FOR CRIMINAL
TERMS OF COURT--By Dillard Gardner

SPECIAL NEEDS AND PROBLEMS IN
GOVERNMENTAL ACCOUNTING
By T. N. Grice

NEWS AND RULINGS OF INTEREST TO
PUBLIC OFFICIALS AND LAWYERS



POPULAR GOVERNMENT

Aids to Officials - - - Savings to Taxpayers

Recent Publications

Guidebook Series

The Listing and Assessing of Property for County and City Taxes—By Henry Brandis, Jr.

The Collection and Foreclosure of County and City Taxes—by Henry Brandis, Jr.

Organization Manuals

The Structure and Organization of the Sheriff's Office—By Dillard S. Gardner.

The Structure and Organization of the Office of Clerk of Superior Court—By Dillard S. Gardner.

Financial Series

A Summary of City and County Financial Problems Raised by the New Amendments—By T. N. Grice.

Local Governmental Debt Problems in North Carolina—By T. N. Grice.

Special Studies

Federal and State Services to Local Units and Officials—By M. R. Alexander.

Guides to Highway Safety—By Harry W. McGalliard.
(Available for distribution in quantity in schools or with city auto tags.)

Directory Series

Directory of State and County Officials Elected November, 1936.

Directory of N. C. City Officials.

Recent Monographs and Articles of Particular Interest

New Legislature Has Work Cut Out.

The New Unemployment Compensation Act.

Revaluation Year Brings Counties Choice of Methods.

Traffic Bureaus for Minor Violations.

Cities Seek New Laws.

Permanent Listing in Mecklenburg.
Tax Mapping a City and County.

Are Your County and City Providing Your Officials

THESE IMPORTANT SERVICES:

Daily Legislative Bulletins

to keep them posted as to action taken each day on all Acts of the Assembly affecting your county and town.

Summaries of New Laws

to bring them a summary, promptly at adjournment and before the printing of the Statutes, of the new laws affecting your county and town and their chief officials.

A Monthly Magazine

to bring them digests of new cases and rulings, State and Federal, interpreting these laws, and new developments in governmental methods and practices, so as to keep their information up-to-date at all times.

Guidebooks for Officials

to bring the chief officials not only the laws, cases, and rulings governing their offices but also the methods and practices in use in the same offices elsewhere.

State and District Institutes

for the imparting of information and discussion of mutual problems among the chief groups of officials.

Informational Service

to provide your officials a continuous informational and advisory service, operated by six full-time staff members, on any subject or problem connected with their work.

Your City and County, and Their Officials, Can Not Afford to Be Without These Services

FOR FULL INFORMATION

—write—

The Institute of Government

Main Offices--Chapel Hill, N. C.

Legislative Offices--Raleigh, N. C.

POPULAR GOVERNMENT

VOLUME 4
NUMBER 4

PUBLISHED MONTHLY BY THE INSTITUTE OF GOVERNMENT

JANUARY
1937

Ideals and Ethics in Law Enforcement

Mr. Clegg headed the staff of national authorities at the Institute of Government's 10-day school for training police instructors, which was held in Chapel Hill January 5-14, and which drew a total attendance of 142 officers. His discussion of ideals and ethics in law enforcement, reproduced herewith, made a deep impression on the enrollees and was one of the high lights of the successful sessions.

THE progress and evolution of criminal sociology give us a degree of pride when comparing present day standards with those which heretofore existed. In the ancient days it was the sharpest teeth, the longest claws, and the most stubborn powers of resistance in combat that were the important and dominating factors. "The weak to the wall; only the strong shall survive," was the code on which was predicated the so-called administration of justice of the day. It was a policy of exaggerated individualism where the injured party was the investigator or policeman, the prosecutor, the jury, the judge, and all too frequently the executioner. The progress which has been made has brought us today to a point where we recognize that every factor in a program of law enforcement must be manned by a personnel that is carefully selected, well adapted, and adequately trained for the performance of their duties.

We recognize that our judges must be learned in the law and must have innate qualities of justice, dignity, poise, and bearing that enable them to command respect and dispense justice to whose who appear

By HUGH H. CLEGG
Director, National Police Academy

before the bar. Our prosecutors must likewise be learned in the law and must be vigorous and alert in defending the rights, property, and lives of our citizens. But did you ever stop to think that the first problem in any program of law enforcement is the police problem—the problem of investigation. The judges are not called upon to impose sentences nor the prosecutors to try cases until after the crimes have been solved and the criminals apprehended.

Those who are engaged in the detection of crime, the apprehension of criminals, and the enforcement of laws should, therefore, be just as carefully selected, as well adapted, and as adequately trained as are our judges and prosecutors for the performance of their respective duties.

Young and Vigorous Profession

Law enforcement is an art and a science. It has developed into a real profession. Yet it is comparatively one of the youngest of all recognized professions. The professions of the clergy, the lawyer, and the doctor are old by comparison, having been in existence on a professional basis for centuries. But the oldest organized police department in the United States is less than 90 years of age, and the oldest law enforcing organization having jurisdiction in a rural territory in the United States, devoted exclusively to law enforcement, is now but 64 years of age. The profession of which you are a member is young, it is vigorous, it is growing, it is vital, it is breathing. It has all the ambition of youth and at times some

of its recklessness, and yet with all its shortcomings, its standards will compare with other professions.

Lawyers and doctors have their standards of ethics. A doctor on entering the practice of his profession takes the oath of Hippocrates, which sets forth a standard of conduct, an idealism in the performance of his duties, and serves as a check on abuses of the privileges of the medical profession. The lawyers of this

THE LAW ENFORCING OFFICER'S OATH

As a man I will seek to give comfort and aid and advice to those who are in need of such benefits; as a soldier I will vigorously fight in defense of my country and its laws; as a physician I shall seek to eliminate the criminal parasite from our social structure and to strengthen the lawful processes of our body politic; I shall strive to be both a teacher and a pupil in the art and science of law enforcement; as a lawyer I shall endeavor to become acquainted with the law of my domain and shall seek to uphold the majesty of the law; as a scientist I shall diligently strive to learn all the truth about all complaints which come to my lawful knowledge; as an artist I shall endeavor to make every assignment a masterpiece; as a neighbor I shall bear an attitude of friendship and good will toward my fellow citizens; and as an officer I shall be loyal to my duty, to my organization, and to my country.—Hugh H. Clegg.



TEN-DAY SCHOOL FOR POLICE INSTRUCTORS GREAT SUCCESS

Here are the North Carolina officers who satisfactorily completed the full 10-day course at the Institute of Government's police school in Chapel Hill, January 5-14, and have returned home to serve as instructors for their local departments. The picture was taken just after Governor Clyde Hoey had awarded the certificates at the final session. The Governor is shown on the front row with Albert Coates (left), Director of the Institute, and Ed Scheidt (right), Special Agent of the Federal Bureau of Investigation, who is on leave to help the Institute work out the North Carolina system of State, district, and local police schools.

The state-wide school for police instructors, which brought to Chapel Hill some of the outstanding law enforcement authorities of the State and Nation, including Director Clegg and six members of the staff of the National Police Academy, was pronounced a distinct success by those attending. The above picture includes only the 61 officers attending the full 10 days and successfully passing the stiff examination necessary to receive certificates. The total attendance reached 142 officers, representing city, county, State, federal, and private law enforcing agencies in North Carolina, including men from 43 city police departments. A list of those receiving certificates will be found elsewhere on this page.

country and practically every nation are associated together in bar associations and institutes. They, too, have established canons of ethics and high ideals which serve to guide them in the performance of duties along legal, ethical, and moral lines. If we the members of the law enforcing profession look at the plain facts, our work is the work of a professional man, and we too must have a standard and a code of ethics, a code that will cause us to follow the principles of right and justice and not to pursue any illegal or unethical methods and tactics in the performance of our duties.

The Third Degree

Certainly those who subscribe to the ethics of the law-enforcing profession must and do recognize the fact that duress, torture methods, entrapment, and third degree tactics have no place in the performance of our duties. Torture and third de-

gree methods are relics of the days of barbarism. They remind us of the days of the ancient inquisitions. They are the remains which are found in the bottomless pits of the dark ages. Of themselves illegal, such practices defeat the purpose for which they are intended, for confessions obtained as a result of duress and illegal methods are not admissible in court. Those who apply torture methods by so doing violate the law, and certainly those who are sworn to uphold and defend the law can find no justification in violating it themselves. In olden days, when an officer obtained a confession as a result of brutality, the only way he could have it admitted as evidence was to testify that he had not used such methods in obtaining it. Thus he not only violated the law in applying such tactics but again when he committed perjury in seeking to have the statement admitted while

denying the practices of which he had been guilty.

Such practices are of a day that is gone. We of today are proud to
(Continued on page nineteen)

POLICE SCHOOL AWARDS

A total of 61 officers attended and successfully completed the full 10-day course at the Institute of Government's Police School in Chapel Hill, January 5-14. Those receiving certificates were:

Town	Name	Rank
Albemarle	J. B. Little, Police Chief	
Burlington	T. J. Davis, Police Sergeant	
Burlington	John Laws, Police Chief	
Canton	A. G. Russell, Police Chief	
Carolina Beach	W. J. Smith, Police Chief	
Chadbourn	D. F. Mercer, Police Chief	
Charlotte	G. N. Lowdon, Federal Agent	
Charlotte	C. T. Brown, Police Lieutenant	
Durham	M. M. Thompson, Police Lieut.	
Durham	W. J. Croom, Pub. Safety Dir.	
Durham	N. K. Hardee, Police Captain	
Durham	R. S. Harris, State Patrolman	
Durham	G. C. Robinson, Police Lieut.	
Durham	E. H. Williams, Policeman	
Edenton	George Dail, State Patrolman	
Gastonia	C. L. Hord, Police Captain	
Gastonia	C. F. Peninger, Policeman	
Gibsonville	C. R. Curtis, Police Chief	
Goldsboro	N. D. Gwatney, Police Captain	
Goldsboro	A. E. Hudson, Forensic Microscopist	
Greensboro	J. J. Bailey, Railway Police	
Greensboro	J. R. Brandon, Alcohol Tax Unit	
Greensboro	J. A. Lowdermilk, Police Detective	
Greenville	J. R. Mabley, Jr., Policeman	
Greenville	R. T. Rogerson, Policeman	
Henderson	J. A. Hall, Policeman	
Hickory	E. B. Eakers, Policeman	
Hickory	R. R. Robertson, Police Sergeant	
High Point	W. C. Johnson, Police Capt.	
Kinston	G. E. Canady, Police Captain	
Kinston	J. A. Merritt, State Patrolman	
Kinston	M. A. Schmidt, Police Captain	
Lenoir	Fred Dover, Assistant Chief	
Lumberton	S. A. Rigby, Policeman	
Monroe	Emsley Armfield, Police Chief	
Morganton	G. R. Dunan, State Patrolman	
Mt. Airy	J. W. Jessup, Police Sergeant	
Mt. Airy	O. W. Patterson, Policeman	
Oxford	J. L. Cash, Assistant Chief	
Raeford	W. R. Barrington, Dep. Sheriff	
Raleigh	W. R. Kelly	
Raleigh	H. L. Pierce, Police Chief	
Reidsville	Hugh Cobb, Patrolman	
Roanoke Rapids	H. E. Dobbins, Police Chief	
Rocky Mount	H. Lynwood Elmore, Solicitor	
Rocky Mount	Z. H. Wheless, Patrolman	
Roxboro	S. A. Oliver, Police Chief	
Salisbury	C. R. Adams, State Patrolman	
Selma	A. R. Driver, Police Chief	
Shelby	W. K. Hardin, Patrolman	
Tarboro	W. R. Worsley, Police Chief	
Troy	S. W. Moxley, Police Chief	
Washington	A. L. Singleton, Police Chief	
Williamston	C. B. Roebuck, Sheriff	
Wilmington	C. H. Casteen, Police Lieut.	
Wilmington	T. D. Sanford, Police Sergt.	
Wilson	O. B. Beland, Patrolman	
Wilson	F. R. Hartis, Policeman	
Wilson	C. P. Hocutt, Police Detective	
Winston-Salem	S. H. Mitchell, State Patrolman	
Atlanta, Ga.	W. A. Coble, Automobile Underwriters' Bureau	

Up to Now with the Legislature

THE 15th of January, marking a little more than a full week of the current session of the legislature, finds few measures of any consequence passed, no measures yet definitely rejected, much major legislation pending, and many major bills yet to be introduced.

The most important measure yet passed, at least potentially, is the resolution which pledges both branches to a six-day week. In fact, the only other measure enacted which is of any importance is the one which appropriated \$1,600 as the State's part of the cost of the inauguration of Governor Hoey and the other State officials.

The list of bills pending is led by the Budget Revenue and Appropriations. These present a balanced budget, but do not include therein the appropriations or taxes necessary if the State is to participate in those phases of the Social Security Program not covered by the unemployment compensation law. Proposed general fund appropriations show a substantial increase (including an average 10% salary raise for State employees). The Budget Commission anticipates that this increase will be cared for by increased collections of old taxes and by new State taxes on intangible property (which would eliminate present County and City taxes on such property), on gifts, and on wine.

The Budget Permanent Improvement Appropriation Bill, submitted by the Budget Commission, would provide for a State bond issue of \$1,980,000 for various permanent improvements at the State's university branches, colleges, and other institutions. Also pending is a bill which would authorize a \$1,000,000 bond issue to establish a State orphanage for white children and provide \$50,000 annually to operate it.

Sales and Auto Taxes

Other pending bills which would affect general fund revenues would: (1) take the sales tax off basic foods and restaurant meals immediately (as would be done by the Budget Revenue Act beginning July 1); (2) broaden the sales tax exemptions for sale of second-hand articles; and

- - - A Summary of the Chief State-wide Acts Passed, Passé and Pending up to Press Time

By **HENRY BRANDIS, Jr.**
of the Staff of the Institute of Government



(3) provide for payment of Confederate pensions monthly instead of semi-annually.

The Budget Revenue Act would not disturb present automobile license and gasoline taxes. However, it would provide for the levy of the sales tax on gasoline (to be taken out of the present 6c per gallon tax), and the Budget Commission Report shows that it is anticipated that the effect of this would be to transfer \$2,100,000 annually to the general fund out of gas tax revenues. With this transfer and with the highway appropriations provided, the Budget Commission anticipates that the highway fund surplus will be substantially eliminated at the end of the next biennium.

Other pending bills which would affect the highway fund of the Highway Commission would: (1) authorize \$25,000,000 in State bonds to build and improve secondary roads, with preference to those roads used by school busses; (2) reduce license rates on automobiles, with the various proposals calling for private passenger vehicles to be taxed at \$5 flat, at from \$4 to \$10 depending on purchase price, or at

30c per 100 pounds with a minimum of \$5, and with one bill reducing minimum truck license from \$15 to \$10; (3) reorganize the Highway Commission to embrace the members of the Council of State, the Attorney General and three members appointed by the Governor, with active management concentrated in a Superintendent appointed by the Commission.

Safety and Schools

Highway safety measures include proposals to: (1) require each automobile owner to carry a minimum of \$5,000 liability insurance; and (2) require all school busses to be equipped with safety glass and governors restricting their speed to 35 miles per hour, and require school bus drivers to be 25, have 5 years' experience, and be specially licensed by the Highway Patrol.

Other school bills would: (1) provide free elementary basal textbooks beginning next fall and free basal high school books as soon thereafter as possible; (2) reorganize the School Commission to make the Superintendent of Public Instruction its Chairman and Executive Secretary.

Numerous bills affecting elections would: (1) reapportion membership in the House in such a way that Guilford, Mecklenburg and Buncombe would gain a representative, and Nash, New Hanover and Rockingham would lose one each; (2) abolish the absentee ballot; (3) greatly restrict the use of markers or assistants and restrict the privilege of entering the polling place with the voter; (4) keep the polls open in all elections from 7:30 A. M. to 6:30 P. M.; (5) Hold primaries on Tuesday instead of Saturday.

(Continued on page seven)

The Institute of Government's Raleigh office has three staff members following the day-to-day doings of the Legislature and keeping member cities and counties posted through Daily Bulletins and special correspondence as to all acts affecting them, collectively or individually. Watch this space each month for the first-hand, authoritative monthly summary, and address inquiries about the Daily Legislative Service to the Institute of Government, Box 318, Raleigh, N. C.

On the Job with N Y A . . .

By M. R. ALEXANDER
of the Staff of the Institute of Government

THE National Youth Administration in this State is revising all work projects the first part of February, and city and county as well as high school and college officials are invited to co-operate in providing remunerative work for young people in their communities which will not only be useful to public agencies therein but will serve to train their youth for private employment. The federal work program for youth, which has the three-fold purpose of earning, producing, and training, is being carried on in counties throughout the State, and it is surprising to note some of the work that is being accomplished with N.Y.A. labor under the proper local initiative, planning, and supervision.

The results of some of the work are shown in the accompanying pictures of North Carolina youth on the job with N.Y.A. But these are only a few typical projects. The work done and under way runs all the way from construction and landscaping for manual labor to clerical work and recreational supervision for the white-collar group. It includes a number of projects requiring trained workers, or workers who can be trained on the job, such as furniture making and repairing and various arts and crafts. And there are even a few projects which call for a high degree of skill, such as a study of oyster pests at Beaufort, a hospital project at Marion, and scientific investigations and construction of laboratory and mechanical equipment in some of the colleges.

The only limitations to the type of public work to be done in a school, college or community are those of need and available labor. Given a needed and useful piece of work and a group of young residents qualified to do the job, the officials of the N.Y.A. are glad at all times to assist local authorities and groups in bringing the two together in a way that will benefit all.

If the work involves a permanent improvement, it must be on public property which will be maintained by a governmental agency. However, some service projects, such as provision of school lunches, recreational activities, or reconditioning of toys, are carried on with quasi-public organizations, such as the Parent-

Teacher Association, Salvation Army or Red Cross. The N.Y.A., in both cases, furnishes the labor, and the sponsors, or local groups, are expected to provide whatever materials, equipment, and tools are necessary.

The N.Y.A. provides work and remuneration for three groups: high school students, college students, and unemployed young people out of school. Students to be eligible

C. E. McIntosh has been Director of the National Youth Administration program in North Carolina from its inception.



must be 16 years of age or more and unable to go to school without the help but need not be from relief families. The maximum that a college student may earn per month is \$20, and the wage rate, which is set by the college, averages 30c an hour. The maximum monthly wage for high school students, whose needs are not so large and who generally can not work more than an hour or so a day, is \$6 with an average hourly wage of 20c. Out-of-school youth on work projects must come from W.P.A. or relief families and must be between the ages of 18 and 25 and unmarried. The maximum time that they can work per month on N.Y.A. projects is 60 hours, or about a third of a month. The pay, which varies with the location and the type of project and which is set locally, averages 25-45c an hour.

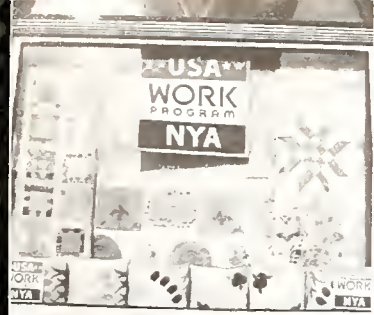
N.Y.A. ACTIVITIES

Fall Quarter 1936

Type of Aid	No. of Projects	No. of Workers	Total Expenditure
High Schools	—	5,542	\$ 73,418
Colleges	—	5,230	151,855
Work Projects	89	3,007	140,813

The N.Y.A. also finances two placement offices for young people in Charlotte and Durham, operated by the State Employment Service, and assists a number of communities in operating vocational guidance centers for unemployed youth.

Here are a few samples of work being done on N.Y.A. projects over the State. Top to bottom: 1. Arts and crafts exhibit, Lenoir County. 2. Woodwork for girls, Asheville Normal. 3. Nursery school attendants, Greensboro. 4. Bookbinding, Stanly County. 5. Handcraft, Catawba County. 6. Library work, Alexander County.



APPLICATIONS FOR PROJECTS UNDER NEW PROGRAM

Public officials, school and college authorities or quasi-public groups wishing to secure N.Y.A. help for local projects under the new program beginning in February are invited to get in touch with the N.Y.A. Supervisor for their County. Or if his name and office are unknown, project proposals may be made direct to the State Office in Raleigh. If young people with the requisite qualifications and training are available locally, the officials of the N.Y.A. will be glad to work with the local authorities in bringing together job and worker.

The work done by N.Y.A. students is mainly in the high schools and colleges, which are given complete power over the selection of students and projects, assigning of workers, and setting and enforcement of standards as to school work for eligibility. The *out-of-school workers* furnish the bulk of the labor for projects of cities, counties, and local quasi-public bodies, and in many counties, where the supply is sufficient, they are used in addition for work on school buildings and grounds, in libraries, etc.

The chief use that North Carolina city and county officials are making of federally-aided youth help at present is for clerical work in public offices. This includes typing, filing, indexing, copying, and transferring records, mimeographing, and general office work. Some cities and counties are utilizing N.Y.A. help, in addition, for painting and repairing public structures, repairing streets and roads, beautifying public grounds, operating libraries and school lunch rooms, and a variety of other purposes. However, the existing city and county projects do not begin to equal the possibilities; local officials doubtless can propose countless needed and useful projects, which would otherwise go undone, but which can be carried out with N.Y.A. workers under proper local instruction and supervision.

The program that one typical western-central county has submitted for the new year may be taken as an example. Three N.Y.A. girls will serve as office assistants to the County School Superintendent, Home Agent, and a School Principal. Three will serve as assistants at a hospital and three at a library, while two others will help with book mending. Six will work in school lunch rooms and seven in a sewing room. Two will help with a cemetery beautification project and another, who lives in an isolated community, will make quilts and blankets. Out of 12 white boys, six have been assigned to a work shop, three to

weaving and furniture making, two to book-binding, and one to the cemetery project. Five Negro girls will work in school lunch rooms and three at school ground beautification, while three Negro boys will be used in street repairing and four others on miscellaneous work. A total of 19 projects, supplying employment for 54 young people, and doing needed and useful work for a number and variety of public activities, at the low cost of \$260 to the sponsors for materials and equipment.

This brief summary of the N.Y.A. program has been written from the standpoint of the project rather than the worker, of the results accomplished and the procedure for local units and officials to co-operate in and secure the benefits of Uncle Sam's activities for youth. But their importance and value to the youths—in providing opportunities for school, work, and further training while earning a small wage to help with personal or family expenses—must not be overlooked. Two or three typical cases, selected from the N.Y.A. files at random, will serve to illustrate.

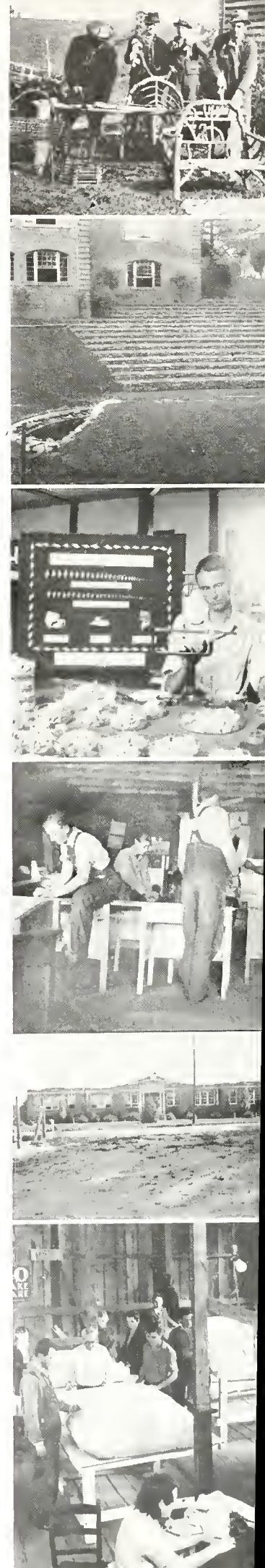
"There was Richard. Richard liked trees. A county had secured federal funds to aid in treating the trees around the court house and other public buildings. Richard was assigned to the project. His work was very satisfactory, and he saved enough money to go to a distant city where tree surgery was taught.

"Some months later, a crew of tree surgeons passed through the county en route to a job in South Carolina. This boy told his companions to wait a few minutes. Breathless, he ran into the supervisor's office to tell her the good news. He had passed his examination and been given a permanent job by a large firm. He was doing well what he could do.

"Another boy who lived in a heavily forested section was assigned to N.Y.A. duty as an assistant to the fire warden. On duty one day, he spied a fire which had just caught. Hastily summoning other N.Y.A. youths, the four of them worked manfully until the blaze was brought under control. Thousands of dollars worth of timber, as well as homes and outbuildings, were saved by their prompt, heroic action. You can't pay for that kind of service.

"Still another young man is literally leading the blind, along with his other duties. After two years' attendance at the Raleigh School for the Blind, he regained his sight. Now he is repaying by organizing and teaching a class for the blind."

Additional N.Y.A. projects in North Carolina, top to bottom: 1. Rustic furniture making, Watauga County. 2. Outdoor theatre constructed at Mars Hill College. 3. Research in oyster pests, Beaufort. 4. Cabinet making, Wilkes County. 5. School ground beautification, Columbus County. 6. Mattress making, Charlotte.



Notes from the Cities and Counties

January, month of annual reports and accounts of stewardship, found local officials busy with numerous plans and programs for the New Year. Public improvements programs showed no let-up, but the new debt limitation amendment brought added legal problems, and a number of units struggled with elections, friendly suits, and bond sales. Many cleared up defaults or refinanced at large savings last year, and others rushed plans to do likewise. A number of counties took steps to take advantage of revaluation year, while all made ready for the coming work of tax listing. And last but not least, the reconvening of the Legislature brought with it the usual crop of proposals for new laws and changes in existing laws, public and local.

* * *

Biggest bond issue hanging fire as a result of the debt limitation amendment was the proposed Mecklenburg-Charlotte \$1,169,000 school issue. The expenditure was approved by the voters on November 3, the same day the State's voters approved the new debt limitations, but the latter did not go into effect until November 24. Question: Did the election on November 3 satisfy the requirements of the new amendment, or is a new election necessary? The local officials have sought the opinions of the Attorney General, New York bond attorneys, and other authorities. While most opinions have tended to uphold the issue, a test case may yet be brought for safety.

* * *

A number of cities and counties reported substantial decreases in net debt during 1936, some in spite of new bond issues for federally-aided public works. And not a few rewarded officials and employees for a good year, as Wilson which awarded a 5% salary increase to town employees, and Washington which voted to bear a part of the cost of insurance for town firemen.

* * *

Charlotte's council and legislative delegation have taken steps to work out a system of mutual understand-



YOUR NOMINATION IS IN ORDER

Which public official or employee in your city and county has the longest record of service?

Pitt offers an outstanding candidate for honors among county officials in Register of Deeds J. Claude Gaskins (above). Pitt voters have returned him to office for 11 consecutive terms—so long that his election is taken for granted, and seldom does a candidate stand against him. Here's another record: in 20 consecutive years in office, Mr. Gaskins has not missed a Commissioners' meeting and has lost only three days from work on account of illness.

Other cities and counties are invited to join with POPULAR GOVERNMENT in paying honor and recognition to officials with outstanding records and terms of service. Just send in their pictures with the necessary information, and they will be carried in this space from month to month.

ing and effective co-operation for the best interests of the city. A hearty working agreement was reached at a joint meeting, it is said, and the Council was assured that prospective legislation affecting the city will not be introduced without first consulting the Council.

* * *

A slightly different approach to the problem of providing relief in municipalities is being tried in Hickory. The Council has established a special winter relief fund, and donations will be solicited from the general public to add to money contributed by the town. Funds will be handled by Manager R. L. Hefner, but distribution of supplies will be handled through the County Welfare

Department following careful investigation of needy families accorded assistance.

* * *

New wrinkles in tax collecting: Enterprising tax officials move to make up for possible loss in revenue if Legislature grants homestead exemption under recent Amendment by uncovering property escaping taxation. Favorite items include bank accounts and other intangibles, automobiles and other movables, and dog taxes. Auditor Troy McKinney reports that Cleveland has doubled the listings of dogs since the County began to require vaccination of all canines. Charlotte City Attorneys, Scarborough and Boyd, write business establishments owing personal property taxes and owning no realty threatening levy if payment is not forthcoming.

* * *

The Tarboro municipal electric plant has begun construction of 35 miles of rural lines, financed by the R.E.A., which will serve portions of Edgecombe and Martin counties. The Town already has in operation about 30 miles of lines in Edgecombe. The municipal plant has also purchased a third diesel engine as part of its general expansion program.—Geo. N. Earnhart, Clerk-Treasurer.

* * *

One of the largest municipal works programs under way in the State during the coming year will be that in High Point. The Council recently adopted a resolution formally accepting the P.W.A.'s grant toward the construction of a six-million dollar hydro-electric power plant. Representatives of the City, State Highway Commission, P.W.A., and Southern Railway have reached an agreement on the handling of different phases of the work on a grade elimination project involving another eight hundred thousand dollars. And plans are under way to begin construction shortly on the new branch county office building.

* * *

The range of improvements projected or planned in other units over the State was wide and varied. And several other projects awaited the result of elections, as Beaufort's school project, Kinston's power and water works improvements, and Yanceyville's water and sewer sys-

tem. Still others were under consideration as this issue went to press, including: water main enlargements for Winston-Salem, schools for Burke, water line extensions for Concord, Court House and County Home additions for Davidson, a nurse's home for Moore, and a school bus station project for the whole State.

* * *

Judge J. Will Pless, Jr., and Clerk Durward E. Morrow have been holding a general house cleaning in Superior Court for Gaston County. All administrators and guardians who have not filed the required reports of funds entrusted to their care were cited to appear and show cause why they should not be fined or sentenced for contempt. And Judge Pless has been calling and finally disposing of all cases docketed before August 1, 1935, except where attorneys presented af-

fidavits setting forth valid reasons for further postponements.

* * *

Governmental re-organizations and re-arrangements: Chief Walter F. Anderson of the Winston-Salem Police Department has completed a sweeping re-organization and revision in ranks, featured by the addition of an identification bureau and the office of assistant chief. Nolan J. Sigman, new Catawba Accountant, has been designated to be County Manager *if and when* the managerial system is inaugurated.

* * *

The Oxford City Government reports a year of accomplishment and progress. Activities of note include: reorganization of managerial staff, installation of new records, increase of police force, renovation of town owned property, street repairing and improving, and remodeling the City Hall, Fire Station, and Armory. The tax rate was reduced

from \$1.45 to \$1.35, the water rate cut 20%, and the bonded indebtedness reduced \$45,000, all at substantial savings to the taxpayers. A committee has now been appointed to consider the advisability of adopting the City Manager form of government.—*Auditor S. S. Farabow.*

LEGISLATIVE SUMMARY

(Continued from page three)

day; (6) fix compensation of judges of elections and their assistants at \$4 per day and of registrars at \$5, and provide for filing fees for County officials of 1% of annual salary (with a \$5 filing fee for offices on a fee basis).

Labor and Liquor

Major industrial measures would ratify the Child Labor Amendment to the U. S. Constitution, establish a 40-hour week for the tobacco and textile industries and a 48-hour week for other employment other than agriculture and domestic service. Most important agricultural measure is that which would authorize the State to enter into compacts with other tobacco-growing states for the control of production.

Two bills would solve the liquor question in entirely different ways. One calls for a State-wide referendum which would either repeal all present liquor, wine and beer laws or preserve the status quo. The other calls for the State to set up an ABC Board empowered to distill and sell whiskey to county stores in counties voting for same, with the State retaining wholesale profits and counties and cities dividing retail profits 1-3 to cities and 2-3 to counties.

Bills affecting courts would: (1) add two Associate Justices to the Supreme Court; (2) allow judges at any criminal term of Superior Court to discharge grand juries and order new juries drawn; (3) restrict the duties of emergency judges to matters in chambers.

Miscellaneous bills of importance would: (1) repeal the lethal gas law; (2) provide old age assistance, with \$15 monthly as the maximum; (3) prohibit sale of fireworks in the State; (4) urge Congress to pass adequate neutrality legislation; and (5) make a number of changes in the laws governing building and loan associations.

CITY TAX RATES—HERE AND ELSEWHERE

A comparison of the tax rates of 310 American cities for 1935 finds North Carolina municipalities in the front ranks of the lower brackets. Special recognition goes to Winston-Salem, whose adjusted rate of \$11.38 per \$1,000 was bettered by only one city in the country, and to Charlotte, whose \$13.87 rate gave it third rank among the nation's cities of the 50,000-100,000 class. Only seven cities, counting all population groups, had a lower rate than Charlotte, and six of these are in Ohio, where stringent tax limitations have kept taxes down but left many municipalities in financial distress.

Other North Carolina cities listed in the compilation and their adjusted rates are as follows: Raleigh \$15.28, Greensboro \$15.75, Durham \$16.50, Wilmington \$21.50, Asheville \$26.80, and High Point (no report for 1935). The rates for the 310 cities ranged from \$11.20 for Steubenville, Ohio, which barely nosed out Winston-Salem for first place, to \$47.26 for Union City, N. J. The average adjusted rate was \$26.61, and the median of the adjusted rates was \$26.10, which shows how well the North Carolina cities stand when compared with cities in other states.

The data on the North Carolina cities listed in the compilation, which was made by the Detroit Bureau of Governmental Research and appeared in the *National Municipal Review* for December, is as follows:

	Tax Rate per \$1,000 of Assessed Valuation on Uniform Legal Basis of Assessment				Estimated Ratio of Assessed Value to Adjusted	
	City	School	County	Total	Legal Basis	Rate
Charlotte	11.80	3.78	5.12	20.70	67%	\$13.87
Winston-Salem	12.50	—	5.00	17.50	65%	11.38
Greensboro	11.10	2.40	7.50	21.00	75%	15.75
Durham	13.50	3.50	5.00	22.00	75%	16.50
Asheville	15.40	2.40	9.00	26.80	100%	26.80
Raleigh	14.00	—	9.50	23.50	65%	15.28
High Point			Not Reporting in 1935			
Wilmington	14.00	2.00	5.50	21.50	100%	21.50

The Proposed Changes in the Election Laws

THE State Democratic Executive Committee, at its last meeting, adopted a resolution authorizing its Chairman to appoint a committee to make a study of, and to propose amendments to, the election laws of this state. The committee was to report its recommendations to the state committee with a view to the sponsoring by the latter of a party program of election reforms in the 1937 General Assembly. After several meetings the committee has completed its report, and the State chairman has called a meeting of the full State committee for January 22nd, 1937, in the Sir Walter Hotel at Raleigh, to consider the committee report.

It is not my purpose here to discuss the merits or demerits of the committee recommendations but merely to present them for consideration by the public prior to the meeting of the State committee and to indicate some of the reasons prompting their adoption by the committee.

The recommendations of the committee may be divided into three classes: (1) Those affecting primary elections only; (2) those affecting general elections only; (3) those affecting both primaries and elections.

Primary Elections

There were eight amendments adopted affecting primary elections only.

1. *Changing Date of Primary Elections.*

The committee recommended that the date for holding primary elections be changed from the first Saturday in June to the first Tuesday in June.

The necessity for this change was urged upon the committee by the representatives of the State Press Association and others. The committee decided that the day on which general elections are held would also be a better day for holding primaries than Saturday.

2. *Reducing Hours for Keeping Polls Open for Voting.*

The committee recommended that the hours for keeping the polls open for voting be changed from sunrise

to sunset to the hours of six o'clock A. M. to seven o'clock P. M. in all primaries.

Representatives of the State Press Association and others urged that this would enable the press to give the State much quicker election service. It was further argued that the present requirement of keeping the polls open from sunrise to sunset in primaries works such a hardship on precinct election officials that it is difficult to get capable persons to serve as registrars and judges in primaries. It was also argued that there are no good reasons for keeping the polls open approximately five hours longer in the primaries than in the general election when about one-third less people vote in a primary than in a general election.

3. *To Prevent Second Primaries from Being Held on July 4th.*

The committee recommended that when the date of a second primary falls on July 4th, a legal holiday, that same be held on the next Tuesday following.

4. *Enforcement of Provisions Requiring Electors to Register Their Party Affiliation on Registration Books before Voting.*

The committee recommended that a provision be added to our primary laws to make more effective the requirements that every voter upon registering declare his party affiliation and that the voter cannot vote differently from the affiliation shown on the books. This provided for change of party affiliation by a voter, but the change must be recorded by the registrar on the registration book at least fifteen days prior to the primary, and there can be no change of affiliation between the first and second primaries. Strict provisions for enforcement of the provisions relative thereto were also recommended.

This proposed amendment, like the two following, was adopted for the purpose of tightening party regularity in conformity with most of the other states. It was intended to assist in curbing the growing practice of members of one political party voting in the primaries of another party contrary to the present

By **RAYMOND MAXWELL**
Executive Secretary, State Board of Elections

primary laws. It left ample opportunity, however, for an elector to change his party affiliation if done in good faith.

5. *Change of Party Affiliation as Affecting Candidates.*

The committee recommended that the primary laws be so amended as to provide that no person who fails to receive a party nomination as a candidate in the primary shall be permitted to have his name printed on the official ballot in the next general election as a candidate of any party.

The purpose of this recommendation is to prevent a candidate running for nomination in the primary of one party and, failing to get the nomination, running for the office in the next general election as a candidate of another party. This has happened a number of times for local offices in this state and is a violation of the party pledge of loyalty which a candidate is required to sign. The committee thought the pledge should be made more effective.

6. *Candidate Not Permitted to Run in Primary of a Party with Which Candidate Is Not Affiliated.*

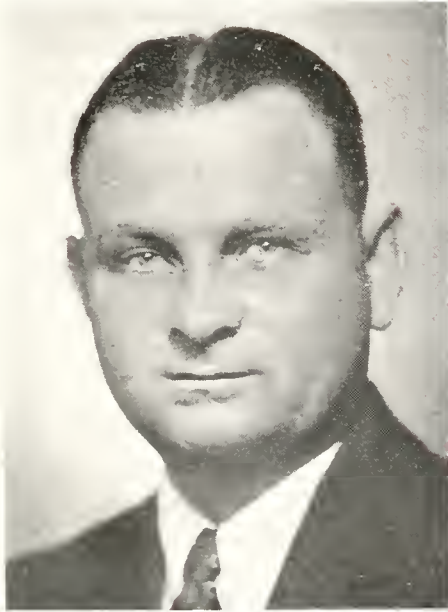
This proposed amendment is similar to No. 5 as affecting party regularity of candidates. It simply provides that a Republican cannot run in a Democratic primary and vice-versa. If a candidate changes his affiliation in good faith in the manner proposed, he may do so.

7. *Appointment of Alternate Judge to Serve in Primary When Only One Party Participates Therein.*

The purpose of this proposed amendment is to clarify the present law relative to the appointment of an alternate judge to serve in a primary when only one party participates in the primary.

8. *Nomination of Judges and Solicitors by Party Conventions.*

The committee recommended that candidates for the office of Chief Justice of the Supreme Court, Associate Justices of the Supreme Court, Judges of the Superior Court, and Solicitors be nominated by appro-



appropriate party conventions having jurisdiction instead of being nominated in a primary election.

General Elections

The committee recommended only one amendment to the general election laws which did not apply also to the primary.

1. *Manner of Marking Ballots in a General Election.*

This proposed amendment is intended to clarify the present law as to the manner of marking a ballot in a general election when an elector desires to vote a split or mixed ticket. The present law provides that if an elector marks in the party circle at the top of the ballot and also marks opposite the name of one or more candidates of another party, the mark in the party circle must be disregarded and a ballot so marked can count only for the candidates whose names are specifically marked. Such a requirement, it was argued to the committee, is contrary to the intent of the voter. A voter in marking a ballot as stated, it was argued, intends to vote for all of the party candidates of the party in whose party circle he marks except those candidates of another party whose names are specifically marked. This proposed amendment will permit such intent of the voter to be carried out as marked on the ballot.

Primaries and Elections

There were six proposed amendments recommended by the committee affecting both primaries and elections.

1. *State-wide Uniformity of Primary Election Laws.*

The committee recommended to the state committee that it favor a uniformity in primary and general election laws throughout the State. To this end it recommended the repeal of all local election laws except those providing for a county convention plan of nominating local officers and except local laws applying only to town and city primaries and elections. It was the opinion of the committee that there is no justification for permitting local exemptions from the state-wide election laws except as mentioned and that such local exemptions lead to confusion and irregularities.

2. *New State-wide Registration of Voters.*

The committee recommended that a new state-wide registration of voters be had prior to the 1938 primary in every county in the State with the exception of those counties in which there has been a new registration since January 1, 1936. This provision was prompted by the opinion that the registration books in almost every precinct are full of the names of electors who have become disqualified to vote by death or removal, and the continual keeping of such names on the books provides an easy opportunity for fraud.

3. *Safeguarding Poll and Registration Books after Elections.*

The committee recommended that it be made the mandatory duty of all registrars and judges to deposit the poll and registration books with the Clerk of the Superior Court within 24 hours after completion of the county canvass of any primary or election and that such books shall be public records under the supervision of the Clerk. There has been much confusion on this subject in the past, and the committee thought that the law should be amended to clear up the point regarding the right of the public to see and inspect these books at all times.

4. *Privilege of Candidates to Copy Registration Books.*

It was recommended that the present law be clarified with respect to the privilege of candidates to copy the registration books or to pay the registrar one cent a name for a copy of same.

5. *Assistance to Voters in Marking Their Ballots.*

The committee recommended that the present section of the law permitting markers in elections be repealed and that a new section be adopted which will allow any voter, who, on account of physical disability, illiteracy or any other good reason, is unable to mark the ballots and who requests assistance, may have assistance in marking the ballots from any election official or from any near relative of the voter and from no one else. Election officials would include duly appointed assistants (for each three hundred registered voters) as now provided by law. The effect of this amendment would be to abolish all official markers in elections, which the committee thought would tend to curb the evils of the present marking system.

6. *Absentee Voting in Primaries and Elections.*

The resolution adopted by the committee with respect to absentee voting is as follows:

"Resolved, that no change be made affecting the eligibility to cast an absentee ballot, but (a) abolish the requirement that the voter must make oath as a condition precedent to the right to vote, and substitute in lieu thereof that each application for an absentee ballot must be made in writing by the voter, or in person, to the chairman of the county board of elections and that as each such ballot is issued by the chairman it shall be numbered in ink—the number corresponding to the number shown on a special registration book kept by the chairman of the county board of elections for recording absent voters,—and that such absentee ballots can only be delivered by the county election chairman to the voter in person, or to a near relative, or by mail. In case of voters who are physically unable to attend the polling place, the certificate of the voter to be accompanied by a certificate of a physician stating that he is personally acquainted with the voter and is of the opinion that the voter is physically unable to attend the polling place. No absentee ballot shall be issued or delivered by the chairman of the county board of elections after 12 o'clock, noon, on the day next preceding the day of any primary or election."

A Wife's Personal Property

AN unmarried woman in North Carolina has always occupied the same position as a man in regard to her personal property—free to sell, give, rent or manage it in any manner she wished. Any income derived from her property or from her labor belongs absolutely to her. But it has not always been so with the married woman.

For centuries at common law, marriage took away from a woman her personal property and transferred it to her husband. It might change her from a woman of wealth to a pauper in a few minutes, unless documents creating a separate equitable estate for the wife had been arranged. (These will be discussed in later articles.) No deed of gift was necessary.

The law did not transfer all the wife's personal property to the husband in quite the same way. Personal property was divided into two classes, (1) *choses* or things in possession, that is, property in possession of the wife, such as money, jewelry, farm tools or cattle either actually in her possession, or in the possession of someone to whom the wife had lent or rented the property; (2) *choses* or things in action, such as a debt owed to the woman by some third person or an uncollected legacy which might require legal action to gain.

Marriage gave the husband all the wife's choses in possession immediately. The law affected the transfer in ownership at the same moment the preacher pronounced the couple man and wife.

Choses in action were not given outright to the husband, but he had the right to make them his own by taking some act to secure possession. Naturally the simplest way to reduce choses in action to choses in possession was to ask the person in possession to turn over the property. Thus if a debtor paid a debt owned to the wife or an executor turned over a legacy owed the wife, the property immediately belonged to the husband, and that ended it.

The husband might do more than receive the property himself. He might cancel the obligation, or he

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

might assign the right to receive the property to someone else. But whatever the husband chose to do, he or his assignee had to acquire it before his death in order to cut off the wife's rights. Thus the law gave to a husband all of his wife's personal property except that of which he neglected to take possession. And it gave him not only all personal property owned by the wife at the time of marriage, but also all that she might become entitled to after marriage either by purchase, gift, will or wages earned by her own labor.

Constitution of 1868

On its face the Constitution of 1868 ushered in a new era with sweeping reforms in the legal status of women. Article X, sec. 6, stated: "The real and personal property of any female in this state acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female and shall not be liable for any debts, obligations or engagements of her husband."

Complete emancipation? No, for husbands, legislators, and judges soon set in motion the ponderous logic of the law to hedge round, cut down the newly won rights. True enough, a married woman's personal property was her own. She could sell it or give it away. It could not be sold for her husband's debts. But, as will be explained at length in a subsequent article, she could pledge this property in making contracts only in a limited number of situations unless she obtained her husband's written consent.

Earnings and Wages

A severe blow, nullifying in part the Constitutional victory of 1868, was struck by the Supreme Court, which denied a married woman any right to her wages. The court declared that the right of a married woman to her own wages was not covered by the Constitution but was an exception. If a woman had a

right to keep her wages, it insisted, then she had a right to take off all the time she wanted from her domestic duties in order to earn those wages. But the husband, it held, was entitled to her services.

The fact that the law was thus interpreted does not mean that every husband in North Carolina emptied his wife's pocket-book every Saturday night. However, he had a legal right to do so, and no doubt some husbands exercised it. The more important result probably was that the husband's creditors could take over the wife's property to pay the husband's debts.

With a spirited dissenting opinion by Judge Clark in practically every court decision, the property law remained unchanged until 1911. Married women had appeared to win a complete victory, but the victory had been weakened by the legislature and the Supreme Court. In 1911, women triumphed in fact as well as in form when the Martin Act was passed, giving in unequivocal terms to married women the right to contract and the right to keep their own wages. The "intent and meaning" of the law was at last made clear. Since 1911, married women have enjoyed practically the same freedom and dominion over personal property as unmarried women.

Reasons for Common Law Attitude

The reasons for depriving the wife of all her personal property have been set forth many times. In marriage, the husband was saddled with the duty (1) to support his wife, (2) to support the children, (3) to pay all debts his wife may have incurred before marriage, (4) to pay all damages that his wife might inflict giving rise to civil suits, (5) to pay all fines that might be assessed against the wife if she should commit any crimes. Thus the whole responsibility for the support and conduct of the wife and children rested on the husband's shoulders. The courts held it only fair that the wife's property be given to him to enable him to fulfill his family obligations properly. Many times no doubt the wife did not own any personal property. But at other times, the husband probably netted a handsome profit by the workings of the law.

State and Federal Services to Local Units

THE National Bureau of Standards has perhaps built up more contacts with State, county, and municipal governments than any other regular Federal bureau. Its specific services to state and local governments run the gamut from data on weights and measures administration to materials on building regulations and standards and specifications for public purchases.

Weights and Measures — Four publications of the Bureau furnish State and local weights and measures inspectors their standard instruction and reference works:

"Manual of Inspection and Information for Weights and Measures Officials."

"Weights and Measures Administration" (Handbook No. 11).

"Specifications and Tolerances for Commercial Weighing and Measuring Devices" (Handbook M-85).

"Annual Proceedings of National Conference on Weights and Measures" (with Index).

States may also have their fundamental standards of weights and measures tested periodically by the Bureau, which through its extensive research and contacts, is able to assist State and local units, through publications, correspondence, and conference, with practically any local problem in the field of weights and measures.

Governmental Purchasing — Numerous and distinct services are available to state and local governmental purchasing agencies. To illustrate: A local purchasing agent may secure from among the 1033 "Federal Specifications" a specification for almost any item he purchases. (Individual federal specifications are sold through the Superintendent of Documents, Washington, D. C., at 5 and 10c a copy; a public purchasing officer may have his name put on the mailing list free and keep abreast of new specifications as issued.) Or if a federal specification is not available, he may locate one prepared by the national technical societies and trade associations through the "National Directory of Commodity Specifications," listing 6,000 federal and private specifications. Moreover, he may se-

I. National Bureau of Standards

By M. R.
ALEXANDER
of the Staff of
The Institute of
Government



cure a "willing-to-certify" list, that is, a list of manufacturers who will guarantee to supply material in accordance with selected Federal specifications and commercial standards. And if his unit is not equipped to test the delivered product, the Bureau can supply him a directory of commercial testing and college research laboratories, arranged geographically with the types of commodities they test.

The Bureau has also established 162 "simplified practice recommendations" and aided in the voluntary establishment of grade, quality, and other standards as a national basis for marketing 55 manufactured commodities. These are of benefit to tax-supported agencies in eliminating expensive specialties and affording a ready means for checking or inspecting the grade or quality of the material so delivered on contracts based on commercial standards.

Testing — The Bureau's testing laboratory, largest in the country, has developed a number of test methods and specifications, in the course of the Federal Government's research and testing, which may be used by other purchasers, both governmental and private. In special cases, it will also test certain State purchases free and certain city purchases on a cost basis.

The Bureau's measuring instruments and standards are available, in addition, for the testing and calibration of local apparatus. This service covers electrical standards and instruments, standard lamps and photometers, length-measuring de-

vices, weights and balances, scales, timepieces, volumetric apparatus, hydrometers, thermometers, pyrometers and calorimeters, optical and engineering instruments and appliances, sound-producing and measuring instruments, meters of many types, and various other items.

Public Utility Standards—The information available on public utility services and standards is of importance both in the operation of municipal plants and in state regulation of private utilities. Among the most valuable publications available in this field are:

"Standards for Gas Service" (C 405).

"Standard Methods of Gas Testing" (C 48).

"Standards for Electric Service" (C 56).

"The National Electrical Safety Code" (Handbook No. H 3).

The publications on gas and electric standards include compilations of the laws of various states, regulatory ordinances of selected cities, and suggested rules and ordinances for regulation by state commissions and cities of different sizes.

Traffic and Safety—Valuable assistance is rendered through the Bureau and through the National Conference on Street and Highway Safety on municipal traffic matters. Examples of specific aids include:

Model municipal traffic ordinance.

Ordinances to create an official traffic commission, to create a division of traffic engineering, and to control roadway and sidewalk obstructions.

Report on "Street Traffic Signs, Signals, and Markings."

The methods for brake testing by police and the motor vehicle headlight standards developed by the Bureau, which are widely used by cities, are other examples of the type and scope of information upon which municipal traffic or police officers may solicit assistance.

Safety Codes—A number of safety codes have been formulated for application by states and municipalities. Examples are the National Electrical Safety Code, the American Standard Safety Code for Elevators, and the American Logging

and Sawmill Safety Code. Such Codes are made mandatory by the state and municipal bodies having legal jurisdiction. Members of the Bureau staff also serve on committees for similar codes which are drawn up locally. To determine appropriate regulations often requires investigations and tests which are carried out at the Bureau laboratories. Tests necessary to determine compliance with local regulations may be made at the Bureau. Such tests are carried out on elevator interlocks and buffers, automobile headlamps, fire-detection equipment, electric appliances and wires, etc. Field investigations of accidents also are frequently made, and advice is given to State and municipal officials on problems connected with accident prevention.

Planning and Zoning — Work on city planning and zoning was discontinued in 1933, but five publications of value to state and local governments are still available:

"A Zoning Primer."

"A Standardized State Zoning Enabling Act."

"A City Planning Primer."

"A Standard State Zoning Enabling Act."

"The Preparation of Zoning Ordinances."

Building and Plumbing Codes — An informational service is maintained for local officials in the matter of building and plumbing regulations and codes. Several hundred municipal codes have been patterned after its recommendations. Among the materials available on this subject are:

"Recommended Minimum Requirements for Small Dwelling Construction."

"Recommended Minimum Requirements for Plumbing."

"Recommended Live Leads Allowable for Use in Design of Buildings."

"Recommended Practice for Arrangement of Building Codes."

"Recommended Minimum Requirements for Fire Resistance in Buildings."

"Recommended Minimum Requirements for Masonry Wall Construction."

"Recommended Building Code Requirements for Working Stresses in Building Materials."

"Design and Construction of Building Exits."

Attention is also given to inquiries from state and municipal authorities relative to specific points involved in the administration of local codes, and reviews of proposed codes in draft form are made on request.

Miscellaneous Subjects Upon Which Information is Available —

The services previously described are not to be considered as including all of the subjects upon which governmental authorities are free to solicit information. The many investigations currently made by the Bureau cover a wide field, such as studies of the fire-resisting properties of building materials, testing of structural materials, and investigations of allied subjects. In sound work, the Bureau makes analyses of faulty rooms and auditoriums, such as school assembly rooms and offices, suggests improvements, and assists officers in the formulation of building plans to eliminate acoustical defects. Aid is extended to municipal fire, police, and other officers on manual fire-alarm systems, electric and pneumatic clock systems, and watchman's time clock systems. Specifications on manual fire-alarm systems and electric-clock systems have been prepared and are available.

As a general rule any governmental agency may obtain assistance from the Bureau when the problem falls within the Bureau's field and when the situation as to facilities and personnel permits undertaking the work. There is a much greater possibility of securing assistance if the Bureau itself is studying the subject. Most of the scientific inves-

tigations or studies conducted by the Bureau and dealing with various phases of state and municipal administration have been initiated by the Bureau, although in several cases the initiative has come from a particular local government. This is true of the Bureau's studies having to do with the determination of hazards from gas appliances, the development of a code for elevator interlocks, the studies of interchangeable fire hose threads, and others.

Making the Results Available — The commercial, scientific, and technical results of the Bureau's work are made available through personal interviews, correspondence, national committee work, printed publications in the several series issued by the Bureau, and the technical press. All results of original research are published either in a recognized outside journal or in the Journal of Research of the National Bureau of Standards. A file of the monthly Journal is available by subscription.

The "Technical News Bulletin" is a monthly publication containing abstracts of all papers in the Journal of Research. It gives a current picture of work in progress in the Bureau, and lists all papers by members of the staff both in its own series and in outside journals.

Circulars contain compiled information not necessarily the result of original research. Recommended safety codes are prepared as convenient pocket-size handbooks. Miscellaneous publications include charts, data, and other material not well adapted to another series. The nature of Simplified Practice Recommendations, Commercial Standards, Directories of Specifications and Testing Laboratories, Lists of Sources of Supply, and the Building and Housing publications is self-evident.

A complete list of Bureau publications (Circular C24 and Supplement) with index and abstracts is available by purchase (25 cents) from the Superintendent of Documents, Government Printing Office, Washington, D. C. The Bureau's papers are available for reference purposes at the principal Government depository libraries of the country, and in most of the libraries of scientific and technical colleges and societies.

This is one of a series of articles on the numerous important services, monetary and non-monetary, direct and indirect, available to local officials through the various State and Federal departments. Watch this space for future articles on the services of other departments, or write the Institute of Government, Chapel Hill, for information about the complete Guidebook on "State and Federal Services to Local Units and Their Officials."

«A Report of Our Stewardship»

That is the way the Duplin County Commissioners presented their annual report to their taxpayers. **POPULAR GOVERNMENT** passes it on to other units, not only as an accounting for a public trust faithfully executed, but also as a record of achievement on the part of this medium-sized agricultural county.

THE lot on the southeast corner of the Court House square has been purchased extending the square to the highway. The lot adjoining the new jail lot has been purchased and the Library Building moved on it. The lot back of Williams' and Burch's filling stations has been filled in and improved.

The Court House has been painted and renovated and a new roof added. Cement sidewalks have been constructed and the lawn graded and landscaped. Telephones, sanitary water coolers, and new bulletin boards have been installed. A new boiler has also been put in, while new furniture and equipment have been provided in 11 offices.

The Jail Building has been painted and repaired, a new fence built, and a new furnace and cook stove installed.

A nine-room, brick County Agricultural Building has been erected as a W.P.A. project. It will house the departments of the Farm and Home Demonstration Agents and the Kenansville Production Credit Association.

The old jail building has been repaired and re-worked into an office building for the Welfare Department and Resettlement Administration. Much of the labor was furnished by the C.W.A. and F.E.R.A.

The buildings at the County Home have been repaired and painted, a new colored ward erected, and running water and plumbing fixtures installed.

Outside Poor Relief

The policy of the Board has been to see that no one suffered, but expenditures have had to be held down of necessity.

Hospital treatment has been given to emergency pauper cases. We feel that this should be continued, but only to cases in which it is a matter of saving a life, and where neither the sick person nor his people are able to pay for the needed treatment.

Commodities distributed by the F.E.R.A. and W.P.A. have been of assistance with some of the outside poor relief cases.

There are now 93 persons on the Outside Poor Relief Roll. The monthly allowance to these cases is \$168.25.

School Buildings and Equipment

Additional school sites have been purchased at Beulaville and Rose Hill. W.P.A. Gymnasiums are being built at Warsaw, Wallace, and Kenansville. The colored school building at Rose Hill, which burned last year, is being rebuilt. Needed desks and furniture have been purchased. School buildings, furniture, and equipment have been put in better repair than in several years.

County Health Department

A full-time County Health Department has been established and equipped in co-operation with the State Board of Health and United States Public Health Service. It is composed of a full-time County Health Officer, Nurse, Office Clerk, and Sanitary Inspector. The Health Officer, in addition to other duties, treats the inmates of the County Home and Jail.

Forest Fire Control

The County is now co-operating with the State Department of Conservation in forest fire prevention and control. Two look-out towers, a telephone line, a truck, and a considerable amount of fire-fighting equipment are in use.

Farm and Home Agents

The Farm and Home Demonstration work was re-established in the County in co-operation with the State and Federal Governments, and a full-time Farm Agent, Home Agent, and Assistant Farm Agent are doing a splendid piece of work in the County. These departments will soon move into the newly erected Agricultural Building.

Valuations and Levies

The total tax valuation of the County has been reduced from \$20,644,245 in 1929 to \$15,614,674 in 1936. The County-wide tax rate has been reduced from \$1.75 to \$1.45. And the total tax levy has been reduced from \$472,562 to \$245,604.

During the years 1929-32 special Local School District taxes ranging from 20 to 30c were levied over most of the county. None of these taxes have been levied since 1932.

The Island Creek Special Road and Warsaw Township Special Road District tax rates were 10c from 1929-32, 15c from 1933-35, and 10c for 1936.

Tax Collection

The offices of Township Tax Collectors were discontinued and a County Tax Collector appointed, effecting a good saving for the County. Tax collections have increased considerably in the past four years.

The County elected to come under the provisions of Senate Bill No. 311, enacted by the 1935 Assembly, and no tax sales were made for 1934 and 1935 tax levies, the Tax Collector settling for these levies under this law.

The office had collected 14% more of the 1933 levy at the end of that fiscal year than had been collected on the 1932 tax levy. The collections at the end of the fiscal year 1934 were 10% above 1933. The collections at the end of the fiscal year 1935 were 6% below 1934, but the 1935 levy was 14% greater than the 1934 levy, due to an increase in the tax rate.

Financial

The County Treasurer had \$109,000 of County Funds on deposit in banks on Nov. 30, 1936. All County deposits were secured by United States Bonds and by F.D.I.C. Insurance in the sum of \$5,000.

There were no outstanding Revenue Anticipation Notes, all current outstanding bills and obligations being paid, or funds being on hand with which to pay them. There were approximately \$80,000 in unpaid current obligations four years ago. All of these have been paid off out of current funds.

Claims in the sum of \$574,000 have been filed with the Commission
(Continued on page nineteen)

Lawyers Study Proposed Changes in State Bar Act

IN the recent *Parker* case the opinion of Chief Justice Stacy intimated that the constitutionality of the 1933 Act incorporating the State Bar is open to question. As a result a committee from the State Bar and the State Bar Association was appointed to study this question and to propose any necessary remedial legislation. That committee has done its work and a bill has been prepared for introduction in the 1937 General Assembly seeking to amend sections 3, 9, 11, and 18, of Chapter 210, *Public Laws*, 1933.

The proposal undertakes: (1) To eliminate the legislative declaration that councillors and officers of the State Bar are not public officers; (2) to eliminate provision for appeal by a disbarred attorney to the "Superior Court Judge holding courts" in the county of the lawyer's residence; (3) to provide that the detention by a lawyer, without a bona fide claim, of money received in a fiduciary capacity shall constitute a ground for disbarment; (4) to guarantee to lawyers disbarred by Trial Committee or Council the right to a jury trial on appeal to the Superior Court, but to limit the evidence which may be submitted to the jury, to the written evidence as taken before the Committee or Council; (5) to permit the Trial Committee hearing a disbarment charge to remove the proceedings from the county of residence of the lawyer to any county in which any part of the offense was committed; and, (6) to provide that the Act shall not limit or abridge the inherent powers of the Court to deal with its attorneys. This amendment seeks to clarify and to strengthen the 1933 law, and to eliminate those features of the present law which may be subject to question on constitutional grounds.

To be more specific, what is the justification for, and the purpose of, each of these six proposed changes?

(1) What constitutes a "public officer" is indicated by the Constitution and must be decided in a particular case by the Court; it is not a matter within the power of the General Assembly. Consequently, any statutory attempt to declare who is, or is not, a public officer is a

OFFICIAL STATE BAR NEWS AND VIEWS

Edited by Dillard S. Gardner of the Staff of the Institute of Government.
Editorial Committee: Julius C. Smith, President; Henry M. London, Secretary, and Charles A. Hines, of the State Bar.

vain undertaking which, without strengthening the statute, invites an attack upon its constitutionality. The proposal would remove any reference to the constitutional status of State Bar officials as "public officers."

(2) In view of the new provision for appeal to the Superior Court upon the Trial Committee's record, the reference to an appeal "to the Superior Court Judge" would be inaccurate, since the new procedure would provide for an appeal—not to the Judge, but—to the Superior Court proper. Thus, this confusing provision would be eliminated in the interest of accuracy.

(3) This new provision was incorporated as a result of the *Parker* case. As quoted in the January 1937 *American Bar Association Journal* President Julius C. Smith, of the State Bar, "deplored the decision of

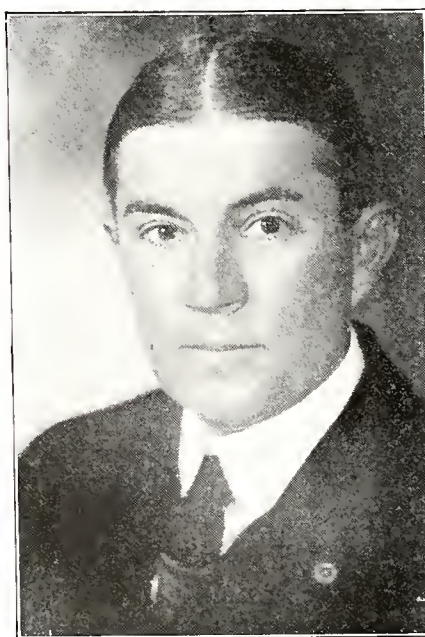
the Supreme Court in the case of *In re Parker*, where it was held that a lawyer was not subject to discipline as such because he stole money as an executor of an estate rather than as attorney." In thus expressing his conception of what the law should be President Smith, no doubt, voices the views of many North Carolina lawyers, newspaper editors, and other well-informed citizens. The new provision would make a lawyer subject to discipline for wrongfully withholding funds irrespective of the capacity in which he acts.

(4) This proposal would make clear the type of Superior Court trial permitted lawyers previously ordered disciplined for unprofessional conduct. Jury trials would be permitted, but the jury would not hear any additional evidence beyond that laid before the Trial Committee. The procedure in such cases would be similar to that now in use in appeals from most inferior courts of record to the Superior Court.

(5) The 1933 law provides that the Trial Committee hear discipline matters in the county of residence of the attorney. In many cases the offense is committed outside the home county of the attorney, and the Committee could more conveniently hold the hearing where the offense was committed.

(6) The 1933 act is silent as to the extent to which the Supreme Court may exercise its traditional and inherent powers with respect to attorneys. In order to make it clear that no effort has been made to deprive the Supreme Court of the power to discipline lawyers, this new provision would be inserted. In the first place, it may well be doubted whether the General Assembly could deprive the Supreme Court of this power; and, in the second place, the soundness of any policy seeking to curtail the authority of the Court in this respect is open to question.

As every North Carolina lawyer is a member of the incorporated State Bar and subject to its regulation and discipline, the course of this amending Act will be watched by members of the profession in every part of the State.



HENRY M. LONDON
*State Legislative Reference Librarian and
Secretary of the State Bar.*

Trial Calendar for Criminal Terms of Court

By DILLARD S. GARDNER

DURING recent years the preparation of calendars for criminal terms of Superior Court has become increasingly popular. In 1933 a law was enacted providing for these in Columbus County and in 1935 seven such laws were passed, providing for criminal calendars in Bladen, Burke, Cabarrus, Cleveland, Craven, Cumberland, and Moore Counties. In five of the 1935 laws it was provided that defendants under bond and witnesses for the State and the defendant need not attend court until the day the case is calendared for trial, and that witnesses shall not prove, nor receive compensation, for attendance prior to the day the case is calendared. However, two of the laws expressly permitted State's witnesses to receive compensation for their appearance before the grand jury. The 1933 law for Columbus sought to accomplish much the same thing by providing that witnesses who did not have to go before the grand jury be subpoenaed for the day the case is calendared for trial.

In those counties in which no criminal calendar is used, cases are called by the Solicitor from the docket. As all the witnesses in all cases are supposed to be in court from the time it convenes on Monday until the case in which they are subpoenaed is disposed of, the Solicitor rarely calls the cases in the order in which they are docketed. Usually he tries to dispose of the jail cases first, so that the defendants in jail, being maintained by the county, may be either sentenced or discharged. The normal picture at the opening of court is a great crowd of defendants and witnesses, growing gradually smaller through the week as cases are disposed of or continued. Since, in such counties, witnesses have to wait, often for days, until the case is called, the item of witness fees in bills of costs is large. As the county pays either full fees or half-fees, particularly of State's witnesses, in many cases, these witnesses lounge around the court for days at the expense of the county. The use of the criminal calendar makes it possible to reduce

materially the total number of days the witnesses in a particular case will have to wait for the call of the case. For example, a case with ten witnesses, calendared and tried on Friday eliminates witness fees of ten witnesses for four full days! The reduction of court costs is obviously desirable, as it results in substantial savings in witness fees paid by the county. It also lowers the total costs in the cases so that many defendants, who would otherwise have to go to the roads, may be able to "pay out" and thus contribute to the re-imbursement of the county for the expense of operating the court.

Preparing the Calendar

In seven of the counties the Solicitor of the District either prepares the calendar, or supervises it, or has an active part in its preparation. In three counties the Clerk of the Superior Court, under the direction of the Solicitor, prepares the calendar. In three counties a committee of the Bar (in two instances with the Solicitor present) prepares the calendar. In two counties the Solicitor himself prepares the calendar. The participation of the Clerk in preparing the calendar is assumed in practically all of these laws.

Five of the laws provide for printing, or mimeographing, the calendar. In three of these counties the Clerk is ordered to charge a fee of 25c in each bill of costs in order to defray the expense of printing and mailing out calendars. In the other two counties the Commissioners are required to pay the expenses of the Clerk in carrying out the acts. In the three counties in which the fee is charged, the Clerk is required to mail a copy of the calendar to each defendant (or his attorney of record) at his last known address. In the other two counties the Clerk is required to furnish a copy of the calendar to each officer of the court and each attorney practicing in the county.

Order of Listing Cases

In one county capital felonies are not placed on the calendar; in another the entire law is inapplicable

to capital cases; in a third county the Solicitor is permitted to calendar capital cases as he sees fit.

In two counties the laws require the calendar in each case to show (a) the name of the defendant, (b) the offense, and (c) the date of the trial. In one county cases in which the defendants are in jail are to be tried first, but cases in which the defendants are required to appear and show "good behavior" and the sci. fa. cases are left off the calendar, the judge hearing these at his convenience. In the other county the cases are to be calendared in the following order: (a) Cases in which the defendants are to appear and show compliance with court orders, and cases in which the defendants have been bound over by inferior courts and are in jail in default of bail, (b) cases in which defendants are in jail, (c) cases in which defendants are not in jail, and (d) sci. fa. cases and hearings on forfeited recognizances. In one county it is provided that submissions may be heard at any time, and in another the Solicitor is permitted to set any case for trial on a particular day.

Procedure after Calendaring

Only three of these laws refer to this topic. In one instance such cases are "for trial" and may be heard in the discretion of the judge; and in another instance they are to be placed on the calendar at the discretion of the Solicitor. In the third law these cases go over to the next succeeding term unless they are jail cases; if they are jail cases the judge may try them if he wishes, but they have priority over non-jail cases and are to be placed at the foot of the jail calendar.

What happens if the case is not reached the day it is calendared? Only two of the laws make any provision for this contingency. Both of these declare that if either side is not ready, "for sufficient reason," the case may be continued. In one county such continuances are for the term unless the court orders otherwise, and in the other such cases may be either continued for the term or placed at the foot of the

calendar. None of the laws declares expressly whether cases not reached on the day calendared are to be continued for the term or are merely to go over to the next day, but the phrasing of some of the laws indicates an intention to have continued for the term all cases not called the day calendared.

What happens to cases dragged through several terms? Only three of the laws provide for automatic dismissal of old cases. Each of these limits the application of this provision to misdemeanors. They provide that if a defendant out on bail attends (without moving for a continuance) for three successive terms after the term to which the bail was returnable, the case shall be nol. prossed permanently.

What effort is made to get bills promptly returned from the grand jury? One of the laws requires the Solicitor to give a copy of the calendar to the foreman of the grand jury in order that the grand jury may pass on the bills in the order in which the cases are calendared. Another law requires the Solicitor to deliver each day's bills of indictment to the grand jury before court convenes, except on Monday of the first week when he is to deliver these as soon as the judge has charged the grand jury.

Pro and Con

Practically the only element which all of these laws have in common is the mandatory provision for a calendar at criminal terms, to the end that the number of days spent in court by witnesses and parties in particular cases may be reduced. In an effort to reduce the total fees to witnesses some of these laws failed to require State's witnesses, who had not been before the grand jury, to appear on the first Monday of the court term. Some of these acts are so drawn that they prohibit State's witnesses from receiving any compensation for the time they have been in attendance upon the grand jury; whether this was intentional is open to doubt. In most of these counties the Clerk, with suggestions from the Solicitor, will probably prepare the calendar. If it is intended that the cases not reached on the day calendared are to be continued for the term automatically, it may be unfortunate that the Solicitor and a committee of the Bar do not

collaborate in making the calendar, as it is often difficult to calendar for each day an ideal number of cases. If too few cases are calendared, court has to adjourn early in the afternoon and time is lost, largely at the county's expense. If too many cases are calendared for the day, many old cases may be carried over to the next term while more recent ones are tried, with the ultimate result that old cases sometimes can not be tried or have to be tried on only part of the evidence, witnesses available earlier no longer being obtainable. Usually when the Solicitor and the defense lawyer are both present at the preparation of the calendar, they can estimate with a fair degree of accuracy the time it will take to try the case. When the Clerk makes the calendar, or when the Solicitor and lawyers can not be present at its preparation, the number of cases calendared for each day must be largely arbitrary.

These laws indicate a variety of opinion as to the extent to which such statutes should specify in detail the mechanics of the preparation of a calendar and the legal effect of its use. However, they do indicate a definite tendency to submit to trial the use of criminal calendars, thus substituting a planned criminal court program for what often amounts to little more than the whim and caprice of the Solicitor. These statutes indicate at least three beneficial results which may accrue from mandatory criminal calendars. These are: (a) the reduction of the State and county expense in the operation of courts, (b) the lowering of the total of court costs assessed against individual defendants with the consequent decrease in the number sent to the roads to be maintained at public expense, and (c) a greater regard for the convenience of witnesses in the operation of our courts. In view of these possible benefits it appears probable that other counties may offer similar bills in the 1937 General Assembly.

Case Comment

School Property—Sale—Delegation of Power—The Court held that the trustees of a city school district

may not delegate to a Property Committee the power to sell property, acquired by foreclosure of a loan from its sinking fund, and granted a restraining order against fulfilling an agreement made under an attempted delegation. "This principle may not prevent the delegation of duties which are ministerial," the decision reads, quoting *Murphy v. Greensboro*, 190 N. C. 269, "but where the trust committed to the governing body involves the exercise of functions which partake of a judicial character, it may not be delegated."

The case raises anew but does not pass upon a second important question as to whether property of a city school district may be sold at private sale.

A sale by the County Board of Education would clearly have to be at public auction. But where the title remains in the trustees of the special charter district, under Section 4 of the 1933 School Machinery Act, the law seems to be silent as to the manner of disposition. The opinion of the lower court, quoted above, may be illuminating as showing the leanings of the Supreme court.

"... taking a general view of all the school legislation to date, it would seem that the State has adopted as its public policy that all public school property should be sold at public auction. It is, however, only by analogy that it could be said that the trustees of a city administrative unit, or city board, would be restricted to a sale by public auction, although the analogy is so strong and the reasons for such restrictions so manifest and so urgent, it would seem that the courts might well declare it to be the law of the land."—See *Bowles v. Fayetteville Graded Schools*, 211 N. C. 36.

Streets and Alleys—Charter Provisions—Enlargement by Private Act—Article II, Section 29, of the State Constitution, limiting the power of the General Assembly to enact private or special legislation on certain subjects, includes among other things the "laying out, opening, altering, maintaining or discontinuing of highways, streets or alleys." A charter (1907) gave the Town jurisdiction over its public streets, providing the machinery for their laying out, altering, and maintaining,

but did not mention sidewalks and alleys. The question was whether a private act (1925), amending the charter provision by inserting sidewalks and alleys, violated Article II, Section 29. Held: The Act merely increases the jurisdiction and authority granted the Town under the machinery set out in the Charter. To violate the Constitution, "it would have to relate to laying out, opening, altering or discontinuing of a *given particular and designated* highway, street or alley." See *Deese v. Lumberton*, 211 N. C. 31.

The Law Says "Put 'em Out"

But Ejectments Not So Simple—
One of Knottiest Problems
Sheriffs Have

RECENTLY while driving along a highway past a small, frame dwelling, I noticed an officer wearing a badge talking earnestly to a man and woman standing to one side of the path as several men brought household goods from the house into the yard. Instinctively I knew what was happening. Story-books call it an "eviction," but here in North Carolina we know it as an "ejectment." A "summary ejectment" is an order from a justice of the peace to an officer to dispossess tenants occupying certain property. Last month I discussed with more than two hundred and fifty Sheriffs and deputies the problems which had been troubling them. From one end of the State to the other officers arose again and again to remark, "Ejectments give me more trouble than anything else. Now last week . . ." Listen to these:

"Last summer while the owner was out of town, a group of shiftless transients broke the lock on a vacant house and moved in. When he demanded the house, they refused to move out . . ."

"The husband was sent to prison. The wife, left with several small children, had no place to which she

could go and no money with which to pay the rent. The landlord wanted his house for a new tenant . . ."

"The ground was frozen and snow was falling when the Sheriff received the order to eject the occupants. When he went to the house, he found the mother in bed with a day-old baby, while a little girl sat in a rocking chair, an old quilt about her shoulders, coughing fitfully . . ."

These and a dozen other cases presented not propositions of legal lore, but problems snatched from the every-day life of a people, situations tingling with human elements and bristling with conflicting rights and duties. In these cases individual rights clash with property rights, moral ideas war with legal concepts. Little wonder that officers often pause to ask themselves, "What shall I do?" Often their solutions would not satisfy legal theorists and bookish law professors, though the common-sense and humanity which their answers display might warm the heart of the bitterest misanthrope.

The law is of little help to the officer in such cases. His legal duty is clear. He is armed with a court order commanding him to remove the occupants and place the landlord in possession (C. S. 2370, 2376). This is never a pleasant duty, and sheer humanity often demands more of him.

When the occupants are paupers, which is often the case, officers frequently communicate with local public or private welfare and relief agencies. Sometimes a word to some active women's organization is sufficient. Sometimes these negotiations require time, and landlords may be impatient. One of the Sheriffs, when asked whether these orders did not often require him to act "immediately," replied: "Yes, but the law gives me a 'reasonable' time, and I'm the one who figures it." Particularly if the occupants are ill or aged, or if there is a large family of small children, some public or private relief and welfare agency will usually hasten to soften the harsh measures of the law.

Not infrequently the officer is informed that one or more of the occupants is seriously ill. Even when the officer goes inside to look at the "sick" person, he can rarely be cer-

By DILLARD
GARDNER

of the Staff of
the Institute of
Government



tain whether the illness is real or merely feigned to secure his sympathy. In these cases officers generally call upon the county physician to examine the "sick" person. If the person is in fact too ill to be ejected, the officer attaches the certificate of the physician to the order and returns it marked "Not served due to illness of occupant as shown by attached certificate." In those counties which have indigent wards in their local hospitals, the officer and the county physician frequently have the sick person removed by ambulance to the hospital. When this is done, the officer may proceed to dispossess the remaining occupants in the usual manner.

In some cases the officer, with the aid of the State-Federal employment service, is able to secure work for one or more of the occupants and to arrange with the employer to pay a part of the earnings to the landlord on the rent.

In a number of communities either the county or the town owns vacant houses which have been bid in for delinquent taxes. Where this is the case, officers often can persuade the governing bodies of the county or town to permit them to move deserving paupers and unfortunates into such houses. When this is done either the officer or some welfare official usually visits the home regularly to see that they are not destroying the property and to determine whether they continue to be deserving of charity.

Much of the law, particularly the "law in action", is not in the books. It would be difficult to find a better example of this than the body of practices which have grown up, largely during recent years, in the handling of executions in summary ejectments.

Special Needs and Problems in Governmental Accounting

GOVERNMENTAL finance and accounting officials are constantly besieged with questions concerning the financial condition of their respective governmental units. Many taxpayers find it extremely difficult to read and interpret governmental financial statements and feel that governmental accounting is too complicated with such things as General Funds, Debt Service Funds, Health Funds, etc. Many citizens as well as many accounting officials feel that governmental accounting should be the same as commercial accounting—simplified by putting everything in one general pot. Let's look at governmental accounting and see wherein and why it differs from commercial accounting.

Governmental vs. Commercial

A governmental unit, unlike a private enterprise, is not created to earn profits, but to render service at cost. A governmental unit does not depend solely upon sales of service and commodities for its operating revenues, but upon assessments in the form of taxes and other charges on its citizens. Unlike a private enterprise, a governmental unit cannot shut down its factory, as it were, and discontinue all services in time of stress. Governmental services must be continued in bad weather as well as good, and in order to carry on these services, since they are not paid for as rendered, it is necessary to anticipate their cost in advance and to determine the amount of assessment necessary to be made against each taxpayer. In other words, a governmental unit must project its expenses a year into the future and levy taxes accordingly, while a private enterprise can vary much of its expenses in almost direct ratio to the demand for its services and commodities. In private enterprise, if there is no demand for a particular service or commodity, that service is not performed or that commodity is not manufactured. The failure to perform a particular service or to manufacture a particular

By T. N. GRICE
of the Staff of the Institute of Government

commodity affects largely the particular private concern and naturally reduces its cost of operations. Also, when a particular service or commodity is sold it is paid for immediately or shortly thereafter. Included in the sale price is the cost plus a margin of profit. Consequently, given a sufficient amount of working capital on which to operate during the interim between manufacture and sale and collection, the private enterprise reimburses itself for its costs and continues its cycle.

Governmental operation is essentially different. A governmental unit does not recoup from the performance of most of its services an immediate return of their costs. For instance, it costs almost as much to maintain a fire department for a month whether there is a fire or not. If there is a fire, the owner of the property saved from destruction does not pay directly the cost of fighting the fire immediately or shortly after the service is performed. Also, the discontinuance of a particular governmental function or service not only affects the governmental unit as an enterprise, but may also affect the safety, health, and property of hundreds of its individual citizens.

Further, the control and management of a governmental unit are largely a process of limitation. The problem of limitation is ever present in governmental finance. The State Constitution, city charters, and numerous public and local laws place limitations upon public officials with respect to taxing and spending. These underlying differences between governmental and private enterprises produce two very distinct features in governmental accounting:

1. The use of budgetary accounts either directly or indirectly.
2. The segregation of resources, revenues, liabilities, and expendi-

tures into funds designated for one or more particular purposes.

The Necessity for a Budget

It is impossible for any governmental unit regardless of its size to be efficiently managed without the use of a budget. As stated previously, a governmental unit does not depend upon profits for its operations but upon assessments against its citizens. To arrive at just and adequate assessments, it is necessary to project expenses into the future in some degree of detail. If this is not done, tax inequities naturally result. Citizens of tomorrow will be assessed for services rendered to citizens of today. The desired result is impossible with one grand total. It is impossible to predict in one grand total the approximate needs or requirements of a governmental unit, since such requirements vary from year to year due to changes in debt service and capital needs and in operating policies. The amount of revenue realized during a particular year may be more than adequate to care for that year, yet the same amount of revenue may fall far short of requirements in the next year. It is only by a rather comprehensive budget plan that such changes can be anticipated and inequities in taxing policies avoided.

To carry on the services of a local governmental unit that are most beneficial to all citizens and remain within the constitutional and statutory limitations on taxing and spending is probably the greatest problem faced by local governmental officials. It is only by strict budgetary procedure that this problem can be approached and a working solution reached. For example, there are limitations upon the rate of tax which may be levied for general operating purposes, and this maximum rate produces a certain amount of revenue with which to defray expenses. There may be some function or activity that is highly desirable and greatly needed by the citizens, but there are other activities and functions, such as protection to life and property which are indispensable and which must be financed from these revenues. The preparation of a budget showing the cost of these indispensable activities is the only method of determining whether other desirable

activities can be financed within realized revenues. The problem becomes more acute when several desirable and needed new activities are suggested.

Taking the problem of limitation another step and assuming there is a possibility of realizing sufficient revenue from the maximum levy to carry out all activities upon a given scale, it is impossible, without budgetary control within the accounting system, for executive officials to determine the degree to which the operating officials are maintaining the desired scale. Without this control activities quite often will have to be greatly curtailed if not completely suspended before the end of the fiscal year because of operations on a scale wider than revenues will permit, or than that which was anticipated at the time the activity was inaugurated.

The Necessity of Fund Segregation

Clear thinking with respect to governmental accounting demands an understanding of what is meant by the term "fund." In its broad application the term signifies the resources designated to meet expenditures for a certain purpose or object. There is no necessity for "funds" in commercial accounting because any and all revenues can be used for the general operations of the business and are not ear-marked for any particular purposes. However, in governmental accounting "funds" are necessary because our laws provide that each tax levy state the purpose for which it is levied and prohibit the use of revenues accruing from such a levy for purposes other than that for which the levy is made. In order to carry out this mandate it is not only necessary to segregate revenues, but all resources resulting from each tax levy as well as all liabilities incurred or expenditures made in carrying out the purpose for which the levy is made.

The necessity for segregating governmental resources and obligations by "funds" is not due to accounting theories but to laws enacted by the legislative representatives of the people. Behind these limitations are a thousand years of struggle by our people for the right of self-government. These limitations are neither a commentary upon our form of government nor upon any

particular elective or other officials, but a protection with which citizens have surrounded themselves against errors in their own judgment.

All these things must be considered when demanding a simplification of governmental accounting.

IDEALS AND ETHICS IN LAW ENFORCEMENT

(Continued from page two)

announce to the world that we recognize them as illegal and unethical and as a violation of all the principles to which we cling and which give us the right to call ourselves members of one of the greatest professions in the world—that of enforcing the law.

F. B. I. Rules and Results

The Director of the Federal Bureau of Investigation, Mr. J. Edgar Hoover, in assuming this position of importance in the field of law enforcement, promulgated a rule which is a standard of conduct of all special agents of the F. B. I. in performing their duty. This rule was that any one who would resort to duress, unethical tactics or illegal practices in obtaining information or confessions would be summarily dismissed from the service with prejudice, which means that he could not obtain a position in any branch of the Federal Government. This rule has been strictly enforced, and the fact that 94.3% convictions were obtained last year in those cases investigated by special agents of the F. B. I. which were selected for prosecution will indicate the effectiveness of the work of these men who employ only legal, ethical, scientific, and intelligent methods in the investigation of crime and enforcement of law.

The fact that these special agents, under the direction of Mr. Hoover, have captured and participated in obtaining the conviction of some of the most desperate criminals of all time will clearly reflect that there is no need to resort to practices which you and I have already outlawed from our profession. I am not speaking of these matters because I believe that it is necessary in the State of North Carolina but do so in order that we all may take pride in the fact that the work we are engaged in is a work which has the

highest type of idealism behind it and because we can jointly be proud to call ourselves artists and scientists in the profession of law enforcement.

"A REPORT OF OUR STEWARDSHIP"

(Continued from page thirteen)

to Investigate Adjustment of County Highway Claims.

All County officers, required to do so, give surety bonds.

All County property is insured in companies licensed to do business in North Carolina. School buildings are also insured against damage by cyclones or tornadoes.

Foreclosure proceedings have been instituted in 2124 tax suits. Approximately 500 of the defendants have paid their taxes since the suits were filed. Over 5,000 tax adjustments have been made. The majority of these were made possible by the County's ability to purchase some of its outstanding bonds at less than par.

We found from a study of the tax books that persons who had kept their taxes paid had also looked after their valuations and seen that they were reasonable. Those who had not paid, in many cases, had given little attention to valuations, and many of them were out-of-line. Tax adjustments were a part of a program of rehabilitation and getting the people to paying taxes again.

A full and complete settlement for all county funds on deposit in closed banks was made with the Sheriff - Treasurer whereby the County did not lose one cent.

Bonded Indebtedness

The total bonded indebtedness and current liabilities of the County have been reduced from \$2,948,600 on June 30, 1929, to \$2,129,050 on November 30, 1936.

All State Loans and bonds of the County, and the interest thereon, are current. There are no defaults.

No new bonds for Current Expenses or for Capital Outlay have been issued during the past four years.

Of the \$108,500 in Refunding Bonds that were issued, \$50,000 have been purchased and are owned by the County Sinking Fund.

Bulletin Service

Opinions and rulings in this issue are from rulings of Attorney General and State Departments from December 1 to January 1



Prepared by
M. R. ALEXANDER

Key:

(A.G.) Attorney General.
(L.G.C.) Local Government Commission.
(S.P.I.) Superintendent of Public Instruction.
(U.C.) Utilities Commission.

1. Ad valorem taxes.

A. Matters relating to tax listing and assessing.

5. Exemptions—city and county property.

To R. B. Woodard. Inquiry: The County bid in a furniture factory for taxes. The property was idle for five years but is now rented. Is the property subject to taxation by the city in which it is located?

(A.G.) In our opinion, this case is controlled by the case of Benson v. Johnston County, 209 N. C. 751. There a city purchased property at a tax foreclosure sale and, pending arrangements for its sale, rented a portion of it out. The court held the land subject to a county tax.

A study of the decision convinces me that it was based on the theory that the land was not being held for a public purpose, rather than the theory that the city was attempting to engage in private business, i.e., the fact that the property was rented was immaterial.

If this be the philosophy of the case, it follows that the town has a right to collect taxes for all of the time the county held the property in spite of the fact that it was not rented. There is one difference between the present situation and that in the Benson case. There the taxpayer was a municipality; here it is a county. But it seems to me that this is no ground for a change of result in view of the fact that the same constitutional provisions (Art. V, Sec. 5) and the same statutory exemptions (C. S. 7880) apply to both cities and counties.

21. Valuation of bank stock.

To Mrs. Evelyn H. Pleasants. Inquiry: Is a town entitled to tax a branch bank whose principal office is in another town?

(A.G.) C. S. 7971 (1) requires every banking association to list its real estate and tangible property, except money on hand, in the county where it is located, for the purpose of county and municipal taxation.

Subsection (2) provides a method of computing the actual value of the shares of bank stock for taxation purposes. Under Subsection (5) the proper valuation of the capital stock of a branch bank is certified to the county where it is located. This figure is the one upon which municipal and county taxes are based.

In our opinion, the town has a right to collect taxes upon the real estate and tangible property of the branch bank under Subsection (1) of C. S. 7971 (59) and a tax upon the capital stock, using as a base the figure certified to the county (Subsection 5).

91. Deduction—in case of mortgage.

To Vernon W. Flynt. Inquiry: Is a tax-

payer entitled to the homeowner's constitutional exemption on city taxes in the following case: The noteholder resides in the same county but outside the city limits and, therefore, lists the note for county but not for city taxes.

(A.G.) The provisions in the North Carolina Constitution with regard to exempting owner-occupied homes and mortgages thereon, each up to 50% of the value, provided the noteholder resides in the county and lists the note, apply. It is not necessary that the note and mortgage be held or taxed in the city in which the home lies. It is a full compliance with this section of the Constitution if the note and mortgage "are held and taxed in the county where the home is situated."

92. Credit to hospitals for charity work.

To R. M. Lilly. Inquiry: May the Board of Aldermen allow hospitals exemptions from city taxes under Chapter 480, Public Laws of 1935, when they submit an itemized statement of charity cases but fail to get a statement approved by the County Physician or Health Officer showing performance of services to indigent patients?

(A.G.) This Office is of the opinion that strict compliance should be had with Chapter 480, Public Laws of 1935, before hospitals should be given credit on their tax receipts for services performed to indigent patients.

B. Matters affecting tax collection.

1. Turning over tax books to collecting officer.

To O. J. Mooneyham. Inquiry: The Board of Commissioners has made settlement with the tax collector for 1935 taxes and turned the new books over to the County Treasurer. Is this proper and legal?

(A.G.) Unless there is some local act for your County giving the Treasurer authority to collect taxes, he has none. The tax books are kept by the Clerk to the Board of County Commissioners until the taxes are made out and are then turned over to the Tax Collector or Sheriff, as the case may be, if he is eligible to collect the same, that is, if he has settled the taxes for the preceding year.

12. Penalties, interest—right of county to remit.

To G. G. Brinson. Inquiry: Do the County Commissioners have a right to relieve a taxpayer from paying legal interest on tax sales certificates?

(A.G.) This Office is of the opinion that County Commissioners have no right to relieve a taxpayer from paying legal interest on tax sales certificates. The Revenue Act specifically provides that this may be done at the discretion of the Commissioner of Revenue. However, we find no such provision in either the Machinery or Tax Foreclosure Acts.

33. Statute of limitations.

To J. S. Vincent. Inquiry: Are street assessments collectible if the contract was

for 10-year payment and it has been left open for 13 years without any payment being made?

(A.G.) In High Point v. Clinard, 204 N. C. 149, it was held that the 10-year Statute of Limitations applies in cases of unpaid street assessments. In Oliver v. Hetch, 207 N. C. 481, it was held that the lien for street assessments attached at the time of confirmation of the assessment. Chapter 331, Public Laws of 1929, provides that no Statute of Limitations shall bar a city from enforcing payment of an assessment, save from and after 10 years from default in payment thereof. Taken altogether, it is apparent that

Municipal Bond Trends

North Carolina Bond Quotations

Security	Bid	Asked
N. C. Gen. Fund, 2½'s, 1945	2.10%	2.00%
N. C. Gen. Fund, 3½'s, 1946	2.40%	2.30%
N. C. Hwy. 4's, 7-1-50	3.00%	2.90%
N. C. Hwy. 4½'s, 1-1-51	3.05%	2.95%
N. C. Hwy. 4½'s, 1-1-58	3.10%	3.00%
Buncombe County, C D's	38 F.	39 F.
Catawba County, Rd. 4¾'s, 3-1-52	3.75%	3.60%
Craven County, Various C D's	62 F.	65 F.
Durham County, R. & B., 6's, 1-1-45	3.25%	3.15%
Forsyth County, Ref., 4¾'s, 7-1-54	3.30%	3.20%
Gaston County, R. & B., 5's, 10-1-49	3.45%	3.30%
Guilford County, Hwy., 5¼'s, 3-1-43	3.20%	3.10%
Haywood County, R. & B. 5's, 7-1-54	4.50%	4.30%
Johnston County, Hwy., 5's, 4-1-50	98	100
Mecklenburg County, Jail, 4¼'s, 5-1-55	3.15%	3.00%
New Hanover County, Court-house, 5's, 1-1-48	3.35%	3.25%
Pasquotank County, Road, 4¾'s, 7-1-50	4.30%	4.10%
Reboeson County, R. & B., Ref., 4¾'s, 5-1-49	3.70%	3.60%
Rowan County, Fdg., 4¼'s, 5-1-55	3.75%	3.60%
Rutherford County, Sch., 4½'s, 1-1-40	90	97
Wake County, Rd., 4¾'s, 1950	3.75%	3.60%
Wayne County, Road, 4¾'s, 12-1-55	4.10%	4.00%
Asheville, Various C D's	38 F.	39 F.
Charlotte, Water, 4¼'s, 5-1-57	3.30%	3.20%
Durham, W. & S., 4½'s, 1-1-54	3.30%	3.20%
Fayetteville, W. & S. 5's, 2-1-51	3.85%	3.70%
Goldsboro, Str., 5's, 1-1-50	4.10%	4.00%
Greensboro, Ref., 4's, 1948	3.70%	3.60%
Greenville, Sch. Bldg., 5's, 7-1-45	3.70%	3.60%
Hickory, Sch., 5½'s, 1-1-52	4.20%	4.10%
High Point, Sch. 5's, 9-1-48	100	102
New Bern, Sch. Fdg., 5's, 11-1-50	86 F.	89 F.
Raleigh, St. Imp., 4½'s, 10-1-43	3.50%	3.40%
Wilmington, P. I., 4½'s, 1-1-51	3.50%	3.40%

Quotations through Courtesy of
R. S. Dickson & Co.

street assessments which have not been collected before 13 years after they became due are barred by the Statute of Limitations.

82. Tax foreclosure—procedure under C. S. 7990.

To R. B. Lee. Inquiry: May tax foreclosure suits be brought under C. S. 7990 rather than C. S. 8037 for (a) county; (b) city, and (c) county drainage district? Would any Statute of Limitations apply as to actions by a drainage district?

(A.G.) Assessments for drainage districts are permitted to be collected as taxes, and our Court has directly held in *Longstreet Drainage District v. Huffstetler*, 173 N. C. 523, that it is proper to bring a foreclosure suit to collect delinquent taxes under C. S. 7990.

Notwithstanding the enactment of C. S. 8037, the Court has since held in *Wilkes County v. Forrester*, 204 N. C. 163, that C. S. 7990 is still available for the collection of taxes for counties and municipalities, and it must be, therefore, still available for drainage districts.

In the *Huffstetler* case (1917) you will note that the Court held that the 10-year Statute of Limitations would apply. However, C. S. 5312 was amended by Chapter 7, Public Laws of 1921, and the drainage districts were declared to be political subdivisions of the State.

If the statute could make a drainage district a political subdivision of the State, obviously the Statute of Limitations would not apply. There is some doubt in my mind, however, whether a statute, by mere terminology, could convey to a drainage district the essential characteristics of a political subdivision of the State, amongst which the most important is the exercise

of some sort of governmental function. Very probably, however, the Court would sustain it.

II. Poll taxes and dog taxes.

A. Levy.

1. Exemptions.

To A. C. McKinnon. (A.G.) We know of no law which would exempt members of the National Guard from the payment of poll taxes.

B. Collection.

9. Garnishment.

To E. P. Covington. Inquiry: May a town garnishee for several years' back poll taxes? (A.G.) In our opinion, garnishment proceedings may be had against taxpayers for all taxes which are due and which have not been outlawed by the Legislature. The same ruling applies to a levy for taxes on personal property. C. S. 8004 contains the form which has been approved by the statute for attachment and garnishment for taxes.

III. County and city license or privilege taxes.

A. Levy.

64. License tax on out-of-town businesses.

To E. P. Covington. Inquiry: May a municipality charge a license tax on out-of-town companies soliciting laundry and dry cleaning therein?

(A.G.) Yes. For schedule of taxes, see Sections 139 and 150 of Chapter 371, Public Laws of 1935.

To R. L. Hefner. Inquiry: May a town collect privilege taxes on: (1) An ice manufacturer whose place of business is outside the corporate limits but makes regular deliveries within the city? (2) A motor express company maintaining a depot within the city from which deliveries and collections are made?

(A.G.) Section 121 of the Revenue Act, which exempts peddlers of ice from license taxes, would prevent the city from collecting license tax on such an ice manufacturer. However, a license tax upon the motor express company, as set out in your letter, would be valid.

14. Privilege license—beer.

To S. R. Hoyle. (A.G.) It is our opinion that C. S. 3411 (11) permits towns to levy a tax on places of business selling beer within two miles of the corporate limits. Also, that the provisions of Subsection 12, which require applicants to obtain licenses from the municipality where the sale is to be made before applying for county licenses, would apply.

To Charlie White. (A.G.) There is no provision in the Beverage Control Act which would permit the Revenue Department to issue a half-year license for the privilege of selling beer. The tax levied under the Beverage Control Act is not a part of the Revenue Act, and the provisions in the Revenue Act with regard to the payment of a half-year license do not apply.

70. License taxes on chain stores.

To A. E. Guy. Inquiry: An organization of retail department stores has a store in this town, but it claims exemption from the chain store tax on the ground that each store is chartered separately. Does this tax apply?

(A.G.) Yes. The taxing statute defines chain stores to include stores operated under separate charters of incorporation if there is common ownership of a majority of the stock in such separately incorporated companies, etc. The principal store in the chain, of course, is exempted from this tax.

Underwriters and Distributors of Investment Securities

Many corporations are today taking advantage of favorable money rates in refinancing their fixed obligations. We solicit inquiries from corporations with experience and background that are interested in rearranging their financial structure.

R. S. DICKSON & COMPANY

INCORPORATED



Charlotte New York Chicago Raleigh Columbia

The Observer Printing House

INCORPORATED
CHARLOTTE, N. C.

County Record Books
Tax Supplies and Systems
LOOSE LEAF OR BOUND

Indexing Systems for All County Records

We specialize in special built Furniture and
Filing Equipment for Court Houses

We Invite Your Correspondence

IV. Public schools.
B. Powers and duties of counties.
25. Use of county funds.

To Clyde A. Erwin. Inquiry: Is a County obligated to follow the State standard salary schedule where teachers are paid from other than State funds?

(A.G.) Upon a careful reading of Section 12, Chapter 445, Public Laws of 1935, I am of the opinion that the statute authorizing the State Board of Education and the State School Commission to fix and determine State standard salary schedules for teachers, principals, and superintendents, does not apply to employment where the teacher is not paid out of State funds but the employment and payment are by the County.

Whatever may be advisable by way of policy in such a matter, I am of the opinion that the standard fixed under Section 12 is not mandatory upon County Commissioners with respect to the employment of teachers paid wholly out of County funds.

E. Status of former school districts and their funds.

To F. M. Waters. Inquiry: Does mandamus lie to compel a County to assume bonds issued for construction of school buildings in a city school district if the County has assumed and is paying the bonded indebtedness of other districts? (A.G.) The case of *Hickory v. Catawba County*, 206 N. C. 165, intimates that it would.

D. Powers and duties of present school districts and agencies.

20. Right to issue bonds—for school buildings.

To P. L. Poovey. Inquiry: Is a gymnasium a necessary expense within the meaning of the Constitution? A teacherage? May a County issue bonds for these purposes, subject to the new debt limitation amendment, without a vote of the people?

(A.G.) In my judgment, a gymnasium might be classed as a necessary object for the operation of the public school system. As yet, so far as I know, a teacherage has not been determined to come within the class of necessary expenses. I can not say what the Court would say about it.

In my judgment, the recent amendment to the Constitution would require that bonds issued for these purposes must be submitted to a vote of the people if greater in amount than 2/3 of the debt reduction for the preceding fiscal year. Such bonds as were not for necessary expenses would have to be submitted to a vote anyway.

Under the decision of the Court in *Hemric v. Commissioners of Yadkin County*, 206 N. C. 845, it is probable that even for a school gymnasium the bond issue would have to be submitted to a vote of the people; certainly if a proper petition is filed under the bond procedure of the Municipal Finance Act.

F. School officials.

53. Teachers — Workmen's Compensation Act.

To Scarborough and Boyd. Inquiry: Two teachers in the city schools sustained personal injuries in the course of their employment. What is the procedure for filing claims for Workmen's Compensation?

(A.G.) Claims should be filed with the City Superintendent on forms furnished by the State Industrial Commission. The Superintendent should notify the County Superintendent who in turn notifies the

State School Commission. If the claims are settled by agreement, the School Commission provides the funds for payment. If the cases are contested, they would follow the usual procedure in claims before the Industrial Commission.

H. School health laws.

5. Compulsory vaccination.

To Clyde A. Erwin. Inquiry: Would a County Health Officer have authority to exclude children from school who are not vaccinated?

(A.G.) Yes, it would appear. See *C. S. 7162 and Hutchins v. School Committee*, 137 N. C. 68.

V. Matters affecting county and city finance.

I. Issue of bonds.

2. Debt limitation amendment of 1936.

To H. H. Phillips. Inquiry: Has a town power to authorize the issuance of bonds to construct a water and sewer system without a vote of the people under the authority given by Chapter 473, Public Laws of 1935?

(A.G.) This Office is of the opinion, notwithstanding the provisions of Chapter 473, Public Laws of 1935, that the provisions of Section 3, Chapter 248, Public Laws of 1935 control, the constitutional amendment proposed therein having been approved by the people of the State at the recent election.

To C. M. Abernethy. Inquiry: Under the new debt limitation amendment will the County, in issuing school bonds, be bound by reductions in outstanding indebtedness during the past fiscal year, or may payments for both years of the present biennium be counted?

(A.G.) The amendment uses the expression "to an amount not exceeding 2/3 of the amount by which the outstanding indebtedness of the particular county or municipality shall have been reduced during the next preceding fiscal year." This, of course, would mean the preceding year ending June 30, 1936.

To T. D. Cooper. Inquiry: Prior to the passage of the recent debt limitation amendment the city entered agreements to bear a part of the cost of two improvements projects in co-operation with (1) the State Highway and Public Works Commission and (2) with certain private parties. Did such agreements constitute "valid existing debts" of the city, and may it now complete such projects and issue bonds for its share of the cost without submitting the subjects to a vote of the people?

(A.G.) After a careful examination, this Department has come to the conclusion that in all probability the wording of the Amendment would not make it applicable to a contract of the kind described in your letter, completed and accepted by all parties prior to the effective date of the amendment.

The inhibition of the amendment is as follows: "Counties and municipalities shall not contract debts during any fiscal year . . ." In this case, it seems the debt, afterwards to become completely mature upon performance of the executory contract by the parties affected, was nevertheless contracted in the sense of the Constitution prior to November 24, 1936—the effective date of the amendment.

We can not guarantee that this view of the matter would be taken by the Supreme Court. We are only giving it as perhaps the better opinion in a situation that can only be made clear by the Court itself. We suggest a test case.

To J. Clyde Stancill. Inquiry: In August bond orders were introduced before the Commissioners of the County authorizing the issuance of certain school bonds. Thereafter, a petition was filed before the Commissioners calling for an election, the election was ordered and held on November 3, and the school bonds received a majority of the votes cast. Will these county school bonds be subject to the provisions of the recent amendment to the Constitution limiting the issuance of such bonds?

(A.G.) Yes, in my opinion. We have heretofore ruled that this amendment applies to bonds which were not actually issued and delivered prior to the date the amendment became part of the Constitution, which was 12 o'clock noon on November 24.

Inquiry 2: Is the election which has already been held upon the issuance of these bonds effective compliance with the provisions of the amendment?

(A.G.) Yes, in my opinion. I find no opinion of our own court exactly in point in the time I have available for research, but the principle seems to me to be clear. The constitutional amendment referred to was intended to limit the power of the State, counties, and municipalities to issue bonds without referring the issuance to a vote of the people. It seems to me that it would be supererogation to hold that where such an issue has been submitted to a vote of the people, it would be necessary to do so again after the amendment to the Constitution became effective. The very purpose of the amendment has already been effected, and I find no explicit language in the amendment which would require it to be interpreted as being entirely prospective with regard to such an election.

In this case it is clear that the constitutional amendment does not in any way affect the laws, rules or regulations under which the election upon the bond issue might be held.

Inquiry 3: What as to the applicability of Article VII, Section 7, of the Constitution?

(A.G.) Had this question been asked prior to the opinion of the Court in *Hemric v. Commissioners of Yadkin County*, 206 N. C. 845, I should have said under the authority of *Collier v. Commissioners*, 145 N. C. 171, that such a question need not be submitted to a vote of the people, or rather that the bonds in question might be issued without submission to a vote of the people, regardless of Article VII, Section 7. It is expressly stated in the last cited case that Article VII, Section 7, has no application to the issuance of bonds for the maintenance of the public schools required by Article IX, Section 3, of the Constitution, and, of course, for the maintenance of the public schools suitable buildings and equipment are necessary, and provisions for such buildings and equipment must be classed in the same way as provision for instructional service.

Without expressly stating that bonds and obligations of this character come within the provisions of Article VII, Section 7, of the Constitution, the effect of *Hemric v. Yadkin County*, in my opinion, is to overrule the case of *Collier v. Commissioners*, so that now when a demand is made in the method provided in the procedure for the issuance of county funds such election must be had.

There is now apparent contradiction between the new amendment restraining the issuance of bonds for any purpose what-

ever and Article IX, Section 3. In my opinion the reconciliation of the two provisions will come along the line adopted in *Hemric v. Yadkin County*, and the recent amendment will be held applicable to all bond issues, whether for the maintenance of schools or otherwise, the only bond issues escaping the application of the amendment being those that are expressly listed as excepted in the amendment itself, and an issue for school purposes is not so excepted.

With regard to the propriety of having a test case, I have only to say that it is quite impossible to say with any certainty what the Court would hold on the matter, in view of the departure from our ordinarily accepted views on these subjects evidenced by the *Hemric* case and some other similar cases, and I really think it might be best for you to have such a test case.

T. Fire insurance.

10. Policies in mutual companies.

To Miss Katie Cobb. (A.G.) Since the decision in the case of *Fuller v. Lockhart*, we are of the opinion that counties may place insurance in mutual fire insurance companies. However, we specifically call your attention to the opinion in that case.

VI. Miscellaneous matters affecting counties.

B. County agencies.

10. A.B.C. Stores.

To D. F. McKinney. Inquiry: Who has authority to set the salaries of employees in A.B.C. stores—the A.B.C. Board or the County Commissioners?

(A.G.) Chapter 493, Public Laws of 1935 (Sec. 9) authorizes the Alcoholic Board of Control created by the Act to "employ such clerical and other assistance

as may be necessary to carry out the provisions of the Act, and to stipulate the salaries to be paid. . . ."

G. Support of the poor.

15. County welfare worker.

To D. H. Tillitt. Inquiry: The County has made certain levies for 1936-37 for hospitalization, pauper relief, emergency and health, from which a total amount is expected to be realized that will probably leave a surplus after a reasonable expenditure for these purposes. May part of such funds be used in connection with the payment of a county welfare worker.

(A.G.) In our opinion, this expenditure would be fully authorized, not only because the subject is so nearly allied with the subjects for which the levy is made, but because I think the Commissioners have full power to dispose in this way of any surplus which remains after the budgetary subjects have been reasonably taken care of.

VII. Miscellaneous matters affecting cities.

To G. E. French. (A.G.) It is generally better to amend existing law when it is done intelligently than to wipe it out altogether and enact a new law substantially the same. In the case of your town charter, we would suggest that you make such amendment as you see fit and then, in a separate clause, specifically repeal that portion of the charter that you want left out.

C. Police and fire protection.

S. Regulation of traffic.

To J. E. L. Wade. Inquiry: May a City pass a valid ordinance requiring inter-city busses operating in the City to provide a terminal station upon private property and prohibit such busses from using

any street or other public place in the city as a terminal point?

(A.G.) In our opinion you could not condition the operation of busses within your city limits upon the requirement of providing bus terminals situated upon private property. However, it might be that under the police provisions of the State you could prohibit the operation of busses upon certain designated streets.

VIII. Matters affecting chiefly particular local officials.

A. County commissioners.

1. Terms.

To G. C. Feagan. Inquiry: May the Legislature change the term of office of a county commissioner who has been elected for a term of six years?

(A.G.) Yes. The Constitution (Article VII, Section 1) sets the term of commissioners at two years. But Section 14 of that article gives the Legislature power to change Section 1 in case it sees fit. And the uniform holding of our Court, since *Mial v. Ellington*, 134 N. C. 131, has been that a public officer has no property rights in his office.

5. Trading with member of board.

To C. H. Sterling. Inquiry: May a county commissioner receive compensation for his services in supervising the construction of a county building?

(A.G.) We are of the opinion that you could not under C. S. 4388 and *Davidson v. Guilford County*, 152 N. C. 436, holding that a member of the Board of Commissioners could not recover for services rendered the Board in inspecting a building.

B. Clerks of the Superior Court.

28. Seal.

To Wm. I. Cochran. Inquiry: The seal

The Orange Printshop

Chapel Hill, N. C.

The big 3 of good printing

KNOWLEDGE
EQUIPMENT
PERSONNEL

are ours for your use.

Call to see us at 126 E. Rose-
mary Lane

Condensed Statement of Condition of BRANCH BANKING AND TRUST CO.

"THE SAFE EXECUTOR"

Wilson — Warsaw — Plymouth — Goldsboro — Selma
Fayetteville — Williamston — New Bern — Kinston
Elm City — Wallace — Trenton — Faison — Kenansville

at the Close of Business Dec. 31, 1936

Resources

Cash and Due from Banks		\$ 3,953,951.54
Obligations of the United States	\$8,117,371.54	
Federal Land Bank Bonds	2,286,366.50	
North Carolina Bonds	401,922.30	
Municipal and Other Marketable Bonds	2,850,947.71	
Other Stocks and Bonds	14,106.00	13,670,714.05
Loans and Discounts		2,030,978.77
Banking Houses, Furniture and Fixtures, and Real Estate		250,000.00
Total		\$19,905,644.36

Liabilities

Capital Stock—Common	\$ 400,000.00
Capital Stock—Preferred	400,000.00
Surplus	400,000.00
Undivided Profits	396,215.00
Reserves	258,699.67
Dividend Payable Jan. 1, 1937	8,000.00
Deposits	18,042,729.69
Total	\$19,905,644.36

SAFE BANKING AND TRUST SERVICE FOR EASTERN CAROLINA

Member Federal Deposit Insurance Corporation

in the Clerk's office has become so defaced and broken as to prevent its use. Should this be replaced by the State under C. S. 7650-1, as the seal of a court of record, or by the County?

(A.G.) We have carefully examined the statutes and are of the opinion that the seal you desire to replace can not properly be called a seal of the Superior Court, or a seal of a court of record, although all certificates, transcripts, and other documents out of the Superior Court are authenticated by the seal used by you. More properly speaking, the seal you desire to replace is the seal of the Clerk of Superior Court, and as you know, is used frequently to authenticate documents which are not properly considered documents of any court. I admit the question is a close one, but am of the opinion that you may, without further resort to the Governor, replace the broken seal of your office and continue to use the new seal.

60. Legal notices.

To F. F. Church. Inquiry: Is it necessary to fix a date in the notice of service by publication provided for under C. S. 485?

(A.G.) The statute requires the notice to state when and where the Defendant must appear to answer the complaint. But in our opinion the requirement is satisfied by a notice which dates from the time of service of summons. That is, a notice which states that the Defendant shall appear within 30 days from the date of service of summons satisfies the requirement of the statute.

73. Process for enforcement of judgments.

To A. L. Hux (A.G.) The Department withdraws an opinion rendered on October 13, 1936, on the subject of upset bids. That opinion stated that when there had been an execution sale it was not subject to upset bid in any court, which was the rule of *Weir v. Weir*, 196 N. C. 268. At that time the Department was inadvertent to the amendment enacted by Chapter 482, Public Laws of 1933, which provided for upset bids in connection with execution sales. See C. S. 2591. This Office is of the opinion that upset bids should be filed in the office of the Clerk of that court where suit was commenced and judgment rendered.

75. Administration of guardian's funds.

To Wm. I. Cochran. Inquiry: A guardian for a minor and an administrator of an estate has tendered his resignation in both capacities subsequent to citations and hearings involving his financial ability to account for certain funds due the minor and the estate. Would it be proper for the Clerk to accept his resignation and appoint other parties, and would this place his bond in jeopardy?

(A.G.) A defaulting guardian may be discharged and a new guardian appointed under exercise of the power of the Clerk when the facts are shown to his satisfaction. It would not be proper to accept the resignation of a guardian unless his account has been filed, found to be satisfactory, and approved by the Court, and a new guardian found to accept the duties of the office.

C. Sheriffs.

9. Appointment of deputies.

To Ray Garland. Inquiry: Is a deputy sheriff provided for by special act of the Legislature and appointed by the County Commissioners entitled to receive papers issued to him direct by the Clerk of Court, and can he legally execute them and col-

lect the fees when he has no connection with or authority from the Sheriff's office?

(A.G.) Where a statute creates the office of deputy sheriff, he gets his authority from the statute itself and not the Sheriff. A deputy filling an office created by statute in this way, and having a definite term of office, may serve papers and collect the fees without any authority from the Sheriff.

21. Deputy's bond.

To J. F. Scott. Inquiry: Does a law requiring a County to bond all officials except the Coroner and Surveyor cover deputy sheriffs?

(A.G.) In our opinion, such a law would not apply to deputies of the sheriff but would apply to any deputy sheriffs created by statutory law who are paid by the County or get their employment directly from the County Commissioners.

22. Settlement for tax collections.

To Ira T. Johnson. Inquiry: Several checks given by the outgoing sheriff to the outgoing Board of Commissioners in his settlement for taxes have proven worthless. What is the duty and responsibility of the new Board?

(A.G.) Checks are not payment for taxes under C. S. 8027 (a), and in our opinion, the outgoing Board and Sheriff did not have authority to make a settlement of taxes by the acceptance of worthless checks. Therefore, the new Board would have authority to proceed by law in the collection of these taxes.

As to recourse against the Board of Commissioners, I doubt whether any action could be brought except a prosecution for misconduct in office, and if they proceeded in good faith and in ignorance of the law upon the subject, I doubt whether a conviction could be had.

But in our opinion the matter is left entirely open so far as the outgoing sheriff is concerned. Certainly I do not think that the County can be estopped because of an unauthorized procedure in the settlement between the sheriff and the commissioners. I think the County may still proceed against the responsible parties for the taxes.

D. Registers of Deeds.

9. Marriage—licenses.

To J. A. Northcott. Inquiry: Should a Register of Deeds issue a marriage license to a girl of 14 years of age if she has the consent of her mother?

(A.G.) C. S. 2494 provides in effect that all unmarried females who are 16 years old or upward may marry, except as therein forbidden, and that females of over 14 and under 16 may marry under a special license to be issued by the Register only after there has been filed with him written consent to such marriage, signed by one of the parents or by the person standing in loco parentis.

22. Oaths of public officials.

To F. F. Church. (A.G.) C. S. 3193-4 provide that all public officials who hold any office of trust or profit within the State shall take the oaths therein prescribed in addition to the oaths provided for in C. S. 3199. This Office is of the opinion that oaths of county officials so taken should be in writing and filed in the office of the Register of Deeds, who is ex officio clerk to the County Board of Commissioners, and that oaths of municipal officials should be filed in the office of the governing body of the municipality. See also C. S. 972 as to the oath of constables in counties and C. S. 2638 as to constables in municipalities.

L. Local law enforcement officers.

26. Prohibition—beer law.

To John A. Mayo. (A.G.) C. S. 3411 (14) prohibits the sale of beer within 300 feet of a church under certain conditions. C. S. 3411 (22) prohibits the sale on the campus or school grounds of schools and colleges. But we are unable to find any other statute which deals directly with the sale of beer in regard to the location of any public school building.

To John C. Kesler. Inquiry: When a Defendant is convicted of a violation of the prohibition laws, how long a period must elapse before he can secure another license to sell beer under Chapter 319, Public Laws of 1933 (Sec. 15)? (A.G.) Six months.

41. Operating motor vehicle while intoxicated.

To J. Will Pless, Jr. Inquiry: C. S. 4506, passed in 1919, sets the minimum punishment for drunken driving at \$50 or 30 days. C. S. 2621 (44 and 101), passed in 1927, sets the minimum at \$100 or 30 days. The 1919 Act provides no maximum, and therefore, since it is a misdemeanor, imprisonment could be as high as two years. The 1927 Act, however, provides a maximum of not more than one year or \$1,000. Please advise whether in your opinion the 1927 Act has the effect of repealing the 1919 Act and what you construe to be the minimum and maximum punishments for this offense?

(A.G.) This Office has formerly held that the punishment to be administered in case of conviction would be governed by the statute under which the indictment was drawn.

To D. M. Cagle. (A.G.) A man who owns a car and knowingly permits the same to be driven by a drunken man when he, the owner of the car, is present in the car, may be held for a violation of the law against drunken driving.

Y. Game wardens.

5. Powers and duties.

To R. Bruce Etheridge. (A.G.) This Office has very carefully considered the question of confiscation by members of your organization of guns which have been used by hunters who have not secured hunting licenses, and we are of the opinion that neither your Department nor its agents have sufficient authority under the law for such action.

Section 8 (d), Chapter 486, Public Laws of 1935, it is true, provides that certain instruments and devices which are illegally used in taking game may be seized and confiscated; however, in the next Subsection there is no provision for the ultimate disposition of devices described other than those named in said Subsection.

We are of the opinion, unless there was a specific provision in the Act actually providing that the arms and ammunition of a person who was hunting without a license could be confiscated, that you and your deputies would have no authority to do so.

IX. Double office holding.

2. Notary Public.

To J. E. Swain. (A.G.) The Constitutional prohibition against double office holding prevents a Clerk of Superior Court from holding office as Notary Public, which was held to be a public office in *State v. Knight*, 169 N. C. 333. However, C. S. 3174 permits a Clerk to exercise the functions of a Notary, not by virtue of appointment as such, which becomes unnecessary, but by virtue of his office as Clerk.

TODAY'S RECORDINGS *May Be Vital Court Evidence*

1987

50 YEARS FROM NOW



Will these recordings be legible? Will they be properly preserved? Such possibility makes it worthwhile for you to know the truth about the manufacture of the record books you use today.

Here is the truth about H & M Record Books: They are made from the finest quality materials. They are made by careful, experienced craftsmen using modern manufacturing methods. They are designed for great durability, safety of sheets, and ease of operation.

Do your recording today in H & M Permanent Record Books. Years from now—if needed for vital court evidence—they will be legible, properly preserved and a credit to your efficient administration. To avoid possible substitution of inferior quality record books, specify H & M when you order.

H & M County Record Books and Indexing Systems are furnished through leading North Carolina County Supply Houses.



HALL & McCHESNEY INC
SYRACUSE, N. Y.

*The Michie Company Has
Supplied Law Books to the
Legal Profession for Over
Forty Years - - - - -*

Our North Carolina Publications—

Encyclopedic Digest of North Carolina Reports, 17 Vols.	\$115.00
Jerome's Civil Procedure	9.00
Jones' Quizzer, 3d Ed.	10.00
Law of Automobiles	7.00
North Carolina Code of 1935	45.00
Vartanian's Law of Corporations	8.00
Vartanian's Law of Wills	6.00

We can also supply any general textbooks at the regular retail price

Reasonable terms if desired

Let us know the books in which you are interested and we will supply you with full information.

The Michie Company

LAW PUBLISHERS
Charlottesville, Virginia

"We Can Supply Any Law Book in Print"

GIVE OLD EYES THE HAPPINESS OF COMFORTABLE SEEING

Middle aged and elderly people require more light for COMFORTABLE seeing and for the avoidance of eye strain and nervous and physical fatigue than younger generations.

It is just as important to avoid glare, sharp shadows and contrasts as it is to have adequate light.

The I.E.S. specification semi-indirect lamp, in both floor model and table model, was designed by illuminating engineers to provide proper and comfortable light for reading, sewing, studying, and other close visual tasks, and the floor model is ideal also for card playing and for general purposes.

In the floor model you may have 100 watt, 200 watt or 300 watts of electricity, according to your needs, at any given time. This is made possible through the new three-light lamp bulb.

In the table model study and reading lamp you can use either a 100-watt or a 150-watt lamp.

Electricity IS cheap. After the use of 50 kilowatts of electricity you can burn a 100-watt lamp for 10 hours for 2½ cents—a 300-watt lamp three and one-third hours for 2½ cents.

For the sake of the eyes of members of your family investigate these lamps and equip your home with them at once.

Duke Power Co.
Charlotte, N. C.

Saves \$3.60 a Day on Fuel

With a
«Caterpillar» Diesel
Auto Patrol!



Saves \$3.60 a day on fuel costs. Here's what a street commissioner in Georgia reports that he is doing with his "Caterpillar" Diesel Auto Patrol. The Auto Patrol operates on 6 gallons of 10c fuel per day, replacing a gasoline tractor which consumed \$4.20 worth of gasoline per day. That's real economy. In addition to economy, thousands of road commissioners report these extra advantages for the "Caterpillar" Diesel Auto Patrol. It has the weight and non-chattering blade action to shave washboards off the hardest packed county feeder roads—the blade reach to clean ditches and shape shoulders—the strength to scarify and reconstruct side streets and deep rutted county roads. Trade in your old road maintenance machines today for "Caterpillar" Diesel Auto Patrols and begin immediately to enjoy tremendous savings in operating costs that have made this Auto Patrol the choice of street and road commissioners throughout the country.

T R A C T O R S
T E R R A C E R S
C O M B I N E S
P O W E R U N I T S

«CATERPILLAR» D I E S E L

Carolina
Tractor and Equipment Co.
Salisbury ♦ Raleigh