THE COURT HOUSE IN WARREN COUNTY

*One of the recent additions to the Institute of Government's membership roll, which now numbers 90 counties and 185 cities and towns.*

## IN THIS ISSUE



THE INSTITUTE OF GOVERNMENT

# POPULAR GOVERNMENT


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JULY, 1937

VOL. 4, NO. 8

## Regular Services

GUIDEBOOKS FOR OFFICIALS

bringing together the laws, cases, rulings, and actual practices relating to the chief offices.

STATE AND DISTRICT INSTITUTES AND CONFERENCES

for the interpretation of new laws, imparting of information, and discussion of common problems.

PERIODIC BULLETINS AND SUMMARIES

on new laws, cases, and rulings; Federal and State agencies and activities, etc.

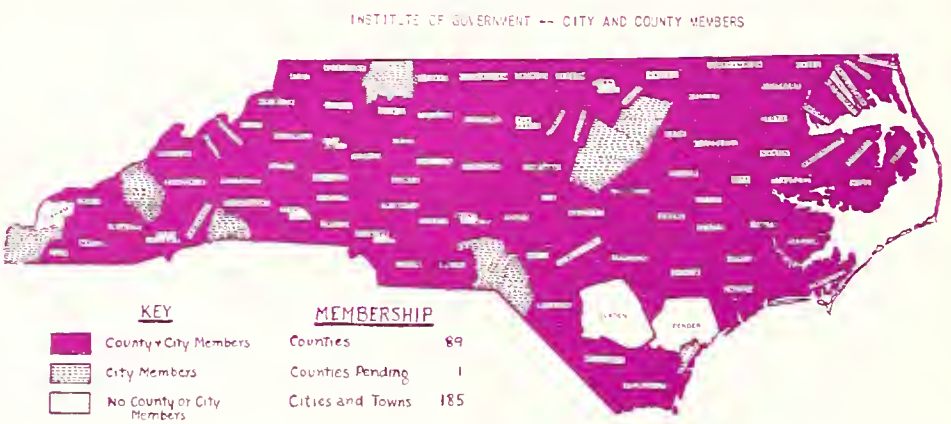
MONTHLY MAGAZINE

summarizing new developments, methods, and practices to keep the official's information up-to-date at all times.

GENERAL INFORMATION AND CONSULTING SERVICE

covering any phase, problem or question in the work of any of the unit's officials.

# 275 County and City Members

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Guidebook on Special Assessments.

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**On Schedule**

Guidebook on Privilege Taxes.

Guidebook on Levy of Property Taxes.

Guidebook on Public Purchasing.

Guidebook for Public Health Officers.

# POPULAR GOVERNMENT

VOLUME 4
NUMBER 8

PUBLISHED MONTHLY BY THE INSTITUTE OF GOVERNMENT

JULY
1937


# THE LIQUOR LAW MUDDLE

## Welter of Laws, New and Old, Plus Patchwork of Areas, Dry and Wet Equals--Confusion


By HARRY McGALLIARD

of the Staff of the Institute of Government


## An «A-B-C» Treatment of Some of the Major Points--for the Officer and Citizen

FEW LAWS in recent years have brought law enforcing officers more confusion and trouble than the liquor control legislation and the search warrant act enacted by the 1937 General Assembly.

### Transportation of Liquor

Any person may bring into North Carolina not more than one gallon of liquor provided the liquor was legally purchased outside of North Carolina, and provided that it is intended for the purchaser's personal use. This applies equally to citizens bringing the liquor to dry counties as well as to citizens bringing the liquor to wet counties. But if a person brings into this state (1) any amount of liquor which was illegally purchased (bootleg liquor) outside of this state, or (2) any amount of liquor intended for sale, or (3) more than one gallon of liquor regardless of purpose, he is guilty of a misdemeanor punishable by fine or imprisonment in the discretion of the court.

Any person may transport liquor purchased in a county liquor store either *through* or *to* a dry county, provided that (1) not more than one gallon is being transported, (2) it is not being transported for the purpose of sale, and (3) the cap or seal on the container or containers has not been broken. This immediately raises a problem. Suppose an automobile with three occupants is stopped in a dry county, fifteen pints of tax-paid liquor are discovered, and each person claims to be the owner of five pints, or less than a gallon each. Is the driver of the car guilty of transporting more than one gallon of liquor in violation of the law? In a recent case involving a similar set of facts in Raleigh the occupants of the car were acquitted, and the Attorney General has approved this construction of the law.

### Possession of Liquor

It is unlawful to possess any amount of liquor on which the federal or state tax has not been paid. Furthermore, any vehicle, vessel, aeroplane or other equipment used in transporting such liquor can be seized and confiscated under the procedure set out in section 6 or Chapter 1 of the Public Laws of 1923 (the Turlington Act, C. S. s. 3411 (f), as expressly authorized in section 13 of the 1937 A. B. C. Act.) But when a person is apprehended while transporting more than one gallon of tax paid liquor, the vehicle cannot be confiscated. If any vessel containing liquor does not bear a federal revenue stamp or the stamp of some North Carolina county A. B. C. Board, such fact alone is *prima facie* evidence of a violation of this provision of the law. Thus, if a person is discovered in the possession of a half gallon of liquor in a fruit jar, the mere fact that there is no federal or county stamp on the jar will be sufficient to obtain a conviction for illegal possession, *unless* the accused person can rebut the presumption by showing that the tax had been paid on the liquor, as for example, by showing that he had purchased the liquor at a legal place of sale and had then transferred the liquor to the jar.

Second, the possession of liquor for the purpose of sale is against the law. On top of this, possession of more than one gallon is (under C. S. 3379) *prima facie* evidence of possession for the purpose of sale. Thus, it is not unlawful for a person in a wet or dry county to possess more than one gallon of liquor —except that not more than one gallon at a time may be transported to or through a dry county as set out above. But if a person is discovered in the possession of more than one gallon, he is presumed to possess the liquor for the purpose of sale, and here again, unless he can offer evidence showing that his possession was not for the purpose of sale, a conviction may be obtained on the basis of the possession of more than one gallon.

### The Turlington Act

The Turlington Act remains in force, as modified by the 1937 law, in all counties which do not vote for county liquor stores.


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**"Wine Base Cocktails"**

The provisions of the new laws authorizing the sale, even in dry counties, of fortified wines, has also created quite a problem. The statutes define fortified wines as wine or alcoholic beverage containing not more than 24% of alcohol by volume "made by fermentation from grapes, fruits and berries and fortified by the addition of brandy or alcohol thereto." Some dealers have apparently used the word "alcohol" in a very loose sense and have thought it permissible to add straight whiskey, gin or rum to very small amounts of wine and other fruit juice, thus producing a variety of hard liquor cocktails.

However, the North Carolina statute adopts the definitions and standards of identity of wines promulgated by the Federal Alcohol Administration of the United States Treasury Department. These federal regulations which are part of the North Carolina law prescribe in detail the manner, amounts, and labelling of such mixtures. Apparently the words "fortified wine" are a technical phrase designed to include champagne and other sparkling wines which are well recognized and which do entail the addition of alcohol or something more than natural fermentation processes to give them their high alcoholic content. But, according to the Attorney General, it does not permit the sale of synthetic whiskey, gin or rum cocktails or other mixed drinks of that type containing wine, fruit juices and natural alcohol. It does not permit the sale of "wine" drinks in which the wine has lost all identity by reason of the heavy dilution with strong spirits and fruit juices. The law does not permit the addition of fruit juices *and* alcohol to "build up" the mixed drink. A fortified wine must consist *only* of *natural* wine to which brandy or natural alcohol has been added without the use of other juices or mixtures.

**A. B. C. Enforcement Officers**

Chapter 49 of the 1937 Public Laws requires that each county A. B. C. Board expend for law enforcement not less than five nor more than ten per cent of the liquor profits. At least one enforcement officer must be appointed in each county voting for liquor stores. An A. B. C. enforcement officer is required to take the oath prescribed for peace officers, he may carry arms, and he is given the same powers and authorities within their respective counties as other peace officers. The Attorney General has expressed doubt as to whether this gives the officer the authority to enforce all criminal laws, and states that, in his opinion, the officer's powers are probably restricted to the enforcement of the liquor laws. These officers are responsible to the local A. B. C. Boards, which are charged with investigating, and aiding in the prosecution of, liquor law violations. As a governmental agency, the A. B. C. Boards are primarily interested in the liquor control aspects of the criminal law, and the apparent intent of the provisions authorizing the appointment of special officers is to aid these Boards in their administration of the liquor laws.

**The Search Warrant Law**

Chapter 339 of the 1937 Public Laws provides that a written affidavit must be sworn to and signed before a search warrant may be issued. A magistrate issuing a search warrant without requiring this procedure is guilty of a misdemeanor. Few private citizens are willing to come out in the open and sign complaints. Therefore, many officers at first thought that the new law would greatly cripple law enforcement. Assistant Attorney General Harry McMullan has declared that this is not the case. An officer can secure information orally from the person making the complaint and then, on the basis of the information thus secured, file the written complaint signed by himself, under oath, and thus obtain a search warrant. The officer is under no compulsion to disclose the source of his information to the person whose premises are to be searched. In short, an officer wishing to obtain a search warrant is by the new law merely put to the additional trouble of putting his complaint in writing, signing it, and swearing to it.

The significant change wrought by this law is that it prohibits the courts from receiving in evidence any facts disclosed as a result of a search made pursuant to a warrant issued without complying with the law. This change brings North Carolina into line with the Federal courts and the great majority of state courts throughout the country.

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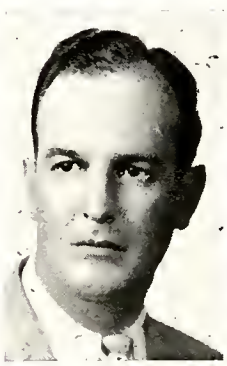
MEET THE NEW MAYORS (BELOW)

*Here is a group of the new Mayors who took over the reins of leading municipal governments of the State in June and July. Left to right: Thomas Cooper of Wilmington, P. J. Suttlemyre of Hickory, J. H. McMullan of Edenton, J. Paul Murray of Canton, Henry Powell of Henderson, and J. Q. Robinson of Rocky Mount. McMullan and Powell are attorneys, Robinson and Murray railroad men, Cooper a business man, and Suttlemyre a pharmacist. The latter is also President of the State Pharmaceutical Association, while Mr. McMullan holds the distinction of having been elected Mayor of his city at the age of 24 and again at 54. Five of the six cities represented below are active members of the Institute, and the organization of cities and counties extends to one and all—a hearty welcome and every good wish in your new posts!*








# Keeping Up with Washington

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

## News on Federal Laws and Activities of Interest to North Carolina Cities and Counties

WPA—The outlook for city and county projects under WPA in 1937-38 may be summed up briefly as follows. The appropriation of 1½ billion dollars, as compared with 1936-37 expenditures of a 1 9/10 billions, provides for the continuation of this program along the same general lines but on a slightly reduced scale. The work relief rolls have been ordered to be cut from 2 to 1 2/3 millions, but it is hoped that the bulk of the reductions will be absorbed by private industry rather than be turned back on the local units. The cut in North Carolina's case will bring the WPA roll down to 19,800, as compared with a peak of 36,000 and an average for the last two years of 30,206. The administration has indicated intentions of raising the average sponsor's contribution from around 15% to about 20%. However, the attempt to set an arbitrary figure was defeated in Congress, and the exact amount will continue to be varied according to the relief needs and financial situation of the particular unit.

**Employment, Resettlement, and Youth** — The WPA appropriation includes allocations to carry on the activities and services of these agencies. However, it is expected that the deductions from WPA funds for these purposes will just about be counterbalanced by unexpended balances of around 221 millions from previous relief appropriations.

PWA—The new relief bill also makes available 359 millions to PWA, whose life is presumably continued for two years, for loans and grants to local units with approved projects pending, but no new projects are to be undertaken. Executive Order 197, which fixed the Federal grant at 115% of the relief wages paid on each project and which minimized the assistance to units with little skilled relief labor, has been rescinded, and the new allotments will be on a 45% grant or loan and grant basis. The new appropriation is earmarked as follows:

| | *Grants (in millions)* | *Loans* |
|---|---|---|
| School projects | 60 | 11 |
| Projects authorized at elections prior to passage of Act | 70 | 22 |
| Projects for which states have made appropriations | 15 | 2 |
| Projects to be financed by issuance to contractors of tax or assessment securities where obligations incurred | 5 | — |
| Projects for which funds have been earmarked but no formal allotments made (grant not to exceed earmarked amount) | 54 | 78 |

Cities or counties which have approved projects pending in the above classes and which wish to go ahead with the same should get in touch with the State Office of the PWA, Chapel Hill.

CCC—Another act appropriates 350 millions for the continuance of the CCC camps, and their work in erosion control and forest fire protection, for three years with a strength of 300,000 enrollees.

**Homes and Farms**—Federal housing projects have not attracted great interest among the cities of the State, but rural communities may be interested in the proposed Farm Security Bill. This act, which had passed the House at this writing, would appropriate 85 millions for 30-year, 3% loans to tenants and share-croppers to acquire farms during the next three years.

**Debt Adjustment** — A Revised "municipal debt readjustment bill," drafted to meet the objections of the Supreme Court, has passed the House and if approved by the Senate would be in effect until 1940.

**Interest** — The House Committee has been holding hearings on legislation which would extend the time that banks may pay interest on demand deposits of public funds. The 1935 Banking Act prohibits interest on demand deposits, and the present exemption in favor of public funds where interest is required by a state or local law will expire August 23.

**Purchasing** — The new Bituminous Coal Code exempts public purchases of coal from federal taxes. Cities buying large quantities of coal may secure the official rules and regulations and the proper exemption certificates by writing the National Bituminous Coal Commission, Washington, D. C.

The Federal Trade Commission has issued an order to 33 companies to "cease and desist" from conspiring and combining to fix prices and prevent competition in the interstate sale of water valves, hydrants, etc. The action followed several complaints filed by the U. S. Conference of Mayors. Similar orders have previously been issued in the case of three other industries — fire hose, electric cable and wire, and turbine

### SOCIAL SECURITY

The Social Security record to date is as follows: 45 states now have unemployment compensation acts. 1,347,000 needy aged, 34,800 needy blind, and 365,100 dependent children received benefits in June. The three decisions of the U. S. Supreme Court upholding the constitutionality of the Federal act and state unemployment compensation laws may be found in 4 *U. S. Law Week* 1179, 1188, and 1191.

### FEDERAL FIGURES

The U. S. Government in 1936-37 took in 5,294 millions, paid out 8,001 millions, ran a deficit of 2,707 millions, according to figures gathered by *Time*. The revenue figure, up 23% from 1935-36, is the largest in history except for 1920 and 1921, when war taxes were still in force, the record being 6,695 millions. The expenditure figure was down 5.6% from 1935-36, but not if the 1935-36 Bonus payments be subtracted. The deficit, although the smallest the New Deal has run, was the seventh in a row, and brings the public debt to the new high of $36,400,000,000.

generators—and inquiries are under way in a number of others.

**Power**—The fight over PWA aid to municipal power projects continues. The Supreme Court has granted certiorari in the case of Alabama Power Co. v. Ickes, in which the Circuit Court denied utilities the right to object to federal aid to municipal plants and refused to pass on the constitutional questions involved. This defers a final solution of the matter, which affects 54 public power projects involving Federal allotments of 51 million dollars, until the case is heard and decided by the Supreme Court at the October term. One case had previously reached the Supreme Court, Greenwood County (S. C.) v. Duke Power Co., but was sent back for re-trial on the merits (without an opinion) to the District Court, where the result was adverse to the power company and the case started back up the long appeal ladder.

**Income Taxes**—The compensation of city water works officers and employees was held to be exempt from Federal income taxes in the case of Brush v. Helvering, 57 Sup. Ct. 495. Employees who have paid such taxes may file refund claims with the Bureau of Internal Revenue up to three years from the date the return was filed or two years from the date the tax was paid.

**Aids** — Important new federal publications of interest to local officials include:

"Public Health Service Milk Ordinance and Code," available from United States Public Health Service.

"Services of the National Bureau of Standards to Governmental Purchasing Agents." (Letter Circular LC-497) available from the National Bureau of Standards.

"Revised Index to Federal Specifications, Section IV of Federal Standard Stock Catalogue." Available from the National Bureau of Standards.

"Financial Statistics of Cities Having a Population of over 100,000: 1935." Available from the Bureau of the Census, United States Department of Commerce.

"Compilation of State and Local Expenditures for Relief and Work Programs, 1933-1936." Available from Works Progress Administration.

"Rat Control" (three publications on this subject). Available from Bureau of Biological Survey, United States Department of Agriculture.

"Vibrating Concrete Pavements Adds 10 Per Cent to Strength." Published in April issue of Public Roads and available from Bureau of Public Roads, United States Department of Agriculture.

"Domestic and Residential Electric Rates, January 1, 1936 and Trends in Residential Rates from 1924 to 1936." This covers cities of 50,000 population and over and is available from the Federal Power Commission, Washington.

"Bibliography of Materials on Building Codes." Available from National Bureau of Standards, Washington.

"Status of City and County Planning in the United States." Available from the National Resources Committee, Interior Building, Washington.

"Guide for Traffic Violators' Schools." Available from Accident Prevention Conference, United States Department of Commerce, Washington.

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## COUNTY COMMISSIONERS AND ACCOUNTANTS TO MEET

The annual meeting of the State Association of County Commissioners will be held at the seashore this year, starting in Wilmington on August 11. The County Accountants will meet in conjunction with the Commissioners again, and a full and interesting program is being planned, and a large attendance is expected. Tom R. Wolfe, of Stanly, is the retiring president of the Commissioners' Association, while J. A. Orrell, of New Hanover, heads the Association of Accountants. John L. Skinner, of Littleton, veteran secretary of the Commissioners' Association, is also taking a prominent part in the arrangements.

CLERKS OF COURT HOLD ANNUAL MEETING

*W. E. Church (Forsyth), the new President, is sixth from the left and A. W. Graham, Jr. (Granville), past President, tenth. Other new officers are: J. Lester Wolfe (Mecklenburg)and R. S. Boyce (Gates), Vice-Presidents, and A. L. Hux (Halifax), Secretary-Treasurer. The Association will meet in 1938 at Charlotte.*

## CLERKS HOLD ANNUAL MEETING

The Association of Clerks of the Superior Court held its annual meeting at Winston-Salem, June 30th through July 3rd, with approximately one-third of the Clerks present. Secretary W. E. Church of Forsyth was host and Chairman of the Program Committee.

The formal program featured a discussion of the Estate Commission's recommendations as to changes in the law of wills and the administration of estates by two members of the Commission, A. Wayland Cooke, Guilford Clerk, and Prof. R. B. White, of the Wake Forest Law School. Former Judge T. D. Bryson, of the Duke Law School, addressed the Clerks on the law governing special proceedings. Dillard S. Gardner, of the Institute of Government, interpreted the many 1937 laws affecting Clerks and conducted a "question box" period. T. W. Alexander, Jr., of the Department of Revenue, interpreted the new intangibles tax law. Enjoyed by all were the tours of the city, the R. J. Reynolds Tobacco Plant, and Mr. Church's office, the buffet supper provided by the Wachovia Bank & Trust Company, and the banquet furnished by the Association.

# Experience and Views on Tax Discounts Vary

A PROPOSAL was made to the 1937 General Assembly to reduce from 3% to 2% the discount allowed for the payment of taxes on or before July 1st before the due date in October of each year. The proponents argued that a 3% discount discriminated against the "little man." Their argument was based on the fact that a 3% discount on taxes paid on July 1st which were payable at face amount on December 2nd was equivalent to paying slightly over 7% interest on collections. Larger taxpayers could and did borrow money at less than 6%, but the "little man" had neither the cash on hand with which to pay nor the credit facilities which would enable him to take advantage of the discount. The General Assembly saw fit to continue the 3% discount, and the Institute of Government is now conducting a survey to determine the experience and position of the various cities and counties as to discounts. First, however, let's examine the reason for discounts.

Tax discounts are primarily a result of the poor correlation between the tax year and the fiscal year. The fiscal year begins July 1, but taxes don't become due until October and are payable at face amount in December and January. Thus, there is a period of three months from the beginning of the fiscal year until taxes are due, and a period of seven months before any penalty attaches for non-payment. Many officials as a result feel that unless some inducement is offered for the payment of taxes prior to the due date it will be necessary for local units to finance, partially at least, the first quarter's operations by anticipatory borrowing. Of course, when stringent credit conditions prevail and local units can not obtain short term loans at less than 6%, if at all, the spread between discounts and interest rates is small. On the other hand, when easy credit prevails, as at the present time, and units are able to borrow at extremely low rates of interest, the discrepancy between the discounts allowed and the interest rates prevailing makes the 3% discount policy costly to many units.

The whole thing boils down to whether a particular unit has sufficient cash resources to finance its first quarter's operations, and, if not, how much difference there is in dollars and cents between discounts allowed and interest costs on the amount needed. The wide differences between our local units in resources and wealth makes it impossible to feed all out of the same spoon and leave a good taste in each mouth. For this reason some officials feel that the discount and penalty policy should be determined locally. But let's get to the results of the survey.

To date information has been gathered on 39 cities and towns and 29 counties from all sections of the State and represent a fairly good cross section both as to size and wealth. Of the 39 reporting cities and towns 2 have local discount laws and do not allow discounts in July. Of the balance, under general law, the per cent of the total levy collected during the 3% discount period range from zero in four to as high as 65% in one, and are distributed as follows:

| *Range* | *No. of Cities and Towns* |
|---|---|
| Less than 1% | 10 |
| 1% under 5% | 5 |
| 5% under 15% | 4 |
| 10% under 15% | 4 |

## RESULTS OF POLL OF REPRESENTATIVE COUNTIES

| *County* | *Am't of Pre-paid Taxes* | *% of Levy* | *Comparison with Last Year* | *No. of Prepaid Taxpayers* | *Total No. of Taxpayers* | *Comments* |
|---|---|---|---|---|---|---|
| Buncombe and Asheville | $ 406,297.77 | 20 | Same | 255 | 30,177 | Favor |
| Caldwell | 23,956.25 | 12 | More | 12 | 10,000 | Favor reduction or leave up to individual units |
| Chatham | 49,889.72 | 25 | More | 32 | 10,000 | Favor |
| Clay | 1,855.52 | 5 | Less | 1 | 2,200 | Favor |
| Cleveland | 16,000.00 | .06 | Same | 200 | 14,000 | 2% Plenty |
| Cumberland | 25,199.32 | 5 | | 21 | 13,000 | Favor |
| Duplin | 3,608.66 | 1.42 | Less | 3 | 11,500 | Too small to worry |
| Durham | 221,789.57 | 34 | Less | 181 | 21,000 | Favor |
| Edgecombe | 20,000.00 | 7 | More | 50 | 15,000 | Favor |
| Forsyth | 409,805.92 | 45 | 2% More | 850 | 35,000 | Favor |
| Guilford | 390,000.00 | 30 | More | 1,000 | 48,000 | 2% Enough |
| Harnett | 59,238.47 | 19 | Same | 5 | 12,000 | 2% Plenty |
| Hertford | 2,333.03 | | More | 3 | 6,000 | Favor |
| Jones | 108.90 | .006 | Less | 1 | 3,000 | Favor |
| Lee | 11,570.84 | 10 | Same | 9 | 6,100 | Unfavorable |
| Lenoir | 14,102.85 | 4 | Less | 30 | 12,000 | Favor |
| Madison | 3,331.93 | 2.6 | Same | 4 | 7,500 | Favor |
| McDowell | 23,721.94 | 11 | Less | 22 | 6,500 | Favor 2% |
| Mitchell | 1,073.87 | 1.1 | Same | 4 | 3,500 | Favor 2% until Sept. 1 |
| Moore | 23,701.90 | 10.4 | Same | 62 | 10,000 | Too wide spread between disc. and penalties |
| Northampton | 20,000.00 | 14 | Same | 12 | 7,500 | Favor |
| Onslow | 2,899.82 | 1.3 | Less | 2 | 5,500 | Favor lower rate —just as good —small |
| Richmond | 80,000.00 | 33.33 | More | 100 | 9,500 | Favor 2% etc. |
| Rockingham | 214,355.00 | 43 | Same | 65 | 17,000 | Favor |
| Rowan | 111,580.19 | 25 | More | 315 | 18,000 | |
| Union | 38,000.00 | 12 | More | 150 | 12,000 | Favor disc. later date |
| Vance | 24,202.23 | 14 | Slightly more | 35 | 9,000 | |
| Warren | 13,843.08 | 10 | More | 29 | 8,000 | No comment |
| Wayne | 41,420.35 | 10 | Less | 85 | 15,000 | Favor 2% |
| | $2,253,887.13 | 14% | | 3,538 | 377,977 | 14 Favor<br>10 Favor Lower<br>2 Unfavorable |

| | |
|---|---|
| 15% under 20% | 1 |
| 20% under 25% | 2 |
| 25% under 30% | 3 |
| 30% under 40% | 5 |
| over 40% | 3 |

Total collections during the 3% discount period amounted to some $694,000. This amount was paid by approximately 1,050 taxpayers out of a total of some 64,750 taxpayers. In other words, in those cities and towns reporting, only one taxpayer out of 60 pays his taxes during the 3% discount period. Of those officials commenting upon the 3% discount policy for cities and towns, 13 favor its continuance, 5 favor a lower rate, and 6 do not favor discounts. The ratio of taxes collected during the discount period apparently is increasing since 17 units report heavier collections during 1937 than in 1936, 13 report little change and 7 report declines.

The county picture is somewhat different from that of cities and towns in that all counties reporting to date have some prepaid taxes and there is not quite as wide fluctuations in the per cent of collections in the various counties. Of those counties reporting, the range is from six-tenths of 1% to 45%, distributed as follows:

| *Range* | *No of Counties* |
|---|---|
| under 1% | 3 |
| 1% under 5% | 5 |
| 5% under 10% | 3 |
| 10% under 15% | 9 |
| 15% under 20% | 1 |
| 20% under 25% | 1 |
| 25% under 30% | 2 |
| 30% under 35% | 3 |
| 35% under 45% | 1 |
| 45% and over | 1 |

A total of some $2,253,800 was paid into the reporting county coffers by 3,538 taxpayers out of a total of some 378,000 taxpayers. Thus, only one out of every 106 county taxpayers paid their taxes during the 3% discount period. Of the officials from the reporting counties 14 favor the 3% discount policy, 10 favor lower discounts and 2 are unfavorable to discounts. The county trend is likewise upward with 11 counties reporting increased collections over last year, 10 reporting little change and 8 reporting decreases.

The survey to date indicates that it is principally the large corporate and individual taxpayers that take advantage of the 3% discount. For instance in the case of cities and towns reporting to date about 1.6% of the taxpayers take advantage of the discount and pay on the average slightly more than 15% of the total levies while slightly less than 1% of the county taxpayers pay approximately 14% of the total levies.

As to the financial expediency of a 3% discount policy, the survey shows that the total collected in all reporting units to date amounts to some $2,948,500 with a discount cost to the local units of approximately $88,400. Assuming that no discounts were allowed and no prepayments were made and that the units found it necessary to borrow the same amount in order to finance operations for the first four months, the total discount cost is equal to an interest rate of 9% per annum, subject, of course, to reduction by whatever income the collections would earn during that period.

Perhaps some time in the future we will better correlate our tax calendar and our fiscal year, and the necessity for material discounts on taxes will cease. That, of course, is another problem and one that has plenty of obstacles in its own right.

## RESULTS OF POLL OF REPRESENTATIVE CITIES AND TOWNS

| *City* | *Am't of Pre-paid Taxes* | *% of Total Levy* | *Comparison with Last Year* | *No. of Prepaid Taxpayers* | *Total No. of Taxpayers* | *Comments* |
|---|---|---|---|---|---|---|
| Albemarle | $ 21,000.00 | 30 | More | 70 | 1,250 | Favor |
| Apex | 812.86 | 8 | More | 3 | 400 | Favor 2% |
| Chapel Hill | 1,491.00 | 3.6 | More | 11 | 1,700 | |
| China Grove | 5,938.97 | 48 | 2% More | 11 | 460 | Favor |
| Clayton | 239.34 | .067 | More | 2 | 625 | Favor |
| Davidson | 2,067.31 | 19 | Less | 6 | 515 | No Comment |
| Dunn | 5,009.93 | 10 | Less | 16 | 1,350 | Favor as of July 1 |
| Durham | 456,000.00 | 30 | Less | 300 | 14,000 | Unfair no Favor |
| Edenton | 890.79 | .02 | Slightly more | 7 | 1,200 | |
| Elizabeth City | 570.02 | | Same | 2 | 4,000 | Nuisance |
| Fairmont | 2,672.13 | 11 | More | 7 | 600 | Helps large taxpayer |
| Fayetteville | 6,500.00 | 9 | More | 18 | 3,900 | No Favor |
| Forest City | 12,332.87 | 33 | More | 25 | 1,300 | Favor |
| Franklinton | 1,287.41 | 8 | Same | 5 | 400 | Favor 2% |
| Fuquay Springs | 2.43 | .2 | More | 1 | 500 | No Favor |
| Gastonia | 55,272.42 | 25 | Same | 95 | 5,000 | Favor |
| Gibsonville | 11,294.99 | 65 | More | 5 | 600 | Favor 2% |
| Greensboro | | | | | | Local provs. not disc. until Sept. |
| Greenville | 5,780.87 | 7 | Same | 6 | 2,700 | Immaterial |
| Hickory | | | | | | Favor local provs. |
| La Grange | | | | | 700 | Sent notices—no response |
| Leaksville | 18,136.40 | 55 | Same | 15 | 700 | Favor |
| Lexington | 4,000.00 | 3.6 | Less | 45 | 3,500 | Favor when cash needed |
| Manteo | | | | | 225 | |
| Marble Town | 6.60 | 2 | More | 1 | 150 | Favor |
| Marion | 381.89 | | Less | 2 | 1,100 | |
| Marshville | 981.99 | 10 | Same | 3 | 400 | |
| Mount Airy | 19,886.75 | 22 | Same | 54 | 2,000 | Favor 2% |
| Mount Holly | 12,896.73 | 33 | Same | 6 | 600 | Favor 2% |
| Norwood | 75.00 | | Less | 2 | 540 | No comment |
| Pinebluff | 1,918.98 | 37 | More | 54 | 230 | Immaterial—Pro-Favor |
| Rocky Mount | 31,237.46 | 27 | More | 175 | 6,200 | No favor |
| Rowland | 1,750.00 | 25 | More | 30 | 350 | Favor |
| Saluda | 77.42 | | More | 3 | 500 | Little difference |
| Star | | | Less | | 300 | |
| Statesville | 3,700.00 | 4 | Same | 7 | 3,300 | Not Favor |
| Thornton | 2,764.36 | 20 | More | 31 | 450 | Not Favor |
| Wallace | 209.59 | 2.8 | Same | 2 | 500 | Favor special discount |
| Washington | 7,397.77 | 12 | 2% More | 36 | 2,500 | Favor |
| | 694,584.28 | 15.1 | | 1,056 | 64,745 | 13 Favor<br>5 Favor lower<br>6 Unfavorable<br>2 Local provs. |

# Monthly Survey - - -

## News and Developments from Here and There in the Major Governmental Fields.

### Courts and Records

By DILLARD S. GARDNER
of the Staff of the Institute of Government

**Justices of the Peace**—The North Carolina Bar Association's Committee on Justices of the Peace recently observed that (1) there are too many justices, (2) there are no genuine limitations on their number, and (3) fierce competition is a threat to administration of justice in the lower courts. The Committee suggested that election and appointment by the Governor and General Assembly be abandoned in favor of appointment by the resident judge, that there be at least two Justices in each county, and that these be paid salaries on a sliding scale basis. It would seem that the justice of the peace problem is still a very real one —and still unsolved.

**A Real Sheriff** — Many papers have noted the record which Sheriff Claude Doughton, of Wilkes, son of "Farmer Bob" Doughton, is making. Among other things he is turning back to the county $50 each month allowed him for clerk hire, $2.50 on each sale allowed him for conducting tax sales, and is seizing liquor and cutting up stills all over his county. His home-town paper is strong in its praise of him, and even at this distance it must be admitted that his record is not what one would call the "usual procedure."

**Officers as Collecting Agents**—The current issue of a widely circulated journal recommends to collection agents that they carry an officer wearing a badge with them on their calls, advising that the officer say nothing and do nothing but "look like the 'law' itself" thus using the "debtor's imagination" as a "weapon with which to work upon him." In Mecklenburg recently magistrates accused special deputies of using their badges and threats of eviction to collect past due rent. Sheriff Riley investigated, found one such

*(Continued on page seventeen)*

### Taxation and Finance

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

**Debts**—Nowhere is the expansion of governmental services and costs more vividly illustrated than in the trend of the National public debt. On March 1, 1917 the net debt was but $1,207,827,886. After two years of war, on August 31, 1919, it stood at $25,478,592,113. This was gradually reduced until on December 31, 1930, it reached its lowest post-war figure of $15,719,283,768. Since that time the National debt has constantly increased until on March 31, 1937, it reached $32,902,515,740. There was outstanding at that date approximately $4,700,000,000 of obligations guaranteed by the Federal Government which are not included in the above total.

**Delinquency**—Recently published figures on tax delinquency in eight of the largest cities in the U. S. show San Francisco has the best record. In this city in 1933, year-end tax delinquency reached its peak of 5.4% as against 14.7% for Baltimore, its nearest rival, and 46.1% for Cook county, Illinois. At the end of 1936, tax delinquency in San Francisco had dropped to 2%.

**Trailerites** — The tremendous increase in the use of automobile trailers as living quarters has brought forth estimates that within the next 20 or 30 years one-half of the homes in the country will be mobile. If these estimates prove true, American local governmental units will face some interesting tax questions, since two important features of local ad valorem taxes are residence and situs. Where is the residence of a person who spends but a few weeks in a given state or the situs of property which is constantly moving? In North Carolina property is listed for taxation as of April first, but if a trailerite moves in on April second and moves out the fol-

*(Continued on page sixteen)*

### Law Enforcement

By ALBERT COATES
of the Staff of the Institute of Government

**From Hunted to Hunter** — Although few cities avail themselves of the service as yet, police departments are invited to send in to the Federal Bureau of Investigation the fingerprints of applicants for positions on police forces. It might be surprising to some to find out just what such a check-up reveals. In one month, 50 out of 299 applicants in Miami had criminal records. On other occasions, 9 out of 43 Cleveland applicants, 28 out of 120 Kansas City applicants, 11 out of 43 Omaha applicants, 44 out of 807 Los Angeles applicants and 133 of 1336 Miami Beach applicants were shown to have criminal records—including such crimes as grand larceny, robbery, passing counterfeit money, and violating the Mann Act.

**Whipping**—The press has been much agitated of late over rulings permitting whippings in state prisons, if necessary, to command respect for officers, promote discipline, and compel prisoners to work. Rightly or wrongly, the lash has been used since Biblical times and before. Three states still prescribe whipping as a punishment to be meted out for specific crimes. In Maryland, an effort is made to fit the punishment to the crime by prescribing whipping as the penalty for wife-beating.

**"Yawara Sticks"**—From California comes news that the Berkeley police department has discarded the "night stick" and will hereafter use "Yawara sticks," knobbed hand-fitting wooden instruments, the size of a corn cob, with which the user can strike both backward and forward. This weapon was invented by a San Francisco Japanese.

**Crime and Religion**—As a result of repeated requests from prisoners, more than 1,000 Bibles and New Testaments have been purchased

and distributed to prisoners in the various prison camps throughout the State. Plans are being made to hold religious services each Sunday in as many camps as possible.

**Slot Machines** — Judge Sinclair ruled in a slot machine case recently that the slot machine law enacted by the 1937 General Assembly (effective July 1) is constitutional.

**Patrol Cars**—With the purchase of 65 new automobiles, bringing the number of patrol cars up to 125, the State Highway Patrol will be able to use automobiles exclusively in bad weather. Motorcycles will be used only in fair weather and to direct traffic.

**Registration of Felons**—Charlotte is considering the adoption of an ordinance requiring all persons convicted of a felony to register with the police upon arrival in the city. It is suggested that those who comply with such an ordinance can more easily be checked. Those who fail to comply can be picked up and arraigned immediately for violating the law. Similar ordinances are in effect in Miami, Florida, and Youngstown, Ohio, and are reported to have been of material aid in police efforts to curb criminal activity.

**License Revocations**—Since the drivers' license law went into effect, November 1, 1935, the State Highway Safety Division has revoked the licenses of 11,483 drivers.

**Police Radio**—The State is not taking any chance on criminals utilizing the new highway patrol radio communications system to receive warnings as to patrol activities. A secret code is being worked out to be used when the five-station system goes into operation early in August, to be used in broadcasting police alarms. The general code will be made known to patrolmen, police officers, and sheriffs.

**Highway Deaths** — During the first five months of this year, as compared with the first five months last year automobile registrations increased 10% and gasoline consumption almost 20% as compared with a 7% increase in highway deaths. Through May, 1937, there were 395 deaths on the highways in North Carolina as compared with 367 for the first five months of 1936. The increase in deaths is not so high as the increase in the number of cars on the road or the amount of gasoline that is being used. The National Safety Council reports that highway deaths throughout the nation are up 17% over the first five months of 1936, with 14,270 fatalities counted for 1937 up to June 1.

**"The Deadliest City"** — Chicago, with 321 fatal automobile accidents registered up to June 1, has had more fatal accidents this year than any other city in the United States.

## Welfare and Health

### By HARRY W. McGALLIARD

**of the Staff of the Institute of Government**

**Welfare Costs**—It may be interesting in future years to contrast County Welfare costs before and after Social Security. For the sake of the record during the month of May, the State Board of Charities and Public Welfare reports that it and its affiliated county agencies aided a total of 33,682 persons at a cost of $145,647.90. The services rendered and the number of persons aided are shown in the following table:

| *Number Persons Aided* | *Type of Aid* | *Cost* |
|---|---|---|
| 30,638 | General Emergency and Poor Relief | $61,462.60 |
| 976 | Mother's Aid | 5,943.32 |
| 351 | Boarding House Care | 3,132.67 |
| 1,184 | Hospitalizatio. | 25,646.05 |
| 154 | Pauper Burials | 2,347.41 |
| 379 | Administration | 9,630.24 |

Under the provisions of Social Security legislation, many times this sum will be spent on public welfare in North Carolina each month during the ensuing fiscal year. The State Welfare Commissioner estimates that $5,440,000 will be spent in this State pursuant to Social Security laws alone. It is further estimated that 47,873 people will be eligible for assistance under this program: 24,586 needy aged persons; 21,837 dependent children; and 1,450 needy blind persons.

**Security Nationally**—All 48 states except Virginia have adopted at least one or more phases of the Social Security program along lines approved by the National Board. During April (the last month for which full figures are available) in the 42 states having approved plans of Old Age Assistance, the obligations of federal, state, and local governments totalled $24,272,824. This furnished an average payment of $18.71 to 1,297,321 needy persons over sixty-five years of age. It is estimated that 186 out of every 1,000 persons over sixty-five years of age in the 42 states received benefit payments.

In the 28 states operating under approved laws for furnishing aid to dependent children, the obligations totalled $3,905,163. Nineteen out of every 1,000 children under sixteen years of age, it is estimated, received aid, and 133,953 families containing 338,869 children received an average of $29.15 per family.

**State Equalization Fund** — According to N. H. Yelton, State Director of Public Assistance, 33 of the State's 100 counties will be eligible to share in the $200,000 equalization fund set up to aid counties in financing Old Age Assistance and Aid to Dependent Children Programs during the ensuing fiscal year. The counties ruled eligible, according to the Director, were those in which the combined levy for carrying out the two programs would exceed ten cents on the $100 valuation. Seventy-five per cent of the amount levied in excess of the ten-cent rate is the maximum which a county may be awarded from the equalization fund. The eligible counties are: Ashe, Avery, Bertie, Bladen, Brunswick, Carteret, Caswell, Cherokee, Clay, Craven, Cumberland, Dare, Gates, Greene, Hoke, Jackson, Jones, Macon, Madison, Mitchell, Nash, New Hanover, Pamlico, Person, Polk, Stokes, Swain, Tyrrell, Union, Warren, Wilkes, Yadkin, and Yancey.

**Labor Law Enforcement** — The State Department of Labor has received an allotment of $15,500 as a supplement to its budget for the enforcement of the new labor laws which the 1937 Assembly enacted without making appropriations therefor. It is expected that the supplement will be used to increase the personnel so as to provide more inspectors for factories and mercantile establishments.

**Jails**—The Director of the Division of Institutions reports that during the month of May, 75 county jails held a total of 6,766 prisoners. One hundred and fourteen insane persons were confined in jails, and 109 boys and girls under 16 years of age were confined in 37 jails during the month. The average monthly cost for jail operation over the state was $21,500.

# Opposition to Roosevelt Plan Voiced on Annual Bar Cruise

Expressions of sentiment against President Roosevelt's court proposal featured the formal program of the State Bar Association's floating convention, Norfolk to Bermuda, June 19-24, attended by nearly 500 lawyers, relatives and friends. President B. S. Womble, of Winston-Salem, was most vigorous in his opposition, as was Hon. A. D. McLean, of Raleigh, whose address, "Lawyers—Conservators of Democracy," was termed the high-light of the sessions. The attitude of the Association toward the President's court program was reflected in the following resolution:

*"Be it resolved by the North Carolina Bar Association in Convention assembled that we contemplate with concern the proposal now pending in Congress to enlarge the Supreme Court of the United States under prevailing conditions, and re-affirm the self-evident proposition that an independent judiciary is essential to the protection and preservation of the Constitution and the rights and liberties of the people."*

Former Governor J. C. B. Ehringhaus replied to the address of welcome by Sir Sidney Rowan-Hamilton, Chief Justice of Bermuda. The Junior Bar program was conducted by Egbert Haywood of Durham.

Hon. Francis E. Winslow, Rocky Mount, who has long rendered yeoman service in the Bar Association, was elected President to succeed Hon. B. S. Womble, and Henry M. London of Raleigh was, for the seventeenth time, re-elected Secretary-Treasurer. The new Vice-Presidents are O. M. Mull of Shelby, Herbert F. Seawell, Jr., of Carthage, and W. D. Pruden of Edenton. W. Frank Taylor of Goldsboro and Kerr Craige Ramsey of Salisbury were elected to the Executive Committee to serve with hold-over members Fred I. Sutton, Chairman, of Kinston, Allston Stubbs of Durham, L. J. Poisson of Wilmington, and T. A. Uzzell, Jr., of Asheville.

WHAT DO YOU THINK ABOUT IT, MR. PRESIDENT?

*Francis E. Winslow of Rocky Mount (right), new President of the State Bar Association, and Henry M. London, re-elected Secretary-Treasurer, talk things over on the deck of the "Reliance" on the floating convention to Bermuda.*

### Bar Opinion on Judicial Reform

The following results of bar referenda taken from the returns as listed in May *American Bar Association Journal* indicate the attitudes of North Carolina lawyers as compared with those over the country generally:

| | *N. C. Lawyers* | | *U. S. Lawyers* | |
|---|---|---|---|---|
| | *Yes* | *No* | *Yes* | *No* |
| Increase of U. S. Supreme Court Justices | 270 | 572 | 14,333 | 56,153 |
| Increase of U. S. Inferior Court Judges | 316 | 516 | 18,533 | 51,156 |
| Proposed Assignment of Circuit, District Judges Outside their Districts | 506 | 324 | 40,482 | 27,495 |
| Creation of the Office of Proctor to Assist Supreme Court | 514 | 299 | 39,990 | 28,341 |
| Right of Intervention by Attorney-General on Notice of Constitutional Questions | 541 | 381 | 42,317 | 26,630 |
| Right of Direct Appeal to Superior Court by Attorney - General | 555 | 271 | 44,283 | 24,663 |

The 1937 *Martindale-Hubbell* lists the names of 2,715 lawyers in the State, whereas fewer than 850 voted in the referenda reported above. The above figures are, therefore, not absolute, although they represent a broad sampling of nearly one-third of the State's lawyers.

### Lawyer Income

A number of interesting and significant facts are brought out in a four year study, which has just been completed by New York lawyers and which is the first of its kind in the country, of the distribution of incomes among the County's 15,000 lawyers, about 5,000 of whom reported.

About 60% of the lawyers were admitted to the practice during the preceding ten years.

About 55% were graduates of full-time law schools.

Three-fourths of the lawyers were in general practice, about 85% being in private practice.

From entrance in the practice earnings tended to increase steadily for about twenty years, after which they remained fairly stable at the highest figure.

Incomes of full-time law school graduates were consistently 50% higher than those of part-time law school graduates. The same correlation existed between incomes of college graduates and of those not graduating from college. The median income for full-time law school, and for college, graduates was approximately $3,500, for the other two groups approximately $2,500.

Two conclusions, at least, deserve quotation:

". . . lawyers as a group have failed to exercise influence or power in community affairs at all commensurate with the obligations imposed upon the bar by the special

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**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.

franchise which it possesses. We recommend steps to meet this situation."

"More than half the profession in New York County are in the income class below $3,000 per year (the median for the entire profession is only $2,990); 42½% below the respectable minimum family subsistence level of $2,500 per year; one third below $2,000 a year, one sixth below $1,000, and almost one tenth at or less than $500 per year; and a substantial number are on the verge of starvation, with almost ten per cent of the New York City Bar virtually confessed paupers, as indicated by applications for public relief."

"Overcrowding is largely responsible for this economic situation."

**Solution to Overcrowding**

The problem of overcrowding in the legal profession is discussed by Dean Young B. Smith, of Columbia University Law School, in the June *N. Y. State Bar Association Bulletin*. In 1935 there were 42,200 students registered in American law schools, Dean Smith points out, 21,798 of whom are in schools not approved by the American Bar Association. It is largely this latter group, he feels, which is flooding the profession with men who are unable to succeed in the practice. He says:

"The problem cannot be solved by bar examinations. Experience shows that after a young man has been permitted to graduate from law school, it is not possible, as a practical matter, to prevent his admission to the bar on grounds other than actual misconduct, although there may be obvious deficiencies in intelligence, education or personality which should disqualify him for membership in the profession.

"The time to eliminate the unfit is before they begin their professional training. Any other procedure is not only wasteful but inhuman."

Dean Leon Green, of Northwestern University Law School, recently gave voice to similar ideas. He stated as "a simple fact" that bar examinations "never have given and never can be made to give any degree of protection against the admission of the unfit to the profession," since a license gives little assurance that its holder is prepared for the profession. He thinks there are too many lawyers, law schools, and students, "not too many good lawyers, schools or students, but too many poor ones."

STATE BAR COUNCIL

*Here is the latest picture of the Council of The N. C. State Bar, taken between sessions at its crowded business meeting in Raleigh, Friday, July 16th.*

*Front row (left to right): A. T. Grant of Mocksville, Albion Dunn of Greenville, G. H. Hastings of Winston-Salem, Vice-President Charles G. Rose of Fayetteville, President Julius C. Smith of Greensboro, Dickson McLean of Lumberton, R. P. Reade of Durham, and Louis J. Poisson of Wilmington.*

*Back row (left to right): B. M. Covington of Wadesboro, L. Laurence Jones of Charlotte, Junius D. Grimes of Washington, McKinley Edwards of Bryson City, Don Walser of Lexington, Secretary-Treasurer Henry M. London of Raleigh, Julius Martin, II, of Asheville, D. H. Bland of Goldsboro, J. E. Shipman of Hendersonville, K. D. Battle of Rocky Mount, Jos. B. Cheshire of Raleigh, W. C. Feimster of Newton.*

*Attending but not shown in picture were: F. E. Wallace of Kinston and Hayden Clement of Salisbury.*

*Absent from the meeting were Bennett H. Perry of Henderson and J. Hampton Price of Leaksville.*

**Junior Bars Active**

Particularly in the more populous counties of the State, Junior Bars have swung into action in recent years. In Buncombe young lawyers have pioneered in the curbing of unauthorized practice. In Guilford another active organization has conducted a series of meetings featuring addresses by leading lawyers of the State. In Durham the work of young lawyers has for several years been so significant that their representatives were asked to appear on the State Association's annual programs.

More recently the Wake Junior Bar has undertaken an aggressive program. A minimum fee schedule has been prepared and its approval by the County Bar Association secured. Resolutions to the State Bar Examiners have been approved to change the date of examinations so that students completing their required study during summer school may take the bar examination the same year. A project is under way to collect, codify and publish the ordinances of the City of Raleigh. And the Junior Bar is now working in close co-operation with the new Clerk of the Superior Court in the interest of the improvement of the mechanics, procedure, and practices of the Wake County Clerk's office.

The organized activities of the younger lawyers in Wake and other counties indicate that there is a definite field of service to the public and the profession open to organized bar groups. The work of these groups is also seen as a clear-cut challenge to the inertia of general bar organizations of the State.

# School Problems and Queries Under the New Machinery Act

By T. N. GRICE

of the Staff of the Institute of Government

The Attorney General has already ruled on some of the questions arising under the new School Machinery Act and the other school laws passed by the 1937 General Assembly. Some of these rulings were carried in the last few issues, and some are included in the Bulletin Service in this issue. Still other questions with respect to these new laws have been asked by various local officials, and the following information is passed on for the benefit of any local official who may be interested.

*Would the failure of a teacher or principal to file an application as provided under section 12 of the School Machinery Act bar his election by the school authorities?*

We think not. If failure to file application would bar the election of a particular teacher or principal it would seriously interfere with school authorities in the selection of a teacher or principal best fitted for a particular position. In our opinion this provision in the law is for the benefit of the applicant in that it insures that he will be notified of action by the school authorities.

*Section 7 of the School Machinery Act provides that the district principals nominate and district committee elect, subject to the approval of the County Superintendent and County Board of Education, all teachers of the district. Since section 12 requires that all applications be filed with the County Superintendent, is it the Superintendent's duty to notify the various principals of all applications filed?*

Since the machinery for the election of teachers must be started by the district principals, the law presumably places upon the County Superintendent the duty of notifying principals of those desiring to be considered.

*Section 15 of the School Machinery Act provides that county-wide debt service funds shall be allocated on the basis of per capita enrollment during the preceding year, but that the amount allocated to any unit shall not exceed its actual debt service needs including sinking fund requirements. Does the phrase "sinking fund requirements" refer only to the amount which would normally be required in one year on an actuarial basis, or would it include an amount sufficient to make up any or all of a deficit existing in the sinking fund when calculated upon an actuarial basis?*

It seems logical that the term "sinking fund requirements" would refer to the amount necessary to bring the total resources of the sinking fund up to the amount that would be expected to be in the fund at a given date. Consequently, county-wide allocations could include amounts necessary to cover deficits existing in the sinking funds so long as the total is not in excess of the amount which is payable under the per capita enrollment basis.

*Does section 22½ of the School Machinery Act, which fixes the age at which children may enter the public schools and provides that they must enroll during the first month of the school year, prohibit a child who is otherwise eligible from enrolling in school after the first month when such delay is due to illness or other good cause?*

We think not. Since there are no penalties provided for the violation of this section, it would seem that it is the intention of the law to give school authorities discretion in this matter.

*Are school authorities liable for a student driver who may be convicted under the provisions of Chapter 397 of the Public Laws (Senate Bill 7), which fixes a maximum penalty of $50 or 30 days for operating a school bus, in which school children are riding, on the highways at more than 35 miles per hour?*

No. This is a criminal penalty and is strictly a personal one.

*Chapter 353 of the Public Laws (House Bill 663) amends section 60 of Chapter 136 of the Public Laws of 1923 by providing that the building of new school buildings and repairing of old school buildings in special charter districts, as defined by section 3 of Chapter 136 of the Public Laws of 1923, shall be under the control of and by contract with the Board of Education or the Board of Trustees having jurisdiction in the special charter district. Did the 1933 School Machinery Act abolish, except for debt service purposes, all special charter districts? If so what is the effect of this new law?*

Special charter districts as such were abolished by the 1933 Act, and since Chapter 353 places duties upon districts which no longer exist, it would seem that this Chapter is of no effect.

SCHOOL RULINGS EXPECTED TO BE AVAILABLE SOON

*The State Department of Public Instruction is submitting a number of problems and questions which have arisen under the new school laws to the Attorney General's office for formal rulings, and the answers are expected to be available shortly. The Institute of Government Staff will also be glad to undertake special research, as part of its general information and consulting service, in connection with any additional problems or questions encountered by school officials in their work. Address inquiries to—Institute of Government, Chapel Hill, N. C.*

# Table Governing the Collection of the $2.00 Process Tax In Criminal and Civil Cases

Prepared by DILLARD S. GARDNER, of the Staff of the Institute of Government

## CRIMINAL CAUSES

| Class of Cases | Liability for Tax | Authority |
|---|---|---|
| General rule: | | |
| *Cases "disposed of" in the Superior Court, whether brought there originally or on appeal.* | Yes* | Revenue Act, 1937, s.157 (a), (e) |
| Exceptions: | | |
| Cases where county pays costs | No | Rev. Act, 1937, s.157 (a) |
| Cases in justice of peace courts | No | Rev. Act, 1937, s.157 (e) |
| Cases in mayors' courts | No | Rev. Act, 1937, s.157 (e) |
| Cases in recorders' courts or other inferior courts of record | No | Rev. Act, 1937, s.157. Rulings of Attorney General (See POPULAR GOVERNMENT, Aug. - Sept., 1936, p. 24; March 1936, p. 24; July-Aug. 1935, p.22.) |
| Cases in the jurisdiction of a justice of the peace but tried originally in an inferior court or in the Superior Court. | No | Rev. Act, 1937, s.157 (e) |
| Cases in the jurisdiction of a justice of the peace but tried on appeal in an inferior court of record | No | Rev. Act, 1937, s.157 (e) |
| Docketing of criminal transcript from any court in the office of the Clerk of the Superior Court | No | Rev. Act, 1937, s.157 (d) |

### BUREAU OF IDENTIFICATION FEE

* The State Process Tax in criminal cases is not to be confused with the new State Bureau of Identification and Investigation fee. Under Chapter 349, Public Laws 1937, effective March 22, 1937, it is required that this State Bureau fee of $1.00 be assessed "in every criminal case finally disposed of in the criminal courts, excepting courts of Justices of the Peace, of this State, wherein the defendant is found guilty and assessed with the costs. . . ." This State Bureau fee is in addition to the State Process Tax. It will be collectible in all Superior Courts, Recorders' Courts, Police Courts, and other courts of record. It will not be collected at the beginning of a case but will be collected only after judgment in cases in which the defendant pays the costs. The Attorney General has ruled that this $1.00 fee is to be collected from *each defendant*, not merely for *each case*, that the fee would not be collectible in those cases in which the defendant is ordered to pay only "the costs for which the County is liable," and that the fee is collectible in a case within the jurisdiction of a justice of the peace where the case is tried in a recorder's court or mayor's court.

## CIVIL CAUSES

| Class of Cases | Liability for Tax | Authority |
|---|---|---|
| General rule: | | |
| *Cases in the Superior Court, whether brought there originally or on appeal from a justice of the peace or other inferior court, and cases begun originally in any other court of record.* | Yes | Revenue Act, 1937, s.157, (b), (e) Ruling of Attorney General (See POPULAR GOVERNMENT, June - July 1936, p. 23.) |
| Exceptions: | | |
| Cases where the county is required to pay the costs | No | Rev. Act, 1937, s.157 (b) |
| Cases in justice of the peace courts | No | Rev. Act, 1937, s.157 (e) |
| Cases in inferior courts of record, either originally or on appeal, where the cause is in the jurisdiction of a justice of the peace | No | Rev. Act, 1937, s.157 (e) |
| Cases brought *in forma pauperis* in any court, either originally or on appeal (*not* including those cases in which the costs are taxed against the non-pauper defendant). | No | Rev. Act, 1937, s.157 (b) |
| Tax foreclosure suits regardless of whether the defendant ultimately pays the costs or not | No | Rev. Act, 1937, s.157 (b); C. S. 8037. |
| Cases brought by county, city, town, or other municipal corporation (*not* including those in which the costs are taxed against the defendant.) | No | Rev. Act. 1937, s.157 (c) Ruling of Attorney General (See POPULAR GOVERNMENT, November 1934, p. 35) |
| Docketing of civil transcript from any court in the office of the Clerk of the Superior Court | No | Rev. Act, 1937, s.157 (d) |
| Cases before the judges of the Superior Courts on appeal from Clerks of the Superior Courts | No | *Windsor v. McVay*, 206 N. C. 730 |
| Special proceedings | No | Rulings of Attorney General (See POPULAR GOVERNMENT, Aug.-Sept. 1936, p. 24; Oct. 1935 p.23. |
| Judgments by confession before the Clerk of the Superior Court | No | Ruling of Attorney General (See POPULAR GOVERNMENT, Nov. 1935, p. 24) |
| Writs of *seire facias* | No | Ruling of Attorney General (See POPULAR GOVERNMENT, May 1937, p. 23) |
| Cases brought by the Commissioner of Banks (*not* including those in which the defendant is assessed with the costs) | No | Ruling of Attorney General (See POPULAR GOVERNMENT, June-July 1936, p. 23) |
| Cases brought by the State regardless of whether the judgment is against the defendant or not | No | Ruling of Attorney General (See POPULAR GOVERNMENT, March 1936, p. 24) |
| Cases brought by a Federal Land Bank | No | Rulings of Attorney General (See POPULAR GOVERNMENT, March 1936, p. 23; November 1936, p. 23) |
| Cases brought by any Federal agency | No | Ruling of Attorney General (See POPULAR GOVERNMENT, Nov. 1935, p. 24) |

### COMPENSATION OF CLERK

The Clerk is entitled to 5% for collecting Process Taxes, this to be in addition to his regular salary and fees. The Clerk is entitled to this 5% whether the tax is collected from the plaintiff in advance or from the defendant after judgment. In civil cases where the tax is collected in advance when the case is begun, the Clerk deducts this 5% from the $2.00 collected, but if the tax is collected from the defendant after judgment, the Clerk must tax his 5% in addition to the $2.00. In criminal cases the Clerk deducts his 5% from the $2.00 collected, as the statute makes no provision for collecting more than $2.00 in a criminal case. Accordingly, when remitting to the Commissioner of Revenue, the Clerk forwards $1.90 for each civil case in which the plaintiff paid the tax in advance, $1.90 for each criminal case in which the defendant was ordered to pay the costs, and $2.00 for each civil case in which the tax was re-taxed against the defendant. (See Revenue Act, 1937, s.157, and rulings of the Attorney General in the following issues of POPULAR GOVERNMENT: December 1936, p. 24; July-August 1935, p. 22; May-June 1935, p. 42; March 1935, p. 23.)

# Administrative Problems and Questions

## Estates, Guardianships, and Trusts

*(Reference is made to Popular Government, March-April, pp. 29, 30, for summaries of the content of laws discussed below. The interpretations of laws presented herewith were arrived at following a conference with the Attorney-General's office.* Dillard S. Gardner.)

*How may funds, located in North Carolina and belonging to an out-of-state minor (or incompetent) having no guardian, be transferred from this State?*—In cases where a minor or incompetent has a non-resident guardian, C. S. 2195 already required the guardian to file the petition for removal of the funds, and C. S. 2196 required the petitioner to show proper appointment and a good bond. A new law, Chapter 307, (H. B. 1056), provides for the transfer of such funds, when no guardian exists, directly to the court or officer authorized to receive them by the law of the other state or county. Apparently the new law contemplates that the petition will be filed by the out-of-state officer, but such a petition could be filed by a local person and be followed by a communication from the out-of-state officer assuring the Clerk of his willingness to receive the funds. The primary requirement of the new law is the establishment of the authority of the out-of-state officer to receive such funds. At least the following proof must be presented: (1) that the court or officer to whom the transfer is to be made is authorized by the law of the respective state or county to receive such funds, and (2) that the identity of the officer is established by a certificate with a proper official seal. For these purposes the Clerk could require the presentation of copies of the specific laws certified over the seal of the officer of the foreign state or country.

*How may Clerks determine what county and municipal bonds are on the list of "approved" investments for trust funds?*—The new law, Chapter 188 (H. B. 546), provides that the approval of such bonds must now be by the Local Government Commission instead of by the Sinking Fund Commission. Neither the former nor the new provision made it clear whether the approval of county and municipal bonds was to be by specific order in each case or whether a single approval of particular bonds for one Clerk was sufficient for all Clerks as to those bonds. In the absence of a "general, approved list" each Clerk would do well to submit a specific inquiry to the Local Government Commission when he desires to make such investments, and to file the letter of approval in his office. This practice has long been followed in securing lists of building and loan associations whose stock is approved by the Insurance Commissioner. Inquiries may be addressed to W. E. Easterling, Secretary, The Local Government Commission, Raleigh, N. C.

*To what extent are bonds guaranteed by the United States deemed cash?*—Chapter 433 (H. B. 1135) declares that such bonds shall be deemed cash in settlements of Clerks and fiduciaries. Under the former law (Chapter 164, Public Laws of 1935) such securities were to be deemed cash to the actual amount paid for them, including premium, "not exceeding par value." The new law strikes out the limitation "not exceeding par value." Formerly, due to this limitation, Clerks and fiduciaries were unwilling to invest in these securities so long as they were selling above par. Under the new law they may freely invest in such securities at the market value, and they will be given credit in settlements to the extent of the full amount paid for the securities including any premium paid. It is doubtful whether the amount "actually paid" (for which credit as cash is to be allowed) would include brokerage fees, as such fees are not *paid for* the securities but are merely *paid to an intermediary to secure* them. However, in estate settlements such brokerage fees are clearly allowable as proper costs of administration.

*How may Clerks and fiduciaries secure the approval of Federal savings and loan association stock for investment purposes?*—Chapter 14 (S. B. 26) makes provision for the approval of such investments. The new law purports to amend C. S. 4018b, but this reference is clearly to Section 4018b of Michie's 1935 Code. Treating the new law as a continuation of C. S. 4018, Federal savings and loan association stock may be approved by an officer of the Home Loan Bank at Winston-Salem, N. C., in the manner suggested for the approval of bonds under H. B. 546, treated above. When so approved, it is to be deemed cash to the amount paid therefor including premium, in payment of any persons entitled to be paid by a Clerk or a fiduciary.

*Of what practical value are the rules of the Uniform Principal and Income Act?*—This new law, Chapter 190 (H. B. 572), by an elaborate schedule provides for the apportionment of principal and income between parties in interest. These rules for distributing principal and income will be of value to Clerks and fiduciaries when questions arise in the administration of estates, the dissolution of businesses, and in similar situations in which the distinction between principal and income is important. The broad definitions of "principal," "income," "tenant," and "remainderman" in the Act apparently make it applicable in all cases in which these

## Raised by the New Laws Affecting Clerks of Court, Registers, and Other Court Officials

By DILLARD GARDNER
of the Staff of the Institute of Government

terms may be used to describe the status of funds or the relationship of parties.

*How will the new procedure for the discovery of property belonging to estates operate?*—The new law, Chapter 209 (H. B. 646), requires the representative to state his belief "under oath" that property of the estate is withheld and also the grounds for his belief. However, the Clerk is given no authority to question the sufficiency of these grounds; accordingly, this notice, apparently, issues as of right. The party holding the property may continue to hold it where he gives a "satisfactory reason for retaining the property"; this refers to a satisfactory, legal reason and the Clerk must pass upon this question. If the party surrenders the property to the representative pending the appeal, it appears that he would be freed from the necessity of giving a bond, as no bond for costs is required in appeals from the Clerk. The losing party who appeals from the Clerk must elect whether he wishes to carry the case before the resident judge or the next term of Superior Court (apparently the next term at which civil motions may be heard is contemplated). The notice of appeal must be given in five days, but the procedure is not provided; consequently, the general provisions regarding appeals from the Clerk to the Superior Court would be applicable.

*What is the proper interpretation of the new provision governing clerks' compensation in opening lock-boxes?* — The Revenue Act, Chapter 127, Section 21½ (H. B. 35), provides a single flat fee of $2.00 to be paid the Clerk in advance for his services in supervising the opening of estate lock-boxes. Mileage allowed the Clerk for trips from the courthouse to the lock-box and return apparently would be chargeable also for necessary additional trips.

*What rules will govern the payment of the intangible tax by clerks and fiduciaries?*—Schedule H of the Revenue Act (Chapter 127, Public Laws of 1937) and Chapter 229 (S. B. 237) deal with the duties of Clerks and fiduciaries with respect to the new tax on intangibles. A number of questions on this subject have already been submitted to the Department of Revenue. The rulings will be carried in the "Bulletin Service" of *Popular Government* as soon as they are available.

*What is the meaning of the new limitations on dower actions?*—The ten-year limitation is made applicable by Chapter 368 (H. B. 927) to actions to allot dower to lands not in actual possession of the widow following the death of her husband. The statute appears to run from the death of the husband, but the widow could maintain the action in the face of the statutory bar if she has been in actual possession during the ten-year period. If construed literally, the phrase used in the statute—"actual possession by the widow"—would bar her action if the property were in the possession of tenants during the ten-year period; however, such a refined construction is not probable in view of the tendency to construe statutes literally in favor of widows.

*When did the new schedule of increased year's allowances to widows and orphans go into effect?*—Chapter 225, (S. B. 214), increasing the allowance of the widow to $500 and that of each child to $150, became effective March 17. However, there is some doubt as to whether the new schedule would apply as to those applications in which the husband died prior to March 17. It has been suggested by the Attorney-General's office that the schedule in force at the time of the death of the husband would govern, although this view is the one less favorable to the widow. It is to be noted that the new law did not expressly amend C. S. 4111, which provides that where no widow survives each child is to receive $100. However, C. S. 4109, the section amended, is the broad section governing the amounts in year's allowances generally. Accordingly, it would seem proper to construe C. S. 4109 and C. S. 4111 together to the end that an orphan without either father or mother would receive as much as an orphan whose mother remained alive.

*What type of depository for wills of living persons must Clerks provide, and what will be their compensation for this service?*—The new act permitting the deposit of wills with Clerks for safe-keeping, Chapter 435, (H. B. 1163), would apply not only to formal wills but also to holographic wills (See C. S. 4131). It appears that the "receptacle or depository" to be furnished by the Clerk contemplates at least that such wills are to be kept under lock and that the locked depository is to be under the direct supervision of the

WINBORNE AND BARNHILL TAKE SEATS ON SUPREME COURT

*Justices J. Wallace Winborne (left) of Marion and Maurice V. Barnhill of Rocky Mount, Governor Hocy's selection to fill the two new places on the Supreme Court, were formally inducted into office on July 1 in a history-making ceremony. Justice Barnhill is a former Superior Court Judge, while Justice Winborne was a practicing attorney and State Chairman of the Democratic Party.*

Clerk. Deposit in a metal safe is to be favored. If the will is removed for inspection by the testator no provision for an additional filing fee is made. However, if the will is substantially changed or a new will substituted, it would seem that the deposit of the new will would entitle the Clerk to receive an additional filing fee of 50c. The statute does not state the form of proof of agency to be furnished a Clerk by one seeking to inspect the will, but careful Clerks will require at least written authority (if not a formal power of attorney) from the proper person before they permit a third person to inspect or remove the will. It would seem clear that any Clerk failing to keep secret the contents of such a will would subject his bond to liability.

*What is the clerk's duty when prosecution bonds are not filed in will contests?*—Chapter 383, (H. B. 1164) requires caveators, unless permitted to sue *in forma pauperis*, to file with the Clerk a cost bond in the sum of $200. Where such bond is not so filed, the Clerk should refuse to file the caveat or to docket the matter on the Civil Issue Docket.

## Civil Procedure and Other Matters Affecting Court Officers

*(Reference is made to Popular Government, March-April, pp. 30, 31, for summaries of the content of laws discussed below. The interpretation of laws presented herewith were arrived at following a conference with the Attorney-General's office.* Dillard S. Gardner.)

*What authority do judges have in chambers to confirm sales of commissioners and receivers?*—Chapter 361 (H. B. 733) permits the "judge resident or judge holding courts in the district" to confirm in chambers (or order re-sale without notice) any sale by a receiver or commissioner appointed by the Superior Court. Apparently no prior notice to interested parties is necessary. This authority to act in chambers does not extend, however, to the following sales: Sales under power, sales in foreclosure proceedings, public sales of realty by personal representatives, public sales under wills, or execution sales. Nor does this authority extend to a judge specially assigned to hold a particular term.

*What provision is made for the allotment of several shares in one tract in a partition where parties are unknown or the ownership is disputed?*—Chapter 98 (H. B. 470) permits the shares of several tenants to be alloted in a single tract where either (a) the parties are unknown, or (b) several dispute the ownership of a share. The practice of allotting the shares of several in a single tract in partitions generally is already familiar. Where the shares of unknown persons are involved, the disinterested persons appointed to represent them (C. S. 3218) could speak for these unknown tenants in seeking the joint allotment.

*To what extent has the requirement that sales be held on a particular day been relaxed?*—Chapter 26 (H. B. 49) provides that sales, or re-sales, under powers in mortgages or deeds of trust need not be made on any particular day of the week or month, and validates all sales and re-sales of real property under court order or under power of foreclosure made on days other than the first Monday of some month. Although this law amends a statute dealing with execution sales, these and other types of sales (for example, sales in foreclosures by action) not mentioned in the new law are beyond the purview of its provisions.

*What are the specific duties of Clerks in making record notations for bankrupt judment debtors?*—When a bankrupt judgment debtor is discharged in bankruptcy, Chapter 234 (S. B. 267), provides that upon receipt of a certificate of the referee the Clerk is to make a notation on the judgment record of the particular judgment. However, "This act shall not apply to pending litigation with reference to the authority of the Clerk . . . . to make such notation." This would seem to render the statute inapplicable to those cases pending in the State or Federal courts on March 17, 1937, even though the orders or judgments have since been entered. As the discharge in bankruptcy is only a personal discharge and does not affect any judgment lien not disposed of (as, for example, where the bankruptcy court refused to accept property under prior encumbrance), the Clerk should be careful to make no notation of discharge or release. A proper notation would include (a) a statement of receipt of the certificate, (b) the referee from whom received, (c) the reference in the certificate to the specific judgment, (d) the drawer where the certificate is filed or the certificate's file number, and (e) the date and signature of the Clerk.

*What must the Clerk's temporary judgment index contain, and to what extent may he rely upon it in postponing permanent indexing?*—Chapter 93, (H. B. 383), requiring Clerks to maintain a temporary index, fixes no time limits as to when the instruments shall be indexed or how long Clerks may delay indexing the judgments permanently. Cautious Clerks will index all judgments on the temporary index as soon as they are received in the office, and will, as soon as possible thereafter, index the judgments on the permanent index. A Register of Deeds has twenty-four hours in which to index an instrument temporarily and thirty days within which to index it permanently, but a Clerk is not protected by these definite time limits and can not rely upon them (see C. S. 3561, 3553). The temporary index need not be a cross index, but must carry the "names of all parties against whom judgments have been rendered or entered." Accordingly, in those cases in which the judgment is against the plaintiff, it must be temporarily indexed *against the plaintiff* although this is not required (however preferable) in the permanent indexing. A simple alphabetical temporary index is sufficient, even in those offices which employ a family-name system of permanent indexing. The temporary index is to be "open to the public until said judgments shall have been docketed in the Judgment Docket and cross indexed in the permanent cross index," but Clerks can not depend upon this provision to relieve them from liability under the statutes providing for permanent indexing. In setting up temporary indexes Clerks should be careful to avoid any relaxation in their usual care in permanently indexing

judgments at the earliest possible moment.

*What restrictions are placed upon county commissioners in ordering the payment of officers' bond premiums by the county?*—County commissioners are empowered by Chapter 440 (H. B. 1215) to order the payment of any or all of the premiums on bonds of salaried county officers. Apparently this would in no way interfere with the discretion of county commissioners to order payment of the premiums on bonds of fee officers, and certainly it would not interfere with the county's payment of premiums on the bond of any officer compensated by both a salary and fees. This statute does not require the commissioners to follow any uniform rule; they may order the payment of the bond premiums of some, none, or all, officials, as they see fit.

*What limits are placed upon the payment of minor's insurance to Clerks?*—Where a minor is beneficiary of one or more insurance policies not exceeding $500, Chapter 201 (H. B. 677) provides that the Public Guardian or the Clerk may receipt for the payments. Although it is not clear whether the $500 limit applies to one policy, the total from a single company, or the total from all companies, the latter view appears to have been the intent of the statute. If the Clerk receives such funds, he should not proceed to administer them, but should either name a guardian, or have himself named receiver, to administer the funds. The Clerk's liability for these funds would be that of an insurer, whereas a Public Guardian's liability would only be that of a guardian.

*How broad are the provisions prohibiting division of a subordinate's compensation with the principal officer?*—Chapter 32 (H. B. 134) prohibits officials from demanding or receiving any part of a subordinate's compensation as the price of appointment or retention of employment. This new law would in no way prevent an officer from demanding that a subordinate furnish bond at the subordinate's expense, nor would it prevent officers from requiring subordinates to furnish certain equipment necessary in the discharge of their duties (as, for example, a deputy sheriff to furnish his own badge, pistol, and ammunition, or a stenographer to furnish her own typewriter).

## Probate and Registration

*(Reference is made to Popular Government, March-April, p. 31 for summaries of the content of laws discussed below. The interpretations of laws presented herewith were arrived at following a conference with the Attorney-General's office.* Dillard S. Gardner.)

*What are the effects of the new provisions prohibiting probate on oath of a grantee-subscribing witness?*—Chapter 7 (H. B. 19) relaxes the prohibitions of Chapter 168, Public Laws 1935, which prohibited probate upon the examination of "the grantee, his agent, or servant." The new law repeals the 1935 statute and limits this prohibition to the "grantee," but provides that it shall not invalidate any instrument registered prior to April 9, 1935. Apparently instruments registered upon examinations of agents, or servants, of grantees of the instruments since the 1935 law became effective but before the 1937 law, would still remain invalid by operation of the 1935 law. Under the new law the registration of an instrument upon the oath of a grantee who is the subscribing witness is declared to be void, but the duty to observe these facts making the instrument void is upon the Clerk, not the Register of Deeds. Where the Clerk probates such a void instrument, the Register could rely upon the Clerk's probate. However, the customary practice of Registers is to call the attention of the Clerks to probates which have been inadvertently and erroneously entered, and such a course would be preferable here.

*To what extent are the new laws validating defective acknowledgments effective?*—Chapter 91 (H. B. 287) attempts to validate acknowledgments taken by grantors in the instruments, and Chapter 284 (S. B. 403), seeks to validate those taken by Notaries who at the time held other offices. Such validating acts are good, as between the parties, and as to third persons from the passage of the acts, but they would not validate such acknowledgments as to third persons whose rights were acquired prior to the validating statutes. (See *Gordon v. Collett,* 107 N. C. 362; *Williams v. Kerr,* 113 N. C. 306; *Barrett v. Barrett,* 120 N. C. 127.) Too, S. B. 403 seeks to validate acts which violated the Constitution (see Section 7, Article XIV, N. C. Constitution). If the first office was that of Notary, the acceptance of the second office vacated the first, and any subsequent acts as a Notary were without color of office and were not the acts of a *de facto* officer. If the first office was not that of Notary, the acceptance of the appointment as Notary automatically vacated the first office, and no validating act was necessary to give effect to his acts as Notary. (See *Whitehead v. Pittman,* 165 N. C. 89.) In view of these constitutional considerations it seems doubtful whether this latter statute has accomplished any change in the legal status of these past acts of persons holding themselves out as Notaries.

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### TAXATION AND FINANCE

*(Continued from page seven)*

lowing March, will he pay his prorata share of local governmental costs?

**Refuse**—Because a new process for shredding tin cans has been developed which makes it profitable for cans to be sold for steel purposes, many cities are reducing the cost of disposing of non-combustible rubbish. Los Angeles, for instance, is now saving about $2,000 per month on this activity.

**Instalments** — Manufacturers of automobiles, radios, cleaners and many other products have long since realized the value of instalment sales. It looks as if local governmental units are finding this method of financing the taxpayer profitable, since only 80 out of 309 cities with populations of 30,000 or over are collecting taxes in a single annual payment. Some 150 collect taxes in 2 instalments, 11 in 3 instalments, 53 in 4 instalments, and 15 in 5 or more instalments. Hundreds of counties and smaller cities accept partial payments of any reasonable amount. The trend in instalment collections is shown by the fact that in 1923, out of some 165 cities, only

43 allowed payments in 2 instalments and none in more than 2 instalments.

**Meters**—Cities which have been eyeing the parking meter as a potential source of revenue will do well to look twice before leaping. Parking meters have been barred by a decision of the Supreme Court of Alabama and upheld by the Supreme Courts of Florida and Massachusetts. In both of these latter cases the Courts made it plain that meters could be used for regulatory purposes and not for revenue raisers. The fine line between the point where regulation ends and revenue starts may lead to litigation in many jurisdictions.

**Audits** — Recently the State of Maine enacted a law which requires each city, town or village to have an annual audit. Such audits are to be conducted either by the State Department of Auditing or by qualified accountants. Also each political subdivision must have an accounting system approved by the State Department. Many states see fit to have all local records audited, and some, notably New Jersey, conduct examinations to determine accountants' fitness for specialized municipal work.

**Who?**—Who pays property taxes, is the subject of a recent survey in Wisconsin. The survey for 1936 reveals that residential property bears 43.9% of the burden, manufacturing and mercantile 26.8%, agricultural 19.3% and personal property 10%. Personal property would probably carry a larger per cent of the burden in North Carolina since automobiles and motor vehicles are not subject to property taxes in Wisconsin.

**Maps** — Although comparatively new, the use of aerial photography in making tax maps has proven profitable to several governmental units. Using such a map of Connecticut, said to have cost only $20,000, some fourteen cities have made equalization studies and discovered so much unlisted property that their tax rates have been reduced on an average of 29 per cent.

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## COURTS AND RECORDS

*(Continued from page seven)*

deputy, discharged him, and promised the public that any other special deputy guilty of such conduct would be likewise dismissed.

**Women Jurors**—The members of the Business and Professional Women's clubs are demanding the right to sit on juries, and the *Durham Herald* urges, "let them have their turn and may they use it with better face than is now the habit of so many men." Women serve on juries on an equal basis with men in eight states — California, Indiana, Iowa, Maine, Michigan, New Jersey, Ohio, and Pennsylvania—and are permitted to serve in thirteen other states, the District of Columbia, and Alaska, according to *State Government*. The North Carolina Bill of Rights (Art. I., s. 13) in referring to criminal trials, requires a "jury of good and lawful men." However, the recent *Dalton* case (206 N. C. 507) purported to list the "essential attributes of trial by jury," and the requirement that a juror be a male was not there listed. In view of the demands of the women's clubs and the recent poll of the Institute of Public Opinion (which indicated that sentiment in North Carolina and forty-five other states favors permitting women jurors), the near future may yet see women in North Carolina jury boxes.

**Appearance Bonds** — A North Carolina bonding company doing business in twenty-three counties went into receivership recently, and dozens of alleged criminals became as free as the wind. When individual surety bonds are discovered to be only "straw bonds," usually either the officer who accepted the bond originally was too easily satisfied or the officer having the bond in his custody did not keep a close check on the changing financial status of the bondsman. However, it is far more difficult to determine whether there has been official default when corporate bonds "blow up." Enforcement officers and magistrates naturally assume that a corporate bonding company doing business over a wide area is financially responsible, yet the present case is a clear indication that this is not always true. To aid the diligent, intelligent officer in determining the sound corporate bonding companies, statutory provision could be made for placing these companies more definitely under the supervision of the Insurance Commissioner, the Secretary of State, the Commissioner of Banks, or the Utilities Commissioner, with requirements as to frequent financial reports and power in the chosen State agency to suspend or revoke licenses of companies when their financial condition becomes questionable. Meanwhile prudent officers are taking care to investigate the financial status of sureties, corporate or personal, before accepting them on appearance bonds.

**Longer Terms for Grand Juries**—Traditionally, grand juries serve only for a single term of court, but during the past quarter of a century provision has been made, in many counties, for longer terms. The longer-termed grand jury reduces the time and money lost in the drawing and serving of grand jurors; it saves time in the drawing and serving of jurors, in familiarizing them with their duties, and in sustaining over a relatively long period an orderly and expeditious procedure in the jury-room by the elimination of frequent organizations of the grand jury; and it encourages grand jurors to constructive efforts by furnishing an incentive to study the needs of the county government in greater detail and by permitting them to follow up more effectively their recommendations.

Of the 17 laws relating to grand juries passed by the 1937 General Assembly, it is significant that 15 provided for longer terms for grand jurors and only one (for Macon County) provided for a shorter term. Laws for Alamance, Bertie, Burke, Halifax, Harnett, New Hanover, Onslow, Rowan, Warren, Wayne, and Wilson Counties provided for one-year terms for grand jurors, and laws for Durham, Forsyth, Mecklenburg, and Scotland provided for six-month terms. Many of the laws of recent years have also provided for staggered terms. Under the staggered term plan, no grand jury is ever entirely new, nine jurors serving their first six months while the remaining nine serve their last six months. Thus, there is an additional saving of time in absorbing new members and familiarizing them with the routine procedures of grand juries, and at the same time a degree of continuity, ordinarily lacking, is given to the policies of successive grand juries.

# Bulletin Service

**Opinions and rulings in this issue are from rulings of Attorney General and State Departments from June 10 to July 15**

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**Prepared by**

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

I. Ad valorem taxes.

**2. Exemptions — fraternally-owned property.**

To J. S. Bryan. (A.G.) In our opinion, a municipality can not legally exempt from city taxes real property belonging to the Woman's Club. Cities can not exempt from taxes except in those cases specifically authorized by the Legislature, and the exemptions set forth in Section 600 of the Machinery Act do not include real property belonging to Woman's Clubs.

**12. Exemptions—veterans' compensation.**

To C. F. Geer. (A.G.) Funds paid by the Government to a veteran are not subject to taxation while they remain in the bank to his credit. Lawrence v. Shaw, 81 L. ed. 391. As soon as invested by him, or by a guardian for him, however, they become subject to State taxation under the decision in Trotter v. Tennessee, 78 L. ed. 358. We know of no law which exempts a veteran from the payment of license tax for the operation of a general merchandise business.

**29. Exemptions—$300 personal property.**

To J. C. Gambill. (A.G.) Section 601, Chapter 291, Public Laws of 1937, sets out the personal property which is exempt from taxation. Section 600 lists the real property which is exempt. The General Assembly did not make any provision, under the recent Constitutional Amendment, for the exemption of homesteads from taxation.

**31. Cotton in bonded warehouse.**

To Fred P. Parker, Jr. Inquiry: May the Commissioners order that all cotton stored in warehouses in the County be put on the books at $25 per bale?

(A.G.) Under Section 500 of the Machinery Act all property, real and personal, must be listed at its true value in money and not at any arbitrary figures.

**50. Listing and assessment of property.**

To W. P. Kelly. Inquiry: Tax listing for one township in the County started on May 1, and the latest listing started on May 17. Should the first meeting of the Board of Equalization and Review be held on the 11th Monday after April 1 or after listing actually began?

(A.G.) Section 1105(5) of the Machinery Act sets the "11th Monday following the day on which the listing began." Section 302 provides that all property shall be listed "in accordance with the owner and value as of the 1st day of April." Section 407 provides that at least 10 days before property is to be assessed, each list taker shall post notices containing the date "as of which property is to be assessed," the date on which listing will begin, and the date on which listing will end. Section 905 provides that "the listing shall begin on the day as of which property is assessed." Hence it seems to us it was the intention of the General Assembly for listing actually to begin on April 1 and for the Board of Equalization and Review to hold its first meeting on the 11th Monday following April 1.

To Eric Norfleet. (A.G.) The County Board of Equalization and Review can not defer a final determination as to the valuation of property later, according to the statute, than the 3rd Monday following its first meeting.

To F. G. Pierce. Inquiry: What procedure does the new Machinery Act provide for a taxpayer to appeal from a decision of the County Board of Equalization and Review?

Section 1107 provides for appeal to the State Board of Assessment, which may either confirm, reduce or increase the valuation set by the Board of Equalization and Review and which shall make an order constituting the valuation for taxation.

Section 1703 of the 1937 Act specifically repeals Chapter 417, Public Laws of 1935, including C. S. 7971(50). Hence it seems appeals must be in accordance with the 1937 Machinery Act and would be to the State Board.

**65. Intangible Tax Law—1937.**

To J. P. Ramsey. Inquiry: Should bank deposits be listed for taxes along with other personal property in 1937?

For the year 1937 the taxpayer is required to list money in banks and other intangibles just as required heretofore. The change in the law as to the taxation of intangibles does not affect the listing of such property for the present year. After this year, as of January 1, 1938, the method for taxing bank deposits and other intangibles will be controlled by Article VIII, Schedule H, of the 1937 Revenue Act. See Section 701.

**75. Solvent credits—foreign corporations.**

To Mrs. Mary G. Burgin. Inquiry: A foreign corporation has no active place of business in the home state but carries on an active manufacturing business in one North Carolina county from which its products are sold and billed for shipment, and reported to an active office in a second county through which they are invoiced and collected. Where should the company list (1) its accounts receivable and other intangible property and (2) a bank account in the first county?

Section 801 (5) of the Machinery Act provides that non-residents doing business in this State shall list intangible property which has acquired a business situs here at the principal office in this State, and this would be in the county in which it maintains the control of its activities. While the facts submitted are too meagre to form a final conclusion, it would seem that the county in which the manufacturing is done, and the bank account kept, and from which the selling and billing is done, would be the county of the principal office.

**79. Deductions from solvent credits—debts and liabilities.**

To W. C. Hicks. (A.G.) This office has ruled that money borrowed on an insurance policy constituting a lien on the proceeds derived from that policy is not such a debt as may be deducted from the taxpayer's solvent credits under the Machinery Act.

B. Matters affecting tax collection.

**11. Penalties in municipal tax.**

To Andrew Joyner, Jr. Inquiry: Our City Charter provides for the payment of taxes on September 1 and sets up its own schedule of discounts and penalties. Do these or the discount and penalty provisions in the 1937 Machinery Act take precedence?

(A.G.) In our opinion, Section 1403 of the 1937 Machinery Act pertains to discounts and penalties in relation to county taxes only and has nothing to do with city taxes. Therefore, in our opinion, your Charter and the Machinery Act are not in conflict, and the provisions of the charter would govern.

**15. Delinquent taxes—incidents of tax notes.**

To A. F. Ghormley. Inquiry: Will the Statute of Limitations bar the County from bringing an action on a tax note, taken under Chapter 181, Public Laws of 1933, after 12 months has expired after the whole note is due?

We think so. This is not strictly a Statute of Limitations but an enabling statute authorizing and empowering the suits to be brought within the limited time, and failure to bring them within this time would leave no existing authority for their institution.

**31. Tax foreclosure—procedural aspects.**

To Pat Kimzey. (A.G.) We have examined the proposed complaint and affidavit which you submitted and are of the opinion you would have to elect either C. S. 8037 or 7990 and proceed to foreclose the tax liens under one or the other.

**35. Tax foreclosure—costs and fees.**

To J. W. Donley. (A.G.) In our opinion, no more than $6 can be charged under the limitations of the tax foreclosure laws, no matter whether the property is redeemed by the owner of the land, or whether the cost is paid by an outsider.

**76. Tax collection—date lien attaches.**

To W. S. Sykes. Inquiry: May the County collect taxes on land sold to the United States in April from the owner as of April 1?

(A.G.) We think that the 1937 Machinery Act, providing that the lien of taxes on property and polls listed in pursuance to that act attached to real estate on April 1, changed the rule in the case of State v. Fibre Co., 204 N. C. 295, and such property would be subject to the lien of taxes which attached April 1.

To Grady Palmer. Inquiry: When does the owner cease to list property taken over by the United States under condemnation proceedings?

(A.G.) In State v. Floyd and State v. Queen, 204 N. C. 291, it was held that land condemned by the State, under Chapter 48 Public Laws of 1927, for the Great Smoky Mountain National Park, was withdrawn from taxation from the time that the condemnation proceedings were filed, and the State was deemed the owner of the land from that time if the proceedings were prosecuted to final completion. In these cases the Defendants surrendered possession of the lands in question on the day the petition was filed. The same rule would apply to condemnation proceedings instituted on behalf of the United States.

C. Levy on special taxes.

12. For support of the poor.

To S. C. Chambers. (A.G.) An appropriation to the Y. M. C. A., Y. W. C. A. or other benevolent institutions would, in my opinion, not be unlawful, provided those organizations undertake to do charitable or benevolent work in the city.

As to hospitals, still referring to the general powers given a town to establish hospitals, clinics or dispensaries for the poor and to establish a system of public charities and benevolence for the aid of the poor and destitute, I think it would be legitimate to make a definite appropriation to be carried in the budget to a hospital, in compensation for charitable work done by the hospital for the poor of the city. There ought, however, to be some definite understanding as to the services rendered by such hospital.

III. County and city license or privilege taxes.

A. Levy.

2. Exemption—veterans.

To Guy Cox. (A.G.) A World War veteran who applies to the County Commissioners, showing that he is disabled and has been a resident of the State for 12 or more months continuously, and who secures a certificate of exemption from the Board, may peddle within the County limits without payment of license tax.

14. Privilege license—beer and wine.

To Kelly Jenkins. (A.G.) Section 510 of the Beverage Control Act provides that municipalities may levy a tax for retail sale of beer of $15 "on premises" and $10 "off premises." Section 509 (2) provides that municipal governing boards shall determine whether or not the applicant is entitled to a "premises" license. Section 511 sets forth the conditions under which a license to sell beer and wines may be issued.

To W. D. Kizziah. (A.G.) When a beer license is revoked, Section 514 of the Revenue Act makes it unlawful to re-issue a license for the same premises to any person for six months. In our opinion, this would cover the issuance of a license to the wife of a person whose license was revoked, for sale on the same premises.

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

To H. M. Ratcliff. Inquiry: May a City levy a tax under Section 133 (1) of the Revenue Act on brokers who take orders on commission for grain, fruit, and other commodities which are shipped direct to the purchasers by the firms they represent?

(A.G.) Yes. This section specifically levies a $50 license tax upon persons engaged in business of this character and provides that cities and towns may levy a license tax not exceeding $50.

To H. M. Ratcliff. (A.G.) This Office is of the opinion that a City could levy Schedule B license tax (under Section 122 b of the Revenue Act) of not more than $10 on contractors constructing projects with a cost exceeding $5,000. The State requires the contractor to furnish information as to whether or not the total cost of the proposed project will exceed $5,000, and we see no reason why the City should not place the same burden on him.

After the City issues a license, the holder could construct an unlimited number of projects during the license tax year. However, Subsection (f) would permit the City to collect building, electrical, and plumbing inspection charges covering the actual cost of inspection, in addition to the builder's permit fee, and regardless of the amount of the cost of same.

To S. L. Hege. (A.G.) Section 122 of the 1937 Revenue Act, imposing certain taxes in connection with the construction of buildings, does not apply in the situation outlined in your letter, where a person is erecting his own building and hiring labor therefor.

To J. S. Bryan. Inquiry: May a municipality levy a tax on a hardware store selling pistols and cartridges in addition to the general privilege or license tax? (A.G.) Yes, under Section 145 of the Revenue Act.

To Julian D. Lewis. Inquiry: May a city levy a privilege tax upon State banks?

(A.G.) There seems to be nothing in the law which would prevent cities and towns from levying privilege taxes upon State banks under C. S. 2677. However, the State does not levy such taxes because perhaps such a course would discriminate against State banks in favor of national Banks, and it might be bad policy for the same reason for a town to levy such a tax.

45. License tax on public dance halls and amusements.

To A. E. Guy. (A.G.) Section 107 of the Revenue Act applies to riding devices operated in connection with a carnival company and permits only the State to tax such devices, to the exclusion of cities and counties. Section 131 applies to riding devices which have a permanent location in a city and provides for city taxes graduated according to population.

50. License tax on barber shops and beauty parlors.

To R. P. Branch. (A.G.) Section 140 of the Revenue Act levies a tax on barber shops only. This is $2.50 for each barber chair therein. If a barber is employed in a beauty parlor, etc., the tax is levied against the barber and not against the chair. We are of the opinion that towns could levy a tax only in the same manner.

58. License tax on filling stations.

To A. U. James. Inquiry: Please construe Section 153 of the 1937 Revenue Act. (A.G.) This levies a tax on service stations based on the population of cities and towns ranging from $10 to $50. Subsections (a) and (b) specifically provide that in no event shall the tax be less than $5 per pump, and this minimum applies in both rural and urban sections.

To W. A. Blount, Jr. (A.G.) The Revenue Department has held that a person who operates a filling station in conjunction with an automobile business in the same building is not subject to the service station tax in Section 153 (1) but is subject only to the tax levied under Section 153 (4).

60. License tax on laundries.

To J. T. Armstrong. (A.G.) Schedule "B" of the Revenue Act gives cities and towns the right to levy a tax not in excess of that levied by the State on pressing clubs but makes no provision for a county tax.

62. License tax on soft drink dealers.

To W. R. Kimbro. (A.G.) The fact that the employees of a corporation operate a stand inside the plant, sell to themselves cigarettes, sandwiches, and drinks, and divide the profits among themselves, would not exempt such persons from the provisions of the Revenue Act levying privilege license tax on this kind of business.

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

To R. W. Davis. (A.G.) In our opinion, an ordinance requiring the payment of a license tax by a non-resident milk dealer but exempting resident dealers would constitute a violation of the equal privileges and immunities clause of the Constitution.

70. License taxes on chain stores.

To Robert Holmes. (A.G.) This Office has ruled that the chain store taxes imposed by municipalities under Section 162 of the Revenue Act does not preclude them from imposing their regular merchants license upon chain stores.

IV. Public schools.

B. Powers and duties of counties.

1. Erection of school buildings.

To M. B. Gilliam. (A.G.) In the case of Denny v. Mecklenburg County, 211 N. C. 558, it was held that a teacherage is not a *Neeessary expense* for which a county might issue bonds. Therefore, you would not have authority, without a vote of the people and by special authority of the General Assembly, to levy a tax for this purpose.

However, we are inclined to the opinion that you would have a right to use insurance collected on a destroyed teacherage for the purpose of rebuilding same, or to use any surplus funds which the county might have on hand for which a tax levy would not have to be made.

30. Assumption of district debts by county.

To Horace Sisk. (A.G.) The assumption by a County of indebtedness of a school district does not change any matter of control of the district in so far as the maintenance and management of the school is concerned. The only effect is to place entirely in the hands of the county authorities all matters relating to the indebtedness assumed by it.

C. Powers and duties of city administrative units.

3. Apportionment of funds.

To J. H. Moody. Inquiry: Is the School Fund entitled to its share of delinquent taxes collected for the years 1929-33?

(A.G.) Delinquent taxes collected for this period must be applied to the purposes for which collected, including school taxes, except as modified by the School Machinery Acts of 1933 and subsequent years. The School Machinery Act in abolishing districts except for debt service purposes provided that delinquent taxes levied in such districts should be paid over to the county. Levies for the maintenance of the schools in these districts represented by delinquent taxes go into the county treasury and are applicable to debt service. Only funds raised for maintenance and then on hand to the credit of the district could be used for maintenance therein.

However, during the period covered by your letter, county-wide taxes were, of course, levied for maintenance of the schools and, when collected can not, in my judgment, be diverted to another purpose. Such portions of the taxes as were collected for that purpose should be treated as part of the school fund and disbursed accordingly.

10. Elections to supplement State funds.

To B. N. Barnes. Inquiry: Our city administrative unit has voted to supplement the public school fund. Can the School Board borrow a small sum on this anticipated levy in order to supplement certain items of school expenditures this year? (A.G.) This Office is of the opinion that your Board has no such authority.

12. Levy of special tax.

To R. M. Hall. Inquiry: May a school supplement tax voted by a city administrative unit on June 8 be levied and utilized for the next school year?

(A.G.) In our opinion, the tax levying authorities are authorized to levy the local

supplement thus voted for the fiscal year beginning July 1, 1937. See Section 15 of the School Machinery Act, setting June 15 as the date that requests for funds to supplement State school funds shall be filed with the tax levying authorities, etc.

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

To J. W. Beam. Inquiry: May our school district vote a supplement to provide a 9-month term?

(A.G.) Under the general law (Chapter 394, Public Laws of 1937) it is incompetent for any school district, except for city administrative units established by authority of this act, to incur any debt or vote upon any supplement, and the Board of Education can not establish a district with such power. However, some counties have special local laws whereby districts may be created and indebtedness incurred by them for school buildings and, in some cases, supplements such as you speak of.

**F. School officials.**

**20. School district committeemen.**

To Lloyd Griffin. Inquiry: Can a County Board of Education, on its own motion, drop one or more members of a district committee and appoint others to take their places?

(A.G.) School committeemen, when appointed by County Boards under Section 7, Chapter 394, Public Laws of 1937, are officers with a definite term of office for two years, and can not be deprived of office except for good cause, nor do they hold office at the will of the Board which appointed them. See C. S. 4458 for the causes and method which the school law provides for the removal of committeemen.

**40. Superintendent of Public Welfare—school attendance.**

To B. D. Bunn. (A.G.) The 1937 laws enlarging the State Welfare Department in connection with Social Security matters merely adds to duties of County Welfare Officers with respect to the new subjects brought into the Welfare Department, and does not take away any of the powers or duties already conferred on the County Welfare Officer by law. Among those powers and duties are those of the truant officer, and the Superintendent of Welfare still has those duties to perform.

**42. Liability for injuries to pupils.**

To H. C. Sisk. Inquiry: We are hoping to offer several courses in our high school which will require the students to spend a number of hours in mills, shops, and other places of business. These students will not be on the payrolls of these corporations but will work under certain overseers as part of their courses. In what way can the corporations be protected in case of accidents?

(A.G.) We know no way in which a corporation which accepts the services of people in the capacity you mention may protect itself against its liability under the Workmen's Compensation Act. In some aspects of the case, of course, there might be a liability for tort, and we do think that a contract with a minor would have the effect of avoiding either liability.

**F. School officials.**

**28. Advisory committee for school building—authority as to teachers.**

To L. J. Lawrence. (A.G.) Section 7 of the new School Machinery Act provides that the "County Board of Education may appoint an advisory committee of three members for each school building in the said school district, who shall care for the school property and perform such other duties as may be defined by the County Board."

In our opinion, since the mode of selecting teachers is provided by law, it would not be within the power of the County Board of Education in allotting "other funds" to this advisory committee, to give it any authority in the selection of teachers. At most, even under the old law, its duties were merely advisory and it had no power of voting.

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

To Mrs. R. B. Watson (A.G.) This Department has construed Section 12 of the School Machinery Act as intending that notice shall be given to a teacher who has not been elected within 30 days after an election has been held and not 30 days after application has been made. Also, when an application has been made to the Superintendent, it is his duty to pass the same to the Principal, who has the power of nominating to an electing committee.

**G. Poll taxes, dog taxes, fines and forfeitures accruing to schools.**

**30. Forfeiture.**

To Cooper A. Hall. Inquiry: Who is entitled to the proceeds of a forfeited appearance bond? (A.G.) The clear proceeds, under our Constitution, go to the public school fund, and in this instance, in my judgment, to the public school fund of the County.

**I. School property.**

**5. Property deeded to school provisionally.**

To R. H. Bachman. In our opinion, when the County Board of Education holds title to property upon the condition of its continued use for school purposes, and it is no longer used for such purposes, the property reverts to the original owners or their heirs, and the County has no right to remove a school building located on the premises.

The possession of property under such circumstances forces the burden of establishing legal title in the person who would eject the occupant. Of course, if possession continued for the proper length of time, the occupant may acquire title by adverse possession.

**10. Disposition of school property.**

To F. T. Johnson. Inquiry: The new school law authorizes the Board of Education, in selling school property, to reject the bids and sell at private sale, provided the price is in excess of that at the public sale. Is there any requirement to re-advertise and re-sell publicly?

(A.G.) In my judgment, the privilege of selling at private sale school property sold at auction and bids rejected, applies to the sale of school property by auction on May 15, and the Board of Education may dispose of property so offered by private sale at this time.

The law is silent as to the distribution of the proceeds. In several instances, we have advised that the funds be held until some enabling act, either of a special or general character, might be passed by the Legislature covering the subject in question.

**K. State loan funds.**

**20. Repayments.**

To R. G. Deyton. Inquiry: A county is due $12,000 in repayment of funds advanced the Highway Commission but is $5,500 in default in its payments to the Literary Loan Fund and Special School Building Fund.

(A.G.) From the $12,000, $5,500 may be withheld to cover the default due the funds mentioned, unless the amount due the county was assigned prior to the passage of Chapter 411, Public Laws of 1935. Such payments due counties (where they are not in default in payments such as noted above) are paid into the Special Debt Service Fund for them, but such is not an assignment of the funds.

**V. Matters affecting county and city finance.**

**I. Issue of bonds.**

**2. Debt Limitation Amendment of 1936.**

To Eric Norfleet. Inquiry: Can the County issue bonds for repairs to the Court House without a vote of the people provided the amount does not exceed two-thirds of the amount by which the indebtedness of the County was reduced during the past fiscal year.

(A.G.) Yes, since this is for a *necessary expense*, but if the stated limitation is exceeded, a vote of the people would be necessary.

To Fred W. Bynum. Inquiry: May the County in figuring debt reductions for purposes of the new Debt Limitation Amendment count reductions through application of a sinking fund accumulated over a period of years? (A.G.) Yes.

**T. Fire insurance.**

**10. Policies in mutual companies.**

To John B. McMullan. Inquiry: May a County insure properties in mutual companies? Would the Commissioners be individually liable in the event of loss if the mutual company is not in a position to meet its obligations?

(A.G.) The Supreme Court held in Fuller v. Lockhart, 209 N. C. 61, that a County Board of Education had authority to insure school property in a mutual fire insurance company authorized to do business in this State, and assume the contingent liability limited to the amount of the cash premium.

In thus answering your question generally, it is necessary to say that the character of the policy must be such as to fall within the decision in this case, and the liability of the County as the insured subject to like limitations.

**VI. Miscellaneous matters affecting counties.**

**B. County agencies.**

**10. A.B.C. Boards and Stores.**

(A.G.) Under Chapter 29, Public Laws 1937, Section 10 (m), County Boards are given the power "to buy and purchase and sell and to fix the prices at which all alcoholic beverages may be purchased from it, but nothing herein contained shall give said Board the power to purchase or sell or deal in alcoholic beverages which contain less than 5% of alcohol by weight."

Section 24 provides "That the term 'alcoholic beverages,' as used in this Act, is hereby defined to be and to mean alcoholic beverages of any and all kinds which shall contain more than 24% by volume and this Act is not intended to apply to or regulate the possession, sale, manufacture or transportation of beer, wines or ales containing a lower alcoholic content than above specified . . . ."

**G. Support of the poor.**

**5. Levies for Old-Age Assistance.**

To R. T. Wilson. Inquiry: Please outline the procedure for County Commissioners to follow in making levies for Old Age Assistance and Aid to Dependent Children.

(A.G.) Under Sections 21 and 51 it is the duty of the County Welfare Board to submit to the Board of County Commissioners their estimates of the amount

necessary to be expended in the county to carry out the provisions of the act. The Commissioners are required to make a careful estimate of the amount to be expended and make a report to the State Board of Allotments and Appeal as to their findings. Under Sections 22 and 52, the State Board of Allotments and Appeal allocates and approves the determinations of the amount necessary to be raised in each county to supplement State and Federal funds, which finding is binding on the several counties. The County Commissioners are then required to levy taxes for the county's share. These sections have reference to the sums to be raised for benefit payments. Somewhat similar provisions are made for administrative expenses in Sections 23 and 53.

**X. Grants and contributions by counties.**

**6. Public libraries.**

To Clyde A. Erwin. (A.G.) C. S. 2702 authorizes counties to appropriate funds for maintaining libraries owned by other organizations, which would include municipal libraries within the county.

**VII. Miscellaneous matters affecting cities.**

**J. What constitutes necessary expenses.**

**1. Public parks.**

To B. M. Boyd. Inquiry: May a City levy taxes to raise money to plant grass and shrubs in the center of some of its boulevards? May it incur a debt for public park construction and improvements?

(A.G.) Our Court has been liberal in construing Article VII, Section 7, of the Constitution, but I have been able to find no decision going so far as to hold that a debt incurred for beautifying a street alone is a necessary expense. Without doubt cities do appropriate money for this purpose, but I believe the appropriation must come from moneys on hand. See Adams v. Durham, 189 N. C. 232, which also holds expressly that park expenses are necessary expenses for a city.

**K. Appropriations and grants.**

**5. Armory sites and American Legion posts.**

To R. T. Allen. (A.G.) We have ruled that a municipal corporation has no right to donate property to an American Legion Post.

**6. Community center.**

To G. K. Butterfield. Inquiry: May a County or City assume the sponsor's share of materials for the construction of a community center as a W.P.A. project?

(A.G.) C. S. 2832 authorized cities to construct such buildings as schools, libraries, market houses, auditoriums, places of amusement, armories, hospitals, clinics, etc. C. S. 1297, clauses 9, 10, and 30, authorizes counties to construct necessary county buildings, court houses, county homes, and prisons. However, in the absence of special legislation, we do not believe a county could contribute financially to buildings which cities are authorized to construct but which counties are not particularly authorized under the law to construct.

**N. Police powers.**

**20. Regulation of trades and businesses.**

To J. E. Norris. Inquiry: May a Town by ordinance make it a criminal offense to operate Sunday movies and amusements?

(A.G.) The question is a close one, but we think it within the power of cities to prohibit the showing of secular moving picture shows for profit on Sunday.

To Ira T. Johnson. Inquiry: Where there is no special act applicable to a town, may the Aldermen regulate by ordinance the hours of places selling beer or wine?

(A.G.) We are of the opinion that the Aldermen have power to prohibit by ordinance the sale of wine or beer on Sunday, not from the standpoint of religious considerations but in the exercise of the police power vested in the town by law. Rodman v. Robinson, 134 N. C. 503. There is nothing in the A.B.C. or Revenue Acts which attempts to regulate sales of wine and beer on Sunday or the hours on which they may be sold during the week. In the absence of a statute restricting and curtailing the general power of a municipality in this respect, we are of the opinion a Town might adopt reasonable regulations as to the hours of sale of these beverages.

**P. Town boundaries.**

**2. Right to change.**

To D. R. Fouts. (A.G.) It is not required that the subject of changing the boundaries of a town be submitted to a vote of the people. The Legislature may do this by direct action, and I know no limitation in the Constitution upon this power, except as it may affect outstanding rights of creditors.

To R. M. Lee. (A.G.) The law does not permit the extension of the boundaries of towns so as to include outside territory by a mere petition of the people. Nor does it permit a variation of the boundaries so as to let out any territory within the corporate limits by action of the town authorities. Any action of that sort is without validity, and there is no law by which the Town could now execute its authority over the extra-territorial limits in any way.

**T. City health matters other than school health.**

**5. Sanitary regulations.**

To W. H. Booker. Inquiry: Is a town ordinance prohibiting privies within 50 feet of a cafe or restaurant valid and enforceable where an inspector of the State Health Department has given directions that a privy be erected within 50 feet of a cafe.

(A.G.) In our opinion, the Town ordinance is a valid exercise of the town's police power and takes precedence over the instructions of the Sanitary Inspector. The statutes authorizing the State Health Department to make regulations as to privies do not authorize the Department to say when and under what conditions privies shall be built, but only to make rules relative to the sanitation of privies after they are constructed. The powers of municipalities as defined in C. S. 2787 clearly are broad enough to sustain the ordinance in question.

**VIII. Matters affecting chiefly particular local officials.**

**A. County Commissioners.**

**2. Compensation.**

To L. C. Reed. Inquiry: A local act limits the compensation of our County Commissioners to $3 a day and 12 days a year. Can we pay them for extra time required by their duties as the Board of Equalization and Review?

(A.G.) We think the County is bound by the act regardless of the fact that the Commissioners' duties as the Board of Equalization require a longer period than the act allows compensation.

**5. Trading with member of board.**

To L. C. Reed. (A.G.) We do not think that a stockholder in your County Depository Bank who, by virtue of his office as Chairman of the Commissioners, signs vouchers on County funds in such bank, would violate C. S. 4388, which prohibits directors of public trusts from contracting for their own benefit.

**34. Jury list.**

To Junius D. Grimes. (A.G.) In our opinion, C. S. 2312 imposes on County Commissioners the positive duty of selecting jurors from the list of men who have paid their taxes and have good moral character. The Commissioners are required to make reasonable investigations for the purpose of ascertaining the moral character and intelligence of those listed upon the tax books. But if after such investigation they are still unable to obtain this information, then, they should not place the name of any person whom they do not know on the jury list.

**45. Power to approve warrants disallowed by auditor.**

To J. P. Ramsey. Inquiry: Do the County Commissioners have a right to draw and pay a check on the general county fund without the signature of the County Auditor if he refuses to sign the same?

(A.G.) If the local laws are silent on the duties of the Auditor in regard to the expenditure of county funds, the general law as found in C. S. 1334 (67) is that the auditor shall sign all county warrants except those for the payment of bonds, notes, etc. The Commissioners have authority to issue a warrant on county funds upon the refusal of the auditor to sign, but the Commissioners' reason for overruling the disapproval of the Auditor must be entered upon the minutes of the Commission.

**B. Clerks of the Superior Court.**

**1. Salary and fees.**

To A. T. Walston. Inquiry: Is the Clerk entitled to commission on the $1 fee in criminal cases under the new State Bureau of Identification Act (Chapter 349)?

(A.G.) No commissions are allowed in the act, and C. S. 3903 does not apply to the case.

To R. E. Little. Inquiry: To what fees is a Clerk entitled for the filing of final accounts in a county to which Chapter 379, Public Laws of 1935, applies.

(A.G.) It is provided in this Act that the Clerk's fees for auditing final accounts of receivers, executors, administrators, etc., shall be 50c for each $100, or a fraction thereof, of the total receipts and disbursements through $1,000, and 10c for each $100, or a fraction thereof, on everything above $1,000, but in no event shall the fee be less than $2.00. A proviso is added, including in the basis of compensation, stocks, bonds or other personal property delivered to a distributee at the valuation fixed as of the date of death or qualification of the fiduciary.

The words, "total receipts and disbursements," as used in this Act, mean the entire receipts and disbursements of the trust from its origin to its termination. It would not be confined to receipts and disbursements shown since the last annual account.

**9. Wills and caveats.**

To W. H. Young. Inquiry: Should the Clerk refuse probate and recording of a will where one of the witnesses refused to testify, as required by C. S. 3199, that at the time of the execution of the supposed will the testator was of a sound mind?

(A.G.) We do not think the question of the sanity or capacity of the testator directly comes up before the Clerk, where the probate is in common form, in a way

to test such a matter, and the passing thereupon for the purpose of settling any question as to the validity of the will is beyond the power of the Clerk. We do think, however, where the law has laid down certain rules and procedure which must be followed before a paper is permitted to be put on record, such procedure must be substantially observed.

In this case, the statute appears to have made the affidavit or statement of the witness that the testator was of sound mind a part of the procedure by which the will may be admitted to record.

Perhaps the Clerk would be justified in refusing probate and recording unless this oath is taken. But it is a close matter, and I can not guarantee that the courts would follow it. On the other hand, if the Clerk admits such a paper to probate and record, a person contesting the will has a remedy by caveat, requiring that the will should be proved in solemn form. For this reason perhaps the better practice would be to admit and probate it.

**26. Duties with respect to funds of incompetents.**

To C. B. Skipper. (A.G.) While the Clerk is not bound in all instances to place trust funds in his hands at interest, when he does so the interest belongs to the owner and not the Clerk.

**27. Appointment of guardians.**

To Lily E. Mitchell. (A.G.) We have ruled that only the Clerk of Superior Court has authority to appoint guardians for minor children.

**50. Costs.**

To A. B. Sawyer. (A.G.) The $1 fee in criminal convictions provided by the State Bureau of Identification Act is not to be paid by the County unless collection thereof is made from the Defendant.

**70. Entries on judgment docket.**

To J. R. Gurganus. Inquiry: In distributing a surplus to judgment creditors, which takes precedence, a 1925 judgment sued upon in 1935, or judgments of 1928 and 1929?

(A.G.) We think that C. S. 436 controls and the 1935 judgment would be effective only from the date it was taken. By the express wording of the statute, the 1935 judgment would not have the effect of continuing the lien of the original judgment taken in 1925.

**100. Escheats.**

To C. T. Woollen. Inquiry: To what fees are Clerks entitled on funds paid into their hands representing unclaimed deposits of banks in liquidation by the Commissioner of Banks?

(A.G.) In our opinion, Clerks are entitled, under C. S. 3903, to 3% on the first $500 so paid into their hands and 1% on any excess. No additional fees are allowable to a Clerk on account of making separate disbursements to claimants prior to the time the remaining part of the fund is paid over to the University. The fees can be figured only on the total sum which is paid over to the Clerk.

**C. Sheriffs.**

**1. Fees.**

To M. D. Owens. (A.G.) While an officer is not entitled to fees unless there is actual service of process, nevertheless we have found in some instances that actually fees have been made up in the bill of costs and collected in such instances. We have ruled that where these fees have been collected in behalf of the Sheriff they should be paid to him.

**10. Executions.**

To Junius D. Grimes. Inquiry: Should the Sheriff execute executions on a judgment against a deceased person? (A.G.) We think not. The issuance of execution is not the proper procedure for the collection of debts against a decedent's estate. Collection must be made in the usual channels of administration.

**40. State Police Radio.**

To D. S. Williamson. Inquiry: Does the law require the Sheriff's office in each county to have a radio receiving set when the State system goes into effect? (A.G.) No.

**D. Register of Deeds.**

**5. Probate and registration.**

To B. D. McCubbins. (A.G.) In our opinion a Register of Deeds has authority, under C. S. 3319, to certify a copy of any deed registered in his office to another county for probate and registration there.

**E. County Auditor.**

**3. Mechanics of handling county funds.**

To F. W. McGowen. Inquiry: Should checks for the disbursement of Old Age Assistance, Aid to Dependent Children, and Aid to Blind funds carry the certificate provided for in Section 16, Chapter 146, Public Laws of 1927?

(A.G.) The Old Age Assistance Act requires the disbursement of awards under the act in the same way as other county funds are disbursed. In our judgment, this makes Section 16 of the Local Government Act applicable to the case.

**L. Local law enforcement officers.**

**1. Prohibition law—beer.**

To H. P. Taylor. Inquiry: Would the 1933 Beer Law (Chapter 319) repeal a prior provision in a town charter (by special act) prohibiting the sale of intoxicating liquors within three miles of a certain church in the town in so far as it relates to the sale of beer.

(A.G.) We are of the opinion that it does. Not only does this Act contain the usual repealing clause, but it is provided in Section 14 that the issuance of a license by a municipality to a person who has complied with the conditions of the Act is mandatory.

**18. Prohibition law—1937 Liquor Control Act.**

To W. G. Honeycutt. Inquiry: What quantity of legal whiskey may a person have in his home?

(A.G.) In our opinion, notwithstanding House Bill 55, C. S. 3379 is still in full force and effect in all the counties of this State. Under this section, as construed by State v. Langley, 209 N. C. 178, possession of more than one gallon of intoxicating liquors by anyone in his home or elsewhere is prima facie evidence of an unlawful intention to sell the liquor. Hence a person charged with the possession of nine pints of legal whiskey can be tried under C. S. 3379 for possession of the liquor with the unlawful intention to sell, irrespective of whether or not the taxes required by Section 13 of House Bill 55 had been paid. In those counties which are under the Liquor Law of 1937, a person may lawfully have in his possession more than one gallon of liquor only if he does not have the unlawful intention to sell it.

To George E. Rudisill. Inquiry: May a Sheriff lawfully confiscate whiskey of a gallon or less found in a person's possession with a government stamp thereon but without a State stamp?

(A.G.) Under the 1937 Liquor Control Act, Section 22, if a county has voted for liquor, a person may have as much as one gallon in his possession for his own use, irrespective of whether it has any stamp on it. If a county is under the Pasquotank or New Hanover Acts, C. S. 3379 would still be applicable and would make possession of more than one gallon prima facie evidence of an unlawful intention to sell the liquor. C. S. 3379 is in effect all over the State but can not be invoked, of course, unless the person has in his possession more than one gallon of intoxicating liquor.

To J. N. Pruden. Inquiry: Is it unlawful under the 1937 A. B. C. Act to possess in a dary county for the purpose of sale alcoholic beverages legally purchased at a County A. B. C. store?

(A.G.) In State v. Langley, 209 N. C. 178, it was held that the Pasquotank Act does not affect the provisions of C. S. 3379, making possession of more than one gallon of liquor prima facie evidence of an unlawful intention to sell. This case came from Nash County, which at the time had A. B. C. stores under the Pasquotank Act. C. S. 3379, as pointed out by the Court in this case, is not a part of the Turlington Act. The same situation exists since the enactment of the 1937 law, and, in our opinion, there is no express or implied repeal of the above section.

To C. C. Horn. Inquiry: How much tax-paid liquor may a person possess in his own home?

(A.G.) Under Section 13 of House Bill 55, a person may not have in possession any amount of liquor unless either the Federal or State tax has been paid on it. Once the required tax is paid, there seems to be nothing in the 1937 Act which limits the amount of liquor one may possess in his own home. However, since C. S. 3379 is still in effect all over the State, in our opinion, possession of more than one gallon of tax-paid liquor would raise against the possessor a prima facie case of an unlawful intention to sell.

To George E. Rudisill. (A.G.) My interpretation of Section 13 of the 1937 A. B. C. Act is that no person may lawfully have in his possession in any county of this State any quantity of liquor on which the federal tax has not been paid, where there is a Federal tax, or upon which the State tax has not been paid, where there is a State tax. However, when we come to the question of prima facie evidence of a violation of the section, the presumption is not raised if the package contains a stamp either of the Federal Government or of the State Government representing the tax. Of course, this is only a presumption which may be rebutted from evidence that the tax has been paid.

Section 22 of the Act permits the transportation into this State from another, and into a county which has voted for the adoption of the A. B. C. Act, as much as one gallon of liquor, provided either the Federal or State tax has been paid thereon.

To John H. Small, Jr. (A.G.) Except as modified by the A. B. C. Act, the Turlington Act is still in force in your County, since it declined to adopt the A. B. C. Store system. It is, therefore, unlawful to manufacture, transport, possess or sell in your County intoxicating liquors above 24% alcoholic content, to drive an automobile under the influence of liquor, etc. Under the A. B. C. Act, however, it is lawful to transport and possess in your County not exceeding one gallon of liquor for one's own use, under the conditions prescribed in the Act. Automobiles used in

transporting liquor may still be confiscated, and smoke screens are prohibited.

**36. Anti-Rabies law.**

To Peyton McSwain. Inquiry: Whose duty is it to prosecute violations of the Anti-Rabies Act, Chapter 122, Public Laws of 1935?

(A.G.) Any citizen, of course, has a right to swear out a warrant for a violation of the criminal law of which he has knowledge. In our opinion, however, Section 8 places the primary duty on the Rabies Inspector in enforcing the provisions of the act, which would include swearing out warrants for violations. A warrant also might properly be sworn out by the Sheriff.

To J. E. Hodges. Inquiry: Under the 1935 Anti-Rabies Act, please advise whether a dog which has been vaccinated on January 1 must be vaccinated again before the end of the year?

(A.G.) Under Section 2, Chapter 122, Public Laws of 1935, the owner of a dog must have it vaccinated by a Rabies Inspector each year. Section 4 states that the annual vaccination carried on by such Inspector shall begin on April 1. We do not interpret this section to mean, however, that a dog vaccinated at some other time during the year must be vaccinated again in April. In situations of this type, Section 2, requiring yearly vaccinations, applies.

**38. Automobile Drivers' License Act.**

To Glenn Austin. (A.G.) Section 11 of the Uniform Drivers' License Act provides that application for renewal of a driver's license may be made at any time after one year from the date of revocation thereof.

To Arthur Fulk. Inquiry: Does the Division of Highway Safety have authority to revoke a driver's license upon conviction of aiding and abetting in operating a motor vehicle in violation of the mandatory provisions of the 1935 Uniform Drivers' License Act?

(A.G.) A violation of the provisions of this act is a misdemeanor, and there are no accessories to a crime of the grade of a misdemeanor. Therefore, a conviction of aiding and abetting in this case would be equivalent to commission of the crime itself as a principal, and we are of the opinion that the Department would be required to revoke the license of a person found guilty of such offense.

**41. Operating motor vehicle while intoxicated.**

To J. D. Grant. (A.G.) In our opinion, the police of a city are not justified in arresting without a warrant an automobile driver operating an automobile recklessly and while in a drunken condition unless the arrest occurs within the city limits.

Under C. S. 2642, a policeman is given the same authority to make arrests and execute criminal process within the town limits as is vested in a sheriff. However, the power of a policeman to arrest without warrant is limited to the corporate limits of the town, and an arrest out of the limits without a warrant for the breach of an ordinance is an assault. In order to make an arrest out of the limits, a policeman must do so under a warrant or by virtue of C. S. 4543(4), providing that every person in whose presence a felony is committed may arrest the person he knows, or has reasonable ground to believe, to be guilty of the offense.

**42. Operating motor vehicle with improper license.**

To W. H. Hauser. (A.G.) The 1937 motor vehicle laws permit a person to operate a car with dealer's tags for not more than 48 hours upon a certificate from the dealer that he is using the car for demonstration purposes only. If he purchases the car, he may deposit with the dealer a sufficient sum to pay for the title and the license plates, secure a receipt from the dealer, and operate the car with dealer's plates for not exceeding 10 days. See Section 43(b).

**90. Warrants.**

To Fred H. Hasty. Inquiry: Please construe the 1937 search warrant act. (A.G.) Senate Bill 385 does not substantially change the requirements of a search warrant. A police officer may still sign the affidavit required by the section as a complainant, and he may do so upon information and belief, including a case where he received his information from a telephone call.

To R. L. Furr. (A.G.) Evidence obtained by officers under a search warrant which was issued by a Deputy Clerk of Court but was not sworn to by the person making the affidavit would be incompetent and could not be used against the Defendant on trial. The fact that the Defendant did not object to the search would not be material.

To W. E. Williams. (A.G.) The recent Legislature provided in regard to search and seizure that a complaint had to be sworn to before a warrant could be issued to search a house for whiskey. Any person is competent to swear to the complaint.

**M. Health and Welfare Officers.**

**3. County Welfare Superintendent.**

To W. J. Berryman. (A.G.) The new law, Senate Bill 98, makes it mandatory upon every county in the State to select a Superintendent of Welfare. This means, of course, that the Superintendent of Schools can not, ex officio, act any longer in that capacity.

To Mrs. W. T. Bost (A.G.) Senate Bill 98 provides for the appointment of the County Welfare Superintendent jointly by the County Commissioners and County Welfare Board. In case of a tie, the matter must be referred to the Judge of Superior Court resident in the district. In either event, in our opinion, the selection must be submitted for approval to the State Public Welfare Board.

To P. V. Critcher. Inquiry: In case of a tie vote in the selection of the County Welfare Superintendent under Senate Bill 98, may the Resident Judge select a person not in the tie? (A.G.) We think not.

**25. Placement and adoption of infants.**

To F. F. Church. (A.G.) C. S. 191(1) provides that only legal residents of this State may adopt minor children, and we are of the opinion that a person who enlisted in the Army while a resident of Louisiana would retain his residence in that State while he remained in the service.

**28. County Board of Health—powers.**

To Vann and Milliken. Inquiry: Please cite us the statutes pertaining to the employment of public nurses by the counties? (A.G.) We find no pertinent statutes. The State Health Department states that this is by regulation of the Health Department in co-operation with the Federal authorities.

**P. Officials of Recorders' and County Courts.**

**5. Costs and fees.**

To A. J. Medlin. (A.G.) In the absence of some local law, the fees for juries in Recorders' Courts are the same as in J. P. Courts, that is, $3.

To W. S. Riddick. (A.G.) Chapter 349, Public Laws of 1937, establishing the State Bureau of Identification, provides that in every criminal case finally disposed of, except in courts of J. P.'s, where the Defendant is found guilty, $1 additional cost is assessed against him. These amounts are required to be sent monthly to the State Treasurer with a statement of the case in which the same have been collected.

**15. Jurisdiction and powers.**

To Dr. J. W. Ashby. (A.G.) In our opinion, the Judge of a Recorder's Court does not have power to commit a person to the State Hospital for the Insane unless the person be convicted of a crime. Of course, the Judge would have the right to commit an insane person where insanity at the time of the trial is pleaded and the person is found insane and, therefore, can not be tried.

**35. Right to practice law.**

To W. D. Barrett. Inquiry: May a Solicitor of a General County Court, with propriety, represent persons charged with crime in Superior Court when the case did not come to the General County Court, or represent persons before the Parole Board or the Governor in applications for a pardon or parole?

(A.G.) The law prohibiting such representation, of course, applies only to the cases in which the Solicitor prosecutes or might prosecute in his own court, and tre practice is general. However, it might be best for you to inquire of some one closely connected with the State Bar as to the advisability of the practice.

**S. Mayors and Aldermen.**

**6. Costs and fees in Mayor's Court.**

To R. H. Ramsey, Jr. (A.G.) Chapter 394, Public Laws of 1937, requiring the collection of an additional $1 in criminal convictions in connection with the creation of the Bureau of Identification, applies to Mayors' Courts. It is not a question of jurisdiction, but one of the court in which such additional cost must be collected. For some reason, the courts of J. P.'s were excepted.

**T. Justices of the Peace.**

**2. Selection.**

To M. A. Hartman. (A.G.) A J. P. who failed to qualify within the 90-day period prescribed in the J. P. Omnibus Bill could not now come before you and qualify as a magistrate.

**10. Jurisdiction.**

To B. C. Jones. (A.G.) The offense of public drunkenness under the 1937 A. B. C. Act and under C. S. 4457-8 is within the jurisdiction of a J. P. The punishment prescribed by Section 16 of the 1937 Act does not withdraw it from this jurisdiction.

**X. A. B. C. Boards and employees.**

**3. Compensation.**

To M. D. Owens. Inquiry: Is an enforcement officer appointed by the County A. B. C. Board on salary entitled to arrest and process fees when the Pasquotank Act and the Board's contract with the officer are both silent on the subject?

(A.G.) We think not. An examination of the general act on salaries and fees does not provide fees for such an officer on salary, and we do not think that the mere analogy existing between the services he performs and those performed by Sheriffs and other officers is sufficient authority for the payment of such fees,

especially when the A. B. C. officer is on salary.

4. Powers and duties.

(A.G.) We have ruled that a non-resident manufacturer, under Sections 518½, may sell beer to a licensed wholesaler in this State.

To Cutlar Moore. Inquiry: May a dry county dispose of liquor seized by its officers to A. B. C. stores in wet counties?

(A.G.) If the A. B. C. Act has not been adoped by the County, the Turlington Act, C. S. 3411(a) and following, has not been repealed as to that County except to the extent that it conflicts with the 1937 A. B. C. Act. Under C. S. 3411(f), it is provided that the Court, upon conviction of a person arrested for unlawful transportation of intoxicating liquor, shall order the liquor destroyed. We think the State A. B. C. Board would have no authority to authorize a sale of such whiskey to any A. B. C. Store.

Y. Game Wardens.

1. Compensation and fees.

To W. L. Cates. (A.G.) The provisions in the Game Laws which permit the allowance to the officer prosecuting a person who has been convicted of violating a game law the sum of $5 for each conviction does not apply to a violation of the fishing laws.

To George L. Peterson. Inquiry: Are County Game and Fire Wardens entitled to fees for arrests for violations of the fishing laws, etc., if they are receiving salaries from the Department of Conservation and Development?

(A.G.) This Office is of the opinion that such a warden is not entitled to these fees when they are on salary. See Section 9, Chapter 486, Public Laws of 1935.

2. Bonds.

To E. B. Kugler. Inquiry: Does the 1937 State Peace Officers' Bond Act (Chapter 339) apply to: (1) District and County Game and Fish Protectors, appointed by the State Department of Conservation at a stipulated salary and bonded under the present State schedule; (2) Deputy and Special County Game and Fish Protectors, who receive no salary but get an arrest fee of $5 for each conviction of a violation of the game laws?

(A.G.) (1) If the individual bonds are for as much as $1,000 and are conditioned "as well for the faithful discharge of his or her duty as other peace officers as for his diligent endeavor to faithfully collect and pay over all sums of money received," then those bonds already given would be sufficient.

(2) Inasmuch as these officers are authorized to make arrests, they are police officers employed by the State within the language of and are included in the broad provisions of the Act.

30. Particular rulings affecting game laws.

To P. F. Buchan. (A.G.) Fishing in inland waters requires a license under the game laws. Fishing on private property may not be done without the consent of the owner, as the license to fish does not give the angler any right upon private property.

IX. Double Office Holding.

2. Notary Public.

To Bausie Marion. (A.G.) A County Superintendent of Welfare and Notary Public have both been held to be offices and may not be held by the same person at the same time due to the constitutional prohibition.

14. Mayors and Aldermen.

To R. Eugene Brown. Inquiry: May a Mayor serve as judge of a juvenile court established under C. S. 5062?

(A.G.) We do not think the Mayor could serve as Judge unless the City Charter permits him to serve in this capacity ex officio.

21. Tax Supervisor.

To J. G. W. MacClamroch. Inquiry: Can a clerk employed by the County Tax Supervisor accept employment from a small municipality in the County in making up its tax scroll from the County records? (A.G.) We do not think that Article XIV, Section 7, prohibits such employment.

24. Member of Legislature.

To T. E. Cooper. Inquiry: Should a member of the General Assembly resign his place in order to accept the office of Mayor, and what is the procedure?

(A.G.) Both are offices, and your resignation might be addressed to the Governor, but this is unnecessary, as acceptance of the second office automatically vacates the first.

XI. General and special elections.

B. Ballots.

10. Absentee ballots.

To C. P. Hinshaw. Inquiry: Is absentee voting permitted in a municipal special bond election? (A.G.) Yes.

D. School elections.

5. Registration.

To Lynn Wilder, Jr. Inquiry: If a Registrar leaves the books with his child or another third person and checks the registrations later, does the irregularity furnish ground for voiding the particular votes or the whole election?

(A.G.) We think not, unless it is found that a person thus registered was actually not a qualified voter. In this case the County Board of Elections is given broad and complete authority under C. S. 5986 to disregard the vote or registration of such person. See Glenn v. Culbreth, 197 N. C. 394; Hall v. Skinner, 169 N. C. 405; Gibson v. Commissioners, 163 N. C. 510; and Quinn v. Lattimore, 120 N. C. 426.

50. Cost of holding.

To J. T. Arledge. (A.G.) We have ruled that the expenses of holding an election for a school supplement in a city administrative unit must be borne by the county.