



ALAMANCE COUNTY COURT HOUSE

Alamance was one of the original County Members of the Institute of Government and has taken a large part in the activities and services of the organization which now numbers more than 90 member counties and almost 200 member cities.

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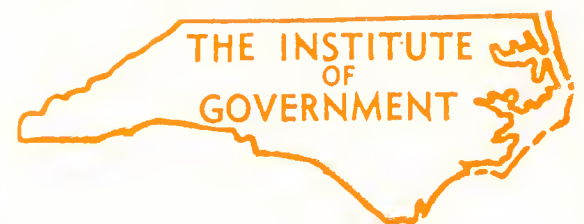
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POPULAR GOVERNMENT

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Attorney General Rules in Favor of Women Jurors

The question of the eligibility of women to serve on juries has been a live one in many states since the 19th Amendment, conferring upon women the right of suffrage, was placed in the Federal Constitution.

Since the 19th Amendment relates to suffrage only, and since the constitutions and laws of many states do not make eligibility to jury service depend upon the right to vote, some of the decisions in such cases refuse to give any effect to the Federal Amendment in this direction. . . .

In other jurisdictions, where jury service follows suffrage, a contrary conclusion has been reached.

In still other jurisdictions, in which the essentials of the common law jury are supposed to be preserved by the State Constitution in provisions practically the same as ours, the changed civil status of women, brought about by the 19th Amendment, has been thought to justify the eligibility of women jurors under appropriate legislative enactment. . . .

. . . generally, the courts have been inclined to relax the stricter interpretation of constitutional reference to the right of trial by jury in respect to the inclusion therein of the incidents of the common law jury, on the ground that certain of these requirements are not important either to the principle or essential to the right of jury trial. . . .

In the beginning of this discussion we must realize that we are dealing with various sources of authority controlling or affecting the eligibility of juries: (a) the 19th Amendment to the Federal Constitution; (b) the State Constitution; (c) the common law; and (d) the

Suggests Test Case before Supreme Court

*Brief of
the Attorney-
General of
North Carolina*



immemorial custom which sometimes operates as precedent with the practical effect of law.

Constitutional Provisions

There are two references in the Constitution of this State to jury trial. . . . Article I, Section 13, relating to trial in criminal cases, reads:

"No person shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful men."

Article I, Section 19, relating to civil trials, reads:

"In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolate."

It has been held, in practically all jurisdictions in which phraseology similar to that used in the above sections is found in the Constitution, that the effect is to bring forward and adopt as a constitutional requirement several of the incidents of jury trial at the common law, or, as it has been popularly but inac-

curately expressed, such provisions require trials to be had by a common law jury.

The decisions of the various State Courts, however, have not been at all uniform as to just what incidents of the common law jury may be thus "frozen" or imbedded in the Constitution.

The stricter view of such constitutional requirements, and the one which I think goes to the extreme limit allowable, is that of the United States Supreme Court, as expressed by Justice Harlan in *Thompson v. Utah*, 170 U. S. 343, 350:

"It must consequently be taken that the word 'jury' and the words 'trial by jury,' were placed in the Constitution of the United States with reference to the meaning affixed to them in the law as it was in this country and in England at the time of the adoption of that instrument."

And, thereupon, it is concluded that a jury necessarily means a jury of twelve men.

The More Liberal View

But, in *Walker v. New Mexico and So. Pac. Ry. Co.*, 165 U. S. 593, the United States Supreme Court adopts a more liberal philosophy:

"The question is whether this act of the territorial legislature in substance impairs the right of trial by jury. Its (the seventh amendment) aim is not to preserve mere matters of form and procedure, but substance or right. This requires that questions of fact in common law actions be settled by a jury, and that courts shall not assume, directly or indirectly, to take from the jury or to itself any such prerogative. So long as this substance or right is preserved, the principle by

which this result shall be reached is wholly within the discretion of the legislature." . . .

The following elements of common law jury trial have been regarded as substantial and as guaranteed by the constitutional provisions like ours and incapable of change by the Legislature:

(1) Unanimity. Hale, History of the Common Law (4th ed.) 293; Thayer, Evidence, 86; Springville v. Thomas, 166 U. S. 707 (holding that Congress has no power to alter the rule). It is to be noted that our Constitution expressly requires that the verdict of a jury be unanimous (Article I, Sec. 13). (2) Number. The common law has fixed the number of jurors at 12, and the legislature has no authority to change this, Thompson v. Utah, 170 U. S. 343; 31 H. L. Rev. 672; State v. Dalton, 206 N. C. 507. This rule is well settled in North Carolina. . . .

"Men" Used Generically

In Article VI, Section 1 of the Constitution, relating to suffrage, the Constitution uses the word "males." Elsewhere when it is necessary to make the distinction, the Constitution also uses appropriate definitive and discriminatory terms to show whether the male or the female is meant. In the first quoted Section of our Constitution (Article I, Section 13), the term employed is "good and lawful men." Elsewhere in the Constitution the word "men" is used in its generic sense, and there is no valid argument why in the present situation it may not be so interpreted unless the court should feel further that it is one of those essential elements of common law jury trial which, despite the changed condition of women, it is still necessary to bring forward.

As to the generic meaning of the word "men," I quote from Cleveland, C. C. & St. L. Ry. Co. v. Wehmeier, 170 N. E. 29 (Ind.):

"Since the world began, in all writings concerning the human race, the word 'man' or 'men' has been used in a generic sense, or as representing the human race. The courts in construing the term have given it a generic or restricted meaning, as denoted or indicated by the context and the object sought to be obtained. Lexicographers define 'man' or 'men' as a human being, or an in-

dividual of the genus homo; also as the human race; mankind; human beings, etc. Applying this definition, and the rule as to the object sought, we find here in section 5 of the Constitution, in question, that the object was to secure a jury of twelve qualified jurors."

Supported by Weight of Opinion

That it is capable of being so construed in our Constitution is agreeable to the greater weight of opinion, and it should be so construed as including women, if women from other legal standards of eligibility might come within its provision.

State v. Chase, (Ore.) 211 Pac. 920;

State v. Barlitz (Mich.) 180 N. W. 423;

State v. Walker (Iowa) 185 N. W. 619;

In re: Opinion of Justices, (Mass.) 130 N. E. 685.

At any rate, with practical unanimity, the courts have not considered this as one of the essentials of trial by jury or as being brought forward by a necessary implication in the Constitution "preserving trial by jury, as at common law."

Walker v. New Mexico & So. Pac. Ry. Co., 165 U. S. 593;

State v. Payne (Cal.) 172 Pac. 986;

Tynan v. U. S., 297 F. 177;

State v. Rosenberg (Minn.) 192 N. W. 194;

State v. Chase (Ore.) 211 Pac. 920.

The process of "freezing" the common law, or contemporary custom, into the Constitution, certainly will not be favored unless it is required by express reference or necessary implication, and the trend of opinion is definitely against that course.

Comm. v. Maxwell, (Pa.) 114 Atl. 825, 31 H. L. Review 671;

Twining v. New Jersey, 211 U. S. 78, 101;

Walker v. New Mexico, supra.

Women of Old Had No Civil Rights

The philosophy of the common law in excluding women from juries is altogether against the argument that trial by males was an important principle in common law jury trial such as may be regarded as an essential to be brought forward and protected either under Article I, Sec-

tion 13, or Article I, Section 19, of our Constitution.

They were not excluded from jury service because they were women, *per se*, nor because as members of the female sex they did not have either intelligence or character sufficient to serve upon the jury. They were excluded for the reason that they did not have those civil rights which would make them legal members of the jury or the peers of any who were tried.

Under the common law, women, and especially married women, had few rights of any kind, and civil and political rights were practically non-existent . . .

The exclusion of women at that time had become a matter of such long standing that the defect incident to her civil status and condition was transferred to her "person" as not being a member of the male sex; whereas, as a matter of fact, she was not *liber et legalis homo* and would, therefore, not be a peer to any person who might be tried before the jury except her unfortunate self . . .

No doubt when the right to trial by jury was made a part of the English Constitution, those who secured its adoption neither particularized nor emphasized the qualifications of jurors. The thing they sought to establish was this: That jury trial should be the mode of investigating crime and considering property rights, rather than trial by judges, who were always unsympathetic, frequently capricious, and often corrupt. Doubtless the use of the term "mode" in our Constitution, and in the source from which it originally came, was intended simply to imply a trial by jury rather than by judges. Refinements as to procedure and as to the qualifications of jurors could properly be left, and in English practice was left, to the law-making body. Ordinary foresight would demand the same freedom of legislative revision to meet substantial changes in social and political conditions.

I think it is clear from the numerous opinions cited on this subject that the courts now have been inclined to pare off much of the useless timber which has gathered on similar provisions of the Constitution as mere arbitrary judicial ac-

(Continued on page seventeen)

State Revenues and Expenditures: 1935-1937

A GLANCE at the increased budget of the State of North Carolina since 1924 gives a vivid picture of the expansion of governmental services during the past fourteen years. That part of the cost of State governmental services which is paid directly by the State's taxpayers amounted to some \$16,500,000 for the year ending June 30, 1924. In 1929 this direct cost had increased to \$32,700,000, in 1935 to \$50,983,000, and at June 30, 1937, it had reached the all-time high of \$69,180,000. These totals include neither grants from Uncle Sam nor such non-tax revenues as tuition fees and charges by our State institutions, but largely those revenues which are raised by direct taxation. From \$16,500,000 in 1924 to \$69,180,000 in 1937, and we don't seem to have reached the leveling off point. In fact total tax revenues in 1937 exceeded those of 1935 by some \$18,200,000 or more than the total tax revenues for the year 1924. Let's examine this increase.

The "pie charts" accompanying this article show the sources of revenue and the purposes for which it was spent for the years ending June 30, 1935 and June 30, 1937. In 1935 we received \$17,334,000 or 34% of our total revenue from gasoline taxes. In 1937 this had increased to \$22,700,000, but the percentage of the total had decreased to 32.8. This increase is due entirely to the increased consumption of gasoline as the rate of tax has remained the same. Thus, we account for some \$5,366,000 of our \$18,200,000 total.

Sales Tax Next to Gas

Our second largest source of revenue in 1935 was the sales tax amounting to \$7,654,000 or 15% of our total. This item remained in second place during 1937 and increased to \$11,320,000 or 16.7% of our 1937 total. There were two causes for this increase in addition to the general improvement of economic conditions. The 1935 General Assembly broadened the base of the sales tax by striking out the basic food exemptions of 1935 and by making meals sold in hotels and restaurants subject to the sales tax.

State Services And Costs Continue To Increase --- Schools, Roads, And Debts Take Lion's Share

By T. N. GRICE

Running a close third in 1935 were automobile licenses which totaled \$7,643,000 or approximately the same percentage as the sales tax. In 1937 this source of revenue had given third place to income tax, but had increased to \$7,867,000 or 11.2% of our total revenues. The revenue from this source increased even though the 1935 General Assembly reduced from 55 cents to 40 cents per hundred pounds the license tax on private passenger automobiles.

In 1935 income tax was our fourth largest source of revenue amounting to \$7,482,000 or 14.7% of our total. In 1937 this source had climbed to third place with a total of \$10,975,000 or 15.9% of our total. This increase is largely the result of improved economic conditions. The only major change in the income tax law was the reduction from 15 to 10% of net taxable income, the maximum amount that may be deducted as donations.

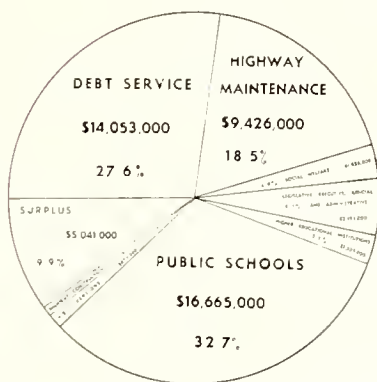
Franchises and Privileges

Franchise taxes continued to hold fifth place in our revenue producing schedule. These taxes brought in \$6,681,000 or 13.1% of the 1935 total. The revenue from this source increased to \$7,362,000 in 1937 but decreased in percentage to 10.6. The increase in franchise tax revenues was due to an increase of 25

1935 TOTAL \$50,983,000

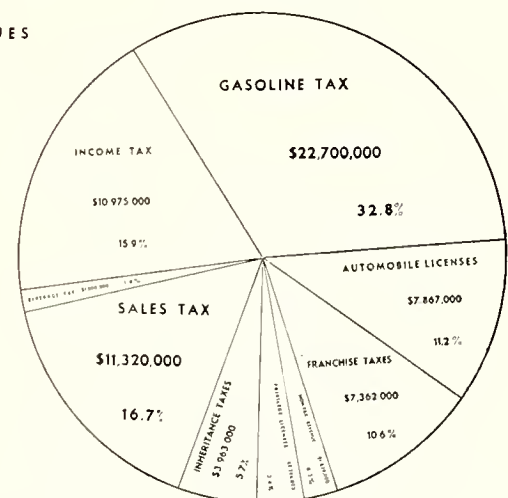


1935 TOTAL \$50,983,000



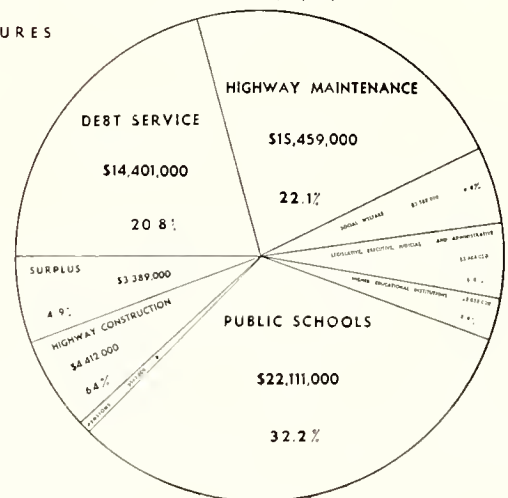
REVENUES

1937 TOTAL \$69,180,000



1937 TOTAL \$69,180,000

EXPENDITURES



cents in the rate and to better business conditions.

Privilege licenses increased from \$1,728,000 in 1935 to \$2,354,000 in 1937 while the percentage of the total revenue remained the same in both years, approximately 3.4%. However, privilege licenses were forced out of sixth into seventh place in the race for revenues by inheritance tax. The increase in privilege license revenue was due to both improvements in business conditions and changes in the laws in 1935. The more important changes were with respect to tax rates on chain stores and automobile service stations.

Inheritance tax which produced but \$502,000 or one per cent of our 1935 total revenue jumped to \$3,963,000 or 5.7% of our 1937 total. This tremendous increase was due to the settlement of several large estates and not to any changes made with respect to tax rates.

Non-tax revenues which include dividends on certain State-owned investments, interest on bank balances, rentals and other like items remained about the same. This revenue which is not a tax amounted to \$1,594,000 in 1935 and \$1,639,000 in 1937.

Beverage Taxes on Rise

The last in the race in 1935 was the beverage tax which at that time included only beer and totaled \$365,000. Still in last place in 1937, but picking up to bring in \$1,000,000 or 1.4% of our total, the beverage tax is due for a rise. The increase in 1937 was almost wholly due to the increased consumption of the amber colored malt fluid, some \$84,000 being collected under the 1937 wine and whiskey taxes. With the new 1937 wine and whiskey levies in effect, don't be surprised to see the beverage tax climb out of the cellar.

Thus, we find that our total State revenues increased some \$18,200,000 during the two years 1935 to 1937 without any radical change in our taxing policy. So much for our revenue. Let's look at expenditures during the same period.

Schools and Debts Head Expenses

Reference to our "pie charts" shows that our largest single purpose of expenditure in 1935 and 1937 was public schools. The operation of our State school system

took \$16,665,000 or 32.7% of our total revenues in 1935. In 1937 this had increased to \$22,111,000 although the percentage of the total revenues had slipped back to 32.2. The lion's share of this increase was for teachers' salaries which were increased in both 1936 and 1937. The individual increases in teachers' salaries were not large, but when there are 23,000 of them it takes a tidy sum.

Our second largest expense in 1935 was the \$14,053,000 used to meet principal and interest payments on our State debt. Although this expense increased some \$350,000 in 1937 to \$14,401,000 it took but 20.8 per cent of our total revenues as against 27.6% in 1935, and fell from second to third place as a money taker. By retiring some \$7,100,000 of principal and paying some \$771,000 into sinking funds each year we will during the next ten years knock a big hole in this expense. The size of the hole will depend upon the amount of bonds we issue during that time.

Highway maintenance took 18.5% or \$9,426,000 of our total 1935 revenues. The increase in the number of miles of highway, in maintenance costs and the amount of maintenance and improvement work placed this as our second largest expense in 1937, taking \$15,459,000 or 22.1% of our increased revenues.

Other Costs Small by Comparison

Compared with the three major expenses, public schools, debt service and highway maintenance, other State expenses seem trifling; however, when all other expenses are totaled we have a neat sum. The combined total of legislative, executive, judicial and administrative expenses amounted to \$2,193,000 or 4.3% of total revenues in 1935. Increases in salaries, personnel, cost of supplies and the payment of salaries withheld by the State in 1933 and paid in 1937 raised this total to \$3,464,000 or 5% of total revenues. It is rather significant that these expenses have increased but \$1,240,000 or 56% since 1924 while the State's business, measured in tax revenues and expenditures, has increased over 300% or from \$16,500,000 in 1924 to \$69,180,000 in 1937.

Social welfare which includes the

cost of our correctional and charitable institutions, welfare, charities and other State Aid amounted to \$1,486,000 or 2.9% of revenues in 1935. In 1937 this item climbed to \$3,369,000 or 4.9%. The increase was due largely to the purchase of some \$935,000 worth of school textbooks to be used under the rental system and our increased activity with respect to vocational education. Two new State activities, the Unemployment Service, designed to place the unemployed back on the payrolls, and the Blind Commission designed to assist in the prevention and treatment of blindness, also helped to increase the cost of this item over its 1935 total.

Our higher educational institutions took \$1,303,000 or 2.5% of 1935 tax revenues. This item increased to \$2,032,000 or 2.9% in 1937. These totals represent only the amount of tax money going into operating costs, and do not include receipts at the various institutions for tuition, fees, board, etc. A large part of the increase in this item is due to increased personal service costs.

Pensions to Confederate Veterans and widows are gradually declining. Amounting to \$1,340,000 in 1929, this expense dropped to \$626,000 in 1935 and to \$543,000 in 1937.

Resume Highway Building

During 1935 there was practically no highway construction paid for out of State funds. The only highway construction was financed by the Federal Government, and the State expenditure of \$190,000 shown as going for this purpose went mostly for survey and other engineering work. However, the Great Father in Washington demanded that after 1935 any State wanting Federal money for highway construction must match Federal dollars with State dollars. Largely because of this policy our highway construction expenses increased to \$4,412,000 or 6.4% of total revenues in 1937.

The last item shown on the charts is the excess of revenues over expenditures. In 1935 we were able to operate our State on slightly over 90% of our revenues, thus leaving a balance of \$5,041,000. In 1937 it required slightly over 95 per cent of our total tax intake to

pay the cost of operations, leaving a surplus of \$3,389,000.

To summarize, we find that our total actual expenses paid from tax revenues increased approximately \$19,850,000 in 1937 over 1935. This increase can be accounted for as follows:

Highway maintenance	\$ 6,033,000
Public schools	5,446,000
Highway construction	4,222,000

Social welfare	1,883,000
Legislative, administrative, etc.	1,271,000
All other expenses	995,000
	<hr/> \$19,850,000

To Cut or Not to Cut?

We often hear the hue and cry against the cost of government and all of us would like to pay less tax, but would we care to reduce the

tax bill by curtailing highway maintenance? Hardly! Shall we cut teachers' salaries? Certainly not! Shall we stop building and rebuilding highways? By no means! Shall we stop our activities with respect to the blind, the insane and other unfortunates? Emphatically no! Well, let's pay the tax bill because we can cut out all other activities and get practically no tax relief.

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

In the Supreme Court. The Supreme Court is expected at a very early date to render a decision as to the validity of P. W. A. loans and grants, made to aid in the construction of government (city or county) owned power plants. In more than half a hundred cases power companies have sought injunctions to block the construction of power companies which would eventually compete with them. The first case to reach the Supreme Court—that of the injunction obtained by the Duke Power Company to prevent the construction of the Greenwood County, S. C., power plant financed by a P. W. A. loan and grant—was sent back to the lower courts for re-argument, and once more, after approval of the construction project by the lower courts, has reached the Supreme Court. Among the federal questions to be argued in this and similar cases likely to be argued along with the Duke Power Company case are: whether the W. P. A. program has involved unconstitutional delegation of legislative authority to the executive branch of the government; whether the power companies would be deprived of their property without due process of law; whether the Federal Government is encroaching on powers reserved to the States under the tenth amendment to the constitution; whether the General Welfare clause of the constitution permits the making of such grants and loans.

Soil Conservation Service. The National Emergency Council for North Carolina reports that "ap-

proximately 5,000 farms are co-operating with the Soil Conservation Service, which includes eight project areas and 18,000 CCC camps, with an area of more than 500,000 acres of land under agreement, of which 210,000 acres are crop land with one or more systems of erosion control plans being put into operation."

Federal Housing. Ninety-three per-cent of all houses insured by the Federal Housing Administration, since the beginning of its program in 1934, have been single-family houses. More than half of the insured mortgages are valued at less than \$5,000 each, and about one-third at less than \$4,000.

P. W. A. Nears End. Although the last Congress made provision for the extension of PWA for another two years, and there remain an estimated fifty million dollars appropriated for this program, but still unspent, plans have been announced for speedily bringing this agency to a close. It is explained that the two-year extension authorized by Congress was permissive rather than mandatory, and that it is felt the need for the continuation of this program has greatly diminished with improved business conditions, increased employment, etc. All state offices will be closed down around November 1, and five regional offices located at Atlanta and four other centers will be set up for the purpose of winding up the business of P. W. A.

Government Contractors and Tax Immunity. Taxation by the fed-

eral government which places a burden on a state government or taxation by a State government which places a burden on the federal government has for many years been held unconstitutional. "The power to tax is the power to destroy," and zealous guardians of the separate sovereignties have stretched the principle far. All are familiar with the fact that a state employee can be required to pay an income tax to the state government but not to the federal government, while the federal government can collect from a federal employee but not from a state employee. Pending before the Supreme Court of the United States at present are several cases involving the question of whether or not contractors engaged in federal construction projects may be subjected to a state tax on their receipts. The Department of Justice has urged the Supreme Court to modify its former position to the extent that certain non-discriminatory taxes levied by the States be made applicable to those doing business with the federal government, and like wise certain federal taxes made applicable to those doing business with the states or their political subdivisions. It is believed that the states would gain on the exchange. This attitude is in line with the feeling of many governmental officials that the field of tax immunity should be narrowed.

Reconstruction Finance Loans. According to a revised circular, RFC is authorized to make loans "for the purpose of maintaining and increasing the employment of labor," when such loans are "so secured as reasonably to assure repayment, to solvent industrial or commercial businesses, directly or in co-operation with banks and other lending institutions or by the purchase of participation."



The Institute of Government's series of four District Conferences last month drew an attendance of more than 1200 officials and was termed a great success from every standpoint. Each assemblage went on record as unanimously endorsing the in-service training program outlined by Director Coates, and the State Democratic and Republican Chairmen, Gregg Cherry and W. C. Meekins, joined in throwing the full weight of the major political parties behind the work. Mr. Cherry described the program as a "great college of practical government," and Mr. Meekins declared that there was "no reason why the two parties, between election times, could not get together on a program designed to serve the officials whom the people elect, regardless of party."

Pictured above is a part of the Western North Carolina group attending the opening meeting at Asheville. The general meeting was attended by more than 200 officials and the police School by more than 100 officers, but the sessions broke up at different times, making it impossible to secure a picture of the whole group. The other three centers where the meetings were held were Clinton, Tarboro, and Winston. Governor Hoey attended and spoke at two of the meetings, and Lieutenant-Governor Horton and Mr. Cherry went to all four. Representatives of new State agencies and commissions were also present to discuss with the legislators and local officials the activities of their departments along with ways and means for State-local co-operation.

Here and There With Local Officials

The Police School and District Conference of Legislators and local officials at Tarboro last month was one of the most enjoyable and successful in the series of four such meetings held by the Institute, and much of the credit goes to Tarboro's new Mayor R. Brookes Peters, Jr., who had charge of the local arrangements including the delightful barbecue at the City Hall. Mayor Peters is the kind of man who finds time to do many things well; in addition to presiding over the city's affairs, he is an attorney and president of the District Bar, Sunday School Superintendent and Church elder, and a former commander of the American Legion Post.

* * *

Miss Eva Wall takes pride in her record of 23 years' service as Win-

ston-Salem's assistant treasurer. Winston is North Carolina's second city, and its disbursements, all of which are handled by Miss Wall, run into the millions of dollars. Miss Wall has visited the finance departments of many of the large cities of the country and has made a diligent study of municipal finances since she finished college and began her career as a municipal employee.

* * *

A. Wayland Cooke will admit to having one of the largest offices of any Clerk of Court in the State, but not to an office of the size indicated by the article on the Guilford office in last month's POPULAR GOVERNMENT. The total number of administrators, trustees, and other fiduciaries appointed by Mr. Cooke since he came into office seven years ago is 2,596 and not the larger figure which resulted from a typographical error. Mr. Cooke incidentally has introduced numerous innovations in the Guilford system and presides over one of the most efficient Clerk's offices in the State.

A "NEW" SUPREME COURT APPEARS

The years 1935, 1936, and 1937 have witnessed a transition in the attitude of the United States Supreme Court toward recent legislation. The shift is best shown perhaps in the following table indicating the distribution of dissenting opinions:

Moderates	1935 Term	1936 Term
Hughes	5	2
Roberts	4	4
	9	6
Conservatives		
Van Devanter ..	2	11
McReynolds	6	20
Sutherland	5	14
Butler	5	17
	18	62
Liberals		
Brandeis	16	5
Stone	16	2
Cardozo	17	6
	49	13

Whereas the Liberals were the vociferous losers a year ago, the tables were turned at the last term and the Conservatives constituted the outspoken minority. The Moderates now appear better pleased with the Liberals than they formerly were with the Conservatives, thus strengthening the hand of the Liberals. With the substitution of Black for Van Devanter at the new term, it would seem probable that the Liberals will dominate the court.

At the recent Sheriffs' Association meeting, the "biggest sheriff," Joe S. Phipps (Guilford) showed the next largest sheriff, Mack Riley (Mecklenburg)—the smaller of the two weighs 250 pounds—the shotguns, gasguns, gas masks, and sub-machine guns supplied his office by the County Commissioners. Sheriff Riley was impressed, returned to Mecklenburg, and laid before his County Commissioners a request for similar equipment; last reports indicated that his request would probably be granted. In the matter of offensive and defensive weapons, probably the best equipped sheriff's office in the State is Sheriff Laurence Brown's (Buncombe); his office is provided, along with other equipment, with a high-powered, armored, pursuit car fitted with bullet-proof glass.

The New Deal Goes to Court

Table Prepared by DILLARD S. GARDNER

Date Decided	Statute Passed Upon	Result	Vote	Specific Case	Determining Factor Indicated in the Opinion
Jan. 7, 1935	N.R.A.	Invalid	8-1	Panama Refining Co. case, 293 U. S. 388, 79 L. Ed. 446.	Unconstitutional delegation of the legislative power to the President.
Feb. 18, 1935	"Gold Clause"	Valid	5-4	Norman case, 294 U. S. 240, 79 L. Ed. 885. Nortz case, 294 U. S. 317, 79 L. Ed. 907. Perry case, 294 U. S. 330, 79 L. Ed. 912. Holyoke Water Power Co. case, 57 S. C. Reporter 485, 81 L. Ed. Adv. Op. 383.	Constitutional regulation of the currency and of the national monetary policy.
May 6, 1935	R. R. Retirement Act	Invalid	5-4	Railroad Retirement Board case, 295 U. S. 330, 79 L. Ed. 1468.	Unconstitutional taking of property without due process of law (the statute provided for compulsory retirements and pensions).
May 27, 1935	N.R.A.	Invalid	9-0	Schechter Poultry Company case, 295 U. S. 495, 79 L. Ed. 1570.	Unconstitutional extension of federal power over hours and wages of labor; delegation of legislative power to the President.
May 27, 1935	Old Frazier-Lemke Act	Invalid	9-0	Louisville Joint Stock Land Bank case, 295 U. S. 555, 79 L. Ed. 1593.	Unconstitutional taking of property without due process (statute aided farmer-mortgagors at the expense of the holders of those mortgages by destroying five distinct rights of mortgage-holders).
Jan. 6, 1936	A.A.A.	Invalid	6-3	Butler case, 297 U. S. 1, 80 L. Ed. 477.	Unconstitutional invasion of states' rights, control of agricultural production being beyond the federal taxing power.
Feb. 17, 1936	T.V.A.	Valid	4-1 (+4 in part)	Ashwander case, 297 U. S. 288, 80 L. Ed. 688	Constitutional exercise of war powers and commerce powers to improve navigation, and of the power to sell property of the United States.
May 18, 1936	Guffy Coal Act	Invalid	5-0 (+4 in part)	Carter case, 298 U. S. 238, 80 L. Ed. 1160.	Unconstitutional attempt to regulate labor in coal mines as being beyond the commerce and interstate powers, and as being an invalid delegation of the legislative power and a denial of the due processes of law.
May 25, 1936	Municipal Bankruptcy Act	Invalid	5-4	Ashton case, 298 U. S. 513, 80 L. Ed. 1309	Unconstitutional invasion of states' rights in attempting to regulate the fiscal affairs of local governments.
June 1, 1936	N. Y. Minimum Wage Law	Invalid	5-4	Morehead case, 298 U. S. 587, 80 L. Ed. 1347.	Unreasonable restraint upon women, tending to deprive them of work.
Jan. 13, 1937	A.A.A.	Invalid	9-0	Rickert Rice Mills case, 297 U. S. 110, 80 L. Ed. 513.	Unconstitutional regulation of agricultural production, an activity beyond the power of Congress.
Mar. 29, 1937	New Frazier-Lemke Act	Valid	9-0	Wright case, 57 S. C. Reporter 556, 81 L. Ed. Adv. Op. 487.	Constitutional exercise of the bankruptcy power (the statute preserved three of the five rights of mortgage-holders mentioned in the Louisville J. S. Land Bank case and sufficiently safeguarded the other two rights).
Mar. 29, 1937	Wash. Minimum Wage Law	Valid	5-4	West Coast Hotel Company case, 57 S. C. Reporter 578, 81 L. Ed. Adv. Op. 455.	Constitutional restriction upon freedom of contract in the interest of the health, safety, morals, and general welfare of the people.
Mar. 29, 1937	Railway Labor Act	Valid	9-0	Virginia Railway Company case, 57 S. C. Reporter 592, 81 L. Ed. Adv. Op. 470.	Constitutional regulation of interstate commerce (the statute compels railroads to negotiate with labor as to hours, wages, etc.).
Apr. 12, 1937	Wagner Labor Relations Act	Valid	5-4	Jones & Laughlin Steel case, 57 S. C. Reporter 615, 81 L. Ed. Adv. Op. 563.	Constitutional regulation of matters having a substantial, and close, relation to interstate commerce.
Apr. 12, 1937	Wagner Labor Relations Act	Valid	5-4	Associated Press case, 57 S. C. Reporter 650, 81 L. Ed. Adv. Op. 603	Constitutional regulation of interstate commerce not abridging freedom of speech or of the press.
May 24, 1937	Social Security Act	Valid	5-4	Steward Machine Company case, 57 S. C. Reporter 883, 81 L. Ed. Adv. Op. 779.	Constitutional exercise of power to levy excise taxes. (Also, see <i>Helvering v. Davis</i> , 57 S. C. Reporter 904, 81 L. Ed. Adv. Op. 804, holding the Act constitutional as a valid provision for the expenditure of money in the interest of the general welfare).

Monthly Survey - - -

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

Courts and Records

By DILLARD S. GARDNER

Delinquent Fiduciaries. Irregularly and spasmodically (and even then only when it is suggested by the judge presiding) grand juries call on Clerks for reports on fiduciaries who are delinquent in filing reports and settlements. Too often it is a long and laborious task to compile this information. Sometimes the forthcoming report is merely a series of estimates which indicate that the work of the office in this field is commendably efficient; often a more diligently prepared and more accurate report shows a large number of delinquents.

It is refreshing to see such a report as that which Clerk Ben McCubbins handed the September, Rowan grand jury, one which is not only detailed and accurate, but also reflects a remarkably low percentage of delinquents. Only 4% of his guardians and administrators, and only 14% of his executors, are behind with their reports. Of 541 guardians, only 18 are delinquent; of 1480 administrators, but 61 have failed to comply with the law; of 419 executors, 58 are behind schedule. Although the report does not cover all estates, it indicates that 9 out of every 20 fiduciaries in Rowan are up-to-date in their accountings! In an editorial the *Salisbury Post* tendered Clerk McCubbins its "very best grade of congratulations"—and those throughout the State who know how difficult it is to achieve such a record in "cleaning up estates" will join heartily in the sentiment of the *Post*.

Card Records on Estates. One of the mechanical aids which has helped Clerk McCubbins is a card index on estates. The card system can be used to advantage in either or both of two ways: (1) As an alphabeti-

(Continued on page eighteen)

Taxation and Finance

By HENRY BRANDIS, JR.

Taxation of State Property. Now on its way to the State Supreme Court is a case to test whether or not property owned by the State Veterans' Loan Fund, not used for a public purpose, is subject to county and city property taxes. Judge A. Hall Johnston of the Superior Court has held that such property is exempt. The opinion is based on the belief that the language of the Machinery Act contains a broader exemption for State than for county and city property. Under recent decisions, county and city property not used for public purposes is taxable.

Instalment payment of taxes. Figures recently published by Carl H. Chatters, Executive Director of the Municipal Finance Officers' Association of the U. S. and Canada, based on reports made by 309 cities of more than 30,000 to the National Municipal Review, show that instalment collection of taxes in the larger cities is still on the increase. In 1936, only 80 of these cities were still using only one instalment. This represents only a small decrease from 1935, when 85 cities were single-payment spots; but in 1934 there were 175 such cities. Ten cities in 1936 used as many as ten instalments, and 53 used four; but the main bracket was that of cities with two-payment plans, comprising 150 municipalities.

Staggered Water Billing in Durham. The City of Durham Water Department staggers its work, reading and billing one section of the city every ten days in a way that spreads the work over the full month and keeps both office and field crew busy at all times. The change from the former quarterly system to the present system, made

(Continued on page ten)

Law Enforcement

By HARRY W. McGALLIARD

John Smith, Criminal. There are almost nine million index cards in the name files of the Identification Division of the Federal Bureau of Investigation. *John Smith* is listed on the name cards of more than 9,000 persons. Many other names are repeated hundreds of times. It can readily be seen that when fingerprints of suspects are not available, local officers, seeking assistance in making identifications, can greatly simplify the task of the Bureau by submitting—in addition to the suspect's name and aliases—all additional information possible, such as his physical description, arrest numbers, etc.

Young America. Prior to July 1, 1935, more arrests were made of persons 19 years of age than for any other age group, according to FBI statistics. During the last half of 1935, all of 1936, and first half of 1937, the age groups shifted, and more arrests were made of persons 21 and 22 years of age than for any other age groups. At the same time, 45,210 persons under 21 years of age were arrested and fingerprinted, amounting to 18 per cent of the total number arrested, on the basis of the records examined.

Counterfeit Money. The critics may jibe at Mr. Roosevelt's 59c dollar, but one class of persons still thinks it's good enough to imitate—the counterfeiters. The federal government seizes approximately \$1,500,000 worth of counterfeit money every year.

Fingerprint Files. More than 11,000 police departments, peace officers, and law enforcement agencies are contributing fingerprints and other criminal identification data to the Federal Bureau of Investigation.

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Scientific Aids to Crime Detection

WITHIN the limits imposed by constitution, common law and statute the investigating officer may exercise all his native abilities, sharpened by training, seasoned by experience and lengthened by increasing scientific techniques. Native abilities, even when sharpened by training and seasoned by experience, are narrowly limited. The words of the pursuing officer when shouted reach a short distance but when picked up by the telegraph as in *Simmons v Vanddyke*, 138 Ind. 380, 37 N.E. 973 (1894), or the telephone as in *Colorado v. Hutchinson*, 9 F. (2d) 275; C.C.A. 8th, 1925; 24 Mich. L. Rev. 712 or the radio they may reach to the next town, county, state or nation in the effort to locate and round up fugitives from justice. With the aid of the dictograph the officers can lift a whisper

By **ALBERT COATES, Director**
of the **Institute of Government**

from the lips of men in secret conference, and with the aid of the dictaphone they can record it for reproduction in court or wherever else it may be required.

The normal human eye can see only objects above a certain size or within limited distances. But *with the aid of the microscope* the officer can see things too small for the naked eye. He can detect the markings on a bullet and tell the gun from which it was fired as in *State v. Shawley*, 334 Mo. 352, 675 W. (2d) 74 (1933), where a ballistics expert fired test bullets from the accused's rifle and compared them with the bullet causing death, showing they had the same microscopic markings and had been fired from the same gun; tell whether a substance is paint and identify it as coming from a hit and run car as in *People v. Wallage*, 353 Ill. 30, 186 N.E. 540 (1933), where paint found on the shirt of the deceased was proved to be similar to the paint on the fender of the accused's automobile; detect animal or vegetable fibres, soils and dusts and help to determine the presence of the accused at the scene of the crime as in *Territory of Hawaii v. Joseph Young*, 32 Hawaii 628 (1931), where soil on the accused's trousers was proved to be similar to that at the scene of a rape. *With the aid of the field glass* he can from great distances keep unobserved watch over buildings where suspects are staying or expected, or "pay off" spots where extortion money is left. *With the aid of the X-ray* he can see through solid objects which would stop his glance on the surface, detect a bullet in human flesh and throw light on the causes of death as in *State v. Matheson*, 130 Iowa 440, 103 N.W. 137 (1905), where an X-ray photograph was used to show the position of a bullet in the body of the murdered man. *With the aid of the ultra-violet ray* he can detect erasures, reveal invisible inks, discover stains that have faded out of sight and throw light on forgeries,

secret messages and other clues which may aid in the solution of crimes as in *State v. Thorp*, 86 N. H. 501, 171 Atl. 633 (1934), where ultra-violet ray photographs were taken of footprints left on blood-stained linoleum and the prints found to match the soles and heels of the accused's shoes, where details of the footprints sufficient to make an identification were not visible to the naked eye.

With the aid of photography he can preserve the scene of the crime for use in further investigation and to aid in presenting the evidence in court, *State v. Matthews*, 191 N. C. 378, 131 S.E. 743 (1926), or to show how the parts of a still found in the possession of the accused would be assembled to make a complete still, *State v. Jones*, 175 N.C. 709, 95 S.E. 576 (1918), or to show how an automobile accident occurred as in *State v. Lutterloh*, 188 N.C. 412, 124 S.E. 752 (1924), where photographs showing the width and general topography of the road were used in explaining testimony, and the accused was convicted of manslaughter. He can make motion pictures of the suspect to disprove his frauds, as in the Harvey Green case investigated by the Federal Bureau of Investigation on the West Coast, where motion pictures were secretly taken of Green to show he was not blind as claimed by him in his attempt to collect government insurance. He may even get a picture of the criminal in action by the aid of an automatic camera device arranged so that it photographs a burglar as he breaks into a store. Pictures have also been taken of a holdup man robbing a stagecoach and of a tramp stealing food from an ice box on the back porch of a man's home. Drawings, maps and diagrams have been used to achieve a similar purpose as in *State v. Wilcox*, 132 N.C. 1120, 44 S.E. 625 (1903), where a witness used a drawing to demonstrate the relative position of places involved in the evidence given by him; as in *State v. Harrison*, 145 N.C. 408, 59 S.E. 867 (1907), where in a kidnaping

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SIX TAR HEELS FINISH NATIONAL POLICE ACADEMY

J. Edgar Hoover (left), Director of the Federal Bureau of Investigation, and Attorney General Homer S. Cummings are shown awarding diplomas at the "commencement exercises" of the National Police Academy in Washington recently. Albert Coates, Director of the Institute of Government, who served on the instruction staff, had nothing but praise for the work of the Academy and the "FBI," and Mr. Hoover expressed his regard for the training program. North Carolina officers are carrying on through the Institute by accepting an invitation to address a State-wide gathering of police in Winston-Salem, October 24.

Two North Carolinians were among the limited number of officers selected from throughout the country to attend the last session and to successfully complete the National Academy's rigorous course. They are Officer Lowdermilk of Greensboro, who is seen in the center foreground, and Officer Gay of Wilson. This brings to six the number of North Carolina graduates of the Academy, the others being Officers Anderson of Winston-Salem, Zimmerman of Lexington, Williams of High Point, and Lineberry of Charlotte.

TAXATION AND FINANCE

(Continued from page eight)

four years ago, is said to have increased collections and cut down delinquencies, as well as reduced expenses. The percentage of accounts which must be cut off for nonpayment is now less than 1% as compared with 2½% formerly. The City has 10,400 water accounts divided into three districts, and employs three crews of two men who can read a section in two or three days. The bills, which are sent out on the 1st, 10th and 20th, are delivered by the same men who read the meters, saving the cost of postage. On the days when they are not reading or delivering, the crews are available for re-checking readings, repairing meters and other miscellaneous duties. The Department's billing and posting machine is kept in operation every day. When the billing is finished, crediting is immediately started.

Books for Supervisors and Assessors. The National Association of Assessing Officers has recently published two books of great interest to tax assessing officials and to others interested in valuation work. The first is "Assessment Principles and Terminology," containing a statement of sound principles of assessment, with a brief and pointed discussion of each, and also containing a glossary of terms used in assessment work. The second is "Construction and Use of Tax Maps," containing a very helpful discussion of types of maps, their uses, preparation and cost. The latter should be of particular interest to officials in North Carolina, where maps are universally needed and almost universally lacking. Aerial photography, in which many North Carolina Supervisors have already expressed keen interest, is one of the topics considered.

Controlling tax prepayments by advertising. By way of the *Wilmington Star* comes news that prepayment of taxes showed a decline there this year of some \$12,000, and this is attributed to the fact that no special effort was made to secure prepayments and no advertising was used. The survey made in connection with the article on prepayments published in the July issue of *POPULAR GOVERNMENT* revealed several other cities in which officials be-

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Health and Welfare

By HARRY W. McGALLIARD

of the Staff of the Institute of Government

No Security for Property Owners. The State Director of Public Assistance, N. H. Yelton, has recently ruled that only in "far-fetched" instances will persons owning more than \$500 worth of property be eligible for assistance under the social security laws. The theory is, of course, that the man who is worth over \$500 doesn't need public assistance.

Labor Laws for Women. Minimum-Wage, Maximum-Hour legislation for women does not always prove to be the unmixed blessing it is claimed to be when the question is agitated in legislative halls. Here are two examples of complaints made by women in some states: (1) In one state men and boys have replaced women workers in many restaurants and cafes; (2) In another state, the employer cut the salaries of his higher-paid women employees and added the difference to the lower-paid workers, and thus complied with the law without adding a cent to his payroll.

Unemployment Census. In connection with the projected unemployment census, the *Christian Science Monitor* urges the necessity for a non-political fact finding commission to investigate conditions to the end that the following questions may be answered on the basis of fact rather than ignorance and prejudice: "With the rising volume of production, why are so many still on relief? . . . Has employment increased in proportion to increased production? . . . Has the machine displaced many workers forever? . . . Is public assistance to be made permanently available to those unable to work? . . . What may be expected in the way of improved business conditions and consequent re-employment? . . . How can public employment agencies be made more useful? . . . If a large number must be cared for, what are the best methods of doing it, and what are the relative merits and disadvantages of work relief and direct relief? . . . How useful and efficient are the present relief methods and how well do they co-ordinate with each other? . . . What

are the maximum amounts which can be made available for public assistance without endangering the national and local government credit? . . . Do people actually suffer under the present plan? . . . How adequate is relief? . . . Do people really prefer to take relief rather than work?" Until such questions as these are answered, the newspaper urges, no sound program of long-range relief can be planned.

September Security Benefits.—More than 10,000 needy persons in North Carolina received Old Age Assistance benefits for the month of September, while 1,310 needy blind persons received blind benefits averaging \$13.60 per person. The average for Old Age Assistance grants in North Carolina has been and will continue to be below the national average, due to the size of the appropriation for this purpose. The average payment in this State was \$9.39 for July and \$8 for August, as compared with a national average grant of \$18.51 per month. The State Board is urging that no grants be made of less than \$5, and a State average of around \$10 per month is anticipated.

Whipping Again. At a recent meeting of the directors of the North Carolina Conference for Social Service, whippings of prisoners for disciplinary purposes were described as "cruel and inhumane," and Colonel Joseph Hyde Pratt of Chapel Hill was named Chairman of a committee appointed to present to the Governor a resolution opposing the practice.

Institution Inmates. On September 30, 17,724 persons were confined in the charitable and correctional institutions of the State. These inmates fall into the following groups:

Prisoners in state prisons and prison camps	9,102
Mental patients in the four state hospitals	7,049
Physical defectives	633
Juvenile delinquents	890
Veterans and widows in the two Confederate homes	50

There were confined in 74 county jails a total of 1,377 prisoners who were either awaiting trial or serving jail sentences. Of this number, 130 were persons under 16 years of

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HEADS OFFICERS OF CAROLINAS

The Association of Law Enforcement Officers of the Carolinas, of which B. M. "Jimmie" Haynes of Cramerton (left) is President, had its beginning when 22 officers from the two Carolinas held an impromptu meeting in Raleigh on December 9, 1934. The Raleigh Conference was called to co-ordinate the efforts of the departments in apprehending a gang of thieves which had been operating for months in larger towns in the Carolinas.

The results from co-operation within this small group were so gratifying that a second meeting was scheduled for the next January at Columbia, S. C.

Since the Columbia meeting the Association has met regularly every three months. Towns in the two states have alternated as hosts to the meetings, and attendance has multiplied from the original 22 at Raleigh to more than 800 at the June, 1937, meeting in Asheville.

Find North Carolina Cases on Doctrine of Judicial Supremacy before Marshall

Chief Justice Marshall's famous opinion in the case of *Marbury v. Madison* is generally credited with originating the doctrine of judicial supremacy, or the power of the courts to declare legislative acts unconstitutional and void, which has been so much discussed in recent months. However, a study of judicial history reveals that this doctrine, which was to have a far-reaching effect on the American governmental system, was expounded in North Carolina cases several years before Marshall's famous pronouncement, and that North Carolina played one of the leading parts in its development.

Judge Hatcher and Dr. Haines insist that there were cases in which the courts held acts unconstitutional as early as 1728, and certainly *dicta* in *Commonwealth v. Caton* (Va.) indicate that this power of the courts was urged as early as 1782. In *Rose's Notes* there is this significant statement:

"It can not be claimed for the principal case (*Marbury v. Madison*) that it is the first case in this country in which this point was involved and adjudicated in favor of the authority of the judiciary. Judge Dillon... finds *Holmes v. Walton* (1780), referred to in *State v. Parkhurst*, 4 Halst. (N. J.-1804) 444, to be the first case on the question."

In *Bayard v. Singleton*, 1 N. C. 5, decided 16 years before *Marbury v. Madison*, the highest North Caroli-

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na court acted upon this doctrine and unanimously declared an act of the General Assembly unconstitutional. James Iredell was chief counsel for the plaintiff in that case. As *Bayard v. Singleton* was decided three years before Iredell was appointed Associate Justice of the United States Supreme Court, it appears certain that he carried the memory of this decision to the highest court.

Professor Corwin, in his scholarly *The Doctrine of Judicial Review*, emphasizes the importance of *Bayard v. Singleton*:

"From North Carolina, just as the Philadelphia Convention was assembling, came the idea of judicial review based squarely on the written constitution and the principle of the separation of powers."

In the same work he lists North Carolina as the first of eight states "definitely committed to the doctrine of judicial review" prior to *Marbury v. Madison*.

North Carolina's relation to the doctrine is not a mere figure of colloquial imagination, for in Iredell's

little-known opinion in *Calder v. Bull*, 3 Dall. (U. S.) 399, he made this clear announcement:

"There are then but two lights in which the subject (the authority of a legislative body) can be viewed. 1st. If the legislature pursues the authority delegated to them, their acts are valid. 2nd. If they transgress the boundaries of that authority, their acts are invalid. . . they violate a fundamental law, which must be our guide, whenever we are called upon as judges to determine the validity of a legislative act."

Justice Iredell wrote these words eleven years after *Bayard v. Singleton*, and—what is more significant, perhaps—five years before Chief Justice Marshall wrote his famous opinion in *Marbury v. Madison*. A year before *Marbury v. Madison*, Chief Justice Marshall himself, on the circuit in North Carolina, adopted the theory of *Bayard v. Singleton* and pointedly declared that a legislative act contrary to the Constitution is void. (*Odgen v. Nash*, 3 N. C. 227). Thus through at least three reported cases—*Bayard v. Singleton*, *Calder v. Bull*, and *Odgen v. Nash*—it is possible to establish a direct connection between North Carolina and the far-reaching doctrine of judicial supremacy as expounded, not for the first time, but possibly with greatest historical effect, by Marshall in *Marbury v. Madison*.

Unauthorized Practice

Unauthorized practice of law thrives upon the lethargy of lawyers. Examples lie close at hand in every city, town, and village. The chief offenders are to be found among notaries; justices of the peace; courthouse officials; stenographers; real estate agents and brokers; collection agencies adjusters; bonding, banking, title, and trust companies; accountants; and credit agencies. Many lawyers who know of unlawful activities have stood mute when they should have raised their voices in protest. Other lawyers, even more remiss, have participated in (and sometimes profited from) such conduct, feeling safely beyond the law in the knowledge

that one cannot compound a misdemeanor.

Unauthorized practice not only results in the frequent butchering of legal rights and mangling of valid deeds, mortgages, and wills, but also exposes the lay practitioners to suits for civil damages, to criminal prosecution, and to citations for contempt of court.

Bar organizations in Michigan, Kansas, and other states recently sent to laymen engaged in doubtful practices letters pointing out specific, unlawful acts, and the criminal and civil liabilities to which unlawful practitioners expose themselves. Often such educational work has alone accomplished excellent results. North Carolina has statutes and decisions defining with considerable certainty the area of "unauthorized practice," but few local bars have moved into action against this serious, if touchy, problem.

Case Comment

Dog Damages—Liability of County—Claims—A case just decided holds that the dog damages provided for in C. S. 1684(b) are to be paid only out of dog taxes, and no liability is imposed on a county in its corporate capacity, and no action can be maintained against a county therefor. However, the Court ruled, if the Commissioners arbitrarily refused to consider and determine Plaintiff's claim, as was alleged, the Plaintiff could bring an action of mandamus to compel the Board to consider his claim and determine whether the proof was satisfactory to the Board. *McAlister v. Yancey County*.

Municipal Corporations—Injuries—Negligence—In a suit against a town for personal injuries caused by its negligence, the town plead contributory negligence, and the jury answered the issues in favor of the Plaintiff. The Supreme Court being evenly divided, one Justice not sitting, the decision of the Superior Court was affirmed "without becoming a precedent." *Braswell v. Town of Wilson*.

Township Debts—Assumption by County—Debt Limitations—In a previous case, *Thompson v. Har-*

NEW DISBARMENT CASE

The West Case, handed down as this went to press, sustained the previous disbarment by the State Bar. There are two methods of disbarment, judicial and legislative, the opinion read, and appellant could not successfully claim that the procedure deprived him of his right to trial by jury, when he was tried by a jury on appeal to Superior Court. The Court also stated that the Parker Case was decided solely on the particular record, which seems to leave the question of the State Bar's jurisdiction over offenses prior to July 1, 1933, yet to be passed upon squarely by the Court.

nett County, 209 N. C. 662, the Court held that certain township bonds were incurred for the benefit of the County as a whole and that the County had a right to assume the debt. The taxpayer then sought to enjoin the Commissioners from issuing bonds to refund the township debts. The motion was denied and the issuance of the bonds declared a valid and lawful exercise of the authority vested in the Commissioners. The new Debt Limitation Amendment does not restrict the power to issue such bonds without a vote, the Court held, as one of the exceptions set out therein is "to fund or refund a valid existing debt." *Thompson v. Harnett County and Board of Commissioners*.

SCIENTIFIC AIDS TO CRIME DETECTION

(Continued from page nine)

trial a map was used to show the location of a residence; as in *State v. Kee and Matthews*, 186 N.C. 473, 119 S.E. 893 (1923), where diagrams were used to show the relative position of several objects in the vicinity of a bank which had been robbed.

With the aid of moulage he can make faithful reproductions of tracks which would disappear with the melting of snow or the falling of rains or the moving of traffic; or the mark left by burglars' tools in forcing open windows and safes.

With ever increasing persistence scientists have been extending knowledge on many fronts and constantly developing skills for the use of law enforcing officers in detecting crime: they can tell the officer whether a substance is poison as in

State v. Bowman, 80 N. C. 432 (1879), where chemical examination of tissues and organs of a dead body disclosed the presence of strychnine; whether the death of a person found in a burned building was due to the fire or to the poison found in his system as in *State v. Holly*, 155 N.C. 485, 71 S.E. 450 (1911), where the body of an eighteen year old boy was recovered from a burning hotel, and a medical expert attributed his death to poisoning with strychnine; whether the death of a person found in a river was due to drowning, or to other causes as in *State v. Wilcox*, 132 N.C. 1120, 43 S.E. 819 (1923), where physicians testified that absence of water in the lungs of a murdered woman showed that she had not died from drowning; whether a blow or a wound was sufficient to cause death, *State v. Messer*, 192 N.C. 80, 133 S.E. 404 (1926); whether the suspect is the man who left his fingerprints at the scene of the crime, *State v. Coombs*, 200 N.C. 671, 158 S.E. 252 (1931); whether the bullet which shattered the windshield or window was fired from within or without the car or building as in the trial of John Paul Chase, a member of Dillinger's gang, for murder, where it was proved that bullets fired through the rear window of the car came from inside and not outside, refuting Chase's claim that a bullet from his pursuer's gun came through his rear window before he fired; whether the hand of the suspect is the hand that wrote the extortion note as in the case of Frank Hampton Crump tried in the U. S. District Court at Rockingham in 1936, where samples of his handwriting were compared with that used in the extortion letter and identified as of the same person; whether notes were counterfeit as in *State v. Cheek*, 35 N.C. 114 (1851); whether the typewriter in the accused's possession is the one that was used in writing the extortion letters as in *State v. Moore*, 204 N.C. 545, 168 S.E. 842 (1933); whether the blood found on clothes is human blood or animal blood as in *State v. Dunn*, 161 La. 532, 109 So. 56 (1926), where tests showed that stains on an article contained in the ruins of a burned house were human blood.

County Offers Broad Program of Activities and Services ---Yet Per Capita Cost to Each Inhabitant Is Only 74c Per Month

5. The County foots the entire local appropriation for relief and welfare among the needy in both the rural and urban areas except, of course, for the work done by the various private agencies and

6. The farm and home demonstration agents, white and colored, and the soil erosion work reach most of the farm homes in the County each year, bringing new methods, practices, and direct assistance which resulted in changes in prac-

Alamance's Budget, in common with the budget of every North Carolina county, is up for 1937-38 due to the placing of the additional burden of Social Security on the counties. This item alone will cost Alamance \$25,485 this year, although the expenditure will bring the County an additional \$47,562 in State and Federal funds for the more adequate provision for its needy, and it is calculated in time to come to result in marked reductions in the County's expenditures for relief. The remainder of the increase is the result principally of a program of additional school improvements, designed to round

1977-78 Budget Distribution

Category	Percentage	Amount
County Debt Service	29.2%	\$103,111,96
School Debt Service	17.2%	\$62,467,62
Schools - Capital Outlay	11.4%	\$40,034,26
Schools - Current Expense	14.8%	\$52,349,68
Other Departments	3.4%	\$12,041,88
Grant and Welfare	0.45%	\$22,910
Law Enforcement	2.5%	\$8,500
County Jail	3.2%	\$11,354
County and Jail Debt	4.0%	\$14,230
Two Auditors Collecting \$2.00 (2)	2.9%	\$10,000

A pie chart illustrating the distribution of 1980-81 expenditures by major category. The chart is divided into 11 segments, with the largest segments being School Debt Service (21.0%), County Debt Service (23.9%), and Schools - Capital Outlay (11.7%).

Category	Percentage	Amount
School Debt Service	21.0%	\$96,306.84
County Debt Service	23.9%	\$106,709.22
Schools - Capital Outlay	11.7%	\$52,156.75
Schools - Current Expenses	13.4%	\$59,585.75
All Other Expenditures	5.3%	\$23,778.95
Salaries and Wages	4.2%	\$18,334
General Interest	3.9%	\$17,085
Depreciation	2.3%	\$10,230.50
Grants and Contributions	1.3%	\$5,661
Costs of Good and Bad Debt	1.3%	\$5,661
Electricity	0.8%	\$3,570.00
Food and Lodging	0.2%	\$90
Tax Rebating and Collecting	2.7%	\$11,980

Alamance County renders numerous services such as public schools, law enforcement, administration of justice, custody of public records, public health, and care of the poor which the average citizen either could not provide for himself or which would cost him many times the sum he pays the County therefor in taxes. For the average cost of Alamance's activities and services to each citizen, as shown by the above charts, will be only 74¢ per month for 1937-38 despite the addition of new expenditures for Social Security, school construction, and district school debts. Compare this with your bills for shelter, food, utilities or other items, and see if you can find another business which renders greater service for the money.

out the County's school plant and make it one of the best in the State, and of the County's assumption of principal and interest payments on the debts of the Burlington, Mebane, Graham, and Haw River school districts. The last-named item alone accounts for an increase of \$33,841, but this move, which the Board of Commissioners was required to take as a result of the decision of the North Carolina Supreme Court in the case of Mebane Charter School District and City of Mebane v. Alamance County Boards of Commissioners and Education last spring, puts the schools and school districts of Alamance on a county-wide basis. Moreover, this is only a shifting of the burden from the district taxing units to the county taxing unit rather than a new expense. The County's assumption and payment of these district school debts will do away with the school taxes formerly paid by taxpayers of such districts except for the taxes for a part of the Burlington district's debt which the Court ordered the District to retain and for which the County makes and collects a 5c levy for its payment.

The accompanying charts show Alamance's actual expenditures for the various public purposes for 1936-37 and its budget appropriations for 1937-38. The total increase, it is seen, is \$92,855, which is accounted for by the three foregoing items:

Item	Expend. Approp.		Increase
	1936-37	1937-38	
Social Security	\$————	\$25,485.00	\$25,485.00
Schools—capital outlay	15,024.26*	52,156.75	37,132.49
Schools—debt service	62,467.82	96,308.84	33,841.02

*Sum levied for on ad valorem basis. Does not include \$25,000 borrowed by County Board of Education from State Literary Loan Fund on 10-year curtailment basis.

Schools, Debts Take Two-Thirds of Budget

Two items in the 1937-38 chart stand out above the others. First, the expenditure for schools, including current expense,

capital outlay, and debt service, will take \$208,051, or 47% of the whole budget. And second, the expenditure for County Debt Service other than schools will take \$106,709, or 24% of the whole budget. All of the County's other activities and services, including law enforcement, courts, public records, public health, agricultural promotion, welfare and Social Security, and general administration, will take only \$130,985, or 29%.

The public debt and the requirements for county debt service are noteworthy of special mention. The total debt is \$2,390,040 (including the \$277,000 debts of the Burlington and Mebane Charter School Districts which the County took over as a result of the recent decision of the Supreme Court. The County was already servicing \$171,000 of these bonds, but this and the other \$106,000 now become direct County obligations.) This is 7.6% of the assessed valuation of the taxable property in the County, and while this percentage is not out of line with corresponding North Carolina counties, it will be seen from the 1937-38 Chart that it will take \$203,018, or 45% of the whole budget, to meet the principal and interest on county, school, and local school district debts this year. This debt of roughly two million dollars was contracted principally for schools, highways, and the Court House, and the taxpayers have to show for these expenditures one of the best school and road systems of any county. They can also find consolation in the fact that the Court House and the school and road systems are all in good shape and no outlay of this magnitude will be required for these important purposes in the future. The County refunded \$809,000 of its bonds last spring and succeeded in getting the base interest rate scaled down from 4.95% to 4.16%, saving the County several thousand dollars each year or a total of \$110,566 over the life of the bonds. And it has worked out an orderly plan by which the principal and interest payments are spread over a period of years and the County can meet the schedule of installments without having to pinch due to heavy maturities in any one year, yet hold the total

interest down by paying out in as short a period as possible.

Per Capita Cost Ranks with Lowest

Alamance's tax rate for 1937-38 has just been set at \$1.18. The increase over last year, as pointed out before, is due principally to the new expenditures for Social Security and school district debts and to the program of additional school improvements.

The \$1.18 rate will apply to a total assessed valuation of \$33,500,000 of real and personal property in the County. This valuation, which was arrived at by a complete revaluation of all property in Alamance along scientific, business principles this year, is not quite 9% higher than the valuation for 1936-37. The increase is due chiefly to new buildings, machinery and homes rather than to a general increase in the valuation of property formerly on the books.

Classifying Alamance's tax rate of \$1.18 as an average rate among North Carolina counties, the total expenditures for County activities and services and the consequent cost to the taxpayer are still low due to the valuation on which the rate is based. Taking the total 1937-38 budget of \$445,745 and dividing it by the 50,000 estimated population of the County, it is found that the average cost of County activities and services to each man, woman and child for 1937-38 will be 74c per month and the average per capita cost for that part of the budget to be raised by ad valorem taxes is 65c per month. This is one of the lowest per capita figures of any North Carolina county in Alamance's general classification as to size, population, and wealth.

A brief report on the work and activities of the major individual offices follows.

LEGISLATIVE AND POLICY MAKING

Wade Huffman, Chairman, L. E. Guthrie, W. Lawrence McPherson, Walter R. Sellars, and W. E. Stainback, County Commissioners.

A Board of five Commissioners serves as the County's general legislative and policy-making agency. The Board also exercises general supervision over the

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various County offices and activities and appoints some of the chief officials including the Chairman and Tax Supervisor, Accountant, Treasurer, and Attorney. However, the Sheriff, Clerk, Register and other important officials are elective and are directly responsible to the people. The Commissioners are part-time officials only and receive a small per diem for the days they are in attendance at meetings or otherwise engaged in the performance of their duties.

ADMINISTRATIVE AND FISCAL

Wade Huffman, Chairman; J. S. Vincent, Accountant; George E. Holt, Jr., Treasurer; and H. J. Rhodes, Attorney.

Alamance has a full-time Chairman who is the County's chief administrative officer and is responsible to the Board for carrying out its policies. The County gets along with one of the smallest administrative and fiscal set-ups of any unit its size. The cost of listing, assessing, and collecting taxes, a big item in other counties, is also one of the lowest, as the Chairman serves ex officio as tax supervisor and tax collector, not to mention purchasing agent. His assistant is also the County Treasurer, who is in charge of the custody of all county funds, and there is one deputy tax collector. The County Accountant with one clerk handles both the County's accounting and the collection of delinquent taxes. And the County Attorney brings all tax foreclosures and serves as general adviser to the Board of Commissioners.

COURTS AND ADMINISTRATION OF JUSTICE

Cooper A. Hall, Judge of County Court; Walter D. Barrett, Solicitor of County Court; and E. H. Murray, Clerk of Court.

Alamance is one of the few counties to provide both a Superior and General County Court. Together the two courts handle all cases, arising in both rural and urban areas, outside the jurisdiction of the Mayors' and J.P. courts, and save the municipalities the expense of maintaining recorders' courts. One Clerk serves as Clerk of the two Courts and also as Judge of Probate and Judge of the Juvenile

Court. Some idea of the work of the two Courts and of the Clerk for a normal year may be seen from the following table:

Civil cases docketed	174
Criminal cases docketed in county court	826
Special proceedings instituted	79
Administrators qualified	95
Guardians qualified	25
Subpoenas docketed	522
Fines and forfeitures collected	\$14,102

The Office of Clerk, which requires an assistant and two deputy clerks, also handles the recording of all judgments and wills in the County and of numerous miscellaneous papers not recorded with the Register of Deeds. In addition, the Clerk, in his capacity as Juvenile Judge, disposes of around 20 cases each month.

REGISTER OF DEEDS

J. G. Tingen, Register

All deeds, mortgages and public records generally, except those filed with the Clerk of Court, are recorded in the office of the Register of Deeds. Some idea of the volume of work handled by this office may be obtained from the fact that the Register and his three assistants last year collected \$7,209 in fees. The Register also issues an average of about ten marriage licenses a week.

LAW ENFORCEMENT

H. J. Stockard, Sheriff

Four full-time deputies are attached to the Sheriff's Office and receive a combination of salaries and fees. One of the deputies is specially assigned to maintaining the fingerprint and criminal statistics division which has recently been added to the Sheriff's Office. In addition to the four full-time deputies, there are 16 additional deputies engaged in part-time law enforcement duties throughout the county.

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Alamance County's Home Store where Style and Quality
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PUBLIC SCHOOL SYSTEM

M. E. Yount, Superintendent

Alamance has a total of 56 public schools, rural and urban, which are busy educating a total of 13,034 children, including the Burlington city unit, which is under the supervision of a City Superintendent. The plant is known as one of the best county systems in the State, and it was made so by a program of additions, enlargements, and modernization carried out during a time of depression, low building costs, and federal grants, at a minimum cost to the taxpayers.

The County's \$410,000 P.W.A. school program, which was one of the largest in the State and which cost the County only 55% or \$226,000, the Federal Government putting up the balance, gave the County two new buildings plus needed additions at nine other schools. In addition, plumbing facilities were added, and buildings remodeled where necessary, and \$25,000 was used in the purchase of new furnishings and furniture. After the P.W.A. program was completed in August, 1936, the County made additional improvements, bearing the total expense, at several other schools, and it has appropriated another \$52,156 for additions and improvements at various city and rural schools this year, to round out its excellent school plant.

The County directly administers all rural schools and, as pointed out before, contributes a large share of the expenses of the Burlington city unit. The following table shows the extent of Alamance's school system and gives the taxpayer some idea of the facilities made available to its children:

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Texaco Products

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Prompt Delivery

Alamance School Statistics (including Burlington city unit)

	White	Colored
Number of schools	23	33
Number of pupils	10,204	2,830
Number of teachers	279	83
Number of busses	43	4
Value of school plant	\$1,592,105	

PUBLIC HEALTH

Dr. H. B. Moore, County Health Officer

Alamance maintains a part-time health officer who serves as physician for the county jail and the county home, acts as quarantine officer, and devotes a great deal more time to promoting county health work. The health officer also headed up the immunization program under which a total of 12,436 residents received free vaccination last year for typhoid and diphtheria. The county expended a total of \$3,429 for this important health campaign.

AGRICULTURAL EXTENSION

J. W. Bason, Farm Agent

Alamance maintains a broad program of agricultural extension training and assistance for its farm people, providing not only the customary Farm Agent but also two assistant agents, a home agent, and a colored farm and colored home agent. The County was one of the first to help its farmers purchase a tractor and terracing equipment for soil erosion work by underwriting the purchase price, and 3,740 acres on 187 farms were terraced

on a cost basis last year under the supervision of one of the assistant agents. The Farm Agent's Office also handles the Federal soil conservation contracts, which resulted in the payment of benefits to 1,134 Alamance farmers last year.

The number of farm homes and persons reached by the agricultural extension work, by telephone, mail, personal visits, demonstrations, and meetings, is revealed in the following table showing some of the Office's activities for the last year:

Different homes and farms visited	997
Total visits to homes and farms	1,996
Office calls relating to extension work	5,311
Telephone calls relating to extension work	3,089
News articles published	88
Individual letters	5,490
Number of different form letters circularized	77
Bulletins distributed	1,078
Attendance at training meetings for local leaders	242
Attendance at method demonstrations	4,155
Attendance at result demonstrations	900
Attendance at other meetings of extension nature	5,274

The above table covers only the activities of the Farm Agent's Office; similar activities are carried on by the Home Agent for farm women and by the Negro agents for their race. However, the best test of the value of this work is to be found in the fact that the number of farms on which changes in practices were made last

year as a result of the County's agricultural extension work is estimated at 2,000.

PUBLIC WELFARE

L. C. Williams, Superintendent

The Welfare Department carries on all public relief and welfare work in Alamance, in both the rural and urban sections. Some idea of the scope of this program can be gained from the fact that the Department last year handled 8,976 consultations and 1,240 visits to service cases, and the average number of persons receiving help from the County each month was 256 for poor relief, 29 for mothers' aid, 12 for boarding home care, and nine for hospitalization.

In addition to the relief and welfare work which is wholly administered and supported by the County, Alamance is paying the entire local share of, and the County Welfare Department is administering, the new Federal-State-County Social Security Grants to the needy Aged, Dependent Children, and Blind which began July 1. These will provide monthly grants for an estimated 35 blind, 350 aged, and 300 dependent children in Alamance, at a total cost of \$25,485 to the County and \$47,562 to the State and Federal Governments.

In addition to the above activities, the County Welfare Department renders numerous services in connection with wide and varied types of welfare work.



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ATTORNEY GENERAL RULES IN FAVOR OF WOMEN JURORS

(Continued from page two)

cretions. It is, at least, contrary to the trend of decisions to add another interpretation even less well founded in reason and more embarrassing in result.

Other Incidents of Jury Trial Abolished

Our own State has not been slow to distinguish between those things which were essential and those things which were merely convenient in common law jury trial, and has not hesitated to substantially alter the features and incidents of the common law. Notwithstanding Article I, Sections 13 and 19, of the State Constitution, our own statutes, with complete approval of our Supreme Court, have abolished many of the incidents of trial by jury at common law which were considered then as extremely important, and which even now by every standard we can apply, appear more substantial than any distinction of sex:

Juries may now be taken from the box and not by a free selection of the sheriff from the body of the county, as was practiced at common law. C. S. 2312. The judge is no longer permitted to aid the jury with his opinion on the facts, considered so important at common law. C. S. 654. The accused is not necessarily tried by a jury of the vicinage as at common law. C. S. 473. It is not necessary now that a man be tried by his "peers," or even by a freeholder, if the jury be drawn from a box. C. S. 2312. See definition of "peer," Bouvier's Law Dictionary. Trial by one's peers is stressed in the Bill of Rights . . .

Has nothing happened to the civil and political status of women since common law days demanding a different orientation of the courts toward this subject? I say much has happened.

Woman's Status Changed

Under the North Carolina Constitution and laws, an unmarried woman stands as the equal of man with respect to her civil rights. Married women have been emancipated with respect to their separate estate, both by the Constitution and the law, where mutual marital rights are not involved. With the adoption of the 19th Amendment to

the Federal Constitution, a whole flock of related consequences of the most important nature came in. The 19th Amendment conferred upon women the right to vote and, in so doing, by operation through our Constitution and laws, automatically conferred upon her other civil and political rights. Article VI, Section 7, of the State Constitution, predicates the right to hold office upon the right to vote, and such office-holding is an unchallenged fact today. Article VI, Section 2, provides for forfeiture of the right to vote upon conviction of a felony, and there is a similar provision in Article VI, Section 8, as to office holding. Both of these latter sections are significant in that with conviction of a felony goes not only the right to vote and hold office, *but the citizenship of the felon*; and it is provided that he cannot vote or hold office until his *citizenship has been restored*.

Both in the Federal Constitution and in all writings upon the subject, citizenship means more than the mere residence, or the protection of the laws which this insures. It includes a more positive body of rights which are thus subject to forfeiture—the free enjoyment of civil and political rights on a plane of equality with other citizens.

I think it is clear from this that we are dealing only with the common law, and this, of course, may be changed by legislative enactment at will. "No one has a vested interest in the common law."

We have been in frequent necessity of relieving against the injustice and barbarity of the common law. Our whole criminal code has been revised to meet the demands of a more enlightened age. Crimes and their punishment have been readjusted in the interest of humanity. In respect to the treatment of women, the courts have not hesitated to give both aid and impetus to the legislature . . .

In many of the States from which the above cited opinions were taken, while it was held that the Constitution itself offered no barrier as to the eligibility of women on the juries, the statutes themselves, *ex vi termini*, discriminated against women, and these had to be changed. In North Carolina there is no need for further statutory enactment, since nowhere

in our procedure for the selection of jurors nor in the laws relating to their qualifications is this distinction made. On the contrary, a word applicable to both sexes has been used—the word "person." The present law, therefore, adapts itself readily to the selection of women, once the supposed constitutional barriers have been passed. C. S. 2312 . . .

Thought Eligible under Present Laws

To say that when our statute was enacted the word "person" meant a "male person" is not accurate. It never meant that, there or elsewhere. All that could be said is that on account of constitutional inhibitions, it could not be made at that time applicable to women. Of course, if one desired to lay a ghost or remove a mere mental obsession, the law might plainly state that females are included. The word "person," however, has continuing life and must be construed to mean women as well as men when other parts of the law permit this common sense application to be made; and, in this instance, there is no occasion for placing the word "person" in a legalistic straight jacket.

The general terms which I find in our Constitution relating to jury service, in the light of the decisions which I have above cited, certainly in their interpretation lend themselves as readily to progress as to retrogression. In my opinion, giving the 19th Amendment of the Federal Constitution its full effect, in connection with our own Constitution and laws, conferring upon the women of the State civil and political rights, has rendered women eligible for jury service under our existing statutes without further legislative enactment. If our Supreme Court holds that to be the law, the last vestige of civil and political inequality with men will have been removed.

Conditions in this State are such that the administration of the law demands the support and attention of the whole citizenship. This end is not served under a system which disfranchises that half of the citizenship which is most vitally interested in the protection of society and to which, in large part, we owe the integrity of our moral standards.

COURTS AND RECORDS

(Continued from page eight)

cal index to all pending estates, each card carrying a summary of the status of the estate together with all pertinent record-page references; and (2) as a continuous, daily memorandum indicating the estates in which reports, accountings, or settlements are due. Heretofore, the Rowan Clerk has used the cards primarily as an index, but he is now installing a second set of duplicate cards to be used as continuous memoranda to aid in notifying fiduciaries and in speeding up the filing of accounts and settlements. He is also using different colors for the cards for each type of fiduciary: for example, blue cards for administrators, canary cards for guardians, etc. Similar colors will be used for the filing envelopes, and the reference cards will refer to the files by number.

In using the cards as notice memoranda, they are filed not alphabetically but under the months. As each paper is filed, this is posted on the card, and a notation is made when the next paper will be due; it is then filed under the month, in proper sequence according to days, when that report is to be filed. Each week the estate deputy takes out the cards in the estates which have some paper due that week. Notices are followed by citations, until the paper is filed follow in order. Meanwhile these cards remain in the "current working file," which constitutes the delinquent list. Finally, when the paper is filed, the card is posted to the due date of the next paper and it is dropped behind the tab for that month. In this way it is possible for the many Clerks already using the plan to follow up delinquent fiduciaries systematically. Probably the first Clerk to develop the idea as a working plan was Church of Forsyth, but variations of the card system are in use by Cooke of Guilford; Henderson of New Hanover; Cabe of Macon; Graham of Granville, and others.

Consolidated Estate Indexes.

Probably an outgrowth of the card system is the permanent, consolidated estate index, which sets out in a single page for each estate reference to every record dealing with that estate from its beginning until it is closed, thus eliminating the

necessity of searching through many indexes in order to locate the complete record data on a single estate. An excellent example of this estate index may be found in the Guilford Clerk's office. Clerks in other offices seeking to achieve a similar result at less expense have adopted the printed, flat estate folder, which reproduces a page of the permanent index form on the back of a flat folder. The original papers of the estate are filed in the folder and the recording of the papers is indexed on the back of the folder, then a file number is given each folder and the Index to Appointments in each estate refers to the file number. This latter plan involves the use of an index to the consolidated file-index, but it has worked satisfactorily in several offices, including those of Hux of Halifax and of Moore of Beaufort.

Clerks' Filing Systems. During recent years many Clerks have concluded that their filing systems were little better than the shelf-storage of papers, and have re-organized their plans accordingly. The work of Church of Forsyth in this direction has been described previously. By the use of flat, folder files instead of the heavy, accordion "jacket" or "shuck," traditionally used, a remarkable saving in cost of jackets and filing cases and a marked reduction in the amount of necessary filing space resulted. A similar study of the filing problem by other Clerks convinced many of them of the value of carrying file number references, as well as record page references, in all indexes. Although a few Clerks still maintain that file numbers for papers (noted in the indexes) are not necessary, it now is often possible to locate in two or three minutes a paper which would have required an hour's search (in some instances, half a day's search) under obsolete filing plans universally in use until only a few years ago. Formerly, there was much confusion as to whether the file of a contested case should be filed in the order of the suit's institution or as of the date of the final judgment. Usually they were filed by terms only, and even when the term was known, it became necessary to examine practically all of the jackets for all cases disposed of at that term before a

file could be located. The use of permanent file numbers, and the indexing of the file numbers in the general indexes, is an improvement which an increasing number of Clerks are adopting.

LAW ENFORCEMENT

(Continued from page eight)

tion. Eighty-one foreign countries and territorial possessions are co-operating with the FBI in the exchange of valuable identification data. Every law enforcing agency that contributes to the national collection is laying the basis for more effective law enforcement by making easier the task of apprehending the criminal.

Liquor Hauler. Much confusion has been caused by the provision in the 1937 liquor law permitting a person to transport in sealed containers to or through a "dry" county of not more than one gallon of liquor, purchased at a county liquor store in this state or purchased in another state at a place where the sale of liquor is lawful, and provided it is not for the purpose of sale. A troublesome question arises when more than one gallon is being transported in one automobile, but each of the several occupants of the car claims less than one gallon, such as, for example, when the driver claims ownership of one-half gallon, one passenger claims another half-gallon, and a second passenger claims still another half-gallon. It would seem that the passenger is guilty of no violation, but is the driver guilty of violating the provision of the law limiting transportation to one gallon? Several judges have ruled in such a case that there was no violation of the law. However, the Attorney-General has expressed the opinion recently that the driver of the car obviously is actually transporting more than one gallon of liquor, and hence is violating the plain language of the law.

Charlotte Traffic. In the past five years, traffic in uptown Charlotte has increased 45%, according to Chief Safety Inspector B. A. Skinner. There are around 25,000 drivers in Charlotte, but this number is increased by the thousands who come to and through Charlotte from out of town. Traffic control is handled by 35 traffic policemen

working in three shifts. Chief Inspector Skinner believes that one of the most serious traffic hazards is the "unconscious driver," who does not keep his mind on his driving.

Liquor Ads. The determination of the State A. B. C. Board to censor all liquor advertising appearing in North Carolina publications has brought forth considerable argument. The State Board considers such action to be clearly within the scope of its duties under the 1937 liquor laws. Many newspapers have contended that no such power is contained in the law. The State Board's policy, effective as of October 1, will prevent the use of "art" pictures or other types of appeal designed "to raise a thirst." No liquor ads will be permitted in publications which are published in "dry" counties. In wet counties, advertisements will be limited, according to State Chairman Cutlar Moore, to "literature giving the age and alcoholic strength of the beverage, and that is about all."

Probation. With the new state probation system designed to begin functioning early this month, pursuant to the 1937 act, ten district probation officers have been appointed. The newly appointed officers are: H. Vincent Leary of Camden; J. Wayland Sledge of Rocky Mount; Kirkwood L. Hanrahan of Kinston; J. D. Beaty of Wilmington; Robert Bruce White of Wake Forest; Thomas D. Stokes of Lexington; E. S. Whitaker of Gastonia; P. T. McNeill of West Jefferson; A. Y. Howell of Boone; and I. C. Crawford of Bryson City.

Week-enders. To prevent traffic offenders sentenced to jail from losing their jobs and thus injuring their families, one Chicago judge has inaugurated a system whereby an offender who has a family may serve his ten-day sentence in week-end installments for five successive weeks.

Non-Fix Traffic Tickets. In Syracuse, N. Y., a practical plan has been devised to prevent the 'fixing' of traffic tickets. Each traffic violation ticket is issued in triplicate; one copy is given to the offender, one is retained in the ticket book by the officer, and one turned over to the City Accident Investigation Bureau. The Accident Bureau checks its ticket against the violator's ticket, and both of these tickets are

turned over to the city comptroller. When an officer secures a new book of tickets, he must turn in his old book, and the ticket forms in his old book are checked by the comptroller against those received from the Accident Bureau.

HEALTH AND WELFARE

(Continued from page ten)

age. A total of 120 insane persons were confined in 42 jails. A total of 2,775 persons were housed in the 79 county homes; 78 of these were children under 16. Eighty-four children were confined in seven county juvenile detention quarters. A total of 433 persons were serving sentences in 30 county prisons, work-houses and farms.

CCC Enrollment. North Carolina has been allotted an unusually large CCC enrollment quota during October, due to the discharge of a large number of the present enrollees who are over 24 years of age. The age range, pursuant to legislation enacted by the last Congress, is fixed at 17 to 23 years of age. During the month of October, the enrollment quota is 2,649 white and 782 colored, a total of 3,431.

"This Way to the Doctor." Last year, there were 71 deaths from typhoid fever and 192 deaths from diphtheria in this State. And, according to Dr. Carl V. Reynolds, State Health Officer, all of these were preventable. Dr. Reynolds points out that people should not wait until a disease reaches an "epidemic" stage to begin taking preventive measures. At the same time, he deplores the public indifference to the ravages of syphilis, with which an estimated 10% of the people are afflicted. If a similar situation existed with respect to any other diseases, Dr. Reynolds declares, "screaming headlines would proclaim the fact and on every corner would be a sign reading: 'This way to the doctor!' or 'Nearest clinic straight ahead!'" Only in the Scandinavian countries where stringent control methods were long since adopted has this disease been brought under control.

District Health Departments.—The organization of district health departments is increasing in popularity with counties which cannot afford a separate full-time unit. Under an arrangement for the organi-

zation of a Bertie-Chowan district health department, put into effect for a ten-months period, Bertie County will save \$1,300. The savings effected by this plan will be disposed of as follows: \$1,050 to be deducted from the health department budget; \$250 to be used in employing a county physician, at \$25 a month, to care for the county relief clients and inmates of the county home and jail.

City Slums. An investigation and report on Charlotte slum conditions by the *Charlotte News* is being followed by a survey, undertaken by the state planning board with the cooperation of the city government, to determine in detail what the existing conditions are and what remedies can be employed. Ill-housing, inadequate toilets, unsanitary locations, and lack of running water are grave disease threats.

TAXATION AND FINANCE

(Continued from page ten)

lieve the amount of prepayments can be controlled to a large extent by the publicity given to the discount offered. It seemed doubtful, however, that this would be true in most localities. The survey showed that something less than 1% of the taxpayers take advantage of the maximum discount and that most of these pay taxes in very large amounts. Such taxpayers are the ones who ordinarily familiarize themselves with collection laws, at least to the extent of finding out about discounts; and it seems probable that in most places their action would not be primarily motivated by advertising or prepayment campaigns.

County-wide Tax Rates. In 1936, the average county-wide tax rate was 90c, if the method used in computing it is to take the total tax valuation of the State and divide it into the total amount of county-wide taxes levied. On the other hand, if the average be obtained by adding the county-wide rates and dividing them by 100, the average was \$1.15. This shows the extent to which the wealthier counties have the lower rates. The figures for 1937 are not yet available; but it is fairly certain that, while average rates of both types will be higher, the same disparity between the two will be present.

Bulletin Service

Opinions and rulings in this issue are from rulings of Attorney General and State Departments from September 1 to October 1



Prepared by

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

I. Ad valorem taxes.

A. Matters relating to tax listing and assessing.

12. Exemptions—veterans' compensation.

To J. L. Abernethy. (A.G.) A home purchased by a World War veteran with money which he received as a bonus from the Federal Government is not exempt from ad valorem taxation. See *Lawrence v. Shaw*, 210 N. C. 352, 81 Sup. Ct. 391, and *Martin v. Guilford County*, 201 N. C. 63.

21. Valuation of bank stock.

To G. H. Andrews. Inquiry: Would a banking institution be allowed to deduct the value of farms, acquired through foreclosure, from the value of the bank's capital stock in listing for taxes? (A.G.) The bank must list its real property for taxation just as any other land owner. Under the Machinery Act of 1937, Section 1500 and following sections, banks are required to make reports to the State Board of Assessment on prescribed forms. The State Board determines the value of the capital stock and deducts from such valuation the value of the real and personal property listed for local taxation. The statute also makes provision for other deductions.

50. Valuation by town.

To Louise Lowdermilk. Inquiry: Do our Town Commissioners have a right to change a tax assessment on personal property after it has been assessed by the County and approved by the Board of Equalization?

(A.G.) Except in instances where the town lies in two or more counties and comes within the purview of Section 1202 of the Machinery Act, the assessment placed on the property by the county authorities must be accepted by the town. We are sure that now after the property has been assessed and the procedure of equalization completed, the town has no authority to change the assessment.

Section 1201 of the Machinery Act allows cities and towns to set up their own machinery for the listing of property, but the second paragraph requires that the municipal authorities shall accept the valuations fixed by the county authorities, as modified by the State Board of Assessment, except in cities and towns lying in two or more counties.

79. Deductions from solvent credits—debts and liabilities.

To R. L. Hefner. Inquiry: May a corporation deduct from its solvent credits, as bona fide indebtedness, in listing for taxes: (1) federal income taxes for 1936 which have been ascertained and one-fourth paid and the balance set up as a definite liability payable in installments; (2) Social Security taxes due for March, 1937, one-fourth of which have been collected from employees?

(A.G.) In our opinion, under Section 602 of the Machinery Act these taxes are not regarded as indebtedness for this purpose and are not deductible from the solvent credits of the corporation.

91. Deduction in case of mortgage.

To G. S. Quillen. Inquiry: Is a taxpayer in listing his home still entitled to a credit for a mortgage thereon under the conditions laid down in Article V, Section 3, of the State Constitution?

(A.G.) This section as quoted in your letter has been repealed. You can see the section as it now reads in the Constitution in the 1937 Public Laws.

100. Listing of trust property.

To W. B. Rodman, Jr. Inquiry: Is money held by an executor in a local bank taxable in the county where the executor resides or where the decedent died?

(A.G.) Section 801 of the Machinery Act, subsection 2, provides that the intangible property of a decedent whose estate is in the process of administration shall be listed at the place where the decedent resided, or if the decedent was a non-resident, at the residence of the executor or administrator.

B. Matters affecting tax collection.

33. Statute of limitations.

To W. S. Holoman. Inquiry: What is the statute of limitations on bringing foreclosure suits on tax sales certificates held by a municipality?

(A.G.) Under C. S. 8037 actions to foreclose tax sales certificates must be instituted within 24 months from the date of sale of the certificates. However, your municipality may elect to foreclose the lien for taxes under C. S. 7990. See *Logan v. Griffith*, 205 N. C. 580, and cases cited.

40. Tax foreclosure—special assessments.

To C. H. Whitlock. Inquiry: May our Town accept a deed from a taxpayer to a part of his property as payment for taxes or paving assessments due the Town on such property?

(A.G.) We are unable to find any statute authorizing a municipality to make such a compromise. The Town has ample means for collecting such taxes through the pursuit of the usual foreclosure methods.

44. Tax foreclosure—pro-rating of proceeds.

To W. H. McElwee. Inquiry: Please advise how delinquent taxes when collected should be applied?

(A.G.) The various statutes under which taxes have heretofore been levied require the application of the proceeds to the particular purpose for which the taxes were levied.

The fact that these taxes have become delinquent do not authorize the county to place them in a general fund when collected, unless they are no longer necessary for the purposes for which they were levied, such as for debt service in school districts whose debts have since been discharged. In such a case the funds could not be used for the original purpose and might be placed in the county fund.

60. Tax collection—property under the \$300 exemption.

To Eric Norfleet. Inquiry: Is personal

property under the \$300 exemption subject to a levy for the taxpayer's unpaid poll and dog taxes?

(A.G.) The Office ruled several years ago that such property was exempt from levy.

65. Tax collection—garnishment.

To J. M. Aldridge. Inquiry: Please outline the procedure for garnisheeing property for taxes.

(A.G.) The various steps from the institution of proceedings by the tax collector to the attachment of the property by the sheriff or other police officer will be found in C. S. 798-829.

To R. G. Deyton. (A.G.) Chapter 112, Public Laws of 1935, provides that when any agent or officer of the State has in his hands any funds due any employee of the State for salary, it is permissible for any county or city in the State and/or the officials thereof in charge of collecting taxes to proceed against such State officer, and the funds in his hand, by way of garnishment, for such taxes.

However, since you, as Assistant Director of the Budget, do not have possession or control of any funds in the way of salaries which might be due State employees, attachment and garnishment proceedings for collecting unpaid taxes due by State employees would be of no effect, and you might so advise the taxing department of the city concerned.

72. Tax collection—levy on personal property.

To Fred P. Parker, Jr. Inquiry: May our County Tax Collector sell personal property which has been levied on for taxes due by the owner thereof for former years?

(A.G.) C. S. 7986 provides that the lien for the payment of taxes assessed against personal property attaches only from the date of the levy thereon. The owner of personal property is not liable for taxes thereon for years prior to his possession of same. See *Coltrane v. Donald*, 203 N. C. 515. This is not true as to real property. See C. S. 7987 and cases cited.

76. Tax collection—date lien of taxes attaches.

To J. L. Abernethy. Inquiry: How long prior to April 1 must a person reside in a county before he is liable to list personal property for taxes?

(A.G.) A person residing in your county on April 1, even though he moved there on that day, would be required to list his property for ad valorem taxes.

II. Poll taxes and dog taxes.

5. Exempted classes.

To Junius D. Grimes. (A.G.) This Office has formerly ruled that a male person between the age of 21 and 50 is liable for poll tax regardless of the fact that he served a term in the penitentiary and his citizenship has not been restored.

III. County and city license or privilege taxes.

A. Levy.

14. Privilege license—beer.

To J. C. Spence. (A.G.) Chapter 127, Public Laws of 1937, provides that a county retail beer license may be revoked by the County Commissioners. See Section 514.

To George T. Davis. Inquiry: Can a man make and sell wine from his own grapes and on his own premises without a license?

(A.G.) Section 504 of the Revenue Act imposes a license tax of \$500 for manufacturing fortified wines and \$250 for unfortified. Section 516 imposes a license tax of \$50 for the sale of wines for on-

premises consumption and \$25 for off-premises. Section 517 imposes an additional tax of 30c for fortified wines and 10c a gallon for unfortified.

We see no reason why the Health Department could not make reasonable rules and regulations designed to protect the public health in connection with the manufacture of wine.

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

To E. P. Covington. (A.G.) Our Supreme Court has held that municipalities are authorized to levy a tax on bakeries under C. S. 2677. See *State v. Bridgers*, 211 N. C. 235, and *Hilton v. Harris*, 207 N. C. 465.

To F. O. Carver. (A.G.) In our opinion, Section 122 of the Revenue Act limits municipalities to a \$10 tax on contractors who offer to construct buildings costing over \$10,000 and pay the State tax levied therefor by this section. If no such tax has been paid, or if no tax is required, then the town may impose no tax.

To L. T. Rose. Inquiry: A mill in our Town has employed a plumber who resides outside the Town to do work in the mill. May the Town impose a plumber's license tax on such person under Section 155 of the Revenue Act?

(A.G.) The fact that the plumber lives out of town would not prohibit the town from imposing a tax on business done therein. However, it would appear that the person is not engaged in the business of plumbing or plumbing contracting but is an employee of the mill only. Under such conditions he would not be liable for the tax under Section 155.

40. License tax on peddlers.

To W. F. Carter. (A.G.) The peddlers' tax under Section 121 (e) does not apply to the sale of farm products raised on premises owned or occupied by the person, firm or corporation, or his or its bona fide agents or employees, selling the same. This provision applies equally to

persons residing in other states as well as this state.

47. License tax on slot machines.

To J. L. Hollifield. Inquiry: What amount of tax may a municipality impose on a music slot machine with slots for 5c, 10c, and 25c?

(A.G.) The State Revenue Department has ruled that such machines require a deposit of only 5c, the other slots providing only for multiple operations, and that the State tax should be \$10 as provided for 5c machines. Section 130 of the Revenue Act, subsection 6, provides that municipalities may impose a tax not in excess of one-half that levied by the State, which would be \$5.

IV. Public schools.

B. Powers and duties of counties.

1. Erection of school buildings.

To R. E. Nimocks. Inquiry: May a county contract debts or borrow money from the State Literary or Building fund, without a vote of the people, for constructing or repairing school buildings?

(A.G.) Under the recent Amendment to the Constitution, it would be necessary to submit the proposition to the voters if the proposed loan would exceed two-thirds of the amount by which the county's indebtedness was reduced during the preceding fiscal year.

Under the recent decisions of the Supreme Court in *Frazier v. Commissioners*, 194 N. C. 49, and *Hemrick v. Yadkin County*, 206 N. C. 845, such a vote might be necessary even though the proposed loan would come within the limitation mentioned above.

My personal opinion is that it would not be necessary to submit it to a vote if the loan would come within this limitation. However, it is a doubtful question—one on which good bond attorneys differ—and I can not predict what the Court would hold.

To John C. Lockhart. Inquiry: If the bids for proposed school additions are outside the budget amounts approved and set up therefor, may the County Board of Education do the building itself, employing a Superintendent and the necessary help on a wage basis?

(A.G.) In our opinion, C. S. 1316 (a) only provides that when construction costing over \$1,000 is let at contract it shall be by advertisement and submission of bids, and that the Board of Education may still construct the building on its own. However, care should be taken to see that the person supervising the construction should not in fact be made a contractor.

17. Apportionment of funds.

To W. H. Woolard. Inquiry: (1) Out of a 7c county-wide ad valorem tax for maintenance of school buildings, what part should go to a city unit with 20% of the total school enrollment of the county? (2) What is the basis of distribution of fines, forfeitures, poll taxes and dog taxes between the county and city school units? (3) How are capital outlay funds apportioned between city and county units?

(A.G.) (1) The 7c tax levied for maintenance of school buildings is for current expenses of the schools in the county and should be apportioned on a per capita enrollment basis as provided in Section 15 (c) of the School Machinery Act of 1937. (2) Fines, forfeitures, poll taxes, and dog taxes are county-wide funds and should also be apportioned on an enrollment basis. However, there is a provision in the School Machinery Act (Section 9) providing: "The objects of expenditure des-

PURCHASE OF SCHOOL BUSES

To R. B. Phillips. (A.G.) Section 26 of the 1937 School Machinery Act makes it mandatory on your tax levying authorities to purchase additional school buses after it has been determined by your Board of Education that the buses now in use are overcrowded and unsafe.

ignated as Maintenance of Plant and Fixed Charges shall be supplied from funds required by law to be placed to the credit of the public school fund of the county and derived from fines, forfeitures, penalties, dog and poll taxes, and from all other sources except State funds: *Provided*, that when necessity shall be shown the State School Commission may approve the use of such funds in any administrative unit to supplement any object or item of the current expense budget; and in such cases the tax levying authorities of the county administrative unit shall make a sufficient tax levy to provide the necessary funds for maintenance of plant, fixed charges and capital outlay."

(3) Section 15 (c) of the 1937 School Machinery Act also provides that "all county-wide capital outlay school funds shall be apportioned to county and city administrative units on the basis of budgets submitted by such units to the county commissioners and for the amounts and purposes approved by said commissioners; said capital outlay funds to be disbursed in the same manner as provided for school funds."

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

To M. C. Campbell. Inquiry: Our County Commissioners have purchased two tracts of land for city school administrative units. Who should take the title, the County or City Board of Education?

(A.G.) The general statute on the subject requires that school property shall be in the name of the County Board of Education. C. S. 5469, 5471, 5472.

In abolishing local school districts, the 1933 School Machinery Act provided that where an existing special charter district was included in a new administrative district, the trustees of the former should be retained and should keep the title to school property in such district. This, however, does not authorize the taking of title to newly-acquired property in the name of such trustees.

7. Attendance districts.

To Clyde A. Erwin. Inquiry: May a County Board of Education require school principals not to allow elementary school children living in one school district to be enrolled in the schools of another district? (A.G.) C. S. 5661 is intended to give resident children all the benefits of the schools of the district. C. S. 5662 provides that under certain circumstances it is permissible for non-resident children to attend the schools of the district upon the payment of tuition fees. C. S. 5481 provides that if school facilities for all the children in a given district are not adequate, the County Board of Education may authorize the transfer of these children to another district, and this seems, in a measure, to limit the action of the County Board in the premises to the instances where school facilities in a particular district are not adequate. C. S. 5430 and 5461, giving to the County Boards of Education, general supervision and control of

TAX ON 1c WEIGHING MACHINES

To A. J. Maxwell. Inquiry: May a \$2.50 license tax be collected on penny weighing machines? (A.G.) Yes. Subsection (a) of Section 130 of the 1937 Revenue Act provides that scales not requiring the deposit of a coin in excess of 5c shall not be subject to the foregoing schedule of license taxes therein set out, and Subsection (e) provides that Section 130 shall not apply to "any penny weighing machines." However, Chapter 249 of the Public Laws, ratified on a later day, amends Subsection (a) of Section 130 to provide that "weighing machines requiring a deposit of 1c shall pay a tax of \$2.50," but Subsection (e) is not specifically amended. Despite the inconsistency, the most logical position seems to be that the Legislature intended to amend the Revenue Act to the effect that penny weighing machines be taxed; and the fact that Subsection (e) of Section 130 was not specifically referred to, as was Subsection (a), was a mere inadvertence. (Ed. Note: Section 130 (J) provides that counties and cities may levy a license tax not to exceed one-half that levied by the State on the machines taxed by this section.)

all matters pertaining to public schools, does not, in my opinion, give the County Board a discretion as to who may or may not attend these schools. This question is closely related to larger questions, such as bus routings and the number of teachers allocated to a particular school, in which instances co-operation between County Boards of Education and the State School Commission is essential. However, if no other provision has been made for attendance of non-resident children in the public schools of a district, the Board of Education might require of the principal that he confine the enrollment to resident children.

F. School officials.

1. County Board of Education—nomination and election.

To A. L. Butler. Inquiry: The General Assembly passed a *local* act ratified March 17 providing for the election of our County Board of Education by the people and a *public* act ratified March 23 appointing A and B as members. Which controls?

(A.G.) In our opinion, the subsequent general act controls. The general rule is that a special public-local act will be considered an exception to a general act thereafter enacted and will not be repealed unless the repealing clause especially refers to it, or does so in such general terms as to necessarily include it, or where it is evident that the general act is intended to apply in the particular instance. Nevertheless, in this case the general act in the most specific way does refer to a particular case and, in my judgment, controls.

41. School attendance.

To E. F. Murray. (A.G.) So far as we have been able to determine, the 1937 Legislature did not increase the age limit for compulsory school attendance from 14 to 16.

50. Principals and teachers—election and contracts.

To Clyde A. Erwin. Inquiry: May a County Board of Education pass a valid resolution limiting the employment of teachers to those holding A certificates?

(A.G.) We see no reason why a County Board could not adopt such a policy. We think that it is entirely proper for the Board to set up minimum qualifications to be met by its teachers.

61. State School Commission—rules as to age.

To Clyde A. Erwin. Inquiry: Our statute provides that a child must be six years old on or before October 1 in order to be entitled to enroll in the public schools for that year. May a child who has been permitted to enter a school of another state, although his sixth birthday comes after October 1, be transferred to a North Carolina school after his sixth birthday? (A.G.) We think not.

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

50. Objects for which such funds may be spent.

To Clyde A. Erwin. Under the 1937 School Machinery Act, may the proceeds from fines, forfeitures, penalties, poll taxes, and dog taxes in the various counties be used to supplement the salaries of school bus drivers?

(A.G.) We think there is no question but this may be done. The last paragraph of Section 9, providing that such funds shall be used for the maintenance of plant and fixed charges, also stipulates that "when necessity shall be shown, the State

School Commission may approve the use of such funds in any administrative unit to supplement any object or item in the current expense budget . . ." and one of the objects of current expense in the classified list of such expenditures in Section 9 is "drivers and contracts."

In case such use of these funds is authorized, it is mandatory upon the tax levying authorities, i.e., the County Commissioners, to take care of the maintenance of plant and fixed charges by a levy for that purpose.

SALES TAX EXEMPTIONS

To J. C. Russ. Inquiry: Is a contractor exempted from sales tax on building materials purchased by him for use in repairing school buildings under a contract with a County Board of Education?

(A.G.) Section 427 of the Revenue Act, subsection (b), exempts from the sales tax such tangible personal property as shall enter into any building or structure erected or constructed under any contract with the Federal or State Governments, or any county or municipality in North Carolina, or any of their agencies.

I. School property.

10. Disposition of school property.

To S. G. Hawfield. Inquiry: Our County is planning to discontinue a school which was erected on property belonging to a local business. To whom does the building belong?

(A.G.) The disposition of the building depends upon the circumstances under which it was erected. If the County leased the land and erected the building under an agreement providing for its removal at the termination of the lease, the County could remove it. If there was a lease and no agreement for removal, the building could be removed, if at all, only during the term of the lease or within a reasonable time after its termination. See 26 C. J. 702-10. If the County erected the building without a lease, the County having no interest in the land, the building would belong to the business, and the County would have no right to remove it.

J. School books.

20. Books handled by county board.

To Clyde A. Erwin. (A.G.) Chapter 169, Public Laws of 1937, provides that the State Textbook Commission shall acquire and/or purchase textbooks and provide for a system of distribution to the children of the *public* schools. There is no provision anywhere in the act which would authorize the furnishing of such textbooks to private schools, and in the absence of such authority, the textbooks provided for therein could not be furnished to children attending private schools.

V. Matters affecting county and city finance.

1. Issue of bonds.

To Gurney P. Hood. (A.G.) When the holder of county bonds transmits the same to a bank with draft attached for the amount of the bonds and interest, nothing else appearing, the cashier of the bank handling the draft has no duty or authority with regard to the cancellation of the bonds, when the transaction on the part of the county is obviously only of purchasing the said bonds for the sinking

fund. The draft should be detached from the bonds and the instructions accompanying the draft, made by the holder of the bonds, as to their delivery, should be followed.

P. Securing local funds.

10. Security furnished by local banks.

To W. E. Easterling. (A.G.) Examining Title II of the Federal Housing Act, Section 170 (b), I find that "debentures issued in exchange for mortgages, insured under this section prior to July 1, 1937, shall be fully guaranteed as to principal and interest by the United States." As to other indentures, they "shall be a liability of the fund only."

In our opinion, only those mortgages insured prior to July 1, 1937, are fully guaranteed as to principal and interest by the U. S., and these only are eligible as security for deposits under the Local Government Act.

U. Liability insurance.

20. Indemnity bonds.

To Gurney P. Hood. Inquiry: In case a Town loses a certificate of deposit in a local bank, should the bank before issuing a new certificate require an indemnity bond, and if so, should the bond be signed by the Town as such or by the members of the Board as individuals?

(A.G.) If the certificate is not negotiable, no indemnity bond should be required. If the certificate is negotiable, the bond should be given by the Town. In this connection, I know of no law authorizing a Town to give such indemnity. However, if it should do so, it is my opinion that the surety could not afterward plead that the Town had no legal authority to enter into the arrangement.

VI. Miscellaneous matters affecting counties.

B. County agencies.

25. County hospitals.

To W. J. Webb. Inquiry: Did a successful election on a county hospital held under the provisions of the County Finance Act give our Commissioners the right to operate the hospital under the machinery set out in C. S. 7255 and to levy a tax for the maintenance of the institution?

(A.G.) We think so, with the tax being levied under C. S. 1297 (29). We are also of the opinion that the property might be leased to private operators on terms agreed upon between the Commissioners and the lessees.

G. Support of the poor.

6. Levies for Dependent Children.

To Elma H. Ashton. Inquiry: Is an adoptive parent eligible for Aid to Dependent Children in behalf of a legally adopted child?

(A.G.) Yes. Under the North Carolina law, the adoptive parent has precisely the same relation to the child as its natural parent.

10. Payment of medical expenses.

To Don Carawan. (A.G.) In our opinion, a county is under a legal obligation to provide treatment for indigent people with syphilis having a legal settlement in the county. While there is apparently no specific statute relating to the subject, it is covered by the general statute requiring the county commissioners to provide treatment for diseases of this character (C. S. 7193).

13. Poor relief.

To W. W. Watson. Inquiry: Please give us your opinion regarding the proper method for handling county relief funds.

(A.G.) The administration of such funds should be committed to the County Super-

NO MAXIMUM HOURS FOR PUBLIC SERVANTS

To W. W. Griffin. (A.G.) The new labor laws restricting the number of hours workers may put in per day and week do not apply to State or municipal corporations or their employees. See the exemption in Section 1 of Chapter 409, Public Laws of 1937.

intendent of Welfare under the control of the County Commissioners, as provided by C. S. 5017 (1). This does not mean that the Commissioners do not remain the responsible board for the administration of general poor relief, but it should be done by them through the County Superintendent as the agency set up in the county for this purpose.

None of the actual funds should be paid over to the County Superintendent, but they should be deposited and paid out in the usual way required by law for county funds. The administration of the poor relief funds has reference only to the procedures followed in determining the amounts and persons to whom the funds are to be paid.

VII. Miscellaneous matters affecting cities. C. Police and fire protection.

20. Duty to provide for prisoners.

To Dr. G. H. Macon. (A.G.) This Office is of the opinion that it is mandatory upon the governing board of your Town to provide meals and quarters for its prisoners, whether kept in the city jail or county jail. We are also of the opinion that the County jailer is within his rights in charging your Town entrance fees and board for prisoners turned over to him by the Town.

N. Police powers.

20. Regulation of trades and businesses.

To W. F. Morrison. (A.G.) This Office is of the opinion that the effect of Chapter 338, Public Laws of 1935, was to place Morehead City, Beaufort, Atlantic Beach, Albemarle, Southern Pines, Pinehurst, and the unincorporated towns and villages in New Hanover County under the operation of Chapter 52, Public Laws of 1931, relating to the licensing of plumbing and heating contractors, which by its terms was applicable only to towns of more than 3,500. Section 6 of the 1931 Act is still in force in regard to the exemption of towns under 3,500 with the exception of those towns placed under its terms by the 1935 statute.

This Office is of the opinion that no advancement of the exemption date was intended by the 1935 Act, and the persons, firms, and corporations within the areas described in the 1935 Act are now required to stand the examinations given by the State Board in order to secure from it permits to carry on plumbing and heating contracting, unless such person, firm or corporation complied with the provisions of Section 12 of the 1931 Act.

VIII. Matters affecting chiefly particular local officials.

A. County Commissioners.

45. Power to approve warrants disallowed by auditor.

To W. V. Farmer. (A.G.) In our opinion, the provisions of C. S. 1334 (67), empowering the county commissioner to overrule the disapproval of the auditor by entering the reasons for their action in the minutes, has not been repealed.

B. Clerks of the Superior Courts.

1. Salary and fees.

To W. H. Young. Inquiry: Please construe C. S. 3903 relating to the fees of the Clerk of Court for issuing summons in civil actions or special proceedings?

(A.G.) The statute stipulates \$1 for issuing the summons, "including all the names therein," and 25c for every copy. While there is some ambiguity in the phrase quoted, in our opinion, it was intended to charge \$1 for the summons, inclusive of the names therein, and not \$1 for each Defendant named.

However, we think that where more than one summons is issued, such as for example an original summons directed to the sheriff of the county in which one Defendant resides and another to the Sheriff

CRIMINAL BONDS

To A. B. Shepherd. (A.G.) If a bonding company, whether incorporated or not, engages in a bonding business other than criminal appearance bonds, it would come under the supervision and control of the State Insurance Department. However, if it deals only in criminal appearance bonds, the Clerk of Superior Court has authority to require, and it is his duty to require, such company to justify or give satisfactory proof before accepting its bonds.

in a second county where another Defendant resides, the Clerk should receive \$1 for each.

8. Acknowledgment and probate of instruments.

To L. Bruce Wynne. Inquiry: When a paper is brought to the Clerk of Superior Court for probate and registration, and there are listed three notaries acknowledging three separate signatures, must the name of each of the three notaries appear separately in proving and probating the instrument? (A.G.) Yes, under C. S. 3322 and 3305, it is necessary for the order of registration to state the names of all officers signing the certificate.

26. Duties with respect to funds of incompetents.

To T. R. Baldwin. (A.G.) The Office of Clerk has deposited \$100 under a will which provided for the sum to be applied to the education of a minor. The boy does not have the proper clothes to attend schools, and his parents are unable to supply them.

(A.G.) Under the circumstances of the case, we are of the opinion that you may apply as much of the sum as necessary to buy suitable clothes to enable the boy to attend school.

50. Costs.

To W. K. Newell. Inquiry: Should jail fees be taxed in criminal bills of costs or are they only a civil liability?

(A.G.) In our judgment, the expense of the upkeep of prisoners is not regarded by the law, as found in C. S. 1347, as costs in the ordinary sense of the word. A prisoner, as you know, may be confined in jail until the costs are paid or until he is entitled to discharge by taking the insolvent debtor's oath.

Obviously it would be absurd to continue to keep and feed a prisoner, accumulating additional expenses, in order to

enforce the payment of jail fees. Perhaps this common sense view of the matter was in the minds of the lawmakers when they made the provision in C. S. 1347, making reasonable charges for jail fees a charge against the prisoner. The statute simply makes the prison fees a preferred debt of the prisoner, and when he has no estate the county must pay it. For this reason we think that such jail fees should not be included in bills of costs as such.

79. Decedents' estates—distribution and administration.

To J. E. Mewborn. (A.G.) In our opinion, there is no provision in the law requiring the Clerk of Court to supervise the opening of a safe owned by a decedent at the time of his death. Certainly, Chapter 127, Public Laws of 1937, imposes no such duty on the Clerk, this act applying only to the opening of safety deposit boxes in banks and other companies making a business of renting such boxes.

C. Sheriffs.

1. Fees.

To R. F. Churchill. (A.G.) Under C. S. 3908 a sheriff or deputy serving any sort of process is entitled to the compensation laid down in that section.

L. Local law enforcement officers.

3. Prohibition law—transportation in state.

To Craige and Craige. Inquiry: Please construe Section 22 of Chapter 49, Public Laws of 1937, as it pertains to bringing into a dry county a gallon of whiskey each by two or more persons in the same automobile.

(A.G.) We think the use of the word "transport" carries us back to the definition given this term by the Turlington Act, and the better opinion is that the driver or owner of an automobile carrying more than one gallon would be guilty of a violation of the law.

However, if each person were the bona fide owner of a gallon and the possession of such were under their personal control, the question would be a close one, as it will be noted from reading this section that the law uses the term "bringing into the same for his own personal use not more than one gallon." Since the courts have not passed on the question, we hesitate to render an opinion thereon.

RECORDING PRINTED FORMS

To George G. Noble. Inquiry: It has been the practice of our Office to register crop liens and chattel mortgages in favor of the local Production Credit Association by pasting, binding or otherwise securely fastening copies in the record books. The original instruments are filed and indexed, and the copies are verified in each instance. Please advise whether this method of registering such instruments is sufficient compliance with the statute requiring the Register to register in writing all instruments delivered to him for registration.

(A.G.) From an examination of the authorities prepared by you and Mr. Larkins, we are of the opinion that this form of recording is sufficient under our law, and that it would not be necessary to actually copy written instruments which are presented to the Register for recording.

DUTY OF ARRESTING OFFICER

To R. C. Sink. (A.G.) Chapter 257, Public Laws of 1937, makes it the duty of an officer making an arrest to permit the person arrested to "communicate with counsel and friends immediately," and provides that an officer violating the provisions thereof is guilty of a misdemeanor and may be fined or imprisoned, or both, in the discretion of the court.

18. Prohibition—1937 Liquor Control Act.

To Briggs G. Simpich. Inquiry: In defining the type of "wine-base cocktail" which may be legally sold in North Carolina, it has been ruled that none of the alcoholic content may be produced by the addition of fruit juice or flavoring materials. If alcohol is necessarily used in the process of manufacturing flavoring extracts, so that the addition of a flavoring extract to a wine base cocktail increases the alcoholic content by a very small fraction of one per cent (.0625 of 1% in this instance), would the use of such a flavoring extract in making wine base cocktails render their sale illegal in North Carolina? (A.G.) No, the very negligible amount of alcohol in the beverage added thereto by the flavoring extract would not violate the purpose and intent of the A.B.C. law.

31. Lotteries.

To John G. Carpenter. (A.G.) There have been a number of recent cases holding that the device of bank night, whereby a theater offers a cash prize to the drawer of a lucky number and does not charge a price for the right to draw nor require participants to purchase tickets, nevertheless constitutes a lottery. Most of the cases on this subject are reviewed by the courts in the cases of *Iowa v. Hundling*, 220 Ia. 1369, and *State v. Eames*, 183 Atl. 590.

To John G. Carpenter. (A.G.) The free distribution of prize books containing tickets and numbers and the drawing of a prize number in a hall to which admission is charged constitutes a lottery, and those who participate in it do so in violation of our criminal laws.

36. Anti-Rabies law.

To Ralph J. Sykes. Inquiry: Our County feels that the administration of the rabies law would be more efficient if it had a County Rabies Inspector who is interested in the work and devotes his full time thereto with deputy inspectors for each township.

(A.G.) This might be a good plan, but the law as it stands contemplates an inspector for each township, with all of equal rank.

37. Safety Responsibility Act.

To Arthur Klinefelter. (A.G.) The Automobile Financial Responsibility Act, Chapter 116, Public Laws of 1931, is still in effect. Its administration is handled by the Motor Vehicle Bureau, and there are a number of instances in which it has been enforced. We know of no case which has been taken to the Supreme Court in this connection.

To J. H. Warren. Inquiry: Does a Justice of the Peace have a right to take up a driver's license of a person brought before him and charged with drunken driving?

(A.G.) No. Under Chapter 52, Public Laws of 1935, a J.P. has no jurisdiction over this offense except the authority to bind the Defendant over to the Superior Court. Under Section 18 only a court having jurisdiction over such offenses may take up a license or make recommendations to the Highway Safety Department, which always does the actual suspending and revoking of the license.

To Arthur Fulk. (A.G.) There is nothing in the Uniform Drivers' License Act which would require a person taking driver's lessons from a licensed operator to have in his possession a learner's permit issued by your Department. You might have authority to issue a learner's permit, but a person who did not have one in his possession would not be violating any criminal law.

39. Motor Vehicle Laws.

To J. C. Strickland. (A.G.) Under Section 142 of the Motor Vehicle Act is it necessary for a hit-and-run driver to inflict personal injuries in order to constitute the crime a felony?

(A.G.) Subsection (b) of Section 128 provides that any driver involved in an accident resulting in damage to property shall stop his vehicle at the scene of the accident, and that any person violating this provision shall be punished as provided by Section 142.

M. Health and welfare officials.**1. County Welfare Board.**

To O. J. Mooneyham. (A.G.) The Social Security law makes no provision for paying a per diem to members of the County Welfare Boards. In our opinion, without some law authorizing it, it is not within the discretion of the County Commissioners to make such payment.

28. County Board of Health.

To Dr. A. H. Elliott. (A.G.) We know of no law which permits an autopsy to be made of the body of a deceased indigent patient in a hospital when the body is unclaimed, unless the autopsy be performed under authority of those charged with the enforcement of the criminal law for the purpose of securing evidence of foul play or crime.

P. Officials of Recorders' and County Courts.**20. Jurisdiction over subject matter.**

To A. R. Crisp. (A.G.) The failure of a parent to support an illegitimate child is a continuing offense, and repeated prosecutions may be based thereupon for such part of the offense as had not heretofore been passed upon by the court.

R. Municipal court clerks.**1. Fees.**

To M. L. Ferrell. (A.G.) House Bill 393, providing for a \$1 Bureau of Identification and Peace Officers' Fund fee in criminal convictions in courts other than J.P. courts, does not conflict with your local act relating to a peace officers' fund for your city and county.

S. Mayors and aldermen.

To J. T. Gresham, Jr. (A.G.) You are correct in that the \$1 State Bureau of Identification and peace officers' fee provided by Chapter 349, Public Laws of 1937, should be added in bills of costs in criminal convictions in Mayors' courts and all other courts except those of J.P.'s. You will note that the law does not exempt courts having and exercising the jurisdiction of a J.P. but only the courts of J.P.'s.

T. Justices of the Peace.**10. Jurisdiction.**

To J. C. Strickland. Inquiry: Does a

Justice of the Peace have jurisdiction to issue warrants in bastardy proceedings for the purpose of finding probable cause?

(A.G.) Chapter 432, Public Laws of 1937, repeals Section 6, Chapter 228, Public Laws of 1933, and provides that the proceedings under this act shall be instituted only in Superior, County Recorder's, City Recorder's or Municipal courts. The 1937 act, therefore, deprives J.P.'s of jurisdiction in such cases. This act was effective, March 23, 1937.

13. Territorial jurisdiction.

To W. M. Brown. (A.G.) C. S. 1479 provides that a J.P. may issue a subpoena or other process anywhere in the county, but he shall not be compelled to try a case out of the township for which he is elected or appointed. This implies that a J.P. may hear a case outside his township but may not be forced to do so.

X. A.B.C. Boards and employees.**3. Compensation and bonds.**

To C. C. Cockrell. (A.G.) The State is not a beneficiary of the fund collected by the A.B.C. Boards, and for this reason, I see no State funds out of which part of the bonds of members of the A.B.C. Boards could be paid.

4. Powers and duties.

To H. F. Bonney. Inquiry: Do the County Boards of Commissioners, Health, and Education have authority to limit the County A.B.C. Board appointed jointly by them to one meeting a month?

(A.G.) Section 2, Chapter 493, Public Laws of 1935, under which your Board was originally appointed, provided that the Chairman was to receive \$50 per month and the members \$7.50 per day for the time actually engaged in their duties as members. However, we think that Chapter 49, Public Laws 1937, now controls, and that Sections 6 and 7, giving these three boards the power to appoint and fix the salaries of the A.B.C. Board members, would carry with it the power to limit the meetings of the Board in this way.

Sections 6 and 26 of the new law provide that the county boards appointed under the 1935 law shall operate the stores according to the requirements of the 1937 act, and it is our opinion that paragraph 3 of Section 6 does no more than authorize the old board to continue in office.

Y. Game Wardens.**5. Powers and duties.**

To R. F. Routh. (A.G.) Under C. S. 2141 (x) a Game Warden has power to arrest without a warrant a man apprehended in the act of violating the game law. The warden and deputies also have power to execute all warrants issued for violations of this act and to serve subpoenas issued for examination, investigation or trial of offenders against any of the provisions of the Game Act.

30. Particular rulings affecting game laws.

To J. A. McDowell. (A.G.) The General Assembly fixed the open season for hunting from September 15 to January 15, but gave the Department of Conservation and Development power to change seasons when conditions warranted, and the Department acting under this power changed the season on squirrel this year from September 15 to October 1.

Z. Constables.**10. Jurisdiction and powers.**

To George A. Gash. (A.G.) A township constable may serve process anywhere in the county in which he is appointed to act. *State v. Corpening*, 207 N. C. 805.

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Cost of Living and Cost of Electricity

(Editorial From Duke Power Magazine)

Taking the levels of 1913 as normal—100—the cost of living today is around 145 while the cost of electric service is around 55. In other words while the cost of living has increased approximately 45 per cent the cost of residential electric service on the average throughout America has declined about 45%.

The decline in the cost of electricity has been constant since 1913 except during a short period during the World War.

The decrease in the cost of electricity has been accompanied by, and made possible by, constant increase in consumption. For instance, the average residential customer in America during 1913 used 264 kilowatt hours of electricity and the average rate was 8.7 cents per kilowatt hour. In 1936 the average consumption per family had increased to 719 kilowatt hours per year and the average rate paid per kilowatt hour was 4.69 cents.

The average American family is paying for electric service today approximately 9 cents per day—an amount equivalent to the tax on one and one-half packs of cigarettes, or the tax on one and one-half gallons of gasoline—less than two-thirds the total cost of one pack of cigarettes—less than one-half the price of a gallon of gasoline.

It is interesting in this connection to note that the average consumption was over, and the average rate on the Duke Power system was substantially under, the national average.

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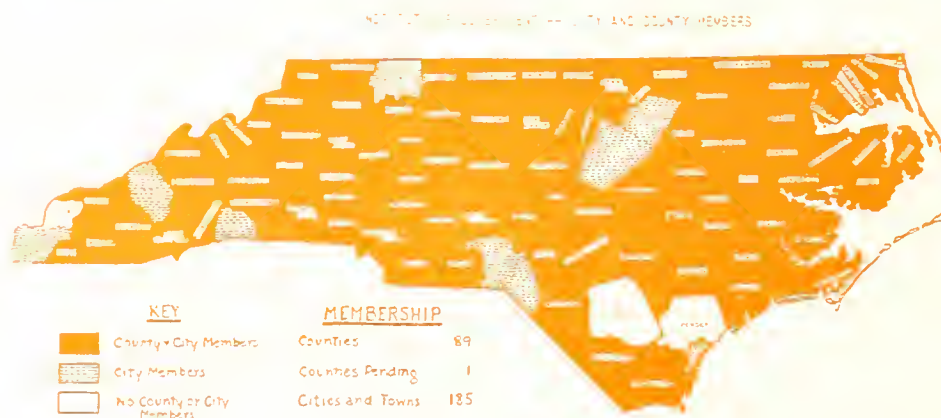
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