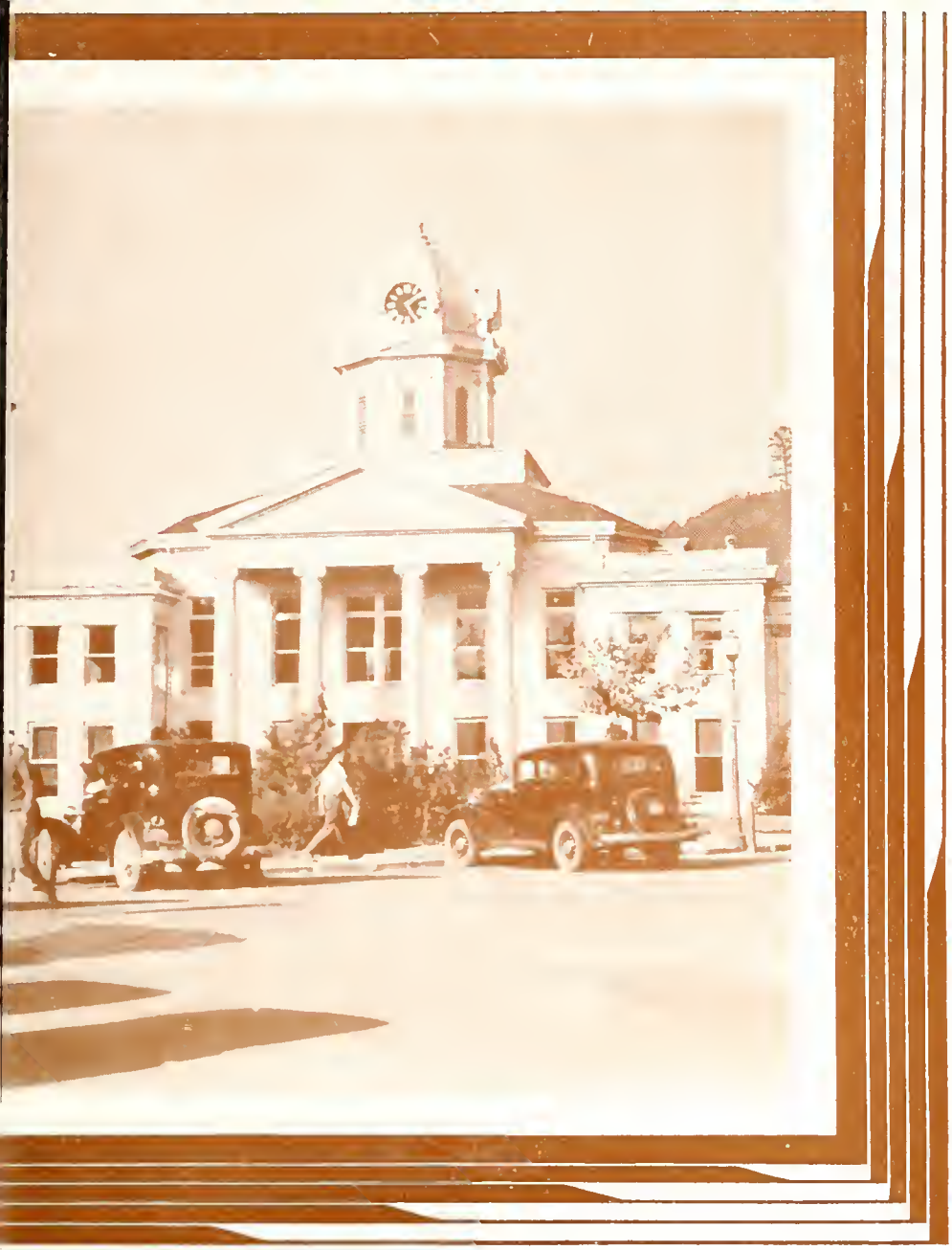


IN THIS ISSUE

THE GROWTH AND DEVELOPMENT OF THE LAW--By Justice W. A. Devin

STATE-LOCAL TAX BILL PASSED $100 MILLION MARK--By Henry Brandis, Jr.

THE PROPOSED STATE DEPARTMENT OF JUSTICE--By Albert Coates

THE PROBLEM OF UNEMPLOYMENT AND RELIEF--By M. R. Alexander

SHOULD SHERIFFS COLLECT TAXES? By Dillard S. Gardner

WHITHER THE BAR--By Arthur T. Vanderbilt

STATE BAR ASSOCIATION LAUNCHES NEW ACTIVITIES--By Frank Winslow

POISON -- TO THE POISONER AS WELL AS THE VICTIM By Haywood M. Taylor

NEWS AND RULINGS OF INTEREST TO PUBLIC OFFICIALS AND LAWYERS

THE INSTITUTE OF GOVERNMENT

POPULAR GOVERNMENT

25c A COPY NOVEMBER, 1937 VOL. 5, NO. 2

POPULAR GOVERNMENT

VOLUME 5
NUMBER 2

PUBLISHED MONTHLY BY THE INSTITUTE OF GOVERNMENT

NOVEMBER
1937

The Growth and Development of the Law *

By W. A. DEVIN

Associate Justice of the North Carolina Supreme Court

THE legal profession has been subjected to criticism and to unfavorable comparison with other learned professions in that it is said to look backward and to be controlled by precedent, instead of looking forward to that which is new and keeping pace with constantly advancing thought. But I think this criticism is unjust. The law is progressive, though not in the sense of making discoveries in unexplored fields and finding new facts. The law is not an exact science. It is an instrumentality for the establishment of justice by the declaration of definite standards of conduct, with machinery for the enforcement and protection of human rights. It has been well said that laws are the tools the community uses to effectuate its ideals. Certainly the supreme aim of all social organization is the administration of justice, and the study, practice and philosophy of law is peculiarly devoted to that end. To accomplish this purpose, there must be consideration of the tested wisdom of the past in the application of rules of conduct to new social relationships.

Law Is a Growth

Neither lawyers nor courts should be fettered by outworn precedent. But both should consider precedent in order to determine the right course for the future—look backward in order to look forward more wisely—examine the foundation before continuing the extension of the super-structure. The use of the plumb line keeps the walls straight. As was said by Chief Justice Clark in Pressley v. Yarn Co. "The law is not fossilized. It is a growth. It grows more just with the growing humanity of the age and broadens with the process of the suns."

In the words of Justice Brogden in Walker v. Faison: "The law is an expanding science, designed to march with the advancing battalions of life and progress and safeguard and interpret the changing needs of a commonwealth or community."

The law, using the word in its larger significance, embraces both legislative enactments and judicial interpretation and construction, not only as embodying rules of conduct but also as constituting the methods and the means for the determination, enforcement and protection of human and property rights. It deals with the duties and obligations of man to his fellowman in the reciprocal and complex relationships of social beings. It involves consideration of conduct, of motivation, of the complicated problems of cause and effect. And so the concept of law, growing through the ages, has developed with increased knowledge and greater culture. The basic principles of law have changed but little. The application of these principles to advancing thought and new relationships is constantly changing . . . .

Law Marches with Progress

. . . the phrase, "the law of change," . . . (is) expressive of the phenomenon of human progress. There is a law of change as definite as the restless energy of mankind. Things do not remain the same. Activity, innovation, motion, progress, these are the laws of life. The discoveries of science, the explorations into unknown fields, physical, mental, philosophical, are fruits of the law of change. We are all pioneers seeking the new in the hope of finding the better, adapting, digesting, advancing. Among these advancing columns the law has marched with equal pace.

But always the law's advancement, as it reflects the study, the thought and the hopes of men, has been by analogy to that which has been established and fixed. Principles do not change. The essentials of religion, faith, love, justice are constant. Only their outward forms and the methods of their application to conduct are subject to the law of change.

Changing conditions render inevitable a new application of the principles of law to the resultant relationships in order to insure justice. These conditions require a new and enlightened interpretation of the law of contract and of constitutional limits in an attempted accommodation of justment to the ramifications of new situations.

Courts Hold the Plumb Line

In this expanding, restless civilization of ours, in the constant clash of ideas, the conflict of purposes, amid the contradictions and frustrations of the law, it becomes the high province of the courts to hold the plumb line. The Courts must impartially record the relationship of the constantly rising super-structure to the base, to guard against

* *Condensed from Justice Devin's address before the annual meeting of the State Bar.*

POPULAR GOVERNMENT, the journal of The Institute of Government, is published at Chapel Hill, N. C., 10 times a year—monthly except June and August. Editorial, business and advertising address: Box 352, Chapel Hill, N. C. Subscriptions, per year: $2.00. Single copies, 25 cents each. Advertising rates will be furnished on request. Editor, Albert Coates; Associate Editors, Henry Brandis, Jr., Dillard Gardner, T. N. Grice, M. R. Alexander, and H. W. McGalliard. Managing Editor and Business Manager, M. R. Alexander. Address all communications to Box 352, Chapel Hill, N. C. Entered as second-class matter at the Post Office at Chapel Hill, N. C.

departure from fixed principles, lest haply in our zealous pursuit of one object we produce inequality, lest in the effort to construct we destroy, lest in the name of progress in one direction we invite disaster to the whole. Amid the uncertainties of change and the doubts incident to the application of the new, the courts must inculcate patience and wisdom. They must not be fettered by the past, nor must they be mere reflexes of shifting popular opinions or passions, nor yield to the temptation to exercise unbridled judicial discretion and power.

In the progress of thought and the growth of the ideals of law, and the application of its principles to new relations, the lawyers have been leaders. Before the revolution it was from lawyers came the words of independence, the language of liberty. Their ideas of national freedom prevailed. The ideal of liberty restrained by law gave form to the government under which we live, and has given direction to the progress of social and governmental thought. Lawyers have occupied the highest executive offices, filled the judiciary, influenced the Legislature, not as lawyers but as representatives of all the people, bringing to their public service the matured fruits of their learning and of their philosophy in the changing relationships of law to government and life. They bear their share of responsibility for the trend of public opinion which expresses itself in legislation to protect and care for the weak and the helpless, to safeguard the rights and give justice to the under-privileged, to provide the machinery for securing a fair share of the nation's wealth for those who toil, and to prevent the exploitation of labor for the enrichment and benefit of accumulated capital.

But with it all they have stood staunchly for a just conception of the necessity of law and order as an incident to progress.

Between the activities of anarchistic and unamerican elements in the defiant disregard of property rights, on the one hand, and the organization of reactionary vigilanteism by force and violence to counteract social unrest, the great body of American citizens call for law and order.

Discipline is civilized man's heritage. Over all the conflicting forces runs the dominant purpose of human society that justice be administered. . . .

The Will of the People

The earliest conception of justice appears to have been the pronouncement of the primitive ruler. He was supposed to be the mouthpiece of a god and his rulings by divine inspiration. We have long since passed beyond that stage. We now understand the law to be no gift of a god, but only the result of conflicting social forces—a conflict in which perhaps the individual's own idea of what the law should be has been overborne.

But we have the broader vision to see that there is something noble and august in this new conception of law as the expressed will of a free people, and there is something impressive in the visible personification and enforcement of that will. . . . .

It was nearly a century after Magna Carta was signed before lawyers were authorized in England to act for litigants, and professional legal education is a comparatively modern outgrowth. Since that time, the progress of what we call civilization has marched with greatly accelerated pace. Some share in this advancement may be attributable to the legal training of lawyers and to their constant study and public leadership.

Credit or Blame Is Lawyers'

The administration of justice is one branch of human activity which has fallen largely to the lot of lawyers. Theirs is the responsibility for its failings, and to them in the main belongs the credit for whatever success has been attained.

Looking back to a time more than 50 years ago when as a small boy I sat in the Court House in Oxford and witnessed the trial and conviction of a man charged with murder, it seems difficult at first to reconcile the past with the new ideals of social justice, legislation for the benefit of particular classes, legislation that seems to interfere with personal rights and the liberty of contract, and to unduly regulate human conduct with a younger generation has wrought into our national consciousness and purpose. To the older generation it seems the "standards of legal justice have been moved while we were dreaming of them and planted in new soil."

It has been said that "life casts the moulds of conduct which will some day become fixed as law." Law preserves the moulds which have taken form and shape from life.

New Concept of Liberty

We are gaining a new concept of liberty, not as a negative abstraction, not as a mere absence of restraint, but as something positive and social, an adjustment of restraint to the end of freedom of opportunity. Therein the essence of liberty has been preserved though its form and expression have changed.

A distinguished Judge said long ago: "The law is progressive and expansive, adapting itself to the new relations and interests which are constantly springing up in the progress of society."

The progress by which the law grows is a social process.

When called upon to say how far existing laws are to be extended or restricted, we must let an enlightened conception of the welfare of society fix the path of its direction and distance. The pioneer penetrated the untrodden wilderness and explored the unknown, but he carried a compass or watched the stars so that he might be conscious of his direction, and maintain the relation between the objective and the base.

We find from study of the ancient scriptures that Moses, the great law giver, though he was learned in all the wisdom of the Egyptians, yet looked with concern and sympathy upon the burdens of his countrymen. Let me commend that attitude to the lawyers of the twentieth century.

Maintaining the Balance

The law in its application of the social instinct to human relationships has constantly felt the impact of the law of change, and gradually freed itself from many of its ancient fetters. It no longer seeks to preserve the limitations of a vanished era, either in form or substance. But liberty must not be permitted to degenerate into license; advanced ideas of social welfare must not be permitted to unduly circumscribe

(*Continued on page seventeen*)

State-Local Tax Bill Passes $100 Million Mark

Is second time in history, and trend is still up—Cities and Counties took two-thirds in '29, but now it is the State—Added functions and centralization of administration explains the shift.

By HENRY BRANDIS, JR.

FOR the second time in history the total State and local tax bill in North Carolina rose above the one hundred million mark in the fiscal year ending June 30, 1937. The first occasion was in the year ending June 30, 1930, and the total that year was $102,131,265. Last year that sum was substantially bettered when the total was $106,534,960.

Before going further, it should be explained what is meant by "total tax bill" as it is computed in the office of Mrs. Wesley J. Tyson, who compiles the statistics for the State Revenue Department and the State Board of Assessment. So far as State taxes are concerned, it means taxes actually collected during the fiscal year. This is also true of county and city license taxes. However, as it applies to county and city property, poll and dog taxes, it means the amount levied for the year rather than the amount actually collected. It should be remembered, therefore, that it does not reflect either the total income or even the total tax income of local governments. It cannot represent total local income because local units, and particularly cities, have large amounts of miscellaneous revenues, such as fees, water rents, electric and other utility collections, and special assessments. It cannot represent total local tax income because, on the one hand, not all of the current property tax is collected during the current year, and, on the other hand, there are collections made on levies of previous years which are not included in the figures.

It is true that these two latter factors tend to offset one another—that is, failure to collect all the current levy is offset to an extent not precisely known by collections from previous levies. However, the miscellaneous revenues not included in the figures are, in the case of cities, large enough to prevent the "total tax bill" from reflecting with any degree of accuracy the total amount North Carolinians pay for local governmental services.

Two tables acompany this article. One shows the history of the total tax bill from 1930 to 1937, divided into State, county, city and district taxes. The other shows a more detailed summary of the total bill for the last fiscal year.

State Taxes Up and Local Down

If the share of the total bill taken by the State on the one hand and by local governments on the other be stated in terms of percentages, the tendency of the period, toward centralization of functions and tax revenues in the State, is clearly illustrated. In 1929-30, State taxes were 36.0% of the total and local taxes were 64.0%. After 1930-31, the State percentage began to rise and the local percentage began to fall, reflecting primarily the State road and school programs. In 1936-37, the State share had risen to 64.5% and the local share had declined to 35.5%. In other words, the relative importance of tax levies by the two levels of government had been almost exactly reversed.

Another factor clearly illustrated by the first table is that city taxes have not declined since 1930 in anything like the proportion that county and district taxes have declined. However, this should not be taken as any indication that the cities have not been as diligent in effecting economies as the other local governments. School operating taxes levied by city authorities are included in the district tax total. Therefore, except to the extent that the State now distributes $500,000 per year for highway street maintenance, the city tax bill as reflected in these figures, has not been materially affected by the State's road and school programs. It is those programs which largely account for the tremendous decrease in county and district taxes. In fact, a more detailed scrutiny of county tax levies for this period would reveal that total county levies for purposes other than roads and schools have actually increased. There have been some savings effected in levies for general county government, but levies for such things as health, hospitals and poor relief (even before Social Security) have more than offset such savings.

The Big Money Producers

The figures given in the accompanying tables are not detailed enough to show where the increases, which have nearly doubled the dollar amount of State taxes, have occurred. Reference to the second table will show how State taxes produced in 1936-7. The figure of more than twenty-two million for gasoline taxes represents an increase of more than $9,000,000 over 1929-30; the sales tax, producing more than eleven millions, was not introduced until 1933-4; the income tax increased more than three millions during the period under discussion; franchise taxes increased more than two millions; inheritance taxes tripled; the beer tax was not levied until 1933-4; and license taxes show some increase. It will thus be seen that all major State taxes

TABLE 1

Total State and Local Taxes, 1929-30 through 1936-37

Fiscal Year	*State Taxes*	*County Taxes*	*Dist. Taxes*	*City Taxes*	*Total*
1929-30	$36,776,963	$37,325,572	$10,951,262	$17,077,468	$102,131,265
1930-31	33,044,940	35,953,219	11,015,119	15,168,560	95,181,838
1931-32	39,204,292	25,844,200	9,350,397	14,566,800	88,965,689
1932-33	34,405,338	23,947,244	8,583,754	13,718,871	80,655,207
1933-34	44,761,449	19,495,646	2,887,168	13,428,885	80,573,148
1934-35	50,969,145	19,929,400	2,530,423	13,103,649	86,532,617
1935-36	56,291,575	20,835,075	2,743,770	13,201,344	93,071,764
1936-37	68,666,326	21,330,270	3,043,824	13,494,540	106,534,960

share in the increase, with the biggest slices coming from the sales tax, the gasoline tax and the income tax.

Reference to the second table will show with great clarity the extent to which local governments of all kinds are dependent upon the property tax for their tax revenues. While, as already mentioned, cities have very important miscellaneous revenues, the property tax is still virtually the only important tax revenue of all local governments, amounting in 1936-7 to $35,447,624 of the local tax bill of $37,868,634, or 93.6%.

A great deal more might be said about these figures if space permitted; but perhaps the most significant thing is that, while from 1929-30 the total tax bill decreased by approximately one-fifth, the decrease has been more than offset by subsequent increases. Rapidly expanding appropriations for schools and roads since the beginning of the centralization programs, plus partial salary restorations and new needs for other purposes, have wiped out the depression savings effected by the initiation of centralization and by drastic reductions of salaries and other governmental costs.

And the Trend Is Still Up

The trend is still upward. Biggest new factor in the situation is Social Security, and it seems inevitable that this one thing alone will increase the local tax bill for the current fiscal year, though it will not account for all the increase which will result if new tax rates so far coming to the attention of the writer are typical. It seems reasonable to anticipate that the increase in the local bill will be substantial. It is virtually impossible to tell at this time what the increase in State tax collections will be, if any. The State has new taxes in the taxes on intangibles, gifts, wine and whiskey. However, none of these are likely to be major producers; and it is now diffcult to estimate what the old taxes will produce, particularly in view of the recent business recession. Further, the State collections last year were more than sufficient to meet State expenditures, and the year closed

(*Continued on page eight*)

TABLE 2

Total State and Local Taxes, 1936-37

State Taxes, General Fund:	
Inheritance	$ 3,963,002
License (Schedule B)	2,353,873
Franchise	7,362,061
Income	10,975,301
Sales	11,320,245
Beer	999,990
Non-Tax Revenue	1,632,863
Total General Fund	$ 38,607,335
State Taxes, Highway Fund:	
Gasoline	$ 22,138,371
Automobile license	7,746,666
Registration	173,954
Total Highway Fund	$ 30,058,991
Total State Taxes	$ 68,666,326
County Taxes:	
Property	$ 19,935,050
Poll	945,446
License	214,124
Dog	235,650
Total County Taxes	$ 21,330,270
District Taxes:	
Property	$ 3,043,824
Total District Taxes	$ 3,043,824
City Taxes:	
Property	$ 12,468,750
Poll	191,121
License	834,669
Total City Taxes	$ 13,494,540
Grand Total	$106,534,960

Invite Cities and Counties to Join State Police Radio Hookup

Pursuant to the law enacted in 1935, the State Highway Patrol Radio system has at last been set up and has begun functioning. Five transmitting stations have been established at Swannanoa, Salisbury, Raleigh, Williamston and Elizabethtown, and each of 106 Highway Patrol cars equipped with a police radio receiving set. The new system has gotten off to a good start, leading to the recovery of one stolen automobile within twenty-seven minutes after it was reported stolen, and to the recovery on one week-end of all of seven cars reported stolen—three of them on the same days they were reported.

Many sheriffs' and police departments are taking advantage of the system, both through use of the state system to broadcast their own alarms, and through the use of receiving sets to secure news of criminal activities.

The State Highway Patrol is "particularly anxious that law enforcement officers avail themselves of the North Carolina police short wave system which is now in operation," according to Major Arthur Fulk. "We who have been given charge of operating the radio system earnestly solicit the co-operation of all law enforcement agencies in the state in the use of this system, and want them to realize that this system is as much for the use of all law enforcement agencies as for the use of the members of the State Highway Patrol. (The Director of the Highway Safety Division) will help in any way possible toward getting the best prices possible for the receivers for any law enforcement agency or officer who wishes to avail himself or itself of this service. The type of receiver being used on cars is the AR5013 police receiving set without chrystals. These receiving sets are giving excellent service. The stationary sets are also available, and are manufactured by the same company at the same price. We will be glad to have all Sheriff and Police Departments advise us of anything that we may do to give the best service possible with the system . . ."

It is expected that in the near future many sheriffs' and police departments will install police radio in order to hook up with the State system, as North Carolina moves forward in its war on crime.

Monthly Survey - - -

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

Law Enforcement

By HARRY W. McGALLIARD

"Drunkard's Chain-Gang" — Tulsa, Oklahoma, authorities believe that they have devised a scheme for more effectually discouraging habitual drunkards in the future. For some time now, the police have been arresting 40 or 50 drunkards regularly—frequently as often as two or three times a week. The new plan, suggested by the mayor and approved by the Police Commissioner and the Judge of Municipal Court, calls for a "drunkard's chain-gang." Instead of relaxing in jail, at the expense of the taxpayers, habitual drunkards will be chained together and forced to work at weeding and similar clean-up jobs in full sight of the public.

Milwaukee Drunks — In Milwaukee, the authorities are beginning to get tired of giving two-and-three day treatments in the County Hospital to habitual drunkards who have the "jitters." Hereafter, it has been decided to give such cases "better" treatment—to the tune of 30 to 90 days in the House of Correction.

First Aid—Under the direction of the Red Cross, traffic policemen in Wilmington have taken up the study of first aid. The increase in motor vehicle accidents throughout the State indicates the need for activity along this line in many cities and towns.

Police Cars—The Chief of Police of Toledo has designed a combination all-purpose car which soon may prove popular in other cities. Chief Allen has worked out a plan so that a car may be used as a patrol wagon, a police cruiser, and an ambulance. Toledo is trying out the experimental car through the use of five such specially-designed Ford V-8's.

Parole and Parole Violators—In Illinois there are 6,318 persons on parole from Illinois prisons. Last

(*Continued on page eighteen*)

Courts and Records

By DILLARD S. GARDNER

Clerk as Juvenile Judge—Clerks troubled with petitions in juvenile matters will find the Supreme Court's recent decision in *Winner v. Brice*, and the petition set out in the report of the case, a helpful guide in determining the extent of their authority under the Juvenile Court law. The facts were briefly as follows: A guardian of an incompetent veteran was appointed guardian of the incompetent's children by deed of the incompetent and thereupon sought to place them in an orphanage by order of the Clerk. The children's grandparents sought to prevent this, challenging the jurisdiction of the Clerk as Juvenile Judge. The Supreme Court upheld the Clerk's jurisdiction, stating that, under the Juvenile Court law, the Clerk has exclusive original jurisdiction of children within the terms of the act. The Court also declared that it was not necessary for the petition to be filed by the guardian and pointed out that the statute permits the Clerk to assign juveniles to institutions and agencies not controlled by the State.

Recording by Duplicate Instruments. Is the filing of an exact copy of an instrument in the proper record a sufficient registration? is a question raised by many Registers in recent months. If it is, Registers could save time now spent in copying instruments by accepting duplicate instruments and placing these in the record books. On September 8th the Attorney General's office ruled that the "pasting, binding, or otherwise securely fastening copies of such records in the record books" is probably sufficient under our law. This ruling had particular reference to recording of crop liens and chattel mortgages and did not refer to recording of

(*Continued on page nineteen*)

Taxation and Finance

By T. N. GRICE

Classification—A recently enacted law in Colorado exempts motor vehicles from assessment as personal property for ad valorem property tax. Motor vehicles are classified separately for tax purposes and are taxed annually on a percentage of the factory list price as follows:

1st year — 3% of 70% of factory list price
2nd year — 3% of 50% of factory list price
3rd year — 3% of 40% of factory list price
4th year — 3% of 30% of factory list price
5th year — 3% of 15% of factory list price
Each succeeding year $1.50 annually.

Motor vehicles are divided into two classes. Class A are those used for hire or for transportation of persons or property as a public carrier. Class B includes all other motor vehicles. The State collects Class A taxes and distributes them to the counties on a mileage basis.

Profits from Bonds—Despite the current condition of the municipal bond market, the Public Works Administration Division of Accounts recently reported to Administrator Harold L. Ickes that PWA's profit on bonds accepted as security for PWA non-Federal loans and sold to the investing public by the Reconstruction Finance Corporation continues to increase.

Bonds with a par value of $373,925,746 have been sold at a total premium of $10,731,536 as of May 31, 1937. This represents a profit of $29.55 per $1,000 of bonds.

The par value of the PWA portfolio is some $247,292,000 of which some $120,916,000 is held by R.F.C.

Pensions—In these days of Social Security much has been said of pension systems for public servants and many pension systems have been created in municipalities. Before any attempt is made to set up a pension system, a complete study of conditions should be made by an actuary. Further, periodic reviews or "audits" should be made of any system

to ascertain that it is actuarially sound. That unsound pension systems can and do provide plenty of headaches and probably many heartaches is shown by the experience of a few of the municipalities in New Jersey. In 1937 the cities of Jersey City, Newark, Camden, and Atlantic City found it necessary to contribute a total of $850,000 to pension funds in addition to their normal contribution.

Federal Finances—The net result of the financial operations of the Federal Government for the fiscal year ending June 30, 1937, based on figures appearing in the Daily Treasury Statements, is a deficit of $2,707,000,000 exclusive of debt retirements. Revenues for the year amounted to $5,294 millions, an increase of $1,178 millions over 1936. Total expenditures, exclusive of debt retirements, amounted to $8,001 millions, a decrease of $476 millions from the 1936 total. The outstanding public debt was $36,425 millions, an increase of $2,646 millions over the debt outstanding at June 30, 1936.

Debts—Speaking of debts, the "Montana Taxpayer" calculates the per capita gross public debt of all governments at $436.39 at June 30, 1937, an increase of $15.43 over June 30, 1936, figure. The per capita of North Carolinians is somewhat higher than the national per capita average. Debts certainly have a way of growing, the per capita in 1913 having been only $59.28.

Hidden Taxes—A recent compilation prepared by the Northwestern National Life Insurance Company attempts to pull from the $1,800 per year salary. This survey shows that taxes average 12.7% of expenditures and range from 7.1% of the food bill to 25.3% of the shelter bill. These percentages do not reflect any real property taxes paid directly by the $1,800 per year employee.

Report—Our hats are off to Charlotte and City Manager J. B. Marshall for one of the most attractive and readable reports received by the office. The report, which is a résumé of the major governmental developments and activities in Charlotte for the past fiscal year, also contains an organization chart of the city and a financial chart showing the sources of revenue and objects of expenditure. Printed on a good grade of calendered paper, each department is reported on separately showing the number of employees, total expenditures, and a summary of its activities. Complete with charts and many excellent pictures, the report is almost as interesting as good fiction. A good job well done by Mr. Marshall and his co-workers.

●

Health and Welfare

By HARRY W. McGALLIARD

of the Staff of the Institute of Government

Relief Expenditures — The State Board of Charities and Public Welfare reports that during the fiscal year, 1936-37, the 100 counties of the state expended a total of $1,551,298.64 for general relief and public assistance, or an average of $129,274.89 per month. This, of course, does *not* include any expenditures under the Social Security laws, because these laws did not go into effect until July 1 of this year. The following table shows the distribution of the money:

General Relief	$674,633.86
Hospitalization	396,762.47
Administration	328,045.54
Pauper Burials	30,695.26
Mother's Aid	30,332.65
Boarding Home Care	25,934.47
Other Expenses	64,894.39

The Neglected Insane—According to the Director of the Division of Institutions and Corrections of the State Board of Charities and Public Welfare, there are now many applicants awaiting admission to all of the state mental institutions. During 1936-37 there were 1,527 insane persons listed in the county jails reporting to the State Board. The recent Governor's Commission for the Study of the Care of the Insane and Mental Defectives estimates that there are 1,700 white feeble-minded children and 700 negro feeble-minded children who need long-time state institutional care and treatment. The Governor's Commission report points out that all but seven states in the Union have provided more state hospital provisions according to population than North Carolina.

October CCC Enrolees — A total of 3,382 young men were enrolled in the CCC in North Carolina during October, according to the Supervisor of CCC Selection for this state. Of this number, 2,616 were white men, and 766 were negroes.

The War on Syphilis—Connecticut authorities report that the marriage law requiring stringent physical examinations of couples applying for marriage licenses—including a Wasserman blood test for syphilis—has been working well, and has been accorded popular support. Dr. Carl V. Reynolds, State Health Officer of North Carolina, has declared that a similar law will be urged upon the next General Assembly. Says Dr. Reynolds, "As evidence that such a law is needed, witness the number of cases of syphilis that are being reported daily to the State Board of Health—an average of 33 a day, 1,000 a month, or 12,000 a year. A fair estimate places the number of syphilitics in North Carolina at 300,000. Without restrictions for preventing the spread of the disease, and proper treatment for those infected, this will mean that we will continue to have 100 new cases of infection every day and the birth of ten newborn syphilitic babies every day." Dr. Reynolds also intends to invoke the criminal laws if necessary in the campaign against syphilis and to jail infected persons refusing to take treatment.

Social Security Payments—The Commissioner of the State Board of Charities and Public Welfare has recently announced that, beginning with the second quarter of the fiscal year—October 1—applications for social security payments of less than $5 monthly would be subject to review and revision. "Persons not qualified to receive $5 a month should be excluded from public assistance and placed on county relief rolls," the Commissioner said.

Birth and Death Rates—During the first seven months of 1937, there were 52,978 births in this state, an increase of 1,147 over the number for a similar period last year, while the number of deaths during the first eight months was 22,954, or 1,253 less than for a similar period last year.

After Conviction—What?—Commissioner of Paroles Edwin Gill reaffirms the necessity for parole and welfare officials to work in close harmony if the problem of what to do with criminals after they are

(*Continued on page seventeen*)

The Proposed State Department of Justice

I. Criminal Law Administration

Commission making study and recommendations — Voters to decide in November, 1938.

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

●

IN NOVEMBER, 1938, the qualified voters of North Carolina will decide for or against a Constitutional Amendment authorizing the General Assembly to create a Department of Justice under the supervision and direction of the Attorney General.

Department of Justice—What do these words mean? As used in the federal government they mean a unified and centralized control by the Attorney General of agencies for (1) the investigation of crime and the apprehension of criminals, (2) the acquisition, preservation and exchange of criminal identification records, (3) the prosecution, (4) probation, (5) punishment, and (6) parole of persons charged with crime. "Here, under the single direction of the Attorney General are all of the mechanisms that deal with criminal justice, from the time of the arrest to the time of the release of the prisoner from confinement. . . . In short, in the federal administration there is a continuity of effort and treatment . . . from the inception of a case to its conclusion—from the snatching of a man from the rest of society because of the performance by him of federal criminal acts to the time when he is returned, he remains in the custody of one responsible agency."

State Departments of Justice

In addition to the federal government, seven states have expressly created a Department of Justice: Iowa, Louisiana, Nebraska, New Mexico, Pennsylvania, Rhode Island, and South Dakota. California has reached the same result without the use of the words. Two of these states have provided for these departments through constitutional amendments, California and Louisiana. The other five states and the federal government provided for them by statute without constitutional amendment. In the federal government and in seven states the Department of Justice is headed by the Attorney General. In one, South Dakota, it is headed by a commission consisting of the Governor, Attorney General, and Warden of the State Penitentiary, who select the Superintendent to run it. In all these states the words "Department of Justice" have a variable meaning. To illustrate:

(1) *The Attorney General's Control over Police* in states with Departments of Justice varies from direct supervision and control to no control and little supervision. To illustrate: *in California* he may appoint as many as ten special agents with full law enforcing powers throughout the state to serve at his pleasure, supervise every . . . sheriff in all matters pertaining to the duties of his office, and appoint another to perform the duties of sheriff with respect to the investigation of any particular crime; and he may be given "direct supervision over . . . such other law enforcement agencies as may be designated by law." *In Louisiana, Nebraska, and Pennsylvania* he has no direct supervision or control over state or local investigative officers or police.

(2) *The Attorney General's Control over Prosecution* in states with Departments of Justice varies from direct supervision and control to no control or supervision. To illustrate: *in Rhode Island* he is given power to appoint all prosecuting attorneys, and *in California* he is given direct supervision over every District Attorney and may assist or supersede him and take full charge of prosecution whenever in his opinion any law of the state is not being adequately enforced; while *in Pennsylvania* he can neither supervise nor intervene in local prosecutions unless the presiding judge requests him in writing to do so.

(3) *The Attorney General's Control over Criminal Identification* in states with Departments of Justice varies from direct supervision and control to no control or supervision. *In Iowa, New Mexico, South Dakota, and Rhode Island* the Identification Bureau is set up in the Department of Justice with the Attorney General as head. *In California and Nebraska* it is attached to the Governor's office, and *in Pennsylvania and Louisiana* to the State Police, and in all four states is outside the Department of Justice and free from the control of the Attorney General.

(4) *The Attorney General's power over Probation* in states with Departments of Justice appears to be non-existent, and his power over Prisons, Pardons, and Paroles varies from a limited supervision and control to none at all.

Uniform State Act

The tentative draft of a Uniform State Department of Justice Act, prepared by the National Conference of Commissioners on Uniform State Laws, provides for a State Department of Justice (1) headed by the Attorney General or the Governor; (2) with six divisions for criminal prosecution, medical examiners, police criminal identification, investigation and statistics, pardons and paroles, prisons; (3) with alternative provisions for a greater or less degree of direct supervision and control of each division to be exercised by the head of the department. These alternative provisions are designed to bring about a unified control of the administration of the criminal laws within the existing constitutional framework of the several states.

It is apparent from the foregoing

THE COMMISSION'S STUDIES

This is a summary of the first of a series of studies made at the request of the Commission appointed by the Governor pursuant to a resolution of the General Assembly of 1937 to make a study of the advisability of establishing a State Department of Justice in North Carolina.

It is not the purpose of this article, as it is not the function of the Commission, to present a brief for or against the proposed amendment to the Constitution, but to give a fair and impartial analysis of what the words, "Department of Justice," mean in the administration of the criminal law, in the Federal Government, in those State Governments having them, and in the Uniform Department of Justice Act, and what they might mean under the proposed Amendment in North Carolina.

The next article will carry a similar analysis of the civil law administration phase, while the third will take up criminal identification and statistics.

analysis that the words "Department of Justice" have a convenient vagueness. They mean different things in different states. They mean everything from highly centralized control of all the agencies involved in the administration of the criminal law in some states to highly decentralized control in others, and to all stages in between.

North Carolina

The words, "Department of Justice," under the proposed constitutional amendment, will mean whatever the General Assembly of North Carolina makes them mean. It can write these words into a statute and under that statute: give the Attorney General completely centralized supervision of all the agencies involved in the administration of the criminal law, or give him partial control, or give him a title full of sound and fury signifying nothing. Out of this situation come the following questions: What is the present status of the criminal law enforcing machinery in North Carolina now? What can the General Assembly do without the aid of the proposed amendment? What can it do with the aid of the amendment that it could not do without it?

Police Agencies. Town and City police, township constables, county coroners and sheriffs, State Patrolmen and other state law enforcing officers constitute the chief investigative and arresting officers in North Carolina.

There is little doubt that the General Assembly already has the power: to increase, decrease or abolish the jurisdiction of any or all of the foregoing state agencies, or to create new agencies with powers to enforce criminal laws concurrent with existing state and local agencies to give the Attorney General a considerable degree of supervision as it thinks desirable, over all the foregoing state agencies and of many if not all local agencies. To the extent that there is any doubt about this power the proposed amendment would remove it.

Prosecution. The Attorney General now has complete control over prosecutions in the Supreme Court. He is directly required by the General Assembly to prosecute specific types of cases in the trial courts. On request of the Governor or of either branch of the General Assembly he is required to appear for the state in any court or tribunal in any criminal matter in which the state "is interested or a party." If these words are taken at their face value, it would seem that the General Assembly could authorize the Attorney General to appear in such cases on his own initiative. There is some doubt as to whether he may simply assist or assume control of the prosecution when he appears. There is also some doubt as to whether the General Assembly can now give him concurrent prosecution power with solicitors in all types of criminal cases or even supervision and control. To the extent that there is doubt about this power, the proposed amendment would remove it.

Identification, Investigation, and Statistics. The General Assembly in 1937 authorized the Governor, in his discretion, to appoint a staff of special investigators in criminal cases, to acquire scientific laboratory facilities to aid in the detection of crime, to establish a finger print bureau, and to collect crime statistics. There is little doubt that the General Assembly now has the power to extend the foregoing activities as far as it desires and that it may now give the Attorney General supervision and control over all of them. To the extent that any doubt exists, the proposed amendment would remove it.

Probation. There is little doubt that the General Assembly now has the power to give the Attorney General supervision over the Probation Commission established in 1937 if it desires to do so. To the extent that there is any doubt the proposed amendment would remove it.

Penal and Correctional Institutions. The Constitution of 1868 gave the State Board of Charities and Public Welfare the "supervision of all charitable and penal state institutions." There is considerable doubt as to whether the General Assembly now has the power to give the Attorney General supervision over penal institutions. To the extent that this doubt exists the proposed amendment would remove it.

Paroles and Pardons. From the beginning of the state's history the Governor has exercised the power of pardon, commutation, and parole. In 1925 the General Assembly authorized him to appoint a Parole Commission and staff, to assist him in his duties. There is considerable doubt as to whether the General Assembly could now give the Attorney General supervision over the investigation and recommendatory aspects of this work. It is doubtful if the proposed amendment would remove it.

Summary

It is apparent from the foregoing analysis that without constitutional amendment the General Assembly can set up a Department of Justice with considerable supervision or control over any or all of the successive links in the chain of our criminal law enforcing machinery and that with the aid of a constitutional amendment it could go even further. *The General Assembly can now, if it so desires,* give the Attorney General supervision: (1) over most if not all city, county, and state agencies for the investigation of crime and the apprehension of criminals; (2) over city, county, and state prosecuting attorneys, though the extent and character of this supervision is subject to some doubt; (3) over the machinery of probation and the staff of probation officers; (4) perhaps to a limited extent over penal and correctional institutions, though this is doubtful; and (5) perhaps to a very limited extent over investigations preliminary to paroles and pardons, though even such preliminary investigations might be held encroachments on the Governor's constitutional power of pardon and parole. To the extent that doubts exist the proposed amendment would remove them in all of the foregoing cases except perhaps the last.

●

STATE-LOCAL TAX BILL

(*Continued from page four*)

with a substantial surplus in both highway and general funds. Therefore, it is not necessary for State collections to increase as much as State appropriations have increased in order to balance the budget. All in all, it is probable that there will not be a very large increase in the State tax bill for the current year, and it is possible that it may not increase at all.

Keeping Up with Washington

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

The Problem of Unemployment Relief—Getting at the Facts—"Fortune's" Surprising Survey

U. S. UNEMPLOYMENT, to statisticians, is a nightmare of varying estimates. To Harry Hopkins it is starving people who have to be fed. To some industrialists it is the reserve labor pool that keeps wages from mounting to the skies. To confirmed anti-New Dealers it is a bunch of bums who have a soft snap at the taxpayers' expense. But what is unemployment?"

These are the terms in which the magazine *Fortune* puts this vital and controversial problem of the day, and its own conclusion, reached after a three-months' impartial study of marginal families in 11 carefully selected communities, is that unemployment is "skilled jobs begging for men and unskilled men begging for jobs."

Fortun(e)-ate for WPA is the fact that the survey by *Fortune* ($10 per year, catering to business and wealth, and by no stretch of the imagination a radical or even popular magazine) "gave strongest support to the feeling that the machinery . . . of the damned and despised WPA functions with an efficiency of which any industrialist would be proud."

The Findings

The survey sought to find the answers by the factual, "sampling" method to 11 basic questions being debated by business men and politicians, and here are the results:

1. Are the reliefers bums? No.
2. Have they had much education? No.
3. Did industry fire them because they could not do their jobs? No.
4. Do they ask for too much help? No.
5. Has industry taken many of them back since 1935? Yes, almost half.
6. Is there a shortage of skilled labor? Yes.
7. Is there an abundance of unskilled labor available to industry that is not being "bid away" by WPA? Yes.
8. Are those remaining on relief "marginal men" in that they are unfit for employment by lack of skill, age, or disability? Yes.
9. Are these "marginal men" unemployable? The unskilled, no; the aged and disabled, probably yes.
10. Is the WPA "spoiling" them and wasting the taxpayers' money? No.
11. Are the local communities doing as good a job of giving direct relief to these unemployables as the federal government did two years ago? No.

Labor Shortage with Unemployment

Fortune's analysis of the problem, based on the above findings, is as follows:

"The depression is over . . . everyone is willing to admit that . . . but a few people . . . in charge of our unemployment relief" who point to the "millions of people unemployed and . . . to the nation's 1937 bill of $1,500,000,000 for 'relief' agencies. But 'relief' from what?

". . . is industry to blame . . .? Well, industry's business is to create goods, not jobs. Assuming that its present price policies guarantee a maximum market for goods and hence maximum employment in producing those goods, then industry is not at fault . . .

". . . Is the trouble with unemployment the unemployed? Many people think so. And by and large these people are almost completely wrong. Such at any rate is the finding of the study conducted by *Fortune* to form the basis of this article. . . .

"Since the villain of the piece is neither industry nor the unemployed themselves, it must be sought in the impersonal mazes of the depression, which slowly sapped the effectiveness of older men and never gave the young a chance to develop the skills that are needed today. The most dramatic news written by the recovery . . . is that a labor shortage exists concurrently with an unemployment problem. The shortage is in skilled labor: if skilled workers could be discovered, they would each in their turn provide jobs for one, two, or five unskilled workmen."

Care of Unemployable Here to Stay

Of even greater interest to governmental units and officials is the way *Fortune* sizes up the effect on governmental relief activities of the future.

"When President Roosevelt laid it down that government had a social responsibility to care for the victims of the business cycle," the article reads, "he set in motion an irreversible process. . . . From now on the government of the U. S. will have to take care of anyone who falls into this classification" (those who are permanently destroyed by time and change as potential gainful workers). "Whether it is to be the federal government or the governments of the separate forty-eight states is a question that will be bitterly fought over at the polls. And it does not matter much who does the job as long as it is done. But the point to remember is that the past depression has set up certain *national* standards for the care of the permanent social burden. States that do not at least comply with federal standards will always be the objects of invidious comparison by the less privileged—and therefore more numerous—voters. . . ."

The "Cyclically Unemployed"

For the unemployed who are victims of the business cycle and remain potential gainful workers, *Fortune's* suggested remedy is "not unemployment relief" but "a gen-

---

The depression may be over, but after five years unemployment, relief, and the related matter of tax relief remain vital problems, and their solution for the future are as vital as ever to every level of government and business. For this reason it is believed that the magazine "Fortune's" thought-provoking survey and analysis of the whole problem of unemployment and relief, summarized in the accompanying article, will be of wide interest to public and private leaders.

And if there are any who do not think these issues are live ones today, let him consult the newspapers for November 16, which report the conduct of a nation-wide unemployment census; list tax relief for business along with crop control, wage-hour legislation, and government reorganization as the major problems facing the new Congress; and quote Mayor LaGuardia of New York as telling the U. S. Conference of Mayors that the cities can not bear a larger share of the relief burden.

eral economic policy designed to increase production to a point that will give all of them jobs in private industry." And the ways it suggests in which "the government can directly help" these classes "if the taxpayer is willing to meet the bill" are as follows:

"For one thing, it is possible to set up a series of nationally co-ordinated labor exchanges on the British model to bring the man to the job. . . . Secondly, government can do what it has already done in Wisconsin: set up a vocational training system for the unskilled young. . . . Finally, the government can . . . help . . . in two emergency ways. It has already enabled the states to legislate unemployment compensation under Social Security for part of the working population. (Whether it should do more or not is a question that we are not called upon to answer: the final arbiter of such questions is the U. S. voter.) And if it be granted that U. S. citizens won't stand for a mere dole, it can continue to do the emergency job of caring for business-cycle victims by such agencies as the despised WPA. As a matter of cold prediction, it is our guess that such agencies have come to stay. Americans are pragmatists; they put their trust in what has worked. And since WPA has worked, even if expensively, it will almost certainly be a light to guide statesman and politician alike in the future."

ADMINISTRATIVE PROBLEMS

Conducted By HENRY BRANDIS, JR.

Exemption of Municipal Purchases from Federal Taxes

City and county purchases are exempt from the Federal excise taxes on gasoline, lubricating oil, motor vehicles, including motorcycles, auto accessories, and radio sets. It seems very probable that many North Carolina cities and counties are not taking full advantage of these exemptions.

The taxes are levied by the Federal Government on the manufacturer, rather than on the dealer or the purchaser. Nevertheless, it is not necessary that the city or county make the purchase directly from the manufacturer in order to obtain the exemption. The purchase may be made through dealers or jobbers; but it is necessary for the manufacturer to know before he fills the order that the goods are destined for the city or county. Where such notification has been given to the manufacturer, the city or county, in making payment for the purchase, can execute an exemption certificate in the amount of the taxes and pay the difference between that amount and the gross amount billed to it by the dealer. The certificate can, in turn, be passed along by the dealer to the manufacturer and used by the latter in settling its tax liability to the Federal Government.

The exemption applies if the purchase is made for the exclusive use of the city or county, even though it may not be technically for a governmental function.

Cities and counties which have overlooked this exemption in the past might consider the desirability of applying for refunds, the application being made in the first instance to the dealer from whom the purchase was made. Purchases made prior to October 1, 1935, are subject to somewhat different regulations than those summarized above; but even prior to that time exemptions were permitted in a smaller number of cases.

State Board of Assessment Reports Mailed to Cities and Counties

At this writing, the forms for the annual city reports to the State Board of Assessment have already been mailed to municipal officials, and the forms for the county reports are expected to follow in a few days.

This year the reports call for the same information as in past years and, in addition, seek facts not heretofore covered by the reports. Both cities and counties are asked for information showing their percentage of collections of 1927-1936 taxes as of June 30, 1937, and cities are requested to indicate the delinquency status of their special assessments. Officials of both units are requested to furnish information as to the tax valuation of industrial property in their boundaries. The city report of fiscal operations during the past fiscal year is elaborated somewhat to draw a clearer distinction between general city operations, school operations, and public service enterprise operations. Counties are asked to furnish a statement of net solvent credits listed for taxation in each special taxing district; and they are also requested to furnish a county-wide breakdown of gross solvent credits listed before deduction of debts, showing the gross listings of mortgages and notes, bank accounts, accounts receivable, and other credits.

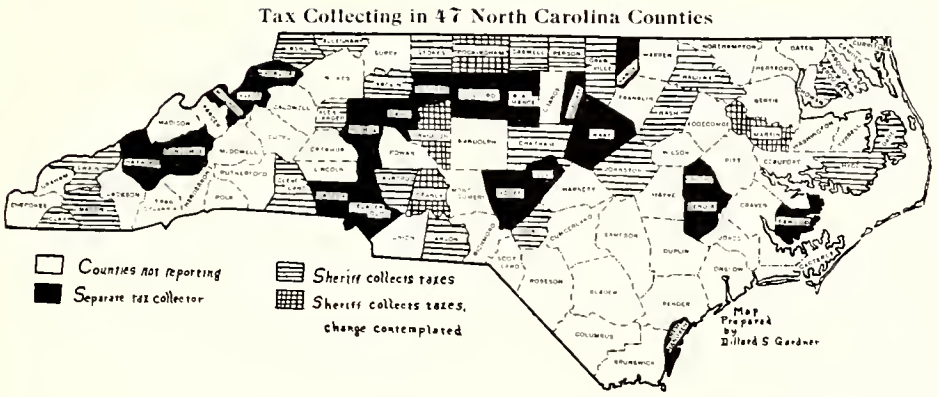
All of the information sought in these reports, and particularly the new information, will be of great importance in the deliberations of the Classification Amendment Commission, which is charged with the duty of making recommendations to the next legislature with respect to classification of property for taxes and exemption of homesteads from taxes. It is, therefore, doubly important this year that local officials make every effort to give this information fully and accurately.

By passing the classification and homestead exemption amendments to the State Constitution the North Carolina voters have opened the way for potential major changes in the State's property tax policies and system. Conceivably such changes may come slowly or rapidly, and may be beneficial or harmful to local government. The best insurance against changes which might be too drastic or harmful is to furnish the Commission and the legislature with all vital information about the fiscal affairs of city and county governments which might influence their recommendations and action. If nothing else, therefore, pure selfishness points toward full and efficient reports this fall.

The Automobile Trailer Creates a Tax Problem.

More and more space in governmental journals from all over the country is being devoted to problems of regulation and taxation spawned by the rapidly increasing

(*Continued on page eighteen*)



Should Sheriffs Collect Taxes?

By DILLARD S. GARDNER

DURING the past two decades in this State the office of Sheriff has undergone a metamorphosis. Throughout the two centuries of the office in this State (from 1738 to 1937) the Sheriff has until recently been a tax officer as well as a law enforcement and process officer. However, the last decades have seen the office gradually stripped of tax duties with the result that sheriffs are turning their attention increasingly to the problems of enforcement of the criminal law and of the service of civil process.

The gradual separation of these functions has tended increasingly to produce the following results: (1) Tax collecting is becoming more businesslike, progressive innovations are appearing, and political factors are being minimized in the interest of more effective tax administration. (2) Law enforcement and civil process duties are, for the first time, being considered by sheriffs as far-reaching, important, and complicated functions demanding considerable thought and study and an essential minimum of training. (3) Tax collecting, law enforcement, and process duties are each becoming more specialized functions, handled by men giving full time to only one, rather than to all, of these activities. (4) Tax collectors and sheriffs are fast becoming salaried officers no longer dependent upon fees and commissions for their compensation.

A survey of North Carolina counties reveals that it is fast ceasing to be the general rule for the sheriff to handle tax collections, although half a century ago this was almost the universal practice. As the sheriff is relieved of tax duties, usually he is placed on a salary and his office is provided with an operating appropriation; and provision is often made for several full-time, salaried deputies. At the same time separate tax offices, likewise on a salary-appropriation basis, are set up to handle the tax duties formerly discharged by the sheriff. In the large and average-sized counties this tendency has been particularly noticeable. Accordingly, salaried sheriffs with no tax duties are in evidence particularly in the populous Central and Piedmont counties.

To date the survey has secured data from 47 counties representing 55% (1,748,098) of the State's population and 43% (21,078 sq. miles) of its area. Summaries of the data follow: the Sheriff collects taxes in 26 counties (in four of these plans to relieve him of tax duties are pending) and in 21 he has ceased to perform this function.

The Sheriff is on salary in 25 counties, receives a salary—plus fees—in 16, and is paid by fees and commissions in six counties. Of the 41 receiving salaries (or salaries plus fees), in 30 counties the Sheriff's compensation is fixed by local law, and in 11 it is fixed by action of the county commissioners.

The actual salaries received were reported by 39 of these 41 sheriffs, as follows:

Of the 25 Sheriffs receiving salaries only (from $1,800 to $6,000) the average salary is $3,412 and the actual median salary $3,600. Of the 14 Sheriffs receiving salaries and fees (with salaries from $150 to $5,000), the average salary is $2,616.43 and the median salary $2,400.

One of the 26 counties whose Sheriff collects taxes will be relieved of this duty beginning with the next tax year. Although North Carolina has seven counties with populations exceeding 60,000, in not one of these does the Sheriff collect the taxes. The average population of the counties in which the Sheriff collects taxes is 25,386 or slightly more than two-thirds the population average of the 47 counties reporting (36,888). The counties reporting varied from 5,202 persons in Dare to 133,010 in Guilford.

It is significant that there are relatively few separate tax collectors in counties having fewer than 20,000 people. As counties pass 25,000 in population they seem inclined to relieve the Sheriff of tax duties, and as they reach 30,000 there is a decided tendency in this direction.

However, there are practical limits to this practice of the separation of functions. A small county, particularly a small rural county, with limited population and taxable property, can rarely afford to add the burden of a new full-time officer to its budget. Accordingly, these small counties have been slow in adopting the plan of wealthier sister counties. As a result, we find that the largely rural eastern counties and mountain counties, with few exceptions, still pay their taxes to a sheriff compensated by commissons and fees.

Again and again in recent years citizens and local officials have posed the question: Would it not be wise for our county to set up a separate tax collecting office? The answer is not always easy. Theoretically, the advantages of the separation of functions favor such a plan, and for populous wealthy counties the answer is "Yes." However, in small, rural counties the solution is not so simple. In a few instances it has been found in combining city and county tax offices. Sometimes the answer is found in the county manager plan. More often it is found in placing the tax collecting duties on the county accountant or auditor.

The future may reveal still other plans, such as jointly-supported tax offices operated by two or more small neighboring counties, or even the merger of adjoining counties for tax-collecting purposes.

Whither The Bar?

By ARTHUR T. VANDERBILT
President, American Bar Association

THERE is a great deal of discontent with lawyers in general and with bar associations in particular. Most of that discontent, it seems to me, is rather unjustified, but I am wondering if it will not be worth while to discuss briefly the problems involved. . . .

Let me stress one thing . . . which very few people realize when they criticise the American Bar Association for not having done the things it should do. That is that while we deliberate, while we are representative, while we set up standards, the American Bar Association as such has no legislative, no executive, and no judicial power, except over its own members. It is on the state bar associations that we must rely for carrying into effect the standards in various fields which are set up by the American Bar Association. And here you of North Carolina have done an outstanding job. You are the first state east of the Alleghany Mountains to have an integrated bar. You are to be congratulated upon that fact alone. But you have taken advantage of your integrated bar; and you have carried on, as I read your records in the last five or six years, in all these fields of admission to the bar, of legal ethics, of unauthorized practice; and you have gone further, into other fields, like the subject of law revision. You have set a standard and have raised a banner for other states to follow. . . Especially are you to be congratulated that, coupled with it, you have maintained a voluntary association in which you can agitate, in which you can deliberate, in which you can do many things to forward the cause of justice which had perhaps best not be done in the integrated bar. . . .

What the Public Expects.

We have done a tremendous task in policing the legal profession. As I see it, however, the public is expecting very much more of both our state bar associations and the American Bar Association. What the people expect of us, as bar associations, in the first instance is this. They expect us to take the necessary steps to see to it that all of the processes of law-making are brought to the highest possible standard of perfection, in the interest of the public. In the field of civil justice they expect us to take the necessary steps so that we have judges who are independent, qualified, and fearless, judges who are intrusted with the power of conducting the trial and who are not mere puppets seated on the bench acting as mere umpires and having very little to say as to how the trial should be conducted. There are many states of the Union where the judge does not even make the charge but goes through the mockery, if you please, of delivering to the jury the instructions delivered to him by counsel, and . . . counsel then sum up to the jury and really make the charge, instead of the judge. That is so in a good many states. There are many states in which the judge is supposed to sit on the bench like a solemn owl and not make any comment on the evidence, so the jury has not the slightest idea as to what is in the judge's mind as to where justice is in the case before them. I think the public is looking to the bar associations to change that condition. There are many states, too, where juries are chosen politically and where they are not representative and not a cross section of the common intelligence and honesty. That problem is prevalent mainly in the large cities, but the public is looking to the bar to change all that.

Improving Law and Administration

Secondly, in the matter of the enforcement of criminal justice, they are looking to the members of the bar to see to it that criminal justice is sanely and effectively administered, to the end that person and property may be protected in every community of every state. We know that that is a difficult task, of course, but if you will free your prosecutors and your police from any influence of the politicians it becomes a relatively simple matter.

In the third place, I think the public is looking to us to do a great deal to better the type of legislation which is being ground out in the legislative mills of all of our forty-eight states. It is a problem that is of the utmost difficulty. Various devices have been suggested: legislative drafting bureaus, permanent law commissions, legislative councils made up of the most important members of the legislature, who will continue to work throughout the year instead of during a small portion of the year or two years in which the legislature meets. But in every quarter the public is looking to us to produce better laws.

The Greatest Danger of All

Finally, we come to the fourth phase, and I refer now to our administrative tribunals, which have grown up in the last thirty or forty years, a mushroom growth, sprung up largely since the World War. They are a growth for which both parties are responsible; a system which was necessary, we admit, but which has gone beyond all control. We have a situation where, in many of these tribunals, the commission makes its regulations, conducts its investigations, makes its complaints, tries the complaints, hands down the decisions, and then conducts the appeal, if there be an appeal conducted, to one of the ordinary courts. It is a situation where you have one group of men exercising legislative, executive, and judicial power. It is the greatest danger, it seems to me, that confronts our system of justice in America today. The solution is not an easy one; . . . it is a problem which demands the best thought of the bench and bar of the entire country if we are going to have what we regard as justice in the United States.

These are fundamental problems which, it seems to me, the public is expecting us to solve. Yes, they are grateful to us for what we have done to uplift the condition of the bar by raising our standards, by

OFFICIAL STATE BAR NEWS AND VIEWS
Edited by Dillard S. Gardner of the Staff of the Institute of Government. Editorial Committee: Charles G. Rose, President; Henry M. London, Secretary, and Charles A. Hines, of the State Bar.

STATE BAR ELECTS ROSE

The annual meeting of the State Bar in Raleigh, October 22, drew an attendance of more than 600 and was generally termed the most successful on record. Charles G. Rose of Fayetteville (above) was elevated to the presidency, while Fred Hutchins of Winston-Salem was elected vice-president.

Two of the highlights of the program, the addresses of Justice Devin and the President of the American Bar Association, are re-printed in this issue. Julius C. Smith, the retiring president, presided over the session, and other featured out-of-state speakers included Ralph M. Hout of Milwaukee, Wisc., and Giles J. Patterson of Jacksonville, Fla.

expelling undesirable members, by keeping laymen from practicing law. But, above that, they are going to hold us responsible for the whole judicial process, whether it be legislative, administrative, judicial or criminal; and that is the great task that confronts bar associations today. I look forward to the time when, in addition to the regular committees, we shall have committees of judges and lawyers working together in attacking each of these individual problems. In addition to that, I sense that the public is asking much more—not of the bar, because the bar, it seems to me, should not go into the field of economic and political controversy, but of lawyers as individuals.

Lawyers or Public Leaders?

The whole history of law, it seems to me, from Magna Charta on, has been a history of conflict. Sometimes it has taken the form of political conflict, sometimes of religious conflict, sometimes of conflict for freedom of thought and speech; sometimes it has taken the form of social conflict, and sometimes, as now, the form of economic conflict. In all of these contentions of opposing forces our people need leadership. And where can they get that leadership better than from members of the bar, who are trained in the law, who are trained in economics, and who are trained in history, and who know the problems perhaps better than any other one class in the country? Here we touch upon what seems to me to be the most perilous problem or situation in American life. Do we today have in our public life men who are comparable to Washington and Benjamin Franklin and John Adams and Thomas Jefferson and James Madison, or are all those men engaging their time exclusively in business or science or the law? The answer, it seems to me, is fairly obvious. Many of the men who should be our leaders are devoting themselves entirely to their business or their professions. The crying need today, it seems to me, is that every lawyer, whether he live in a city or in a town or in a hamlet, exert his influence to further the public good, whether on the conservative side or on the liberal side —to throw himself into these issues, to the end that the public may have the advantage of our experience, of our training, and that they may have leadership of intelligence rather than mere leadership of ambition. I think the great crisis we have gone through in the last six or eight years existed largely because the public has felt the lack of leadership, and they have blindly turned to government to help them. But government, in the last analysis, is nothing but an aggregation of men; and government, as a mere aggregation of men, can never give the public the results that individual leaders, working conscientiously in their individual conditions, can give. And this, it seems to me, is the challenge which the public is handing to the lawyers today, not as bar associations but as individuals. I venture to say that when, as individuals, we are willing to tackle that problem, each in our own respective sphere, there will be an end of this discontent, an end of this criticism of the bar which has been so disturbing in recent years and months.

Case Comment

County Bond Issue—Hospital Addition—Is a County hospital a *necessary expense* so as to permit a bond issue for additions without a vote of the people? The North Carolina Court this month answered the question in the negative but not without a split in opinion. The majority view held that building or maintaining a public hospital is not a *necessary expense*, and taxes may be levied only for public purposes (only part of the addition in question was to be used for indigents). Two Justices concurred but expressed the view that a hospital for indigents, under particular circumstances, could be a *necessary expense*. And another Justice dissented on the ground that the county is an agency of the State; that it is the duty of the State to provide for the poor and sick; and that provision for a hospital, in discharge of this duty, is accordingly a *necessary expense.*—*Palmer v. Haywood County, 212 N. C.*——.

Drainage—District Assessments—Bonds Pledged Not Sold—Drainage commissioners, unable to sell the drainage bonds, borrowed the money and pledged them as collateral. To pay off the bonds the commissioners levied an assessment, which defendant attacked more than 20 years after the original bond issue. The assessment was upheld. *Held*, correct. The liability under the drainage statute attaches to the land until the original bond issue for drainage has been paid.—*Bank v. King, 212 N. C.*——.

Municipal Corporations — Street Assessments—Limitations on Foreclosures—Foreclosure of a street assessment by a town was begun more than three years after the assessment came due and more than 18 months after the date of the certificate of sale. The Superior Court upheld the lien. *Held*, correct. The three year statute does not apply to towns, as statutes of limitation do not apply to sovereigns unless they are expressly made subject to the provision. The action was begun within twenty-four months after the certificate, as required by C. S. 8037. However, this action was under C. S. 7990, and when the sovereign

(*Continued on page sixteen*)

State Bar Association Launches New Activities

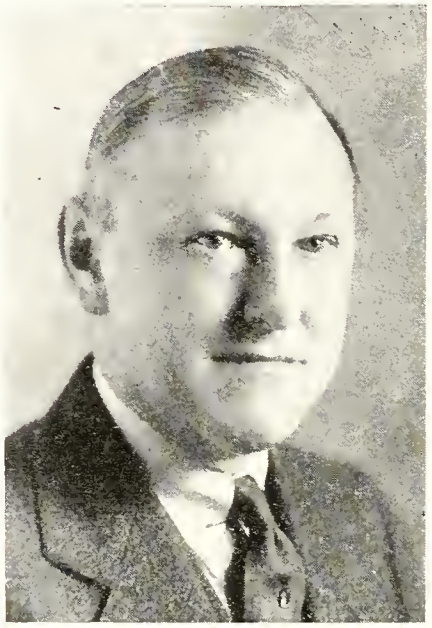
The Case for Increased Membership Among the Bar

By FRANK WINSLOW
President, State Bar Association

MOST parents, after having raised their families to maturity, now look to the Government for support; but the North Carolina Bar Association does not come within any of the provisions of the Social Security Act, and must, in the old fashioned way, look for support from its own offspring, the State Bar. When the North Carolina Bar Association was finally successful in 1933 in its movement to integrate the bar of this State, it did not disband but has continued to serve the State and the profession as before. These have been years of experimentation, of testing out theories, and there is now a general agreement that a healthy, strong, and vigorous voluntary association is as necessary as it ever was.

In limine, let me dispose of the idea that the payment of dues to two organizations is burdensome. The dues of the Bar Association used to be $4.00 per annum. After the State Bar required the payment of $3.00 a year, the voluntary association reduced its dues to $2.00 per year. So a lawyer can belong to both organizations for $5.00 a year, about the cost of one good law book or magazine subscription. I understand that the barbers and beauticians of the State, which are also integrated, have to pay $5.00 a year.

Now as to the *need* to join the voluntary association. It is now, as it was before the integration act, the only deliberative body of lawyers organized on a state-wide basis. The integrated bar is an administrative body. Its duties are to regulate admission to and suspension from the right to practice and to discipline members; it may have other implied powers, which are not now clear, but it has only a one-day meeting each year, with no authority to call any other, except special meetings at which action is limited to the matter mentioned in the case. It has no power to speak for its members on matters not mentioned in the act and no machinery for exploration and study of new matters, through committees which function between meetings. . . . The lawyers need a forum for discussion of current problems as they arise in a rapidly changing order of society, and machinery for study of those problems, and for doing something about them. For example, the Bar Association is now engaged in study of new problems arising out of:



North Carolina has ample need and room for a voluntary, deliberative Bar Association as well as a compulsory administrative State Bar, according to Frank Winslow (above). And the new President has launched the Association on a program of activity and legal reform, headed up in the J. P. system and described in the accompanying article, which bids fair not only to secure results but also to revivify the lawyers' voluntary organization. POPULAR GOVERNMENT *has called attention to many of the same problems in previous articles, and the editors urge every lawyer to give careful study to the Association's new program as described by President Winslow.*

Activities of Bar Association

(1) New forms of unauthorized practice, taking the bread out of our mouths, and mulcting the public at the same time. We have a special committee on that.

(2) The increasing need of legal aid clinics in our cities, to furnish legal services to those too poor to employ counsel. The chairman of our committee on legal aid is the pioneer on this subject in the Southeast.

(3) The out-moded forms of pleading and practice which make it a major undertaking to get a judgment on *any* kind of claim or defense, even though admitted out of court, if the opposite party puts enough in his pleading to raise issues of fact and demands technical proof of every essential detail. We have a strong committee working on a summary judgment bill, and a case for it which will appeal to the legislature when it meets in 1939.

(4) The denial of justice, and the oppressive administration of injustice, to the lowest level of our population, in the so-called courts of far too many justices of the peace. In my opinion, this is, from a social and humanitarian standpoint, the most important field in which the N. C. Bar Association is at work.

Whatever opinion any one may have of the President's proposal to reorganize the U. S. Supreme Court, all will agree that one desirable result was a revival of interest in the Bill of Rights and its history, and a fresh devotion to its principles.

J. P. Problem Biggest of All

But what boots it that rights are guaranteed in a dozen constitutions, and that there are courts with power to enforce them, if those rights are, as a matter of fact, denied to litigants too ignorant or too poor to give bonds and perfect appeals from J. P.'s who render unconstitutional and illegal judgments and demand oppressive bonds? We all know J. P.'s who have formed partnerships with constables and have made a "racket" out of the enforcement of the criminal law. . . .

We all know J. P.'s who have converted appearance bonds to their own use and pocketed fines; who issue warrants for offenses of which they have no jurisdiction and collect costs thereon; who bulldoze and intimidate humble defendants; who render judgments by default without notice; who always give judg-

(*Continued on page sixteen*)

POISON!

--to the poisoner as well as the victim

•

Some famous Cases Solved by Toxicologists in the Laboratory

Part II

•

By HAYWOOD M. TAYLOR
Toxicologist, Duke Hospital

The toxicologist is most often called in to assist the pathologist in determining the cause of death by showing the presence of poisonous materials in lethal amounts. This is not the only instance in which the toxicologist may prove his worth. His findings may oftentimes be the only means of identifying a body. This is adequately illustrated by a case from the New York files.

Case VI[1]. Becker, his wife, and two children lived in the Bronx, N. Y. Mrs. Becker suddenly disappeared. Letters mailed in Philadelphia to friends of Mrs. Becker stated that she was tired of living with Becker and, therefore, she had gone to Philadelphia; also, that she was well and not to worry about her. Her friends, however, did not believe these letters. They knew that, although she might have gone away from her husband, she loved her children too well to leave them behind. They, therefore, brought the matter to the attention of the District Attorney. Investigation was started by the police. Mrs. Becker could not be found anywhere. After a few weeks of good detective work, a clue was unearthed that Mrs. Becker had been buried in the yard behind a garage owned by a friend of Becker. The police proceeded to search for the body in this yard. After much digging up of earth, they found the body of a woman completely covered with lye. The clothes, face, and most of the external part of the body were badly eroded by the lye so that it was impossible to identify the body. Autopsy revealed that the woman's skull had been fractured by a blunt instrument. No poisons were found present on chemical analysis. The stomach contents revealed grapes, figs, and nuts. Meanwhile the detectives found the person who had last seen Mrs. Becker alive, a woman friend of the Beckers. She stated that Becker and his wife visited her about ten o'clock on this particular evening. When asked what they had eaten at her home, she told them, without knowledge of the chemical findings, that she had given them grapes, figs, and nuts. It was mainly upon finding of these particles of grapes, figs, and nuts in the stomach that the State succeeded in the identification of the body as that of Mrs. Becker. The Beckers left the house of this woman about 11:30 p. m., got into Becker's automobile, and started for home. On the way home Becker feigned engine trouble and drove into the aforesaid yard. He got out and lifted the hood. He called his wife to come out of the car and assist him. As she stooped down to look, he hit her over the head, knocking her unconscious. He then threw her into a previously dug hole, covered the body with lye, and buried her. He was tried and convicted and paid the penalty.

When Is a Man Intoxicated?

Alcohol plays a very important role in many accident cases. Formerly one had to rely upon the empirical decision that a person who had partaken of only one bottle of beer or one small drink of whiskey was under the influence of alcohol, regardless of how little effect that influence might exert upon the individual's activity. It is no longer necessary to set up such an empirical ruling. Much excellent research by many outstanding investigators has been done upon this phase of the problem. Probably the most outstanding work along this line has been done by Drs. Gettler, Freireich, and Tiber. They analyzed more than 6,000 human brains as well as the spinal fluid and blood of living alcoholics and carried out series of experiments on dogs in which the brains, blood, and spinal fluid were analyzed for alcohol. The results of their investigation show that if the alcoholic contents of the brain or of the spinal fluid rises above 0.25 per cent it indicates that the individual is intoxicated. This is true regardless of whether the individual is an abstainer or a habitué. The brain or spinal fluid alcoholic content seems to offer the only conclusive chemical evidence of intoxication. This is disputed by other investigators who claim that the blood, urine, saliva or exhaled air offers equally conclusive evidence. Further investigation is necessary to settle this question. A local case offers a good example of the value of alcohol determination. Alcohol determinations should be carried out in all serious automobile accidents.

Case VII. An individual driving a passenger car was killed in a collision with a truck. The estate of the deceased brought suit against the insurance carrier of the truck for $25,000 damages. The insurance company showed that the driver of the truck was not at fault and put up a defense that the deceased was intoxicated. An analysis of the brain of the deceased confirmed this defense.

Identifying Blood Stains

The identification of blood stains most often falls to the toxicologist though not directly a toxicological procedure. This is of great importance and quite often offers the only clue to the solution of the crime. The identification of blood stains is not a difficult determination but requires very careful and painstaking work and adequate controls in order to rule out cross reactions. The question involved in blood stains is usually whether the stain is due to human blood or to the blood of some other species of animal. When stains are found on clothing, knives, weapons, etc., the defense is usually that the blood is chicken blood, hog blood or blood of some other animal.

Positive findings are of value to the prosecution whereas negative findings are of immense value to the defense. Having identified the stains as human blood one is often asked to determine if the stain is of the same type or group of human blood as that of the victim. In the light of a recent investigation by Gettler and Kramer this seems to me to be a rather dangerous procedure. Gettler and Kramer took known groups of blood, dried them on metallic weapons, cloth, etc., and allowed some samples to stand in tubes until they were completely dry, thus undergoing putrefaction. After varying periods of exposure the stains were extracted and their groups re-determined. The error in grouping amounted to 11 per cent in the series in which the bloods were dried immediately and then left exposed for varying lengths of time and 77 per cent in the series in which the blood underwent putrefaction. This possibility of error makes the determination of blood groups a questionable procedure and should not be attempted. The identification of the stain as human blood is, however, a perfectly sound procedure and should always be carried out.

In seaching for blood stains one should always look in the places that are most difficult to clean, for instance, around the sole of the shoe where the upper part joins the sole, in cracks on the handles of knives and other weapons, in the hilt of the knife where the tine of the blade goes into the hilt or handle, under the edges of rugs, in the seams of automobile cushions, etc. The size of the stain, the shape, and the direction from which the drop came should be carefully noted. A complete description of the stain and its location should always be made. The stains should also be photographed when possible to do so. If stains are found on plaster walls or other absorbent material some of the material should also be submitted, as the test depends upon the blood protein.

●

STATE BAR ASSOCIATION

(*Continued from page fourteen*)

ment for their regular customers; who sound out the views of other magistrates before removing cases to them; who have partnerships in removal cases; who regularly decide cases from personalities, prejudices or favoritism, rather than in accordance with the evidence; who are lacking in upright character. . . .

Now in making this indictment, it is necessary and only just to say that the fault lies in the *system* which regulates the appointment of magistrates and the method of compensating them. In spite of this fantastic system, there is a small but courageous minority of magistrates who still manage to carry on their duties with nobility and self-respect which lift them above the multitude. It is not fair to them that they have to compete for business in such a system. What can you expect in a state in which any one who wants to become a magistrate can do so? . . . In some states they are appointed; in some states they are elected; but in North Carolina, alone of all the states, they are both elected and appointed, and appointed by two different branches of government, the executive and legislative. The judicial branch is the only branch which has no authority over them. This lack of any limitation as to number, together with the fee system condemned by the U. S. Supreme Court in Tumey vs. Ohio, 71 U. S. (L. ed) 508, as unconstitutional, is the root of all the evil in the J. P. system. And the North Carolina Bar Association is going right ahead with its work of exposing the situation and giving the people of the State the facts, and submitting to the legislature a well thought out plan for reform. We have good reason to hope for co-operation from the North Carolina Association of Magistrates. There are many high-minded men in its membership.

This case is submitted as a sample of the thing we are doing and as justification for our plea for a larger membership and more active interest in the North Carolina Bar Association. We are working in the public interest, and we need every lawyer's help; there is plenty of useful work for all to do.

●

CASE COMMENT

(*Continued from page thirteen*)

elects to proceed under C. S. 7990 no statute of limitations is applicable. —*Asheboro v. Morris, 212 N. C.*—.

Power Projects — PWA Loans—The latest trial of the *Duke Power Co. v. Greenwood (S.C.) County* case resulted in a Circuit Court verdict favoring the county's PWA power project, and the much-discussed case once again has moved up the long ladder of the law to the Supreme Court for a final decision. The Circuit Court held that the National Recovery Act was constitutional, and that this was a valid loan under the act to relieve unemployment.—*90 Fed. (2d) 665 (C.C.A. 4th)*.

Street Assessments — Receipts — Notes in Payment—In an action to foreclose street assessments, receipts of the town were shown, but it appeared that these were issued in exchange for notes which remain unpaid. The judge peremptorily instructed the jury to find for the town. *Held*, Error. Production of receipts was prima facie evidence of payment, and the jury must decide whether there was payment or not. —*Taylorsville v. Moose, 212 N. C.*—.

THE GROWTH AND DEVELOPMENT OF THE LAW

(*Continued from page two*)

human liberty or lead to the destruction of the inalienable rights of person and property.

The shadowy line of distinction between human rights and the rights of property is not always to be clearly discerned. The right to the preservation of the home and to the inviolability of private property, the right to labor free from molestation and to preserve the fruits of labor, constitute human rights as much so as the freedom from physical coercion.

We have come to understand, however, that the incidents of property ownership are relative, not absolute. I own land, not absolutely, but in truth according to the time honored formula "in fee," not in liege to the lord of the manor nor in consideration of some service to him, but in subordination to the welfare of society and the needs of humanity.

Freedom of contract is fundamental, but as between employer and employee the circumstances may be such that public welfare requires the interpretation of the law to protect the weak from the strong.

Social interests worthy of protection invoke the very purpose of government and demonstrate not only the necessity of law but of a constantly advancing conception of law, responsive to changing conditions.

But in our efforts for human betterment let us constantly keep in mind that in order to avoid disaster, the super-structure of our governmental ideas must be kept in line with the base.

The principles set forth in our organic law and in written constitutions must be preserved, inviolate, until altered by definite popular action in the method therein prescribed.

Government of Laws, Not Men

Our country is committed to written constitutions. That was an inevitable outgrowth of the first colonial charter that defined the rights and privileges of the pioneering fathers. We have here an American system, unique—distinct from all others—a new order. It has preserved our liberties and given direction to our destiny. While it has given us problems, divisions and occasions for the profoundest studies of lawyers, judges and statesmen, yet I think no sensible person, mindful of the past and hopeful of the future, wishes to destroy the principle of constitutional government no matter how urgent the specious plea for public welfare. We desire a government of laws rather than of men.

The Pillars of Government

We are not always attentive to the fact that constitutions in this country are popular ones. They were created by the people for their own welfare. They are not the peculiar property of the judges. The constitutions were made for men, not men for the constitutions. Both the Constitution of the United States and of North Carolina begin with the words, "We the people do ordain this constitution." The application of their original purpose to all the changing and unforseen human relationships and economic problems of succeeding generations can be attained only by liberal interpretation, or by wise amendment in the manner fixed by the basic instrument itself, seasoned and restrained by the wise concept that we will best serve the public welfare and promote our happiness by adherence to the constitution and laws as the people have written them, and as wisely interpreted and liberally construed by an independent and uncontrolled judiciary whose character, learning and unbiased judgment entitle their decisions to respect and obedience. These I conceive to be the very pillars of government by the people. The definite terms of a written constitution should be interpreted in the light of present day conditions rather than in the effort merely to ascertain the legislative intent of its framers, who, however wisely they laid its foundations, could not envision the limitless future.

The well recognized, uniformly adjudged and necessary power of the courts to declare an act of the Legislature invalid when plainly and clearly in violation of constitutional limitation or constitutional grant, could not be avoided under a written constitution, since enactments attempted in violation or excess of written constitutional provisions can not be regarded as valid laws.

It is impossible to conceive of an orderly government without the power lodged somewhere to declare when the constitution has been violated. . . .

Editor's Note: Judge Devin's survey of the development of the law will continue next month with a discussion of suggestions for the improvement of laws and legal practices in North Carolina.

●

HEALTH AND WELFARE

(*Continued from page six*)

convicted is ever to be satisfactorily solved. In a recent bulletin of the State Board of Charities and Public Welfare, Mr. Gill writes: "We are in dire need of a modern name for the processes of penal servitude and parole. Incarceration has too long been described as *punishment* and parole as *freedom* . . . Release on parole is far from being just a matter of freedom. It is rather, an extension of discipline beyond prison walls. It is an effort to direct and advise the parolee in efforts at rehabilitation. Parole in a real sense bridges the gulf between the prison door and citizenship. . . . We agree that Public Enemy No. 1 and all that he stands for should be permanently segregated from society. But what of the vast majority of ignorant, poverty stricken, and blundering humanity that is flooding our prisons? The penal system of North Carolina today holds in custody over nine thousand persons. How few of them can be termed public enemies! Whether paroled or not, by virtue of the sentences imposed, they are coming back to society at the alarming rate of fifteen hundred per month. Common sense tells us that in the great mass of penal commitments we are facing an immediate social problem that must be met whether we desire to face it or not. . . . Let no one be surprised that in North Carolina Parole and Welfare go hand in hand! In North Carolina the Parole System is more than an agency for the release of men. It is, rather, an integral part of a correctional process that begins with indictment and does not terminate until the experiment in human rehabilitation reaches its final culmination in the office of the Superintendent of Public Welfare."

ADMINISTRATIVE PROBLEMS

(*Continued from page ten*)

number of automobile trailers and trailer-domiciled families. It is safe to say that neither the trailer owners nor the municipal authorities relish these problems, but that doesn't eliminate them, and many predictions are heard that we are merely at the beginning of the trailer age.

According to a recent issue of "Public Management," magazine of the International City Managers' Association, a survey of 53 cities revealed the following facts: Only one city, Peoria Heights, Illinois, levied a direct tax on trailers, the amount being $50 annually. Twenty-nine cities collected no trailer taxes of any kind, while the remaining twenty-three levied annual license fees on trailer camps. North Carolina's neighbor, Virginia Beach, prohibits location of trailers except in licensed camps and charges such camps an annual license of $100 for the first five units and $25 for each additional five units or fraction thereof. Licenses in the other cities were considerably lower, ranging, for a camp of 30 units, from $4.80 in Phoenix, Arizona, to $165 in Pasadena, California. Further, in many cases, according to "Public Management," these license taxes do not even indirectly tax the majority of the trailer residents, because only 17 of the cities restricted trailer locations to the licensed camps. Only five of the fifty-three cities collect a fee for issuing a trailer location permit.

While the property tax is applicable to trailers of North Carolina residents on April 1, this is obviously not a satisfactory solution of the trailer tax problem in the majority of cases. In cities where no trailer camps have been established, the trailer location permit would seem to furnish the most satisfactory solution. Where there are such camps, a restrictive location ordinance coupled with a license tax on the camp appears to be a better method—that is, if the particular city or town desires to obtain revenue from itinerant trailer owners. There would seem to be no reason why cities and towns could not levy such license taxes under their general licensing powers. Counties, however, probably have no statutory authority to levy such taxes or even to charge fees for location permits. For the time being, therefore, trailer camps and trailers located outside of incorporated towns are probably tax free.

Section 126¼ of the Revenue Act levies State taxes on tourist homes and camps, allowing cities and towns to levy not more than half of the State tax on the same business. However, the section apparently does not include trailer camps, as the tax is measured by the number of rooms. Further, counties are prohibited from levying taxes under the section.

●

LAW ENFORCEMENT

(*Continued from page five*)

year 889 parole violators were returned to prison, and the paroles granted this year have been much fewer than formerly.

Buying Liquor for Drunks—In many of the wet counties, officials have been bothered by drunks who get sober persons to act as their agents and buy whiskey for them. Frequently, persons who are banned from purchasing liquor hang around liquor stores and plague sober persons into buying it for them. In several places the ABC authorities have taken steps to stop such activities. By exercising a little vigilance they have been able to spot this sort of practice, and to have both parties to the transaction caught red-handed and arrested, as when the purchaser delivers the liquor to some drunk or other person prohibited from buying liquor.

Highway Death — Of the fatal highway accidents involving 115 deaths in North Carolina during the month of September, *speeding and reckless driving* figured in 39 cases, and hit and run drivers in 18 cases.

Rural Police Officer—According to the *Sanford Herald*, the post of rural police officer has been established in Lee County. The officer will divide his time between the sheriff's office and the Sanford Police Department, serving regularly with the sheriff, and serving with the police on Saturdays and special occasions. The new office is designed to furnish the city with a police officer who will not be required to stop at the city limits, but will be free to go anywhere in the county. The rural police officer's salary will be shared by the county and the town.

Mr. Hoover Answers His Critics —The recent attack made by J. Edgar Hoover, Director of the Federal Bureau of Investigation, on the free-and easy method of granting paroles in many states throughout the country—termed by him "a national disgrace"—aroused a storm of criticism. Director Hoover answered the critics in a recent speech, saying, "There has been . . . quite a blatant outcry from these crime-coddlers to the effect that anyone who seriously objects to the spewing forth from prison of the fomenting scum of criminality belongs to what they critically call the 'machine gun school of criminology'." Mr. Hoover declared that he had rather be termed a member of the so-called "machine gun school of criminology" than the "cream puff school of criminology"—a view endorsed by many law enforcing officers who have seen their efforts to place dangerous criminals behind the bars wind up too often with those same criminals paroled to prey upon the public once more. It is good to know, as the Governor has recently pointed out, that the parole system of North Carolina functions with an excellent degree of efficiency.

"Liquor Breath" Test—A test for determining the relative intoxication of drunken drivers—or anyone else for that matter—has been developed at the Indiana School of Medicine. The Berkeley Police Department (California) has adopted this test, and twelve men have been trained in administering it.

Automobile Theft — Montreal, Canada, has adopted a novel, if common-sense, method for reducing the number of automobile thefts. An ordinance makes it unlawful for anyone to park his car in a public place without locking it.

Convincing the Speeder—In Milwaukee a new device has been adopted for determining and recording the miles per hour of "speeders." Specifications for new squad cars call for plans whereby a recording spedometer will be installed. When the officer gives chase to a speeding auto, he presses the button of the special spedometer, which records the rate of speed at which the officer is forced to drive to overtake the speeder. This can be shown to the man who thinks he wasn't making more than "about thirty," when he was burning up the road.

COURTS AND RECORDS

(*Continued from page five*)

real property instruments. C. S. 3553 does not describe what shall constitute sufficient registration, nor have our decisions described the mechanical details which are essential. Accordingly, Registers contemplating the adoption of this plan will do well to question the sufficiency of such recording, even for chattel instruments.

The purposes of registration are: (1) To preserve the muniments of titles, (2) to perpetuate the evidence of their voluntary execution, and (3) to give the community notice of changes of ownership. And in view of the purpose to be subserved, the copy should be made with ink of non-fading quality, and a copy made in pencil or other material that will not permanently remain is not within the spirit of the recording acts. So it has been held that a map pasted between the leaves of the recorder's book is not properly recorded." 23 *Ruling Case Law* pp. 182, 183. In this State a complete and sufficient registration must (1) serve every purpose of the law in protecting the rights of the parties directly interested, and (2) give genuine notice to the public relying entirely upon the record. *State v. Young*, 106 N. C. 567.

Under these authorities it will be seen that the Court has ample latitude in which to declare insufficient a registration by copy. This possibility is strengthened by the following factors: (1) No general law expressly approves recording by copy, and the absence of legislative approval may be construed to be the equivalent of legislative disapproval. (2) No fee schedule for such copy-recording exists, and no general statute here permits the Register to accept less than the scheduled fees for recording. (3) Regulations as to size, type of writing, form, and durability of paper would be necessary to make such a plan practicable, and no general statute gives the Register or any other officer authority to make such regulations. (4) Such recording would almost necessarily be less durable, less legible, and more cumbersome. (5) No such plan is in general use for all instruments in any county, and in those counties in which it is used only for certain types of chattel instruments the Registers, in most cases, are relying upon local laws the validity of which has not been passed upon by the Supreme Court.

Although the Court may eventually uphold the validity of recording by copy as to chattel instruments, it has not done so as yet, and conservative Registers will be slow to adopt the practice until the status of such recording has been more definitely established. Certainly, in recording real property instruments the traditional practice is definitely preferable to recording by duplicate, as the traditional method of copying the instruments on durable paper with permanent inks has been legally approved as a proper method of perpetuating such records.

Women Sheriffs and Jurors — Shortly after Wilson and Harnett Counties came forward with claims to having had the first women jurors in the State, Mrs. Nina Corpening Ross was appointed successor to her late husband, W. F. Ross, who served as Sheriff of Burke County until his death recently. Many newspaper reports referred to Mrs. Ross as "North Carolina's First Woman Sheriff." However, Henry M. London, Legislative Reference Librarian, says that Chatham County, not Burke, has this honor. He states that back in 1920—the same year in which Wilson and Harnett had women jurors—Sheriff Leon T. Lane of Chatham resigned, and Miss Myrtle Siler was appointed to fill the unexpired term. Although she made an excellent record, Miss Lane did not seek reelection. The Statesville *Landmark* also insists that many years ago Caldwell County had a woman Sheriff—"and a good one too"—but no names and dates are given. Current reports are that the fifty year old Sheriff of Burke *may* become a candidate at the next general election. If she should be elected, it would seem that she could lay valid claim to the distinction of being the "first woman elected Sheriff," even though it may be necessary for her, at present, to yield first honors to Miss Siler or the unnamed Caldwell Sheriff.

Judicial Teamwork—Often a conference of superior court and inferior court judges with bar officials can do much to increase the effectiveness of local courts. Buncombe County furnished an excellent example recently when Superior Court Judge A. Hall Johnston, County Judge J. P. Kitchen, and the Presidents of the Bar and Junior Bar noted that at times one court would have a crowded docket while the other court stood idle. To remedy this, in the future instantaneous transfers will be made from the crowded court to the idle one. In Buncombe the congestion in the civil docket of the County Court is due primarily: (1) to the popularity of the County Court in which orders and hearings may ordinarily be secured with greater ease and speed than in the higher court, and (2) to the tendency of superior court judges to adjourn terms in midweek with the result that scheduled cases have to be continued. During the last fiscal year 306 civil cases and 624 criminal cases were disposed of in superior court and 766 civil and 1,075 criminal cases in the county court. On June 30th, 380 civil cases were pending in the county court and 146 civil cases were pending in the superior court. Similar co-operation between bench and bar in other counties should yield equal results in more effective court administration.

Bond Practices — Judge W. B. Gaither, of the Catawba County Recorder's Court, has swung into action against the practice of treating the giving of bonds as the settlement of the cases. Upon finding 16 forfeited appearance bonds, he questioned the officers and found that, in the past, the officers fixed the bond at the time of the arrest, and the defendants upon giving a cash bond often considered this as ending the case. Judge Gaither pointed out that the purpose of such bonds is to assure the appearance of defendants in court and is not authority to an enforcement officer to "try" a case as judge and jury. In ending this particular practice in his county, Judge Gaither has put his finger upon a laxity in bond practice against which the judges and officers of every trial court would do well to guard.

Bulletin Service

Opinions and rulings in this issue are from rulings of Attorney General and State Departments from October 1 to November 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 Donald Howell. (A.G.) World War Veterans are not required to pay tax upon the compensation money received by them until it has been in some way invested. However, the property which is bought with such funds is subject to taxation.

29. Exemptions—$300 personal property.

To W. Z. Penland. Inquiry: Is a person entitled to list his household furniture in one ward and office furniture and scientific instruments in another, and obtain two $300 exemptions?

(A.G.) It seems clear that the Machinery Act contemplates a single exemption of $300 to any one person, whether he owns personal property in only one or all of the classes exempted in Section 601 (9). It does not entitle a taxpayer to secure any exemption in excess of this amount on the articles mentioned therein, regardless of their location.

79. Deductions from solvent credits—debts and liabilities.

To H. T. Warren. Inquiry: Is a taxpayer entitled to deduct income taxes due and owing the Federal Government on April 1 from his solvent credits in listing his taxes?

(A.G.) We have formerly ruled that taxes due the Federal Government, payable by instalment or otherwise, do not constitute indebtedness in the contemplation of the Machinery Acts prior to 1937. This ruling, of course, was enacted into law by the 1937 Legislature in Section 602 of the Machinery Act, which specifically provides that taxes of any kind owed by the taxpayer shall not be regarded as a bona fide indebtedness.

91. Deduction—in case of mortgage.

To P. E. Frye. (A.G.) The old Section 3, Article V, of the State Constitution, providing for exemptions from taxation of mortgaged property, was repealed at the general election in November, 1936, at which time a new Section 3, Article V, was put into the Constitution. This section makes no provision for such an exemption.

B. Matters affecting tax collection.

10. Penalties, interest, and costs.

To Robert W. Davis. Inquiry: What rate of interest may a county and city charge on tax foreclosure certificates?

(A.G.) Under C. S. 8037, the certificate of sale brings interest at the rate of 10% of the entire amount of the taxes and sheriff's costs for a period of 12 months from the date of sale, and thereafter at the rate of 8% per annum until paid or until final judgment of confirmation is rendered.

Chapter 560, Public Laws of 1933, repealing House Bill 158 of Public Laws of 1933, provides as follows: "That all penalties in force January 1, 1933, which were repealed by said Act, are re-enacted;—provided further, that the interest and penalties on tax sale certificates shall be 8% per annum."

In view of this provision, this Office has ruled that only a flat rate of 8% can be charged by the county or city on tax foreclosure certificates. Michie's Code failed to bring forward this provision.

14. Delinquent taxes—requirement of advertising.

To Robert A. Freeman. Inquiry: Could the County foreclose property under a 1934 or 1935 tax sale, and not advertise the same land for 1936 taxes, saving the cost of the extra advertising?

(A.G.) Although the matter has not been passed upon by the court, it is generally conceded that where lands have been sold for delinquent taxes and a foreclosure proceeding is brought upon the certificate of sale, that the taxes for subsequent years upon the same lands may be set up as distinct causes of action in this proceeding, and upon a final foreclosure the taxes of the years subsequent to that in which the property was sold may be enforced against the land and paid off by the proceeds of the sale. However, we repeat, this has not been passed upon by the court.

24. Sale of personal property.

To Faye Martin. Inquiry: What is the procedure for the collection of personal property taxes, current and delinquent?

(A.G.) The most direct way, of course, is to put the tax list in the hands of the tax collector and let him levy upon a sufficient amount of personal property to bring the tax.

However, if the delinquent taxpayer has real estate, this may be sold as required by statute, at the same time the lands are sold for county delinquent taxes, and upon the Sheriff's certificate of sale so obtained a foreclosure proceeding may be instituted as provided in C. S. 8037.

31. Tax foreclosure—procedural aspects.

To Ira T. Johnson. Inquiry: A number of tax certificates for the years 1928-35 have been turned over to our County Commissioners. Summons have been served in some and not in others. May we proceed to a conclusion of the actions already instituted and add in any other delinquent taxes owed by the same persons?

(A.G.) Under C. S. 480, among other things, it is provided that where the suits have been brought under C. S. 8037, an alias or pluries summons may be sued out at any time within two years after the issuance of the original summons, regardless of whether any intervening summons had theretofore been issued. If you are within this limitation, we think that a pluries summons could be sued out, and you would then be in a position to make a motion to amend your complaint and sue for the taxes for subsequent years in the original action.

We think it entirely proper for one suit to be brought foreclosing the tax certificates for the several years which are delinquent. In cases where summons have been served, a motion to amend your complaint would be in order.

To B. L. Fentress. Inquiry: Where a county brings a tax foreclosure on property on which the State and its Commissioner of Revenue have filed a lien, what procedure is proper, and is the State a proper party on whom process should be served?

(A.G.) We think it proper to make the Commissioner of Revenue a party Defendant in such a case. The State will, of course, file an answer, admitting the allegations but denying that the County has a preferred lien to the taxes due the State, and ask for its proportionate part of the proceeds received from the sale of the property.

50. Tax collection—acceptance of bonds or notes for taxes.

To H. L. Carpenter. Inquiry: Our Town, under authority of an act of the 1935 General Assembly, accepted in payment of taxes for 1932 and prior years bonds of the Town. The entire amount has been credited to Debt Service. Is the General Fund entitled to have by transfer that part of the funds to which it is entitled on the basis of the levy?

(A.G.) If the bonds were past due and in default, it would seem to us that the respective funds of the town should be credited with the part of the taxes which were paid by the surrender of the bonds, and if credit has been made entirely to debt service, that the transfer might be made as you suggest. The transaction, it seems to us, should be handled as though the taxes were paid in money and credits made accordingly.

76. Tax collection—date lien of taxes attaches.

To E. F. Upchurch, Jr. Inquiry: Under the 1937 Machinery Act, taxes become a lien on real property as of April 1. Does this mean that a tax payment covers the period from April 1 to March 30, or is it July 1 to June 30?

(A.G.) The case of State v. Fibre Co., 204 N. C. 295, of course, held that *under the 1931 Machinery Act*, the taxes paid in a tax year were for a definite period from July 1 to June 30. Section 1401 of the 1937 Machinery Act states that the lien shall attach as of the date on which the property is listed. This provision, in part, changes the basis of the decision in State v. Fibre Co., but I am inclined to think that our Court would hold that the period for which ad valorem taxes are paid is coterminous with the fiscal year of the local governments, that is, July 1 to June 30, although the lien for the taxes attached on the listing date.

II. Poll taxes and dog taxes.

A. Levy.

3. Exemptions—age.

To M. O. Wyrick. (A.G.) C. S. 1673, the general statute on dog taxes for State purposes, designates 6 months as the age above which dog taxes may be collected. However, C. S. 2677, which is part of the chapter on municipal taxation, sets no age limit, and we think a town could tax all dogs irrespective of age or sex.

III. County and city license or privilege taxes.

A. Levy.

2. Exemptions—veterans.

To G. W. Bernhardt. (A.G.) Section 121 (g), Chapter 127, Public Laws of 1937, provides that the Board of Commissioners of any county, upon proper application, may exempt from the annual peddler's license tax Confederate soldiers, disabled veterans of the Spanish-American War, and disabled soldiers of the World War, who have been bona fide residents of this

State for 12 or more months continuously. The certificate of exemption is granted by the Commissioners and entitles the holder to peddle within the limits of such County without payment of any license tax to the State.

14. Privilege license—beer and wine.

To J. C. Reece. Inquiry: Can an incorporated town refuse to grant a license for the sale of beer and wine for any reason?

(A.G.) An incorporated town may refuse to grant such a license if the application does not comply in every respect with the provisions of Section 511 of the Revenue Act, which sets out at length the conditions under which such a license may be granted.

The distance from a beer stand to a church is not cause to refuse a license. Section 513 merely provides that such beverages shall not be sold within 50 feet of a church in a town or within 300 feet of a church outside of a town while church services are in progress.

Section 514 provides for revocation of licenses for violations of any of the rules and regulations under authority of the Act.

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

To E. P. Covington. (A.G.) C. S. 2677 authorizes a tax upon any profession, trade or business carried on or enjoyed within a town, and in our opinion, a florist who has a place of business in a town from which he sells flowers, whether raised by him or not, may be taxed under this statute.

However, in our opinion, out-of-town florists who merely solicit business in a town through an agent can not be subjected to a privilege tax, and we do not think a merchant can be separately taxed for handling flowers as an agent.

It is true that a separate tax may be imposed, and is imposed, by the State, upon merchants carrying certain items in a general stock, such as oils, auto parts, firearms, ammunition, and the like. Perhaps the Court would sustain an ordinance separating, as a distinct subject of taxation, the sale of flowers. We would not be able to guarantee what would be the result.

To B. H. Perry. Inquiry: Section 139 of the Revenue Act, fixing the State license tax on pressing clubs, provides for a similar tax by cities and towns but does not mention counties. May our County levy such a tax?

(A.G.) We find nothing in Section 139 which permits a county to impose a tax upon pressing clubs. Counties get their authority for taxing certain businesses, occupations or professions entirely from the statute and, without direct authority, can not tax such enterprises.

40. License tax on peddlers.

To J. T. Maddrey. Inquiry: The peddlers' tax imposed by Chapter 127, Public Laws of 1937, Section 121 (e), exempts products raised on premises owned or occupied by the person, firm or corporation, his or its bona fide agent or employee, selling the same. Does this exemption extend to out-of-state producers?

(A.G.) Yes, under the case of Gramlin v. Maxwell, 52 Fed. 2d. 256, and such producers are not liable for the tax.

45. License tax on amusements.

To F. R. Seeley. Inquiry: Are fairs held by the American Legion, and the proceeds used for charity, exempt from taxation by Section 107 (b) of the Revenue Act?

In our opinion, the Revenue Act contains no exemption from the tax on holding fairs, and the Legion is required to pay the tax levied by said Act in the amount of $200.

To A. J. Maxwell. Inquiry: Does the Revenue Department have a right to collect the tax levied on circuses, wild west shows, dog and pony shows, etc., by Section 106 of the Revenue Act when such shows are held on Sunday?

(A.G.) In our opinion, you should collect the tax, but the fact of collection would not authorize the exhibitors to put on the show in violation of any law in force in this State.

In the event that there is a violation of C. S. 3955, which is the only general Sunday law in effect in North Carolina, or any local law or ordinance, it would be a matter for the local authorities to deal with in respect to such law.

In other words, it is your duty to collect the taxes imposed by the Revenue Act on persons subject to such taxes, leaving any violations of the law as to the manner and time of performance of such acts to those officers charged with the duty of enforcing the criminal laws.

47. License tax on slot machines.

To E. H. Northcutt. (A.G.) Section 130 (a) of the Revenue Act provides that drinking cup and food vending machines which do not require a deposit in excess of 5c are not subject to the tax schedule in the first paragraph of Section 130, but provides that persons, firms or corporations engaged in the business of operating such machines shall pay an annual operator's license tax of $100 to the State. We think that this would prohibit a municipality from leving a tax upon this class of machine.

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

To E. C. Wilson. Inquiry: Do the State and local license taxes imposed on photographers and their canvassers under Section 109 of the Revenue Act apply to an agent who collects and transmits pictures to an out-of-state concern, collecting a deposit with the balance to be collected C. O. D. when the purchaser gets his order direct from the home office?

(A.G.) We think that this case comes within the decision of the U. S. Supreme Court in the case of Real Silk Hosiery Co. v. Portland, 268 U. S. 325, and taxing such a business would be an interference with interstate commerce.

65. License tax on express and franchise carriers.

To R. O. Self. (A.G.) You are correct in interpreting Section 61 (b) of the Revenue Act as prohibiting a county, city or town from levying a franchise tax upon a motor vehicle carrier operating under a State franchise and paying a State franchise tax under the Revenue Act. A privilege license tax imposed by any town is invalid because of this prohibition in the state law.

B. Collection of license taxes.

1. Means of collection.

To L. P. Dixon. (A.G.) Privilege taxes due by a taxpayer are collected just as personal property taxes, to wit, by levy on sufficient personal property, or when they have become a lien upon real estate by virtue of becoming past due, by sale of real estate at the time provided for the sale of lands for delinquent taxes.

You understand, however, that if there is personal property out of which the tax may be collected, it is proper to make a levy upon the property of the taxpayer which is not exempt and sell a sufficient amount thereof to satisfy the tax.

15. Penalties for non-payment.

To R. L. Shoe. Inquiry: May a tax collector or sheriff confiscate and hold slot machines on which a county's license tax is not paid?

(A.G.) Section 130 (g) gives the State this right as to unpaid State taxes. However, Section 130 (j), authorizing a county tax, does not carry the same remedy, and laws providing for the confiscation of property must be strictly construed.

IV. Public schools.

A. Mechanics of handling school funds.

25. School audits.

To P. G. Gallop. Inquiry: Does the law require a separate audit of county school funds, or is it sufficient for the county auditor to make the audit or for the school audit to be included in the general county audit?

(A.G.) Section 21 of the School Machinery Act provides that "the State School Commission, in cooperation with the State Auditor, shall cause to be made an audit of all school funds, state, county, and district; and the cost of said audit shall be borne by each fund audited in proportion to the total funds audited, as determined by the State School Commission. The tax levying authorities shall make provision for meeting their proportionate part of the cost of making said audit, as provided in this Act."

A proper audit is, of course, entirely necessary and should be had as soon as possible, and it seems from the above section that the matter is under the control of the State School Commission and the State Auditor, to be paid for by funds provided by the tax levying authorities in the county and city administrative units.

B. Powers and duties of counties.

2. Issuance of bonds to build—without vote.

To J. H. McElroy. Inquiry: What is the last ruling on the issuance of bonds for construction of needed school houses without a vote of the people?

(A.G.) Heretofore we have endeavored to refrain from expressing a direct opinion upon the matter until our Supreme Court should have before it some case which would clarify its previous utterances upon this subject.

However, we think that the trend of opinion since the case of Hemric v. Yadkin County is sufficient to justify us in saying that bonds for the construction of a school house may be issued without submission to a vote of the people, provided the amount of such bonds is within the constitutional limitations set out by the recent Amendment.

17. Apportionment of funds.

To Clyde A. Erwin. Inquiry: Does Section 15 of the School Machinery Act contemplate that *all* county-wide funds for current expense purposes shall be distributed on a per capita enrollment basis, including funds used by a county for General Control, or should the latter be deducted before the distribution is made?

(A.G.) The last paragraph in Section 15 (c) provides that "all county-wide current expense school funds shall be apportioned to county and city administrative units and distributed monthly on a per capita enrollment basis."

County-wide capital outlay funds are distributed upon the basis of approved budgets. County-wide debt service funds are distributed on a per capita basis based upon enrollment for the preceding year, not in excess of the requirements of the unit.

Under Section 9, the objects of expenditure under the heading of general control, as well as other objects mentioned in the list set out in this section, are to be provided from State funds. In case any county-wide funds are used to supplement

the objects of expenditure listed under general control, with the approval of the State School Commission as authorized in the last paragraph of Section 9, such expenditures of county-wide funds would be a part of the current expense of operating the schools in the unit. As a part of the current expense school funds of the unit, the amount expended for this purpose of county-wide funds must be apportioned to the county and city administrative units as required by the above quoted part of Section 15.

In our opinion, the whole procedure should be simplified by an apportionment of all county-wide current expense funds on the basis as provided in the statute.

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

5. Erection of school buildings.

To C. M. Abernethy. Inquiry: Should the request of a city administrative unit for building funds be made through the County Board of Education or the County Commissioners direct?

(A.G.) Section 5 of the School Machinery Act provides that city administrative units shall be dealt with by the State school authorities in all matters of school administration in the same way and manner as county administrative units. This, in effect, places a city administrative unit on a parity with a county administrative unit. For this reason, we are of the opinion that requests for funds need not go through the county board of education because this board has no jurisdiction over the activities of city administrative units, and may proceed directly from the city unit to the county commissioners.

6. Location of school buildings.

To Clyde A. Erwin. Inquiry: Does the law permit the construction and operation of a school house to serve a joint district, or rather a district composed of parts of contiguous counties?

(A.G.) Chapter 136, Public Laws of 1923 (C. S. 5482) permitted the Boards of Education of contiguous counties, when necessity arose, to create a joint school district and build a school house in that district in one or the other of the counties. Provision was also made therein for the upkeep of such a school, for the apportionment of costs and expenses, etc.

Since the State has taken over the support of the schools, we think, with the exception of the construction of school houses, which is now the responsibility of the counties, that the procedure provided in C. S. 5482 for the apportionment of the costs and expenses connected with such a joint school is not now applicable, and this much of the statute is substantially repealed.

However, on account of the necessity of the case, the State adopted a policy with regard to the construction of these joint schools, which I understand are now as desirable as they were when the original law in 1923 was adopted. The same local convenience and necessity exists and must be served: and in fact, not only did the law omit to abolish these local schools but in practice an adjustment has been made by a method of managing the schools by which they are continued.

Under the circumstances, it is our opinion that so much of the statute (C. S. 5482) as provided for the creation of these school districts from parts of contiguous counties was not repealed by any of the School Machinery Acts subsequently adopted and is still in force and effect.

Generally speaking, since the School Commission is now given the authority to create school districts which had heretofore existed exclusively in the Boards of Education, the authority given the Boards of Education of contiguous counties to create joint districts must be considered an exception applicable to the particular situation.

43. Workmen's Compensation.

To Clyde A. Erwin. (A.G.) In school districts which have voted a local supplement for a ninth month, the local Board is an employer of teachers and should carry compensation insurance. Perdue v. Board of Education, 205 N. C. 730.

For the period that . . . teachers receive any salary from the State, the State should carry insurance. The School District is expected to carry insurance only where State funds are not used in paying salaries.

I. School property.

6. Title to property of former districts.

To J. B. McMullan. Inquiry: What agency now has title to a building acquired by a special school district several years ago and since abandoned for school purposes?

(A.G.) In our opinion, title remains in the trustees of the special district unless there has been a consolidation with the county administrative unit, in which case title would be transferred to the county board of education. See paragraph 2, Section 5, of the School Machinery Act.

V. Matters affecting county and city finance.

P. Securing local funds.

10. Security furnished by local banks.

To W. E. Easterling. (A.G.) The Office has just received a copy of the Federal statute, passed by the last Congress, extending until July 1, 1939, the period that the United States Government will guarantee the principal and interest of debentures issued in payment of mortgage insurance under the National Housing Act: (Editor's Note: This apparently makes such debentures eligible as security for deposits under the Local Government Act.)

VI. Miscellaneous matters affecting counties.

G. Support of the poor.

5. Levies for Old Age Assistance.

To J. C. Gambill. Inquiry: Is it a county's duty to pay for notarizing of Old Age pension applications and affidavits, and if so, what would a reasonable amount be?

(A.G.) We find nothing in the law requiring a county to pay the fees of notaries on verifications of applications or affidavits in connection with Old Age pensions.

6. Levies for Aid to Dependent Children.

To Mrs. W. T. Bost. Inquiry: Are minors over 16 eligible to apply for Aid to Dependent Children in behalf of brothers and sisters under 16?

(A.G.) In our opinion, you are authorized to receive such applications, and if the applicants are otherwise eligible for benefits, the same might be paid under the Act.

VII. Miscellaneous matters affecting cities.

C. Police and fire protection.

25. Electrical inspection.

To George W. Tidd. (A.G.) Electrical inspection is recognized as a proper exercise of the police power of a town.

Under C. S. 2790, the power of the electrical inspector extends one mile out of the city limits. The jurisdiction of the city to be exercised through its electrical inspector, outside of the one-mile territory, applies only to a street railway company, or an extension thereof, operating under franchise granted by the city, and to property in rights-of-way of the city itself anywhere outside of the corporate limits, including water, sewer, and electric light lines.

We think an ordinance providing that meter or protective devices should not be connected or re-connected to new or old wiring until a certificate of inspection has been issued is valid.

F. Contractual powers.

40. Claims due city.

To J. S. Bryan. Inquiry: Our Town holds a promissory note which was made February 1, 1927, and on which the last payment was made February 1, 1936. From which date does the statute of limitations run?

(A.G.) The statute runs from the date of the last payment credited thereon, regardless of whether payment was noted on the face or back of the note, and the note would be valid for 10 years from the date of the last payment thereon.

N. Police powers.

25. Police regulations.

To E. P. Covington. Inquiry: May a city pass a valid ordinance preventing large trucks from passing through its main streets, thus increasing congestion and hazards to its citizens, and providing alternate truck routes over side or back streets?

(A.G.) We are unable to find any court decision on the matter in this State. However, the general law is laid down in 42 C. J. 635:

"The State may prohibit the use of automobiles on public highways on such reasonable conditions as it may see fit to prescribe, and either the State Legislature or a municipality, within its police power, may prohibit the use of certain streets, highways, or public places, by certain motor vehicles."

We are of the opinion that such an ordinance, reasonable in nature, would be upheld under the general police power.

X. Ordinances.

1. Validity.

To R. T. Allen. Inquiry: Does the Board of Aldermen have a right to pass an ordinance requiring all taxi drivers operating within the city to carry public liability insurance?

(A.G.) The case of State v. Sasseen, 206 N. C. 644, held invalid a city ordinance requiring taxis to give surety company bonds or make deposits of cash or securities to protect the public in recoveries for injuries to persons and property. The decision rested upon the ground that the ordinance did not permit other forms of bonds to be given. The Court referred to but did not decide the question as to whether the ordinance would have been valid in the absence of this defect.

To Robert R. Carpenter. (A.G.) A study of your question leads us to believe that the courts will sustain an ordinance which outlaws pool rooms as a nuisance, but the decisions seem to hinge on the idea of gain or profit in the operation of such rooms.

If the pool tables are used by a club merely for the amusement of the members, in a room rented by them and without profit, and if the operation itself is not such as to make it a public nuisance (apart from its character as a place

CONVICT-MADE GOODS

To J. J. Lynch. (A.G.) In our opinion, coal mined by convict labor in another state can not be legally sold in North Carolina.

where pool is played), I do not think the town could suppress it as a nuisance.

VIII. Matters affecting chiefly particular local officials.

B. Clerks of the Superior Court.

1. Salary and fees.

To C. T. Woollen. Inquiry: I understand that Clerks of Court are entitled under the general law to 3% commission on the first $500 and to 1% commission on the balance of escheats paid to the University of North Carolina. Which would control, the general law or a local act providing that the Clerk of a particular county shall receive 5% commission on all moneys coming into his hands by virtue of his office except judgments, decrees, and executions.

(A.G.) The local law would justify a charge of 5% commission on escheat funds in the hands of such Clerk. The general law is as you stated it, but there are many modifications of the salary and fee law in different counties, and this forms an exception.

79. Decedents' estates—distribution and administration.

To B. D. McCubbins. (A.G.) Under C. S. 49, 938 (16), and 2158 (6), the Clerk of Court has the power and authority to remove any administrator, executor or guardian for good cause. Failure to file reports and inventories would be sufficient cause. The statute also expressly states that the Clerk may remove an administrator, guardian or executor upon a showing that he has become, or is about to become, a non-resident of the State.

82. To W. E. Church. Inquiry: (1) If an executor under a will stipulating that no bond be given files a petition to sell real estate, is he required to give bond under C. S. 34 (3)? (2) If such an executor has given bond as a fiduciary under C. S. 34 (3) to cover the proceeds from the sale, is he also required to give a commissioner's bond under C. S. 766?

(A.G.) (1) Yes. The statute imposes the requirement on executors "other than such as may have already given bond." (2) In our opinion, no additional bond is necessary.

88. Pensions.

To George Ross Pou. (A.G.) I agree with the view that a Confederate widow does not have to be completely bedridden in order to come within the meaning of the term "totally helpless" and be eligible for a Class A pension. I think it would be sufficient if the woman were not able to take care of herself in the ordinary way without the help and assistance of some other person.

C. Sheriffs.

9. Appointment of deputies.

To F. W. Bynum. Inquiry: Is it legal for our County Commissioners to appoint a deputy sheriff for a township and pay him out of the general fund?

(A.G.) We are unable to find anything in C. S. 1297, setting out the powers and duties of County Commissioners, which would indicate that a Board could pay a deputy out of the general county fund.

You are also reminded of C. S. 3908, which states that "Sheriffs shall be allowed the following fees and expenses, and no others," etc.

We believe that only an act of the Legislature could make this possible.

D. Register of Deeds.

2. Vacancies.

To R. B. Morphew. (A.G.) The person appointed to fill the unexpired term of the deceased Register of Deeds of your County would serve out the term for which the former Register was elected. See C. S. 3546, Chapter 362, Public Laws of 1935, and Article VII, Sections 1 and 14, of the Constitution.

5. Probate and registration.

To B. D. Gowdy. Our recent opinion to John D. Larkins, Jr., regarding the legality of the use of carbon copies for recording crop liens and chattel mortgages was based on the following authorities: C. S. 3553, White v. Stennis, 118 So. 902, 53 C. J. 613, and Bennington v. Booth, 57 A. L. R. 156. In the absence of any public-local legislation relating to recording such instruments in a county, we are of the opinion the ruling would hold.

10. Marriage—age of partner.

To C. E. Muse. Inquiry: What is the legal age for marriage in North Carolina? (A.G.) The Register may not issue a license to a person under 18 without the consent of his parent or guardian. See C. S. 2500 and 2503 which control the matter.

E. County Auditor.

3. Mechanics of handling county funds.

To O. J. Mooneyham. (A.G.) Services for additional clerical work in your County Farm Agent's Office may be supplemented out of any unexpended or unappropriated funds of your County without violation of the law.

L. Local law enforcement officers.

5. Prohibition law—transportation in interstate commerce.

To A. J. Edmisten. Inquiry: Is a person guilty of illegally transporting whiskey who is apprehended in a dry county with 16 cases of liquor which he claims was bought in Kentucky and was en route to an A. B. C. county under a bill of lading to a "Mr. J. H. C. . . ."

(A.G.) We think this would depend entirely upon whether or not the liquor was really en route from Kentucky to a legal destination.

A person may lawfully transport liquor through a dry county to a lawful destination and be guilty of no offense. However, if a person is found transporting liquor in this quantity in a county where the Turlington Act applies, when the shipment is either to persons in a dry county or to persons in a county which has adopted the A. B. C. Act but not to the A. B. C. Board or to persons authorized to receive the said liquor, then under these circumstances, it is our opinion that the person is guilty of violating the law.

The second county you name is under the A. B. C. law, but we do not know who "Mr. J. H. C.—" is, or whether he is an officer of the A. B. C. Board or person authorized to receive the liquor. The fact that the whiskey seems to have been intended for "J. H. C.—" without any office designated seems to me, on the face of it at least, to show that the liquor was being illegally transported. I think this explains the law to you, but its application, of course, must depend upon the facts.

18. Prohibition law—1937 Liquor Control Act.

To H. M. Clark. Inquiry: How much *non-tax-paid* whiskey can a person have in his home? May the County confiscate and sell an auto in which whiskey is being transported illegally?

(A.G.) Section 13, Chapter 49, Public Laws of 1937, makes it unlawful for a person to have possession of *any* alcoholic beverages upon which the taxes imposed by the laws of this State have not been paid. The section further provides that the beverages shall be seized and forfeited together with any vehicle or other equipment used in the transportation of such beverages, and that the procedure for confiscation shall be as provided in Section 6, Chapter 100, Public Laws of 1923.

30. Slot machines.

To E. A. Russell. Inquiry: What is the present law on slot machines?

(A.G.) There are several acts relating to slot machines, the one now most spoken of being Chapter 196, Public Laws of 1937.

Any coin-operated or slot machine which yields an uncertain return or operates on the principle of chance can not be possessed or operated under the law.

The possession of a license from the Commissioner of Revenue has no bearing whatever upon the illegality of possession or operation of the machine.

The law provides for the destruction of all gaming devices, and the authority to dispose of them is given to the court having jurisdiction.

To J. Erle McMichael. (A.G.) This Department has made no ruling with regard to "Type 12" slot machines, in connection with the case of Vending Machine Co. v. McGeachy, or otherwise. We are unable to pass on the question of the legality of any such machine from a description which gives the conclusions of the describer rather than the exact mechanical operation of the machine.

37. Safety Responsibility Act.

To E. C. Horton. Inquiry: Is the Automobile Financial Responsibility Act

INCOME TAX ON STATE EMPLOYEES

To A. L. Fletcher. Inquiry: The salaries of State employees, of course, are subject to State but not to Federal income taxes, and the salaries of Federal employees are subject to Federal but not to State income taxes. What is the rule as to the salaries of employees of a State agency who are paid partly out of State and partly out of Federal funds?

(A.G.) In our opinion, the salaries of State employees engaged in the performance of any governmental function are not liable for Federal income taxes, and we think this immunity exists notwithstanding the fact that in part the salary is eventually paid from Federal sources. However, we have to advise you that in this particular instance, the Federal authorities hold otherwise under the ruling of Mr. Helvering, based solely upon the opinion of the Federal Circuit Court in the case of Miller v. McCaughn, 22 Fed. (2d.) 165.

A short time ago a number of State employees had it in mind to contest this ruling, but we know of no instance in which it has been contested. I think, on account of the expenditure involved in a suit, the tax has been generally paid, and I have no idea at all that the United States Supreme Court would sustain any such ruling.

Here of late there has been a persistent trend in the administration of the Federal income tax laws to deny the immunity of State employees, and for one reason or another to bring more and more of them within the liability by mere administrative rulings and practices.

(Chapter 116, Public Laws of 1931) still in effect? What is the status of taxis and for-hire cars? Are they supposed to carry liability insurance?

(A.G.) Chapter 116, Public Laws of 1931, was dealt with in the case of Nichols v. Maxwell, 201 N. C. 38. That portion of the law with regard to taxing for-hire cars to satisfy the Insurance Commissioner of the ability to respond in damages before obtaining licenses was declared inoperative. The rest of the act is valid and applies to such operators.

38. Automobile Drivers' License Act.

To J. B. Combs. Inquiry: May a State Highway Patrolman or other officer take up a driver's license of a person arrested on a charge which carries a mandatory revocation if convicted?

(A.G.) We have ruled that a patrolman has no authority, under any circumstances, to take up a person's driver's license in the absence of a written order of suspension or revocation from the Highway Safety Division.

To Lon J. Moore. (A.G.) The new Probation Act does not repeal or modify the law regarding the revocation or suspension of drivers' licenses. Revocation or suspension of a license is not a part of the punishment but a provision under the police power of the State to secure the safety of the public highways, and for this reason can not be involved in the judgment admitting to probation. Similarly a pardon or parole does not have the effect of altering a suspension or revocation.

39. Motor Vehicle Laws.

To R. R. McLaughlin. Inquiry: Does the Motor Vehicle Bureau have authority to take possession of certificates of title and registration cards which have been unlawfully used?

(A.G.) Section 10 of the 1937 Motor Vehicle Act (Chapter 407) permits the Department to take possession of any certificate of title, registration card, permit, license or registration plate "upon expiration, revocation, cancellation or suspension thereof, or which is fictitious, or which has been unlawfully or erroneously issued, or which has been unlawfully used."

43. Public drunkenness.

To E. C. Robinson. Inquiry: Is a man sitting beside the highway in a drunken condition guilty of public drunkenness under the definition in Section 16 of the 1937 A.B.C. Act?

(A.G.) We think that the phrasing of this section is sufficient to cover drunkenness in any public place in North Carolina, and certainly the public road would be such a place.

M. Health and welfare officers.

28. County Board of Health—powers.

To O. J. Mooneyham. (A.G.) If the members of your County Board of Health refuse to serve because there is no provision for compensation, your County Commissioners could, in the absence of their resignation, declare the offices vacant and appoint new members.

P. Officials of Recorders' and County Courts.

2. Establishment.

To A. D. Qualls. (A.G.) Chapter 19, Public Laws of 1931, amends Section 2, Chapter 85, Public Laws Extra Session of 1924, and permits the establishment of Recorder's Courts in the 16th District.

5. Costs and fees.

To E. L. Curlee. (A.G.) We have held that Chapter 347, Public Laws of 1937, requires the collection of the $1 Bureau of Identification and Peace Officers' fee in criminal convictions in every court except that of Justices of the Peace. It is not the jurisdiction which controls but the court in which the case is heard.

27. Criminal appeals.

To J. B. Combs. Inquiry: What is the proper procedure when a person appeals from a judgment of Recorder's Court convicting him of drunken driving and revoking his driver's license?

(A.G.) Section 18 (d) of the law (Chapter 52, Public Laws of 1935) provides that the court from which the appeal is taken shall make such recommendation to the Highway Safety Department as may seem just and proper under the circumstances. In the absence of such a recommendation, we are advised that the practice of the Department has been to suspend the license.

S. Mayors and Aldermen.

30. Liabilities and penalties.

To J. A. Buie. Inquiry: Are the Commissioners of a Town criminally liable in any way for failure to include in its budget sufficient funds to pay interest on its outstanding indebtedness?

(A.G.) We are unable to find any statute imposing criminal liability in such a case. We can only refer you to C. S. 2959, 2724, and 2727.

T. Justices of the Peace.

1. Fees.

To T. A. Henley. (A.G.) It would not be proper for Justices of the Peace in a town to agree upon a schedule of lower fees than the law prescribes for the purpose of getting custom in their courts, or for the purpose of popularizing such courts with those who must resort to the courts for settling disputes or putting in motion the criminal law.

3. Issuance of process.

To Jack Respess (A.G.) A Justice, under C. S. 4540, may issue a warrant for the arrest of a person for public drunkenness or for any other crime in the breach of the peace committed in his presence. He may also sign his name to the affidavit on the warrant.

13. Territorial jurisdiction.

To Roland Yarberry. (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 outside 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.

38. Executions on judgments.

To B. D. McCubbins. Inquiry: A plaintiff secured judgment in a J.P. Court and docketed it in Superior Court. May he sue on the judgment in a J.P. court just before the end of the period of limitation and thereby secure another 10-year lien?

(A.G.) No. When a J.P. judgment is docketed in Superior Court, all right of execution in the Justice's Court is renounced, and in lieu thereof the creditor has the more efficient and far-reaching executions and process of the Superior Court.

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

30. Workmen's Compensation.

To S. R. Hoyle. Inquiry: Are employees of a County A.B.C. Board eligible for Workmen's Compensation insurance carried by the County on its employees?

(A.G.) We think not. In our opinion, the peculiar relation of the A.B.C. Board to the county, under which the profits derived from the sale of alcoholic beverages are paid to the general fund of the County, do not make the A.B.C. Board so subordinate to the county governing body that its employees would also be employees of the county. We think in this respect it must be considered an independent agency and, therefore, its employees would not be eligible for inclusion in the county list of employees.

Y. Game Wardens.

5. Powers and duties.

To Frank W. Steed. (A.G.) The game laws do not provide for a forcible search, without warrant, of a person in order to ascertain whether or not he has been violating the game laws by exceeding the bag limit, when such person is not hunting but is in his car.

CONDITIONS OF PROBATION

To Lon J. Moore. Inquiry: Section 3 of the new Probation Act (Chapter 132, Public Laws of 1937) provides that the Court shall determine and may at any time modify the conditions of probation and may include among them certain enumerated conditions or restrictions. Is a court required, in placing a person on probation, to include all of the provisions in Section 3, or does it have the right in its discretion to omit such provisions as it thinks are not required in the particular case?

(A.G.) The enumeration of the conditions on which probation is granted is not intended to be mandatory on the court to the extent that all of these conditions must prevail. Any of these conditions, or all of them and others, too, may be put into the judgment of the court, and indeed, it has the power to grant probation upon any reasonable condition.