IN THIS ISSUE

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Suggested Improvements in the State's Laws

By W. A. DEVIN

Associate Justice of the North Carolina Supreme Court

THE most radical change in the constitutional history of North Carolina occurred in 1868. There were two remarkable things about the new constitution then ratified. Considering the personnel of the constitutional convention and the method of their selection, in the light of attendant circumstances, surrounded by the wreckage of a social and an economic system, in the wake of a disastrous war, and amid the violent passions and glaring inequities of Reconstruction, the wonder is that it was as able and sound an instrument as it has in the main proved to be, and that after 70 years it remains largely unchanged. Amendments ratified from time to time have not altered the form of the structure.

At the last general election a far reaching change in the system of taxation was adopted whereby the dead hand of the requirement of taxation by uniform rule was removed and a more modern and intelligent method of taxation permitted.

Of interest and importance to the bench and bar was the increase in the number of members of the Supreme Court, and I trust this will tend to expedite the work of that court and prove of value to the state.

Other changes which the people have recently made in their basic law may introduce problems requiring judicial interpretation in their application to all possible facts and interests.

There are still other amendments to the constitution that suggest themselves to many who have studied its present provisions.

Needs of Judicial System

There are those who think that changes should be made in the judicial system, prescribed and limited by the constitution, so that it might become more flexible and adaptable to modern conditions, and that our system for the administration of justice might be placed upon a basis and more in keeping with the underlying principles of our political structure. Some of these were embodied in the proposals recommended by the distinguished commission headed by the Chief Justice, which unfortunately failed of ratification.

The separation and independence of the judicial department, responsible to the people alone, should be effectively maintained as far as practicable, and wise provision made to insure the uniformity of the system of courts inferior to the superior court, with definitely defined jurisdiction and procedure, graduated according to popular needs, so that the growth of the law may be consolidated and systematized. . . .

The divorce of judicial from solicitorial districts, several times defeated by the people because misunderstood, should be decreed, so that the Legislature might create judicial districts equal in number to the number of regular and special superior court judges, and thus remove the anomaly of six superior court judges holding their high office solely by the will of the executive instead of being nominated and elected by the people whom they serve. Their authority would be enlarged and their usefulness enhanced. The present method inaugurated for the purpose of supplying an emergency has so far worked well, and brought to the bench those who have measured up to the high standard and best tradition of the North Carolina judiciary, but it was not intended to constitute a permanent system.

Changes in Procedure

Those who have had long experience at the bar or on the bench are constantly thinking of the future and of improvement in our laws and procedure. As one of those I claim the privilege of suggesting for consideration some changes in procedure which would seem to me to be advantageous:

1. The method of selecting trial juries in civil, criminal and capital cases should be improved to the end that needless embarrassment in the examination, questioning and challenging of prospective jurors might be avoided, without interfering with the rights of litigants to an impartial jury. Jurors are presumably citizens of character and intelligence, summoned from their private employment and called to aid in the administration of justice, and are entitled to the utmost consideration compatible with the proper and orderly administration of justice. The method of securing juries in capital felonies entails a useless consumption of time and should be improved.

2. The number of peremptory challenges should be reduced and

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the necessity of calling in tales jurors avoided as much as possible by larger lists of regular jurors.

3. The challenges should be the same for the state and the defendant in criminal cases. The state is equally interested with the defendant in securing an impartial jury, and the right of the defendant should not be permitted to extend further, or afford opportunity for selection.

4. The ancient rule denying right of comment on the failure of the defendant to testify should be abrogated. The same just rule in this respect should apply to the trial of criminal cases as in civil actions.

5. In equity cases I suggest more latitude to judges in finding facts, and a nearer approach to the rules of the Federal courts in such cases.

6. I suggest a re-examination of the question whether demurrers as separate and distinct pleadings should longer be allowed to delay the determination of causes.

7. There should be a growing sentiment among the members of the bar and the larger exercise of authority by the trial court to restrict arguments to the juries to the facts in evidence and not permit them to become appeals to passion and prejudice rather than to reason.

8. My short experience on the Appellate Court where a bare majority controls in the most vital and important matters, leads me to reaffirm and restate my conviction that in civil actions verdicts less than unanimous be received in order to avoid delays and additional expense.

9. The statutory provision for settling issues before the trial, more honored in the breach than the observance, should not be overlooked.

10. The trial of civil actions would be expedited by requiring the admission of the genuineness of documentary evidence where the instrument is not attacked or controverted; and this should extend to informal admissions whether any fact is in good faith disputed, and thus prevent what Mr. Wigmore terms "a mass of needless skirmishing," and save time and avoid confusing the jury.

The Duty of the Bar

Let us all be mindful of the high duty of attorneys and counsellors at law to aid in the administration of justice and to avoid the appearance of practices which discredit the profession of the law and give to laymen sometimes a wrong conception of its purposes and ideals.

Unfailing courtesy and consideration for opposing counsel and respect for the office and a dignified acquiescence in the rulings of the Judge will go a long way toward allaying the distrust of lawyers and courts, and to remove the misconception of their functions, that seems to exist in the minds of some. When one in high place speaking of the relation of the people to the courts and bar, declares that the people are restive under the slow and uncertain processes of the law; when reference is frequently made to the advantage taken by the legal profession of the technicalities of the law and of the conservation of the courts to obstruct social and economic reform, it gives ground for thoughtful consideration and introspection, and it behooves us to see to it that our attitude toward the application of sound principles to new and changing conditions shall not justify this criticism.

The Law Is a Growth

Let me repeat that the law is a growth. The legal profession must be progressive in thought and practice, receptive of new ideas based on changing social problems. I counsel a wise liberalism, conformable to established principles of justice, and compatible with adherence to constitutional government under a written constitution alterable only by the people who made it, in the manner prescribed by the instrument itself.

More than ever, in this period of shifting, questioning thought, of testing old standards and ancient formulas, it is the high province of the members of the bar to stand for the preservation of the traditions of the bar and the tested wisdom of the past, to maintain the dignity of self restraint in the interest of the common good, and to influence in all sincere and right thinking people that sense of respect for law and for the integrity of the courts that characterizes civilized communities and insures the orderly march of the battalions of life and progress.

And upon the lawyers to whom the people look for leadership rests the high obligation to govern their private and professional conduct in accord with the letter and spirit of the constitution and laws of our commonwealth and to aid in inculcating popular approbation and support for the processes and the instruments which the people have created for the administration of justice as the only sound basis for happiness and prosperity.

The law is not static. It is constantly growing. Our ideas about law are progressive, advancing, changing. Our ideals of law are enlarging, broadening. The process by which it changes, the formula of its progress, its variations, its future currents, its ultimate end, these are beyond human ken, but I have a profound faith that the structure which man's ideas of law and justice has builded through the ages has been shaped by an unseen hand. It is like a temple to which every man in every age has brought a stone, but no matter how large a stone one man may bring, he can not change the design. This is according to the plan of the Divine Architect.

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Reducing Local Debts

The *Municipal Finance News Letter* for December 1 pays tribute to the progress which North Carolina cities and counties, assisted by the Local Government Commission, have made in clearing up defaults and reducing debts since 1933. The number of defaulting municipalities has been reduced from 152 to 64 and defaulting counties from 62 to 13, while the net reduction in local government bonded indebtedness was $32,499,000, according to the *News Letter's* figures.

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Some Tax Collecting!

W. F. Snuggs, Albemarle tax collector, has the remarkable record of 95.9% collections for 1936 and 99.7% for 1929 with an average of 98.51% for the eight years between the two dates. This is the highest city average that has been reported to the Institute, and is only .03 less than the 98.54% average of W. T. Penry, Forsyth County tax collector, for the same period, but if any unit can show a better mark, the editors would like to have it.

Collecting Personal Property Taxes

Many Units Use Newspapers, Mail, Telephone, and Personal Visits to Advantage—Levy and Garnishment Available where Less Drastic Methods Fail—Important Thing Is Sustained Policy, Plan, and Campaign.

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BY HENRY BRANDIS, JR.

WITH 1937 taxes now more than two months past due, city and county tax collectors are once more presented with the problem of collecting the taxes of those who own no real estate but are liable for personal property and poll taxes. There is no underlying security for these taxes, such as real estate offers, and, in the absence of voluntary payment by the taxpayer, collectors cannot hope to collect them without an active campaign.

Most collectors properly start with a "peaceful" campaign. The "outside man" attached to many offices makes constant rounds among the taxpayers urging, wheedling, and finally threatening. Many offices use newspaper advertising and mailed notices as reminders. However, in many places, it is not attempted to pay each delinquent a personal visit, as the time and expense involved are too great; and use of all the methods mentioned will still leave many taxpayers who have not paid.

More forceful methods of collection are offered by levies and garnishments. In many of the larger centers these have been in regular use for years and there are many indications that they are being more and more frequently used by smaller cities and counties, though in many places their use on any large scale has been inhibited by fear of possible political repercussions.

To Levy or Garnishee?

Of the two, the levy on personal property is the more cumbersome and less certain procedure. It is the more cumbersome because it involves taking the property into custody, if the proper procedure is followed, and, if the mere making of the levy does not induce payment, it also involves a public sale of the property, with the attendant costs. It is less certain for two reasons. In the first place, under opinions expressed by our Supreme Court in several cases, personal property of the types exempt from taxation up to $300 in value are also exempt from levies. This includes principally household and kitchen furniture, livestock, wearing apparel, and agricultural implements. Of course, a taxpayer may own a total of more than $300 in value of such property, but, because of the absence of statutes on the subject, there may be some uncertainty as to how to go about the business of levying on the excess. In the second place, under other opinions of our Court construing the levy statutes, if there is a valid chattel mortgage on personal property, a levy for taxes is prior to the mortgage only to the extent that the taxes are levied on the specific property. The mortgage is entiled to priority over taxes levied on other property of the taxpayer or on his poll. This considerably reduces the practical value of levies for taxes on such items as motor vehicles which are frequently —almost customarily—covered by chattel mortgages.

Garnishment, which is the more frequently used of the two methods, is the process of collecting taxes from those who owe money to the taxpayer or may owe it to him within the calendar year in which the garnishment is served. The statutes prescribe the form of the garnishment and the procedure to be followed. In practice, it is most frequently used in industrial areas where it can be served on the taxpayer's employer, who is required to deduct the taxes from his wages. It can, however, be used to collect taxes from rents or other types of obligations owed by third persons to the taxpayer. Of course, it is least useful in primarily agricultural communities where the taxpayer is not a wage earner or where, at least, there are not concentrations of wage earners employed by one employer. In the industrial centers garnishments can be and are served on one employer and frequently for dozens and sometimes hundreds of employees. The permissible costs in connection with garnishment are not large, but neither are the tax bills which it is usually employed to collect. The costs, by comparison to the tax bill, assume more importance than they have when looked at separately. This fact has led some collectors to make special arrangements with some willing employers under which, by consent of the taxpayer-employees, taxes are deducted from wages without service of formal garnishments and without addition of costs.

When the Taxpayer Moves

Removal of the personal property taxpayer to another city or county should not necessarily mean the end of efforts to collect the tax. The statutes provide ample machinery by which a certificate may be forwarded to the collector in the place to which he moves, if it is within this State, and by which that collector may proceed with collection as if the tax were levied by his own unit. Use of these certificates is on the increase among the larger cities and counties, but many of the smaller places are losing tax dollars by failure to take account of it.

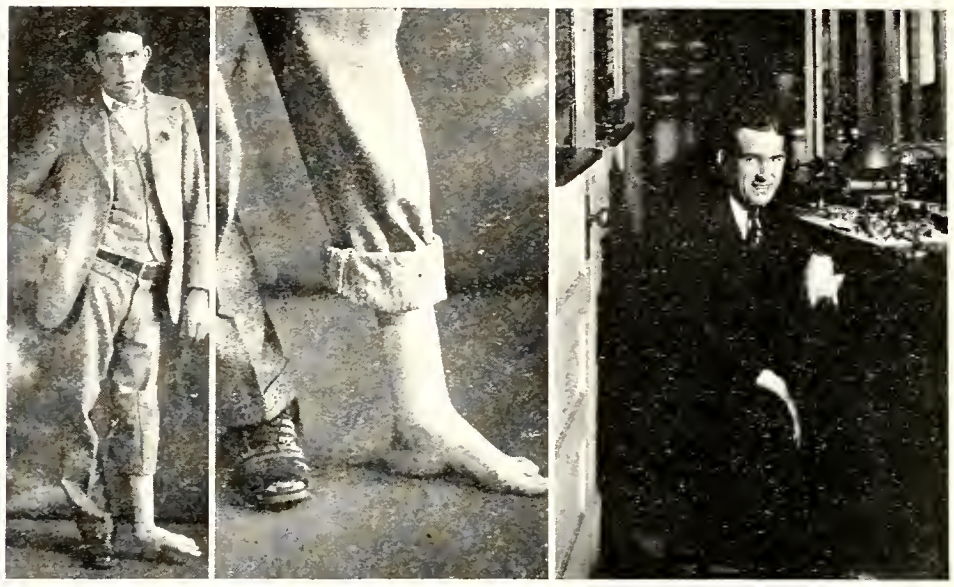
In many places there is a tendency to regard personalty taxes, once they are allowed as "insolvents" at the end of the current year, as gone forever unless the taxpayer voluntarily and most unexpectedly suffers a change of heart. Undoubtedly, some of these insolvents do represent extremely questionable assets and should never be budgeted as collectible revenues. However, collectors who pursue a systematic policy of following up insolvents collect a surprising portion. Persistent notices, personal visits where substantial amounts are involved, and levies and garnishments do the work. Frequently a rough cross-index between current personalty taxes and insolvents is kept and, whenever any type of effort is made

to collect the current taxes, the delinquent amount is included. This is permissible because there is no statute of limitations on the use of levies and garnishments in cases in which the taxpayer owns no real estate.

Holding Down the Insolvent List

Many insolvent lists should never be allowed, as they contain many items which could be collected with the proper effort. Primary responsibility for this rests on the collecting officer. Secondary responsibility rests on the members of the governing body who approve the insolvent list without requiring that the collector demonstrate that he has exhausted his legal remedies. Even when both collector and governing body are vigilant the insolvent list will contain solvent items. It will also contain many items which are then insolvent but will eventually be solvent. By proper effort, the insolvent list can be shortened originally and subsequently almost picked clean. Demonstrations are furnished by units having better than a 99% collection record. Sustained effort also has a marked effect in increasing voluntary payments in subsequent years.

While figures are not available, it is almost undoubtedly true that the cost per dollar is higher for efficient collection of personalty taxes than for efficient collection of realty taxes. It is also true that, at times, the use of drastic methods has something of the appearance of heartless plucking of the feathers of the little fellow. Presumably, however, both of these matters were duly considered in devising our property tax system. If they are such matters as call for changes in our policy (a matter about which no opinion is expressed here), probably the proper approach is through a revision of the tax levying system on a State-wide basis and not through individual concessions made on a haphazard basis by scattered collectors. As long as the taxes are levied they are there to be collected. It is the duty of all collecting officials to see that they are collected; and charges of gouging or favoritism can be largely avoided or refuted by the pursuit of an equally sustained and consistent policy with respect to collection of taxes of large realty taxpayers.



Crippled Corrected Trained

PICTURES SHOW THE MIRACLES REHABILITATION WORKS

This may read like a "before and after taking" advertisement, but it is just another case record in the files of the North Carolina department, showing what rehabilitation has accomplished in actual cases—physically, industrially, and psychologically.

The deformed farm boy at the left was criticized by his brothers because he could not do as much work as they did. The new man at the right, after orthopedic treatment and a course in watchmaking, has outstripped all his brothers. He is not only a skilled worker but has recently gone into business for himself; he is making a good living for himself and wife and is a productive, useful citizen.

Credit for the transformation goes not only to the Federal-State Vocational Rehabilitation service but also to the local civic club and orthopedic surgeon who helped to make possible the operation and subsequent training.

BILLY was a cripple in a wheel chair, George had lost both his legs in a saw mill, and Arthur's eyes were put out by a piece of flying steel in a machine shop. Billy was young and single, but George and Arthur had families to support, and the difficulties of one of the number were complicated by lack of education. Quite some problems these, but thanks to the aid of a co-operative governmental service, each received treatment and retraining which now enables him to earn his own living and be a productive member rather than a burden on society. Nothing could be done about Arthur's lost sight, of course, but orthopedic treatment gave Billy back the use of his limbs, and George was supplied artificial legs. Arthur was trained in basket weaving, George in shoe repairing, and Billy in radio repairing. Today, two of them own their own shops, the third earns a good income, and all look to the future confidently and brightly as they voice their praise of *Rehabilitation*.

For this is the name of the Federal-State service which picked up these unfortunates, added public funds to the resources they had or could secure from local sources, and helped them to new life and hope. And these cases from the files of the North Carolina service are just three among thousands of similar cases in which this service, in this and other states, is helping to turn physical handicaps into well being, poverty into self-sufficiency, and despair into cheer.

Each year in the United States 800,000 persons become permanently disabled through accident, disease or congenital cause, and an unknown number of children are born with physical defects which just as surely bar their chances for a self-supporting and useful life. To take these individuals and rebuild and re-train them to be productive citizens is the job of the Vocational Rehabilitation services. The importance of this assistance to the disabled individual can be demonstrated by the records of successful rehabilitation in hundreds of "closed" cases in the files of the North Carolina service. But let's look at its value from the hard-boiled, dollar-and-cents standpoint of the taxpayer who foots the bill and of the Service itself, which frequently has more applications than

Re-Building and Re-Training the State's Disabled

By H. A. WOOD, Asst. Director
State Division of Vocational Rehabilitation

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it can care for and which must make every dollar bring the maximum return:

$300 Per Case or $300 Per Year?

The average cost of effecting vocational rehabilitation is only $300 *per case*. But the average cost of maintaining a person at public expense is from $300 to $500 *per year*. And at 32, which is the average age of rehabilitated persons, the average work-life expectancy is 36 years.

Any story of the evolution of rehabilitation should begin with a description of the attitude of primitive peoples toward the deformed.

Within the period of recorded history it was common practice to kill the physically defective or to abandon them to die because of the feeling that their existence was an indication of ill favor of the gods. Through several centuries public feeling with regard to such unfortunates remained one of intolerance, and although the practice of doing away with them was abandoned, they were looked upon as social outcasts. An incredibly long period elapsed before this spirit of intolerance of the physically handicapped began to change to a constructive attitude.

With the rise of modern orthopedic surgery in the first part of the nineteenth century, there developed in the United States, in the latter part of the century, a program of specialized treatment and education, under public auspices, for particular groups, such as the deaf, the blind, the feeble-minded, the crippled, those with speech defects, and the tubercular.

The service of vocational rehabilitation of physically handicapped persons began in North Carolina in 1920 when the Legislature enacted legislation accepting the provisions of the Federal Act of that year. The Federal Act has now been made permanent by provisions of the Social Security Act.

Disabled workers lose time, wages, and frequently their employability.

Children are often taken from school, and wives and mothers forced into employment for the support of the family.

The State and Nation suffer tremendous economic losses because industry, the community, and the country are deprived of the work of skilled men and women.

Disabled persons become dependent upon relatives, friends, or the public. A high percentage of persons on relief rolls are physically handicapped.

Workers lose their morale and frequently develop anti-social attitudes.

Many handicapped persons are unable to re-establish themselves in remunerative employment.

Prevention and Remedy

Safe working conditions and education of workers in safety practices reduce the cost of accidents to society.

Safety education in the schools reduces street, playground, and home accidents.

The teaching of health habits and the control of communicable diseases make life safer and reduce the number of victims of disease.

Society's program for reducing the effects of accidents and disease include: compensation for the industrially injured, surgical and medical care for the sick, sanatoriums for the tubercular, relief for the unemployed, maintenance for the indigent, and rehabilitation for the handicapped.

All permanently disabled persons, who are vocationally handicapped, are eligible for vocational rehabilitation service regardless of the origin of the disability.

The rehabilitation program is state-wide, and all types of disabled persons are eligible—the crippled, the deaf or near-deaf, and those handicapped from tuberculosis and other diseases. However, not all persons who are eligible for services can be rehabilitated. Factors taken into consideration include citizenship, moral character, age, degree of disability, attitude of mind, and environment. A case must appear *feasible*.

After the disabled person is located the Rehabilitation Service (1) diagnoses his physical, mental, and vocational resources; (2) gives vocational guidance and assists in the selection of suitable employment; (3) secures maximum physical restoration; (4) trains him for employment; (5) secures or provides services incident to the solution of personal and family problems; and (6) places him in employment, and follows him up until his ability to succeed is assured.

Through this work handicapped persons become producers rather than dependents. Disabled persons are transformed from public liabilities into civic assets. Skilled workers are restored to industry, and the family life of the disabled worker is reestablished.

REHABILITATION SERVICES AVAILABLE TO THE DISABLED

Do you know of some adult or child in your community who is physically disabled but could be rehabilitated with the proper treatment and training? If you do, you will do him, the public, and this agency a favor by writing the Division of Vocational Rehabilitation in Raleigh.

The Federal and State funds for rehabilitation are used in the aid of individual cases for operations, mechanical appliances, trade education, college training or almost any other thing necessary to take disabled persons whose cases appear feasible of rehabilitation and re-build or re-train them to earn a living. The percentage of the Division's contribution varies from case to case, the Board attempting to supplement whatever resources the disabled person has or whatever assistance he can secure from local persons or organizations to the extent of what he needs.

The North Carolina service has an average of approximately 2,000 active rehabilitation cases at all times, and the range of treatment and training with which it is helping them is as broad as the opportunities of medicine and industry on the one hand and as their needs and qualifications on the other. Nor does the assistance stop with the task of physical restoration or re-training, but continues until the person is SATISFACTORILY employed.

Keeping Up with Washington

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

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

Up to Now with Congress.—The first three weeks of the Special Session could hardly be called productive, and indications were that the solons would leave Capitol Hill for Christmas without a great deal accomplished. Administration leaders finally succeeded in driving a Crop Control bill covering cotton, wheat, corn, tobacco, and rice through the House, and news dispatches indicated that the Senate would push for a farm bill vote prior to adjournment. The Senate had already passed a Wage-Hour bill, and proponents in the House finally obtained the requisite 218 signatures to a petition to force the House bill to the floor for consideration December 13.

However, the two controversial subjects brought forward a welter of conflicting plans not only from members but also from the leadership of farm and labor organizations. Indications were that Congress would gladly pass whatever legislation the various interests involved could agree upon. However, no such agreements were in sight, and meanwhile there remain several important differences in the House and Senate bills on the two subjects which are yet to be ironed out.

Proposed Highway Cut.—With the session already torn with strife, yet another apple of discord was thrown into the legislative arena when the President recommended to cut appropriations for federal aid to the states for highway construction from $238,000,000 to $138,000,000 for this and to $100,000,000 for next year. This provoked a storm of opposition and may be a factor in "trades" affecting the course of other measures, perhaps including even Crop Control and Wage-Hours. However, if the proposed cut is to be effected, it might be well to point out, Congress would likely have to act during the Special Session and before the allocations to the states are finally set.

Housing.—Cities which are underdeveloped or which are handicapped by exorbitant rentals, such as those which now have Seattle, Wash., pondering a rent regulation ordinance, will be interested in the twin Housing Bills, designed to stimulate private residential construction, which were introduced in both Houses and referred to committees. These bills would extend and liberalize the operations of the F. H. A. by raising the coverage of insured mortgages to 90% of the value of owner-occupied houses up to $5,400. Provision is also made for the insurance of mortgages on certain apartments, groups of single family dwellings, and large scale rental properties, up to 80%, and for the establishment of national mortgage associations authorized to purchase insured mortgages and to make mortgage loans to large scale rental undertakings. The concensus is that the proposed legislation will pass, although opposition to such far-reaching measures may develop on the part of building and loan and other lending interests and may either delay passage or force modifications.

Carry-overs.—Congress has gotten around to only a small portion of the program the administration had mapped out for it. Legislation on tax revision, centering in the unpopular undivided profits tax, anti-trust law amendments, federal reorganization, and regional development appear to be "out the window" as far as the Special Session is concerned and must go over until the regular term in January.

WPA Rolls.—The current business slump and the regular winter decline in industry have led Administrator Hopkins to announce that 350,000 persons would be added to WPA work relief rolls, adding $23,000,000 a month to payrolls. The latest reports showed 1,575,000 persons on work relief. However, reports from Washington indicate that the administration is not planning any new large-scale spending program but will continue to place emphasis, for the present at least, on ways to induce private finance and industry "to take over."

PWA.—The State Office of the PWA in Chapel Hill has been discontinued and merged with the Atlanta Office under a new regional set-up. Stanley H. Wright, former State Director, is now an engineer with the Atlanta District office. The last Congress authorized the President in his discretion to make certain funds available to PWA for pending projects from the sale of its securities. However, the Administration held up the funds, and all PWA loans and grants have been halted, at least for the present.

Unemployment Compensation.—North Carolina is one of 22 states in which unemployment compensation systems will go into effect on January 1. A total of $440,000,000 is now on deposit in the United States Treasury as a backlog for 11,500,000 workers in such states. Of this, North Carolina's share is $9,100,000. Workers covered by the Act and thrown out of employment after January 1 should be directed to the nearest State Employment Office to register for work and file a claim for unemployment insurance.

Income Tax on Officials

The Ways and Means Committee of the House is reported to have dropped its idea of attempting to extend federal income taxes to approximately $3,750,000,000 of income of State and local officials. The reason was the decision of the United States Supreme Court, December 6, upholding a State tax on the income of contractors performing work for the Federal Government, but reiterating its ruling against "any taxation by one government of the salary of an officer of the other, or the public securities of the other." However, an amendment to the Constitution permitting such taxation is still possible, and indeed, several amendments of this nature are pending before Congress.

Purchasing.—Many cities are purchasing their trucks and cars without tires and tubes because cities are exempt from the Federal excise tax on tires and tubes if purchased separately but not if purchased with cars.

The Bituminous Coal Commission's new marketing rules, regulations, and minimum prices went into effect December 16. City and County purchasing officials should write the Commission for a copy, as government purchases are subject to these regulations in the same manner as private. However, attention is called to the fact that the tax levied under Section 3-A does not apply in the case of a sale for the exclusive use of a State or local unit or agency when such coal is used in the performance of governmental functions.

The President has requested the Federal Trade Commission to make an immediate investigation into monopolistic practices, unwholesome methods of competition, and violations of the anti-trust acts by corporations leading to an increase in the cost of living.

Federal Aid.—The Report of the Urbanism Committee to the National Resources Committee on changes and problems in urban communities contains some recommendations of far-reaching significance to cities. It reads in part:

"The Federal Government should continue, but in a fuller nature, its policy of co-operation and assistance to the social welfare programs of the urban areas. This assistance should include crime prevention and control, unemployment relief, and equalization of cultural opportunities.

"There should be more co-ordination between the various federal agencies and the urban governments.

"In times of economic distress the urban areas should be able to borrow from a Federal credit agency, this money to be used for public works construction, better housing, construction of public utilities, and land purchases.

"There should be created a Federal public works authority which should formulate and execute a nation-wide program of public works . . . . ."

HERE AND THERE

---With Progressive Officials

Monthly Tax Bills

The majority of people pay their bills by the month, why not their taxes? Augusta, Maine, officials queried back in 1934 and proceeded to put in a 12-payment plan which is reported to have worked most successfully. A numbered coupon book is issued to each member, and when a payment is made, a coupon is removed and marked paid, and the payment is noted on the taxpayer's card in the Treasurer's office. Payments are required before the 15th of each month and may be from $2 up. Advance payments are also accepted, and if a member wishes to pay by mail, the coupon book is kept in the treasurer's office. — *Municipal Finance News Letter.*

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Voting Machines

A total of 42 New Jersey municipalities used voting machines in the recent elections, according to the New Jersey Taxpayers Association *Bulletin.* More than 3,500 municipalities, it is said, have now adopted the machines,—many in connection with permanent registration systems. The machines, which work on the cash register principle, will not operate until the curtain is drawn, and give an instant count at the close of the polls.

* * *

Checking Sex Crimes

The recent wave of crimes and misdemeanors by sex morons, degenerates, and perverts has led some of the larger cities to devise new policies for handling this grave problem. One system is to transfer all indictments for lewdness, indecent exposure, and molesting children, however minor, to a central court, and subject the accused to an expert examination by a trained psychiatrist to judge as to his probable danger to the community.—*United States Municipal News.*

* * *

Selling Tax Lands

What to do with tax-foreclosed properties? Milwaukee's answer has been to offer for sale scores of parcels taken over for delinquent taxes. A list has been printed for public inspection, and real estate agents are invited to sell from the list with their customary 5% commission. To meet any questions as to validity of title, the city gives a complete title abstract and warranty deed with each parcel, all of which is handled through a central real estate department.—*Municipal Finance News Letter.*

* * *

Buying Street Signs

An intensive test of various types of street signs by Saginaw, Mich., resulted in the following evaluations: Durability—Cast Aluminum 1, Gum Wood 2, Aluminum Plate 3. Visibility—Gum Wood 1, Cast Aluminum 2, Aluminum Plate 3. Lowest Cost—Gum Wood 1, Aluminum Plate 2, Cast Aluminum 3. Final selection: a Gum Wood sign, black on white, letters 3⅞ inches high and ¾ inch wide, visibility 259 feet. Saginaw's findings are said to bear out previous investigations in other places showing that wood is the preferred street sign material, unless funds are unlimited.

* * *

Accident Bureaus

Accident bureaus are showing results in the 16 police departments which have them, according to reports to the International Association of Police Chiefs. The death rate in these 16 cities for 1937 was 19% less than the average for the three previous years and 13.8% less than 1936, although the figures for other cities showed a 12.3% increase over 1936.

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Special Police Services

Greenwich, Conn., officials have taken under advisement a proposal to put special police services to banks, industrial establishments, and social organizations on a fee basis at cost. Such tasks as guarding bank transfers and payrolls, providing police details for funerals, social functions, etc., benefit only the particular agencies or persons, is the argument, and they should be performed, therefore, at those persons' expense.

The Proposed State Department of Justice

II. Civil Law Administration

Commission Making Study and Recommendations — Voters to Decide in November, 1938.

By ALBERT COATES, Director of the Institute of Government

This is a summary of the second 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. Major L. P. McLendon of Greensboro is Chairman of the Commission.

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 civil 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.

I. United States Department of Justice

"There shall be at the seat of government," says a federal statute enacted in 1870, "an executive department to be known as the Department of Justice, and an Attorney General, who shall be the head thereof." The Attorney General is appointed by the President.

Pursuant to this statute the Attorney General is required: (1) *appellate court duties:* to conduct and argue suits and writs of error and appeals in the Supreme Court where the United States is interested; (2) *trial court duties:* to conduct any kind of legal proceeding in which the United States is interested in any court and to exercise general superintendence and direction over the attorneys and marshals of all the districts; (3) *advisory duties:* upon request to advise the President of the United States and the head of any executive department on matters of law arising in the administration of their respective departments and to supervise and control the Solicitors of executive departments including the Departments of State, Treasury, Interior, Commerce, Labor and Bureau of Internal Revenue.

Summary. "To avoid conflicts of jurisdiction and to achieve better co-ordination, uniformity, certainty, simplicity and economy," says the Attorney General's personal representative, "the governmental program has been to center the major part of all legal problems of all federal agencies in this Department. . . . The functions and duties of all these different departments and their heads and subheads are defined and supervised so as to mesh in with the operations of the Department as a whole. Over it all and centering in him as the trunk of this huge tree of many limbs is the Attorney General as the nation's chief law officer."

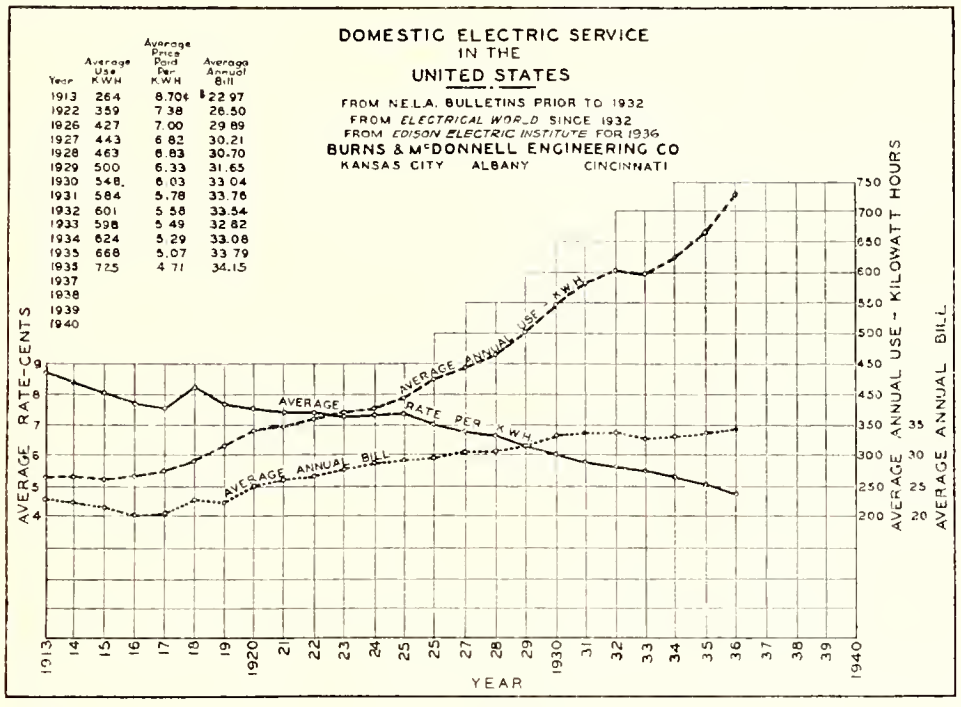
II. State Departments of Justice

In addition to the United States government, seven states have expressly created a "Department of Justice": Iowa in 1909, Nebraska in 1919, Louisiana in 1921, Pennsylvania in 1923, New Mexico in 1933, Rhode Island and South Dakota in 1935. California reached the same result in 1934 without the use of the words. Two of these states have provided for these departments through constitutional amendments: California and Louisiana. The other six states and the federal government provided for them by statute without constitutional amendment. In the federal government and in seven states the Department is headed by the Attorney General. In one state, 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 seven of these states the Attorney General is elected by the people; in one, Pennsylvania, he is appointed by the Governor.

The Attorney General's power over appellate court proceedings in civil cases in which the state is a party or interested varies from the duty to prosecute and defend all such cases in the Supreme Court in seven states to the duty of conducting in the appellate courts only such cases as he has prosecuted or defended in behalf of state agencies in the trial courts. *The Attorney General's power over trial court proceedings* in civil cases in which the state is a party or interested varies from the duty to appear in all civil cases in which the State is interested to the duty to appear only on the failure of the district attorney to perform his duties as in New Mexico. *The Attorney General's advisory duties* vary from the duty to advise all *state* department heads and officials to the duty to advise specific state agencies; from the duty to advise prosecuting attorneys to the duty to advise no local official. *The Attorney General's power to hire special counsel* varies from the power to approve the hiring of all special counsel to the power to hire no special counsel. *The Attorney General's power over legislative drafting bureaus* appears to be nonexistent. In practice, Attorney Generals, according to their reports, have always assisted State Departments and agencies in drafting measures in which they were interested. None of the states having departments of justice appear to provide for the collection of civil court statistics, with the possible exception of one state where the Attorney General is required to keep a docket showing the status of all civil cases in which the State is interested or a party.

Summary. It is apparent from the foregoing analysis that the words "Department of Justice" have a convenient vagueness. They mean different things in different states at the same time. They mean everything from highly centralized control of the machinery involved in civil law administration in some states, to highly decentralized control in others, and to all stages of centralization and decentralization in between. Many states without Departments of Justice have as greatly centralized control as states with such departments. They mean different things in the same state at different times. Some states have started with little more than a name and have gradually added meaning to the name. Other states have started with considerable meaning

(*Continued on page ten*)



Rates Down and Revenues Up, Municipal Power Survey Shows

By R. E. McDONNELL
Burns & McDonnell Engineering Co.

THAT there is a direct correlation between low rates and increased consumption of electricity is clearly shown by statistics compiled by the Federal Power Commission for recent years, as shown by the accompanying chart. Those states in which the rates are lowest also show the largest annual consumption per customer. This is true for each class of service shown.

Many cities are realizing that reduced rates do not necessarily result in a decrease in operating revenue. On the contrary, they have found that, in the long run, such reductions in rates increased the operating income of the plant. Plants may experience a decrease in operating income for a relatively short period following a downward revision of rates, but the ultimate effect is increased income, due to a more liberal use of current by the old customers and by extension of the service to new customers. The increased use of electricity incident to lower kilowatt-hour cost is more noticeable among residential consumers than among the commercial and industrial consumers. This is due, quite largely, to the fact that lower rates induce residential consumers to install more electrical appliances, whereas the demands of commercial and industrial consumers are not so elastic. It is true that rate reductions have resulted in smaller electric bills for some customers, but to the vast majority it has offered an opportunity for additional uses of electricity. Thus, rate reductions, together with the reduced cost and greater efficiency of electrical appliances, have caused a steady increase in the use of electricity with a consequent increase in revenue.

That lower rates result in increased operating income for electric plants is no mere fiction. It has been proved by actual experience. In this connection the record of the Tacoma, Washington, plant is pertinent. In 1915 this city reduced its rates so as to make it possible for every family to receive some current for cooking and lighting, for one cent per kilowatt hour. Mr. Davisson, Commissioner of Public Utilities, states that "The immediate result of the establishment of this rate was to decrease the income, but as soon as the encouraging effect of this rate began to have effect there was a steady increase in returns." He states, also, that 31.5 per cent of the residential customers use electric ranges, and 22 per cent use electric water heaters, while the percentage of customers using electricity for house heating is higher than the usual percentage on other systems. Tacoma operates under the lowest electric rates in the United States. Colorado Springs reduced its rates approximately 10 per cent on January 1, 1936, but its operating revenue for 1936 was decreased only 1.25 per cent. During 1936 the kilowatt-hour sales were increased 9.77 per cent and the number of meters in service increased 2.79 per cent. Mr. E. L. Mosley, City Manager and Manager of the Light and Power Department, made the statement that, "Of the total amount of the rate reduction recovery during the year, approximately $25,000 was from new business and $45,000 from increased use by old customers." The city justly contemplates a continuation of favorable results, and will no doubt show an increase in revenue during the present year over that received under the old rate schedule. These are only two typical

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The accompanying article will have its interest and value for both those municipalities owning their own power plants and for those operating distribution systems for power bought at wholesale. Burns & McDonnell, in the past 40 years, has served 288 cities and clients in 41 states in the capacity of consulting engineers on electrical generation and distribution problems, and the firm's wide experience qualifies it to offer much helpful advice on the problems of municipal plant and distribution systems.

Public officials wishing further information on rates, revenues, operating expenses, etc., may find such data for 512 cities, including 15 in North Carolina, in the fifth edition of "Results of Municipal Electric Plants," recently brought out by this firm. The State Utilities Commission, which has helped the private utilities work out a number of rate revisions that have profited both the utility and customer, is also available for information and assistance, or requests may be addressed to the Institute of Government, Chapel Hill, N. C.

examples of what has been done in numerous instances.

By reducing rates and thereby extending the use of electricity, municipal electric plants are performing a splendid service. Electricity is a modern necessity and is one of the greatest instruments in the promotion of human welfare today. Rates should, therefore, be reduced to the lowest possible point consistent with sound economic principles. Municipally-owned plants are the leaders in this movement. That municipal ownership has not sacrificed business principles in order to show favorable rates is attested by the operating statistics of the 512 plants included in our summary this year. These plants not only show annual profits, but many of them have paid off the entire plant indebtedness from the profits of the plant. In fact, a total of 268 or 52.5 per cent of the plants surveyed are entirely free of debt.

The Federal Power Commission report, "Trends in Residential Rates from 1924 to 1936," shows that the downward trend in residential rates since 1924 has been relatively steady despite the fact that the cost of living remained practically stationary until 1930, declined rapidly until 1933, and has increased since that time. Reductions have been greatest in the 150 cities of 50,000 or more population studied by the Commission in the 250 kilowatt-hour monthly consumption group, and least in the 24 kilowatt-hour group. The percentage reductions during the period studied were 42, 32.4 and 21.9 in the 250 kilowatt-hour, 100 kilowatt-hour, and 25 kilowatt-hour groups, respectively. Expressed in the average bills in dollars per month, the reductions for the three groups, respectively, have been from $13.36 to $7.75, $6.18 to $4.18, and $1.92 to $1.50.

During 1935 reductions were made in rates in 82 of the 512 cities covered by our summary, and during the first half of 1936 such reductions were made in 28 cities. Since publication of the fourth edition of "Results of Municipal Lighting Plants," in 1935, rate reductions have been made in at least one class of service by 226 of these cities.

Graded Taxes

Pittsburg, Pa., is experimenting with tax exemptions as an inducement to new industries and with a graded tax (one-half) as an inducement to property improvements. Despite the weight of expert opinion against subsidies to industries, the two schemes are said to have had a salutary effect in attracting industries and on land usage, and other states are watching developments with interest.—*National Municipal Review.*

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THE PROPOSED STATE DEPARTMENT OF JUSTICE

(*Continued from page eight*)

and gradually subtracted from the meaning. In one state an apparent contest between the Governor and Attorney General for the balance of power has resulted in a temporary impasse.

III. North Carolina Department of Justice

The proposed amendment to the North Carolina constitution authorizing the General Assembly "to create a Department of Justice under the supervision and direction of the Attorney General, and to enact suitable laws defining the authority of the Attorney General and other officers and agencies concerning the prosecution of crime and the administration of the criminal laws of the state," says nothing about authorizing the General Assembly to enact suitable laws defining the authority of the Attorney General and other officers and agencies concerning the administration of the *civil* laws of the state. This omission may be explained on the theory that the General Assembly already has in civil law administration the power it does not have in criminal law administration. We may therefore examine the accuracy of this assumption as it applies to the Attorney General's (1) appellate court duties, (2) trial court duties, (3) advisory duties, (4) employment of special counsel, (5) legislative drafting duties, and (6) the collection of court statistics.

Appellate Court Duties: The General Assembly now requires the Attorney General "to defend all actions in the Supreme Court in which the State shall be interested or is a party." The General Assembly could go no further with a constitutional amendment. *Trial Court Duties:* The General Assembly can now, without the aid of constitutional amendments, give the Attorney General power to supervise, supersede, or supplant the Solicitor in all civil cases in which the state is a party or interested, if it desires to do so; for the Constitution, which gives the Solicitor the right "to prosecute in behalf of the state *in all criminal actions,*" does not give the Solicitor the right to represent the state *in all civil actions,* and it does authorize the General Assembly to "prescribe by law" the powers and duties of the Attorney General. *Advisory Duties:* The General Assembly, pursuant to Constitutional permission, has already designated the Attorney General as the legal adviser: (1) to all state departments, institutions, and agencies, (2) to Solicitors of the Superior Court, and (3) may without further constitutional authority designate him as adviser to county, city, and town officials. *Legislative Drafting:* The Attorney General, as legal counsel to state departments and agencies has long assisted in the drafting of legislative measures in which they were interested; the legislative drafting service created in 1915 was transferred to the Attorney General's department in 1933. *Judicial Statistics:* No state agency collects civil court statistics for the State. *Special Counsel:* Since 1868 the General Assembly has vested the employment of special counsel exclusively in the Governor. The General Assembly may without further constitutional authority transfer this power from the Governor to the Attorney General if and when it so desires. It is also apparent that the General Assembly can enlarge the Attorney General's staff to the point that no "special counsel" is necessary, or restrict it to the point that a great deal of "special counsel" is necessary, or extend to each state department the power to employ its own counsel as in the case of the State Highway and Public Works Commission, the Commissioner of Banking, and the Unemployment Compensation Commission.

Public Opinion on the Major Issues of the Day

—A Summary of the Results of Some of the Most Interesting and Timely Polls Taken by the American Institute of Public Opinion Over the Last Few Years

What is your personal opinion and how do you size up public opinion on the same issues? Check them with the findings of the Institute, whose polls have been uncanny for their accuracy. And keep up with public opinion on new issues by watching your Sunday papers for the results of new polls.

	HOW PUBLIC VOTED
THIRD TERM	Dec. '36 July '37
Do you favor a third term for Roosevelt?	No (70%) No (63%)
Would you favor a constitutional amendment prohibiting any president to run for a third term? (August '37).	No (51%)
ROOSEVELT POPULARITY	Feb. '37 Nov. '37
If you were voting today, would you vote for or against Roosevelt?	For (65%) For (63%)
BUDGET	
Should Congress balance the budget and start reducing the national debt now? (Feb. '37)	Yes (70%)
Do you think the administration will be able to balance the national budget during the next year? (Oct. '37)	No (84%)
SPENDING	
Are Federal expenditures for relief and recovery too great, too little, or about right? (Oct. '35)	Too great 60% Too little 9% About right 31%
Do you think government expenditures should be increased or decreased on: (Nov. '37)	
General government running expenses: Decrease 70%, Increase 5%, Same 25%	Veterans pensions: Decrease 25%, Increase 24%, Same 51%
Unemployment relief: Decrease 49%, Increase 4%, Same 47%	National defense: Decrease 21%, Increase 46%, Same 33%
Farm benefits: Decrease 31%, Increase 38%, Same 31%	
RELIEF	
Do you believe relief reductions should be made in your community? (Jan. '37)	Yes (53%)
Should relief be returned to the state and local governments? (Apr. '36)	Yes (55%)
Should the government do away with the W.P.A. and give only cash or direct relief?	No (79%)
STRIKES	
Should sit-down strikes be made illegal? (Mar. '37)	Yes (67%)
Should employers and employees be compelled by law to try to settle their differences before strikes can be called? (July '37)	Yes (89%)
Would you favor laws regulating the conduct of strikes? (July '37)	Yes (84%)
Should the militia be called out whenever strike trouble threatens? (July '37)	Yes (57%)
Do you approve of citizen groups, called vigilantes, which have sprung up recently in strike areas? (Aug. '37)	No (76%)
LABOR UNIONS	
Are you in favor of labor unions? (July '37)	Yes (76%)
What type of labor union do you favor: craft (AFL) or industrial (CIO)?	Aug. '36 July '37 AFL (59%) AFL (64%) CIO (41%) CIO (36%)
Do you think the attitude of the Roosevelt administration toward union labor is too friendly or not friendly enough? (Sept. '37)	Too friendly 45% Not friendly enough 14% About right 41%
INFLATION	
Do you think we will have inflation? (Apr. '37)	Yes (53%)
Do you think inflation would be a good thing? (Apr. '37)	No (80%)
A.A.A.	
Are you in favor of the A.A.A.? (Poll reported day before Court decision—Jan. '36)	No (59%)
Would you like to see the A.A.A. revived? (Aug. '37)	No (59%)
C.C.C.	
Are you in favor of continuing the C.C.C. camps? (July '36)	Yes (82%)
MAXIMUM HOURS	
Should Congress set a limit on the hours employees should work in each business and industry? (June '37)	Yes (58%)
How many hours are you supposed to put in on your job in a regular week, excluding overtime? (Aug. '37)	Av. 47 hours
MINIMUM WAGES	
Do you think the Federal Government ought to set the lowest wage employees should receive in each business and industry? (June '37)	Yes (61%)
OLD AGE PENSIONS	
Are you in favor of government old-age pensions for needy persons? (Jan. '36)	Yes (89%)
How much should be paid monthly to each person?	$30
Each couple?	$50
MOST VITAL ISSUE	Dec. '35 Jan. '37
What do you regard as the most vital issue before the American people today?	1. Unemployment 1. Unemployment 2. Economy 2. Neutrality 3. Neutrality 3. Social Security
DEMOCRATIC POPULARITY POLL (Democratic Voters Only)	Apr. '37 Aug. '37
If President Roosevelt is not a candidate in 1940, who do you think will make the best Democratic candidate?	1. Farley 1. Farley 2. Earle 2. Garner 3. Murphy 3. Earle 4. McNutt 4. Barkley
WAR AND PEACE	
In order to declare war should Congress be required to obtain the approval of the people by means of a national vote?	Sept. '36 Oct. '37 Yes (71%) Yes (73%)
If another war like the World War develops in Europe, should America take part again? (Nov. '36)	No (95%)
Which plan for keeping out of war do you have more faith in—having Congress pass stricter neutrality laws, or leaving the job up to the President? (Oct. '37)	Neutrality laws 69% President 31%
FOREIGN AFFAIRS	
Should we withdraw all troops in China to keep from getting involved in the fighting, or should the troops remain there to protect American citizens? (Sept. '37)	Withdraw (54%)
STOCK MARKET	
Do you think that government regulation of stock exchanges has helped investors? (Oct. '37)	Yes (62%)
BUSINESS CONDITIONS	
Do you believe the fall of stock market prices means a new depression is coming? (Nov. '37)	No (74%)
Do you expect general business conditions will be better or worse in the next six months? (Nov. '37)	Better (64%)

Economies in Office Management

---The Fundamentals and Basic General Rules

In this article an attempt has been made to cite general rules of procedure pertaining to various phases of office management. Specific economies are hard to name but observance of the general rules should mean management at the least possible expense. A brief discussion of fundamental items follows:

1. *Department Policies:* A definite office rule that questions affecting departmental policies shall be referred to the department head for decision will eliminate the possibility of conflicting orders or orders detrimental to the best interests of the executive and the city. True economy in office management and determinations of policy go hand in hand.

2. *Planning:* Office procedures, whether routine work or special job assignments, should be based on a definite work program or plan of operations. In this way peak work loads can be adjusted or special jobs assigned without adding to the existing personnel.

3. *Space and Placement of Furniture:* Proper heat, light and ventilation must be provided. Space should be allocated, if possible, on the basis of frequency of contacts with other departments. Furniture (desks, chairs, etc.) should be selected with particular regard for the job to be performed and placed in the office in such manner that work will flow from one person to another with the least wasted effort.

4. *Personnel:* Employees should be selected on a basis of qualifications and experience with special consideration as to the personal characteristics, aptitude and skill required for a particular job. Salaries represent the largest office expenditure and therefore should be guarded the closest. Where full time personnel can not be used, the same personnel might work in two or more divisions. Loaning of employees between departments will help decrease the need for extra help.

5. *Job Classification:* The work of each employee should be properly classified and recorded. Instructions in writing will eliminate any doubt as to an employee's duties. If duties are routinized, duplicated efforts will be brought to light and can be eliminated. Uniformity of salary rates can be made through proper classification.

6. *Progress Reports:* The submission of periodic reports on all major jobs (routine or special) will insure executive control over the maintenance of an established schedule. The executive will also be better able to plan his program in accordance with Item 2 above.

7. *Supplies:* The selection of supplies should be based upon the results desired, and not on a purely personal preference for particular trade brands. Although one trade brand may be superior merchandise, an inferior product may produce the desired results at less cost. Standardization of supplies used by various offices will permit economy through quantity purchasing.

8. *Forms:* Records should be established on standard size forms, if possible. Irregular sizes increase the cost of reproduction and require special files at higher prices. A standard letterhead should be adopted for all offices with the name of the department head the only departmental feature. Letterheads should not be used for interoffice memoranda. A cheaper grade of paper will suffice.

9. *Records and Filing:* Permanence and legibility are essential in recording transactions. Machine-made records are preferable but if not possible, a permanent ink should be used. Correspondence and other records, whether current or old, should be so filed that accessibility is assured when occasion demands. Much time can be saved through a good filing system. Important records should be protected against fire and theft through use of fire-resisting lock cabinets, files and storage vaults.

10. *Communications:* Communications should be sent by the least expensive method commensurate with the necessary speed. A saving can be made, if the transmission of first-class messages in the United States and Canada is considered in the following order: (a) letter, regular postage, any distance; (b) letter, air mail, long distances; (c) letter, special delivery, any distance; (d) letter air mail, special delivery, long distances; (e) telegraph—night letter, day letter, telegram; (f) telephone.

11. *Mechanical equipment:* The use of mechanical equipment normally is governed by the volume of transactions. A survey should be made prior to any installation to determine the benefits to be derived from a change in procedure. Typewriters, addressing and bookkeeping machines, to a large degree have supplanted pen and ink methods. Time has also been saved by use of adding and calculating machines. Duplicating machines often achieve satisfactory results at less cost than printing. Other economies are effected through check-writing, check-protecting and check-signing machines. In larger cities tabulating machines can be used. Dictating machines save the time of both stenographer and executive. If mechanical equipment cannot be used economically in one office alone, its use by two or more offices should be considered.

12. *Preservation of Records:* Accounting records should be kept permanently. Correspondence should be kept for a period of two to three years, depending on its importance. Statutes or local ordinances may govern the preservation or destruction of certain records. Non-essential items should be eliminated at least once a year. Files should not be allowed to become cluttered with items which will benefit no one.

13. Planning a work program to eliminate peak loads is the chief element in economical office management.—Bulletin of Municipal Finance Officers Association.

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Recent Cases

Criminal Law—Assault, Punishment—The jury convicted the accused of simple assault only, but the judge found that the assault inflicted serious injury and imposed a sentence of four months on the roads. *Held,* error—under C. S. 42-15 the maximum punishment for simple assault is $50 fine or 30 days.

Pleadings—Amendment on Motion to Correct Name—Summons and complaint erroneously named "Knott Management Company" was intended. However, service was made on the agent for both companies, and, as the latter company was not misled or prejudiced, all the process and pleadings were amended under an order of the court. *Held,* affirmed—the trial court properly permitted the amendment in the exercise of its discretion.

Pleadings—Amendment on Appeal from Clerk—An appeal was taken from a clerk upon his refusal to vacate an attachment, and the Superior Court permitted plaintiff to amend, refusing to vacate plaintiff's attachment. *Held,* the Superior Court could allow the amendment, and an appeal from the refusal to vacate the attachment was premature.

Estates—Execution Against Estate of Deceased—Judgment was entered of record against *A*, who then conveyed his realty, and an execution was requested against the land in the hands of the grantee of the judgment debtor. *Held,* execution should not be issued against a dead man even though no personal representative of deceased is acting, since the judgment creditor's remedy is an action against debtor's grantee to foreclose his judgment lien.

The Clerk's Annual Report

By DILLARD S. GARDNER

THE Christmas season finds many officials busy making up important annual reports and none more so than the Superior Court Clerks of the State. Two separate reports are required of this official, one to the County Commissioners in December (C. S. 956) and another to the presiding Judge at the first term of court after January 1 (Superior Court Rule No. 13). What are the minimum essentials of the two reports, so the one will serve both purposes?

(1) The report must cover all public funds in hand belonging to any person or public or private corporation. (2) The statement must be itemized showing each fund separately. (3) Each item must show the date and source of each fund, and if it came through a judgment, order or decree of court, the title and file number of the action and the term at which the appropriate order was made. (4) Each item must show the person or persons to whom it is due. (5) Each item must show the amount and character of the investment including a statement as to how and where it is invested, and if deposited, in whose name it is deposited, the date of the certificate, and the rate of interest it is drawing. If there is any evidence of investment, such as stocks, bonds, mortgages, or notes, these must be listed. (6) Each item must show the security for that specific investment. (7) For each item the sufficiency of the security must be shown.

Required by Statute and Court Rule

These seven requirements are specifically laid down by C. S. 956 and Superior Court Rule 13. A Clerk may possibly render an acceptable report which does not comply with these requirements, but if he does so, the Supreme Court may later point out his delinquencies or, what is more disastrous, hold him liable for his shortcomings.

Many Clerks also indicate by each *unclaimed* item (not credited to persons *non compos mentis*, i. e., insane persons, minors, etc.) the number of years which it has been held and reported. This is desirable because money and other personal property unclaimed for five years after it is due escheats to the University (C. S. 5786). And any jury and witness fees held by the Clerk after January 1st following the third annual report of such fees are turned over to the County Treasurer for the benefit of the school fund, the statute requiring the Clerk to indicate each item so reported the third time (C. S. 5634).

In order to reduce the scope of the annual account, it is customary for Clerks to turn over to the County and State all funds due them before the report is compiled. For example, all fines, penalties, and forfeitures on hand are turned over to the County Treasurer for the school fund (C. S. 5630); and all State process taxes (Revenue Act, s. 157) and all State Bureau of Identification fees (Chapter 349, Public Laws of 1937) are paid over to the State, before the annual account is prepared. Accordingly, funds shown in the account are held, almost exclusively, for private individuals.

The advantage of striking a balance in each account every year is important to the Clerk as well as the claimants. Funds held for long periods may easily become confused, particularly if varying rates of interest are earned and irregular payments are made from the funds. A Clerk may forestall much future difficulty by auditing, and posting, to date each account once a year. The balance so shown should reflect the total principal and total accrued interest due at the time of the account for each item listed.

Separate Records for Court and Clerk

Motivated by the depression years, many Clerks and their Boards have examined the costs of operating the county's Courts and the Clerk's Office with the hopes of effecting reductions in expenditures. However, the income and expense of the Court and the Clerk were generally found to be lumped together, making it impossible to segregate the two with the idea of reducing expenses or increasing revenues. As a result many Clerks have begun to keep the income and expenses of their office separate from those of the Court. Where this has been done it usually is revealed that the expenses of the Court, heavy during terms and light at other times, are generally the cause of any deficits, but the revenues and expenses of the Clerk's office are relatively steady and normally practically balance.

When this is the case, Commissioners and Clerks have realized that it is practically impossible to set up an invariable budget for Superior Courts, but that systematic, detailed accounting records make it possible to budget the Clerk's office so as to secure the best possible return on its expenditures. The same records reveal to the Clerks the classes of expenditures which are the heaviest drains upon their funds and enable them to focus attention on reducing these items. This also makes it possible for the Clerk to compete each year with his previous year's record, so as to show "on paper" the actual improvements which he is making in the administration of his office.

The segregation of the figures dealing with the Courts from those affecting the Clerk's Office has had a more general, but equally important, effect in pointing out the relatively high expenditures made for such items as jury and witness fees. As these larger items in the cost of administering the courts are more generally noticed and discussed, improvements in procedure and practice will doubtless be brought forward.

What One Clerk Accomplished

In one county in which the Clerk's revenues and expenses were separated from those of the Superior Court, the Clerk, permitted for the first time to examine critically his operating costs, was able to increase the accessibility of the records and the amount of filing space in his office while reducing the cost of these items by from one-third to one-half. The methods included: consolidating in a single book the recording of similar records previously distributed among five books; using larger and standard-sized record books with very narrow page margins instead of small, non-standard books; and using standard, large, flat file folders instead of narrow, heavy ac-

cordion jackets or envelope "shucks."

In the past, a few Clerks, finding the preparation of the annual report an overwhelming task, have dispensed with it entirely, and others have contented themselves with a very brief summary of the year's work. However, such a course, as pointed out before, exposes a Clerk to serious dangers at law. To spread the work over the whole year and still meet the requirements of the statute and Court Rule, other Clerks have adopted systems of daily or weekly reports, making the preparation of the annual report a simple matter of summarizing the totals of their daily or weekly statements. This system also enables a Clerk to catch immediately any errors in his financial records and to turn over funds to the County Treasurer in small amounts and receive an immediate receipt, minimizing the funds in his custody for which he and his bond are liable. The experience of Clerks using the daily or weekly reports has been so satisfactory, it appears highly probable that the practice will spread through voluntary adoption by other Clerks.

Controlling Auto Accidents

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Here Is What One Company Has Done to Reduce the Number of Accidents in Its Fleet—And the Results Show That Other Companies and Individuals Can Do Likewise.

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By A. J. THORNHILL

CONTROLLING motor vehicle accidents in a fleet of 220 gasoline trucks, operated by as many different drivers for almost four million miles a year, and under every type of road, weather, and traffic conditions, is no little job. But the North Carolina Division of Standard Oil has found a means to do the job and, although it is impossible to eliminate them altogether, to reduce materially and to control motor vehicle accidents, as the following record bears out:

Number of Accidents Per 100,000 Miles in 1928—2.32.

Number of Accidents Per 100,000 Miles Last Year—1.86.

Number of Accidents Per 100,000 Miles for All Gas Trucks in United States Last Year—2.19.

The result has been a reduction in not only injuries and property damages but also in insurance costs and rates of the whole company, and especially of this particular Division.

In controlling accidents and maintaining this record we are faced with two definite factors:

1—The human element.

2—The mechanical condition of the motor vehicle.

The latter does not present any great difficulty. The real problem confronting us is found in the human behaviorisms which cause most accidents. Since human conduct is largely a matter of education, it follows that the results we obtain will depend upon the methods applied to the duty of educating our employes in the safe operation of our motor equipment.

Some distinguished engineer has said that the task of teaching people to avoid accidents is essentially the same as teaching them to avoid war, crime or pestilence.

We all know that great progress has been made in some of these fields and we are confident from our experience that equal progress can be made in the field of safety.

What causes or permits a driver to get into accidents? Physical or mental defects, lack of knowledge or skill, wrong attitude, or a combination of any two or all three. The practical question is how to correct these human deficiencies and also, of course, prevent accidents due to the faulty mechanical condition of equipment.

The procedure we have found most successful in curtailing accidents in our operation is as follows:

1. When a man is employed by our Company he must successfully pass a physical examination, and where his duties will involve the operation of a motor vehicle particular stress is placed on his hearing, field of vision, and ability to distinguish colors.

2. We have employed throughout the state five Motor Vehicle Inspectors who are considered experts not only in keeping motor equipment mechanically perfect but also in its operation. A new driver must undergo a rigid test, both practical and written, conducted by the Motor Vehicle Inspector. The written examination paper of the new driver, as well as a written opinion from the Motor Inspector, is forwarded the Division Office to be examined and approved before the new employee is assigned a vehicle.

3. The new driver is next handed a book entitled "Instructions for the Operation and Maintenance of Motor Vehicles" which covers, we feel, all the essentials for safe driving. He is expected to read and study this manual thoroughly and be able to answer any questions which might be asked him by his immediate superior or the Motor Vehicle Inspector.

4. Each month we issue Safety Posters bringing out the cause and means of prevention of some accident which has occurred in our operations.

5. We endeavor at all times to impress on our drivers the value of "Road Courtesy" as is evidenced by the sign on the rear of each of our Motor Tank Trucks: "Blow Your Horn, the Road Is Yours."

6. Despite all of the foregoing precautions, accidents do occur and for this reason we have a "Division Safety Committee," which convenes shortly after the first of each month for the purpose of analyzing and determining the cause of each accident which may have occurred during the previous month. We keep a complete record of accidents by individuals, and when a driver has an accident his previous record is closely examined to determine whether we are dealing with an "accident repeater." If this is the feeling of the committee, after two or more accidents, immediate steps are taken to either place such employee on a job which does not involve motor vehicle operation or dispense with his services.

7. At every opportunity motion pictures pertaining to safety are shown to our employees, and at each group meeting "Safety" is given a prominent place on the program.

Toxicology at Work

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Some More Famous Cases Solved in the Laboratory

By HAYWOOD M. TAYLOR
Toxicologist, Duke Hospital

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TOXICOLOGICAL work is very exacting and time consuming and demands great responsibility. The person selected to carry out such work must be one who is experienced in the handling of autopsy material, accurate in his work, and of unquestioned integrity, as his evidence may be the basis for the acquittal or conviction of the accused. It is not sufficient to select just a chemist for work of this nature. The chemist may know perfectly well how to detect various poisons but to extract and identify minute amounts of as volatile a material as ether from 500 grams of brain tissue or a milligram of strychnine, morphine, etc., from the same amount of tissue requires experience and careful and expert technique. His job is not finished when he isolates and identifies the toxic material. It is necessary that his findings be correctly interpreted, and in order to do so some medical background or pharmacological training is necessary. Two New York cases will illustrate these points. The first involves the honesty and experience of the expert in giving his testimony. The second case shows the importance of correct interpretation of one's findings.

Case IX. An elderly, well-to-do couple, had just returned to their suite of rooms in a first class hotel, from a short vacation at Palm Beach. The next morning both were found dead in one of the rooms. No clue as to the manner of their death could be unearthed. Many curious theories were put forth, among them that some one had injected some rare poison into some plums which they had eaten. The autopsies of the two bodies revealed nothing specific as to the direct cause of death. Dr. Gettler analyzed all the organs for all conceivable poisons but found them all absent. During the application of a series of the most sensitive tests, however, he did get a faint indication of a very small trace of cyanide. Upon this lead the lungs were then examined, using larger portions, and especially concentrating on the cyanide reactions. After much painstaking work, reactions were finally obtained which proved without question that death of both people was due to hydrocyanic acid gas, originating somewhere in the hotel. The authorities then got the admission of the manager that a fumigation had taken place on the floor below. The gas diffusing into the upper apartment killed the two people. No sign of danger had been posted. The case came to trial. Dr. Gettler testified to his findings as above related. The defense hired two experts. One, a physician doing X-ray work, gave testimony as an expert pathologist. The other, a professor of chemistry in one of the technical institutes, gave testimony as an expert pathological chemist and toxicologist, yet himself admitted on the stand that he never before saw an autopsy nor had he analyzed a human organ before this one. It was testified by one of them that cyanide was not poisonous under certain conditions. They testified that all lungs, normal lungs, your lungs and mine, will yield cyanide in measurable quantities, because they contain carbon, hydrogen, and nitrogen. They testified that they could produce cyanide from normal lungs by simply letting them stand in a flask for five or six days, and further, that they had allowed a guinea pig and a white mouse, both sick, to breathe fumes of hydrocyanic acid gas, and they began to eat more and more and finally got well from their original sickness. Such statements were testified to without the least restraint. When asked what is meant by the science of pathology, one answered "it is the science of poisons." Upon this answer the district attorney said to the witness: "The answer which you have just made is as true as all the others you have made upon this witness stand." The jury finally acquitted the defendant. A case of this kind well serves to show the poor system we have when it comes to expert medico-legal testimony. Many scientific witnesses think only of winning the case for their side, thereby stretching their testimony so far that it becomes false. What can the jury be expected to do when the experts on one side say a thing is white and those on the other that it is black?

Case X. A Mr. and Mrs. J. C. were suspected of having poisoned the brother of Mrs. J. C. An autopsy was performed by the county physician, and the organs were chemically analyzed by the chemist employed by the county. The conclusion indicated by the autopsy and chemical report was that the brother had been poisoned by arsenic. Following up this lead, the county authorities suspected that Mrs. J. C.'s father-in-law and mother-in-law, who had died two and three years previously, had also been poisoned, and an exhumation of both their bodies was ordered. The attorneys for the two defendants requested Dr. Gettler to be present at the autopsy, to witness it, and also to get parts of the organs of each body for a chemical analysis. In this way, two separate series of analyses were made of each body, one by the county's chemist and the other by Dr. Gettler representing the defendant. The county's chemist concluded after his investigation that the mother-in-law had also been poisoned by arsenic; in the organs of the father-in-law he found no poison at all.

The defendants were first brought to trial for the death of the brother and later for the death of the mother-in-law. As both of these cases were so much alike as far as the toxicological investigation was concerned, they will be described together. The medical testimony introduced by the prosecution was the following: In both cases the pathologist for the prosecution testified that he had found no specific lesions in either of the bodies. The chemist for the prosecution testified that both bodies contained about one-fourth of a grain of arsenic in the entire body, and in his opinion this amount of arsenic had killed them. Against this testimony the experts for the defense testified as follows: The pathologist, Dr. A. V. St.G. stated, corroborating testimony of the

(*Continued on page eighteen*)

A Way to Better Law

By DILLARD GARDNER

GROWTH is the life of the law. Progress in stability is the paradoxical necessity which commands the judge. Yet, change through judges should come—and usually does come—only within narrow limits, limits stated by the Constitution and, strangely enough, often restricted even more by the interpretations of the judges themselves, fearful of the limits of the power given them. Within the periphery of vaguely-marked limits it is the province of judges to clarify by interpretation, but there are limits beyond which even the boldest of judges fears to venture. The judiciary's extremity is the legislature's opportunity. There are points at which the torch must be passed to other hands. Here between these two great bodies there is need of a messenger, an interpreter, one who reads the distress signals of the one and carries them to the other. Again and again the court cries, "The court can but interpret the law as it is; it can not change the law." Yet, how often the General Assembly misses this cue!

Four New Cases Point to Need

Take specific cases, fresh at hand, decided during the past three months. In *State v. Whitehurst* the Court, itself shocked to discover that a receiver may make away with funds in the custody of the court and commit no crime, has told the legislature in effect: "Unless you wish such agents of the court to run at large, taking and carrying away what is entrusted to them, make this offense against common morals a crime. We would gladly do so, but we do not have this power. You, who have the power, have neglected to do so."

Again, in the dissent of Barnhill, J., in *Palmer v. Haywood County* it is pointed out that for more than a decade we have had two statutes permitting counties to set up public hospitals, the one requiring the people to vote upon such action, the other permitting the commissioners to act without a vote. For many years these statutes, at least partly inconsistent, have stood as a confusing cross-road to bewilder counsel who may come upon them. And they still stand, because the court has not ventured, as yet, to set up signposts along highways which it has not been given power to lay out or maintain.

Once more, in *State v. Miller* the court found that the law of receiving stolen goods is so written that if one received them merely *believing*, but not *knowing*, them to have been stolen, he is guilty of no criminal offense. The Attorney General asked the court to write its own dictionary and declare "belief" to mean the same as "knowledge." The Court, unwilling to distort the plain and accepted meanings of English words in every day use, did not feel free to go so far. Implied clearly is the signal to the legislature that if the law as written is not strict enough on those receiving stolen goods, the decision is one for the legislature, which defines and creates the offense.

Finally, in *Lewis v. Hunter and Kinston* it was clearly indicated that the question as to whether a city shall be free from liability if one of its cars runs over a citizen while being used in the performance of a governmental function is one for the General Assembly and not the courts. Until the rule is modified by statute, when cities maim or kill while discharging necessary functions, they will not even be required to pay the hospital and funeral expenses of their victims.

Code Commission Suggested

Here in four recent cases the court has indicated that the problems are for the legislature. Yet, there is no guarantee that these problems will be laid before the next General Assembly. What is more significant, there are hundreds, even thousands, of such questions of doubtful meaning hidden away in the statutes and decisions, and their clarification by statute is left to the vagaries of pure chance in a political arena. The security of a free people demands greater certainty. Our people wish to be law-abiding, but is this possible when the wisest cannot tell them what the law is? Certainty in law is not only necessary for the present; law must be predictable, or no man can order his future life according to the mandates of the society in which he lives. The law should be a trap to the rascal, but never a deadfall to the honest and honorable citizen seeking to live uprightly.

One suggested solution which is commanding more and more attention is that between the courts and the legislature there should be an agency appraising and evaluating the laws of the one and the decisions of the other, knitting them together in the warp and woof of the law, and handing back to each the shattered and defective threads which the one or the other has dropped. For want of a better name such an agency may be called a Code Commission, and it should function continuously to discover the pitfalls and weaknesses in our law, and suggest the remedy, either statutory or judicial. It should report to each legislature its extensive and inclusive recommendations for law improvement in keeping with the changing life of a growing people.

Two Big Tasks To Be Done

Specifically it should assume two important tasks now discharged by no one: (1) Every public bill before enactment into law should pass under its scrutiny in the interest of legal clarity and mechanical preciseness; and, most important of all, it should act as a safeguard against bringing incidental confusion instead of light into related phases of the law. The recent *Humphries* case

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OFFICIAL STATE BAR NEWS AND VIEWS

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

declared that the second 1935 slot-machine law was so confusing as to its meaning that the court was bound to ignore it altogether; and, every lawyer can cite instances in which a law aimed at one question back-fired and, incidentally, confused the law in some related field; for example, the statutes dealing with service by publication as affected by the provisions relating to time for answering.

(2) Every statute should be woven by it, as an official agency, into the general body of our statute law, and every related statute should, by elaborate cross references, be annotated to every other kindred statute. Wherever buried, conflicting laws lie hidden, these cross references and editorial comments should post red flags of danger. Every case, as it is decided, should be annotated to the statutes which it definitely affects as well as to those which the case itself cites. The statutes and the decisions are not separate entities, but are mutually dependent and equally important in the formation of the amalgam of the law. The decisions should be treated as not only interpreting and fulfilling the law but also as pointing out its limits and shortcomings.

Law in its prospective or preventive aspects is as important as law in its retrospective, or diagnostic, phases. It is in the latter field that it has functioned in the past. More than we care to admit law has sprung up as a volunteer growth rather than as a result of a planned sowing. Legislation of the future must seek higher requirements than that of the past. In this destiny of tomorrow a permanent, able, and effective code commission with liberal powers and sufficient funds could be a powerful ally to the courts and the legislature alike.

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Live Bar Programs

In conversations with lawyers and correspondence with local bar officials two facts stand out clearly. Active local bar organizations have regular, well-attended meetings in which interesting programs play an important part. Local organizations which have become inactive usually trace their failures to poor attendance almost invariably attributable, at least in part, to uninteresting programs.

Interest is the keynote. How often have we all noticed organizations, legal and otherwise, start off with a burst of enthusiasm only to fritter away into a slow death after the first few meetings? Always there were a few loyal ones who stuck it out insisting that the members ought to attend if for no other reason than duty. But the flesh is weak. It often takes more than duty to move us from the easy chair after a hard day in court or at the office. Yet, let some friend drop by to mention something of interest to us and we are up and away. The answer seems so easy, but we still ignore it very generally in our local bar groups.

Interesting programs don't "just happen." Back of every one of them is someone who has planned it. Back of every active bar group there is someone who has given freely of his time and thought in the planning of the programs.

Local bar officers who have racked their minds for program ideas may find that topics dealing with the relation of science to law have many interesting possibilities. Bar journals from other states show many interesting discussions in this field. To cite a few examples: the relation of various mental disorders to the legal concept of insanity in the fields of criminal and civil law; the use of scopolamin, hypnosis, and the various "lie detectors" in testing the truth of testimony; the use of chemical, bacteriological, and pathological tests to identify blood-stains, hair, dust, skin, and similar clues left behind by unknown criminals; the use of experts generally to aid the court, such as the work of the wood expert in identifying the ladder used in the Lindbergh kidnapping case; the use of ballistics and expert knowledge of firearms in identifying and tracing weapons used in crimes; the use of blood, and similar medical, tests in determining drunkenness, paternity, and other matters which often become pertinent to legal inquiries; and the use of X-rays, photographs, and even motion pictures (the latter particularly in confessions) as evidence.

In presenting these and similar discussions lawyers may call upon chemists, physicians, and surgeons; identification experts of police departments; optometrists and oculists; mechanical, electrical, and highway engineers; and experts in such divergent fields as sound, photography, mental testing, and finger-printing. Close at hand in nearly every community in the state there are men who can contribute valuable specialized knowledge touching the hem of the garments of the law. Alert bar officials seeking new and interesting topics for discussion may find that the men and materials are available close at hand—an untapped source of a series of excellent local bar programs.

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Case Comment

Municipalities—Liability for Employee's Negligence—Police Car.—A city's radio repairman while testing a radio patrol car ran over a woman who had just been knocked down by another car. *Held,* the car was operated in the discharge of a governmental function, to-wit, police protection, and, the city is not liable for negligence resulting in injury, even though the driver was not a police officer. *Lewis, Admr. v. Hunter and City of Kinston, 212 N. C.* —.

Public Playgrounds — Liability for Negligence.—A father sued a city for loss of services of a minor daughter who was killed when she was thrown from a swing maintained at the city playground. *Held,* non-suit was proper, as only the child's administrator may sue for the child's wrongful death. *White v. Charlotte, 212 N. C.* —.

School Bonds and Debts—Assumption by County.—Bonds were issued by a town to provide schools necessary for the constitutional six month term after the County Board of Education had refused to provide such schools. The county refused to take over these bonds, although it had previously made certain grants to some districts to aid in the building of schools or retirement of school bonds. *Held,* on this record there was no finding that the county had assumed all or part of the school indebtedness of any district, and in the absence of such finding, the assumption by the county is one which

lies in the discretion of the County Board of Education, approved by the County Commissioners. *Town of East Spencer v. Rowan County, 212 N. C. —.*

School Districts—Re-Districting.—A school district existing in Iredell was ignored, and a new school district formed under the 1933 School Machinery Act. A new school building was located outside the original but within the new district. *Held,* the General Assembly had power to abolish all school districts and to provide for the redistricting of the counties, and, accordingly, the building was lawfully located. *Moore v. Board of Education, 212 N. C. —.*

Streets and Sidewalks—Liability for Negligence.—A salesman broke his leg when he stepped from a curb to a street at night, falling in a hole five inches deep, eleven inches wide, and sloping to the surface level five feet out. The partly-filled hole had remained for two years. *Held,* (by a 4-3 decision) salesman barred from recovery as a matter of law because of his contributory negligence. *Oliver v. Raleigh, 212 N. C. —.*

Workmen's Compensation—Sheriffs and Deputies.—A fee deputy and two special deputies were injured while transporting two insane women to an asylum. The driver received mileage and per diem and the special deputies per diem from the county through the sheriff for this service. The sheriff carried compensation insurance. *Held,* (by a 4-3 decision) as a deputy is not an "employee" of the sheriff, he is not entitled to Workmen's Compensation.—*Borders v. Cline, 212 N. C. —.*

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TOXICOLOGY AT WORK

(*Continued from page fifteen*)

pathologist for the prosecution, that he also found no arsenical lesions in the various organs and that in every previous case of arsenical poisoning that had come to his attention, there was always present some one or more typical lesions or effects produced by the arsenic. Dr. Gettler testified to his findings as follows: Arsenic was present in the bodies, but in extremely small amounts, mere traces. However, granting the presence of about one-fourth of a grain in the entire body, as testified to by the chemist for the prosecution, this was a far too small amount to produce death, as the smallest accepted lethal dose by various authorities is three grains. Of course, it is possible for a person to receive a lethal dose of arsenic, live for a number of days, the arsenic be mostly eliminated by excretion, and death still follow. Under this condition, but a small fraction of the lethal dose would remain in the body after death. If this had taken place, however, arsenical lesions would surely have been detected. This process of elimination of the arsenic was ruled out, however, because the state offered evidence that the arsenic was given about two to three hours before death. During this short interval of time, the arsenic could not have been excreted. Dr. Gettler further testified that he had also found a very large amount of bismuth in the stomach and other organs and also a trace of lead in the stomach. In concluding, he testified that it is well known that there are some impure samples of bismuth on the market. These always carry with them small amounts of arsenic and traces of lead. The arsenic which got into these bodies evidently originated from the bismuth which the deceased had taken. During the course of the trial the prosecution put on the stand the physician who had attended the deceased in their last illnesses, he testified that he had prescribed bismuth for both. Further, it was testified to that both bismuth preparations had been bought in the same drug store. Thus it appeared that the same impure sample of bismuth had been taken by both of the deceased and that the origin of the small amount of arsenic could be traced to the bismuth medication. The defendants were acquitted at both trials. These cases illustrate how a careful expert chemical investigation saved two innocent people from the death penalty.

The cases cited indicate the extent and scope of the work involved in an efficiently organized coroner's or medical examiner's office. The coroner should either be expert at, or have at his disposal expert departments of, pathology, histology, toxicology, and bacteriology. He must be given full support of all agencies involved in the discharge of his duties.

Material and Equipment Notes

Contributions solicited. All notes credited to sources for reliability. For further information on any item, address either the Institute of Government, Chapel Hill, N. C., or the sources given.

A chemical which melts ice at 25 degrees and more below zero and thereby anchors sand, cinders or other abrasives in road surfaces has been developed and is being extensively used by state and city highway and street departments to break up ice and skidproof roads, sidewalks, and other public places. The chemical is calcium chloride, and the combination chemical-abrasive method is now the standard maintenance practice. It is said to have three definite advantages—positive protection, fast action, and low cost—and more specifically to:

1. Anchor the abrasives, providing a sure-gripping, skidproof surface.
2. Stretch abrasives by making 1 cubic yard do the work of 7.
3. Permit quicker coverage due to greater mileage per truck load.
4. Cut down number of applications by preventing wind and traffic from dislodging materials.
5. Pay for itself in savings in material and costs of application.

H. W. Kueffner, City Engineer of Durham, which spread several tons of sand and chloride on its streets after a freeze on December 14, was quoted in the Durham *Herald* as saying that the chloride melted the ice enough to let the sand work into it. Otherwise, he said, sand alone—especially on hills, where it is needed the most—is likely to slide off the smooth surface. If the ice isn't too thick, he added, the chloride might melt it from the road by itself.

The calcium chloride may be mixed with the sand or cinders in its dry flake form or may be first made into a solution with water. A mixture of one cubic yard of abrasives and 100 pounds of chloride is recommended for general use down to zero temperatures.—Information, courtesy of Charlotte Branch, Solvay Sales Corporation, Charlotte.

Methods for Buying and Testing Traffic Paint

By EUGENE F. HICKSON
National Bureau of Standards

TRAFFIC or zone paints are used to an increasing extent for marking off street-car loading areas, cross walks, "islands" of safety for pedestrians, center line stripes on city and State roads, caution and other warning signs on roads. Materials other than paint, such as metal "buttons," inserts of white brick, white plastics, white cement, mixtures of black asphalt emulsions and sand, and strips of painted cloth, all used for the same purpose as traffic paint, are not considered in this discussion.

While the following material deals mainly with white traffic paint, it should be noted that colors such as bright red, yellow, orange, and black are used in some States. Whatever the color, the paint must be suitable for any kind of hard pavement, have good consistency, flow evenly and smoothly, dry rapidly, hide in one coat, be of a brilliant color, show good color retention, dry hard and tough, be resistant to water, oil, and grease, show good day and night visibility, and be extremely durable (resistant to both weather and abrasion). Some paint manufacturers make one type of paint for concrete roads, and another for bituminous roads. Some make paint designed separately for use in summer and winter, so that at all times the paint will be rapid-drying.

Because large quantities are used, the cost of traffic paint is an important consideration. There are three elements which enter into the ultimate cost: The cost of the paint itself, the cost of application, and the durability. The cost of application is at least twice the cost of the paint itself, and may be in even greater proportion. Durability may vary as much as 2 to 1. If paint *A* costs $1 a gallon and wears for 3 months, where paint *B* costs $1.50 per gallon and wears for 5 months, and the cost of application is $3 a gallon in each case, the ultimate cost of paint *A* is about 4½ cents per gallon-day, while paint *B* really costs 3 cents per gallon-day of use.

Characteristics of the Paint

Generally, traffic paints are fairly heavily pigmented, so that they dry to flat or semigloss finishes—rarely to gloss finishes. Frequently, they are made purposely of a thick consistency, so that they can be thinned on the job, generally with gasoline. However, traffic paint should not be thinned excessively with gasoline, or its durability will suffer. A heavy-bodied traffic paint, provided it can be brushed or applied by machine, is apt to wear longer than a thin-bodied paint, because a thicker film is formed, assuming other properties equal. In white paint, the opaque pigments are selected for suitable color and efficient hiding power at minimum cost. The pigments generally used are lithopone, zinc oxide, and titanium-base pigments. A certain amount of silicate-base pigments, such as china clay, magnesium silicate, silica, sand, pumice, etc., are added to increase resistance to wear, the last two mentioned materials being added also to increase visibility at night by imparting roughness to the film. Extremely small glass spheres distributed on the wet paint coat are also used for the same purpose. In paints other than white, pigments such as carbon black, iron oxide, and organic reds, chrome yellows and chrome oranges are used. Large amounts of

AIDS IN PURCHASING

The Purchasing Agents' Division of the Institute of Government has been fortunate in working out an arrangement with the National Bureau of Standards whereby the Chapel Hill Office may secure copies of Federal Specifications, Commercial Standards, Simplified Practice Recommendations, Lists of Willing-to-Certify Manufacturers and Testing Laboratories, etc., and serve as a clearing house for disseminating this important information to city and county officials in North Carolina.

The State Division of Purchase and Contract had already made available copies of State specifications and contracts, and local officials wishing information on either Federal or State purchasing aids are now invited to write — Institute of Government, Chapel Hill, N. C.

The accompanying article on traffic paints is the first in a new series on the buying and testing of important city and county purchases. Local purchasing officials are urged to send in any products on which they would like to see similar articles, along with copies of specifications and tests which they work out in their own offices.

THE ULTIMATE TEST FOR TRAFFIC PAINTS

The series of traffic lines at the side of the Greensboro City Hall, pictured above, tell their own story. The 12 stripes were put down with as many different samples of traffic paint at the same time; their condition after six months of wear furnishes an unfailing gauge by which the city buys the best and most economical brand for use during the following year. Note how the two brands in the center out-lasted and out-wore the others, although all have long since worn out insofar as their effective use is concerned.

the silicate-base pigments are added to these colors as diluents. Some zinc oxide is also beneficial for color retention in the yellow and orange colors.

Whatever the color, the vehicles or liquid portions of traffic paints of a single brand are usually the same. Generally, the vehicle is a quick-drying varnish. In the better grades, china-wood oil-rosin varnishes containing from 10 to 40 gallons of oil per 100 pounds of rosin may be employed. Ester gum and gum copals may be added to improve the adhesive properties of the film. Besides the resins, oils, and driers, traffic paints contain a large amount of volatile thinners, selected to promote the rapid drying of the paint film. The thinners are usually low-boiling fractions from petroleum or coal tar, including gasoline or varnish-makers' and painters' (V. M. & P.) naphtha and benzol. In some paints, the vehicle is a cold-cut resin, such as East India gum (powdered Batu or Macassar), or manila or damar resin dissolved in mineral spirits or, sometimes in such solvents as alcohol (formula 1), acetone, or butyl alcohol. Occasionally, blown linseed, tung, or other oil is added as a plasticizer.

Rubber latex and clear cellulose lacquers are also employed as vehicles; and water-vehicle paints, such as those made from casein, glue, and sodium silicate are sometimes used.

Road Exposure Tests

About 10 years ago, the National Bureau of Standards began testing traffic paints for and in cooperation with officials of the District of Columbia. Since that time the working properties of many paints in a road distributing machine and the "mileage," how long a stripe 4 inches wide can be made with 1 gallon of paint, have been determined by the District officials, while such physical tests as hiding power, reflectance, consistency, drying time, tendency of the bitumen to "bleed" (stain the paint above), and relative durability in actual service on the road have been determined at the Bureau.

The tests last mentioned were made on Connecticut Avenue, near the Bureau. Parallel stripes of the various paints, about 4 inches wide and about 15 feet long, spaced about 1 foot apart, were applied, mostly by hand brushing. The stripes were made on the road on one side of the avenue (south-bound traffic) from the curb to the car tracks in the center. Fortunately, one portion of the road was concrete, while the rest was bituminous material, so that the same paints were applied at the same time on both types of surfaces. On both portions of the road there was a gradual change in the number of automobiles to which the paint was exposed, varying from a maximum near the middle of the roadway to minima at the curb and at the car track. Traffic on the avenue was fairly heavy, but not as heavy as in congested traffic areas. A traffic count showed that, on a particular day, 4,600 cars passed over the test area in 7 hours from 8 a. m. to noon and from 3 to 6 p. m. The area lies in a 22-mile speed zone.

A great variety of paints were applied to the road, including both commercial brands and experimental paints . . .

In general, the paints did not wear as well on concrete as on bitumen. However, some paints wore better on concrete. Some were satisfactory on concrete, but caused the bitumen to "bleed," changing the white color of the paint to a brownish or yellowish white. The usual life of the best paints was about 3 months. Some of the paints were worn off in less than 3 weeks. The paint near the car tracks and near the curb lasted several times as long as that in the center of the roadway, showing that weathering was of minor importance as compared with wear under the conditions of testing.

In repeated trials, one brand of paint was consistently the best of the commercial paints. This paint was, therefore, used as a "control" in comparing the durability of more recent brands and of all experimental paints. Chemical analysis failed to reveal the reason why this paint was so durable. The vehicle appeared to be a tung-oil-rosin varnish. The pigment was a mixture of 30 percent of lithopone, 40 percent of zinc oxide, and 30 percent of siliceous matter. The separated vehicle dried to a hard, very tough, and adherent film, and contained 45 percent of nonvolatile matter.

Two of the best experimental paints were of the following compositions, expressed in percentages by weight unless otherwise indicated:

Paint 1 contained 65 percent of pigment and 35 percent of vehicle. The pigment was 65 percent of light-proof lithopone, 25 percent of lead-free zinc oxide, and 10 percent of magnesium silicate.

The vehicle was a varnish made in the proportions of 9 gallons of china wood oil and 6 gallons of linseed oil per 100 pounds of modified phenolic resin and thinned with V. M. & P. naphtha and drier to contain 40 percent of nonvolatile material.

Paint 2 contained 65 percent of pigment and 35 percent of vehicle. The pigment was 56 percent of titanium-barium pigment, 24 percent of lead-free zinc oxide, 10 percent of magnesium silicate, and 10 percent of silica. The vehicle was again 40 percent non-volatile and made of the same constituents as the first, but in the proportions of 12 gallons of china wood oil and 8 gallons of linseed oil per 100 pounds of resin.

The results of the road tests quickly demonstrated that the character of the vehicle is far more important than that of the pigment in a traffic paint. However, the addition of zinc oxide to either lithopone or titanium pigment improved durability. The presence of some abrasion-resisting inert of the siliceous-base type is also desirable.

It was also observed that several commercial paints, all passing the same specification based on composition, gave different results during wear tests. It is not possible to state whether or not these paints were of identical composition. Methods of analysis of the vehicle of a paint are not exact enough to identify and determine the amounts of resin and oil present. Even if this were possible, chemical analysis would not reveal how the resin and oil were processed in the varnish kettle. This processing procedure affects the properties of the vehicle. Thus a consumer's specification for traffic paint should be based on physical and performance tests, rather than on a formula which purports to describe the composition.

The Bureau of Standards also uses a machine for testing the wear resistance of traffic paints under ac-

celerated wearing conditions. The wearing test is still in the development stage, although the best-wearing paints on the road are generally the best in the accelerated tests. It must be remembered that, for paint under heavy traffic, resistance to abrasion is more important than resistance to weathering. A measure of the abrasion resistance may to a certain extent be indicated by the hardness of the paint coat, since the two properties are related. However, the hardest paint does not always wear the best, because the toughness of the paint film is an important factor. On the other hand, for paints on country roads, weathering and night visibility may be the more important factors.

The conditions of service should be studied, and the accelerated tests made to fit these conditions.

Specification for White Paint

The following performance specification is being used at the present time by the District of Columbia in buying white traffic paint. The award is given the lowest-priced paint meeting the specification. Awards are not made by brands, and all paints are actually tested (both bid and delivery) before acceptance.

gallons, paint, white traffic, ready-mixed, put in 5-gallon containers, with wire bail.

General.—All paint must be furnished in strong, substantial containers, plainly marked with lot number, name and address of manufacturer. The paint shall be well ground and mixed, shall not settle badly nor cake in the container, shall not thicken in storage to cause change in consistency, shall be readily broken up with a paddle to a uniform condition, capable of easy application with brush or mechanical distributor, in the ordinary manner according to the methods of standard practice. The paint is intended for use on bituminous or portland cement pavements.

Ready-mixed paint.—Ready-mixed paint, as received, shall be suitable for use with the usual paint brush or paint machine. It shall be well made, shall not "liver" nor settle badly, cake or thicken in the container within 3 months of delivery. It shall flow evenly and smoothly, and cover solidly in one coat on bituminous and portland cement pavements. It shall not cause the bitumen to "bleed" either during application or while it is drying. A single coat shall set in not less than 15 minutes nor more than 45 minutes (so that there shall be no pick-up under traffic) and *thoroughly* dry within $1\frac{1}{2}$ hours, free from tackiness, to an elastic, opaque, adherent finish, when applied at temperatures between 40 and 90° Fahrenheit. It shall give a brilliant white finish, free from laps or brush marks. It shall not turn gray in sunlight, nor show appreciable discoloration with age. It shall show a wet hiding power of not less than 225 ft^2 per gallon (checkerboard brush-out method, ASTM Specification D 344-32T). It shall show a daylight reflectance of not less than 80 percent relative to that of magnesium oxide as the standard white (see National Bureau of Standards Letter Circular 395). The paint as received shall show a consistency of not less than 50 nor more than 200 seconds, using the Gardner Mobilometer with the 51-hole disk, a total moving load of 100 g and a distance of 10 cm. (See Physical and Chemical Examination of Paints, Varnishes, Lacquers, and Colors, by H. A. Gardner, 8th edition, page 590.) The paint furnished shall be at least equal, with respect to wearing properties, weathering, and water resistance, of a paint of the following composition:

Pigment—56 percent of titanium-barium pigment (not less than 25 percent of TiO_2). *Paint*—Pigment 65 percent; Vehicle 35 percent.

Pigment—24 percent of zinc oxide (American Process—lead free), for exterior use. *Paint*—Pigment 65 percent; Vehicle 35 percent.

Pigment—20 percent of magnesium silicate. *Paint*—Pigment 65 percent; Vehicle 35 percent.

Liquid.—A properly cooked, quick drying, pale colored varnish, composed of drying oils, resin, drier, and volatile thinner. The oil portion is a mixture of properly cooked China wood oil and heat-bodied linseed oil, in the proportion of 60 parts china wood oil to 40 parts of linseed oil. The resin is a modified phenolic resin. The driers and volatile thinners are to give a quick-drying varnish, containing not less than 40 percent of nonvolatile matter. The varnish is 15 to 20 gallons in length (15 to 20 gallons of the above oils to each 100 pounds of the resin.)

Samples of paint submitted will be subjected to chemical analysis and test. The samples of paint will be applied on the pavement under field conditions and subjected to an *accelerated laboratory service test.* Comparative determinations of the rate of drying, amount of spread, resistance to discoloration, and durability will be noted.

Bulletin Service

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

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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.

2. Exemptions — fraternally owned property.

To John H. McElroy. Inquiry: Is a Masonic Building exempt from ad valorem taxes when the title is in the "Masonic Home Company," two of the three floors are rented to businesses, and the rent is being used to pay off the debt on the building and the stock of the Company, after which title will vest in the local lodge?

(A.G.) Section 600(7) of the Machinery Act exempts "property beneficially belonging to or held for the benefit of churches, religious societies, charitable, educational, literary, benevolent, patriotic or historical institutions or orders, where the rent, interest or income from such investment shall be used exclusively for religious, charitable, educational or benevolent purposes, or to pay the principal or interest of the indebtedness of said institutions or orders." Under the facts stated by you, we are of the opinion that this property is exempt from taxation under this section of the Machinery Act.

30. Situs of personal property.

To H. N. Anderson. Inquiry: May a county or city tax a deposit in a local bank owned by a non-resident and not used in connection with any business in this State?

(A.G.) In our opinion, such intangibles of a non-resident are not subject to ad valorem taxation by your county and city, and if it has been improperly listed, the taxpayer is entitled to have the same relieved upon proper application.

50. Listing and assessment of property.

To Luther T. Rose. (A.G.) The procedure for the assessment of property for ad valorem taxation by cities and towns is set forth in Article 12, Sections 1201 and 1202, of the 1937 Machinery Act.

79. Deductions from solvent credits—debts and liabilities.

To W. Z. Penland. Inquiry: Is a taxpayer entitled to an offset against his solvent credits for "windfall taxes," arising from money originally collected for process taxes under the A. A. A. Act, and due the Federal Government?

(A.G.) No, in our opinion. Section 602 of the Machinery Act provides that "taxes of any kind owed by the taxpayer" shall not be regarded as bona fide indebtedness for the purpose of this subsection.

B. Matters affecting tax collection.

76. Tax collection—date lien attaches.

To Brandon P. Hodges. Inquiry: Is a person liable for ad valorem taxes on land which he purchased in June from an educational institution which was not liable for such taxes?

(A.G.) No, in our opinion. In State v. Fibre Co., 204 N. C. 295, it is stated that the lien for taxes does not attach until they are due and that the taxes are for the fiscal year in which they are levied. The lien for the taxes is said to attach on July 1. That, however, in our opinion, would be the lien of the person who was owner thereof on the first day of April.

102. Refunds.

To J. F. Scott. Inquiry: A note listed for taxes for two years has now turned out to be non-collectible. Should the taxpayer be refunded the taxes on such note?

(A.G.) When a note or other solvent credit is listed for taxes, it must be listed at an assessed value at that time. If the

note later proves uncollectible, the Commissioners have no power to refund property taxes paid upon it.

III. County and city license or privilege taxes.

A. Levy.

14. Privilege license—beer and wine

To Marsden Bellamy. Inquiry: The County Commissioners issued a beer license to a person who, unknown to them, had previously been convicted of selling beer without a license on a plea of nolo contendere. Is this a "violation of the prohibition laws" within the meaning of C. S. 3411 (12) (5), which would justify revocation of his license, and if so, should the Board give him notice?

(A.G.) We think that the judgment on a plea of nolo contendere amounts to a "violation of the prohibition law" and comes within the provision of the law relating to the issuance of beer licenses. We think, under the circumstances, it would be preferable to give notice to the licensee before revoking his license. We would not say positively that the license might not be revoked without notice. However, we think that the privilege once extended might be defended by the licensee if he could show that actually the suggested court action had not been taken.

40. License tax on peddlers.

To A. C. McKinnon. Inquiry: A taxpayer is contesting the constitutionality of the $250 license tax which Section 121(e) of the Revenue Act levies on exhibiting merchandise and taking orders for later delivery on the ground that it is a violation of the interstate commerce laws.

(A.G.) We have not rendered an official opinion on the constitutionality of this section. The Department of Revenue is making an effort to collect the tax, and if the question of constitutionality is raised, we will, of course, attempt to defend it in the courts.

B. Collection.

15. Penalties.

To L. P. Dixon. (A.G.) An examination of the statutes does not disclose that municipalities are entitled to apply the penalties for non-payment of license or privilege taxes in the manner permitted the State in such cases.

IV. Public schools.

F. School officials.

52. Employees — Workmen's Compensation

To T. C. Hoyle. Inquiry: Our city administrative unit includes a portion of rural territory, and since it is the policy of the State School Commission to operate busses in county units only, our unit is compelled to operate some busses out of its supplementary budget. (1) Does the Workmen's Compensation Act apply to the drivers of such busses? (2) Is the city or city unit liable for the death or injury of a child in the operation of such busses?

(A.G.) (1) In our opinion, the Workmen's Compensation Act applies to these employees and, for the purpose of this Act, they would be considered as employees of your city unit and not of the State School Commission.

(2) In our opinion, Chapter 245, Public Laws of 1935, has reference only to children injured or killed while riding in school busses provided by the State School Commission in connection with the operation of the 8-months term. The Act does not deal in terms or effect with the liability of a city administrative unit. In the absence of a similar statute having reference to the operation of a bus system by a city administrative unit, we are of the opinion that there would be no legal authority for payment of compensation similar to that authorized by this Chapter.

V. Matters affecting county and city finance.

P. Securing local funds.

5. Extent of Federal Deposit Insurance.

To Charles Hughes. Inquiry: Does Federal Deposit Insurance cover more than one account of the same depositor?

(A.G.) This Office has ruled that the $5,000 guaranteed by the F. D. I. C. covers the total accounts of a depositor and not the separate accounts when split up. However, where the depositor has accounts in different capacities, such as a personal account and a trustee's account, each would be covered by the insurance separately. But where the different accounts belong to the same person or agency in the same capacity, they are not separately covered.

U. Liability insurance.

To W. F. McGowen. (A.G.) We know no legal reason why your County Commissioners could not place fire insurance on county property under the five-year staggered plan outlined in your letter, and since insurance is a necessary expense, we are of the opinion that your Board could borrow the money to meet this expense. However, we call your attention to the constitutional limitation on the authority of your Commissioners to borrow money, even for a necessary expense, without a vote of the people.

VI. Miscellaneous matters affecting counties.

G. Support of the poor.

5. Old Age Assistance.

To Mrs. W. T. Bost. Inquiry: Does a foreign-born woman who is naturalized or who marries an American citizen meet the citizenship requirements necessary for eligibility for Old Age Assistance?

(A.G.) Yes, under Act of Congress of February 10, 1855.

6. Dependent Children.

To Mrs. W. T. Bost. Inquiry: Please give us your ruling as to the relations a dependent child may live with and qualify for Aid to Dependent Children?

(A.G.) In our opinion, the words "father and mother," as contained in Sections 35 and 36 of the Act, would include the adoptive father and mother of a dependent child within the meaning of the Act. We also think that the words "brother and sister" would include a brother or sister of the whole or half blood, and the words "uncle and aunt" would include an uncle or aunt by the whole or half blood. However, we do not think the language is broad enough to include a great grand-parent, grand-parent-in-law, adoptive brother or sister, uncle-in-law, aunt-in-law, great uncle or great aunt.

X. Grants and contributions by counties.

9. Community buildings.

To F. W. McGowen. Inquiry: May our County contribute funds to a WPA project on land donated by the citizens of a rural township for the construction of a building to be used as a polling place and community center?

(A.G.) We doubt whether such a building would be considered a necessary public county building within the meaning of C. S. 1297(16), authorizing counties to purchase real property necessary for public buildings, etc. As you know there is no direct authority for the construction of a building to be used for the purpose of holding elections. We feel that the County would not be authorized to contract any debt for this purpose without a vote of the people and by virtue of special authority by the General Assembly.

VII. Miscellaneous matters affecting cities.

B. Matters affecting municipal utilities.

20. Franchise and other taxes

To Dr. John H. Hamilton. Inquiry: Is a power company which operates one or more city water systems liable for the $64 waterworks inspection fee provided by C. S. 7059 for the State Laboratory of Hygiene for each station or plant?

(A.G.) We think that a power company which furnishes water becomes liable for this fee and is liable for the fee for each plant operated. (EDITOR'S NOTE: This tax or inspection fee also applies, of course, to municipally-owned water plants.)

F. Contractual powers.

2. Light and power contracts.

To Patrick Healy, Jr. Inquiry: Has a municipality a legal right to enter a street lighting contract with a public utility for 10 years or any period longer than the term of its governing board?

Duty to Provide for Prisoners

To D. H. Tillitt. (A.G.) This Office has held for a number of years, reaching back into Mr. Brummitt's administration, that it was mandatory upon the governing body of a municipality to provide meals and board for its prisoners whether kept in the city or county jail. We have made a further study of this matter and feel that we must take a contrary view.

C. S. 4714 provides that "if any person shall violate an ordinance of a city or town, he shall be guilty of a misdemeanor and be fined $50 or imprisoned not exceeding 30 days." This statute was tested in the Supreme Court in the case of Board of Education v. Henderson, 126 N. C. 689, involving the validity of a city ordinance providing that fines and penalties imposed for violations thereof be paid into the treasury of the municipality for municipal purposes. In the opinion the Court says "but whether the criminal offenses created by the town ordinances are tried before the municipal court or before a Justice of the Peace, they are State prosecutions in the name of the State, for violations of the criminal law of the State, and at the expense of the State, and the city can not be charged with the cost of such prosecution."

In view of this opinion of the court, the person tried and convicted for violation of a town ordinance is, in fact, convicted of a violation of a criminal law of the State, and the city can not be charged with the cost of keeping such prisoners.

(EDITOR'S NOTE: The Attorney General, in a personal interview, has stated that this ruling was meant to apply to the cost of keeping prisoners after conviction. He has not yet made an official ruling as to whether the city or county should bear the cost of prisoners held in jail pending trial for violation of municipal ordinances, etc.)

(A.G.) In our opinion, this is a "continuing contract" within the meaning of C. S. 2960(d) (i), and it would be competent for the governing board of a town to enter such a contract for a reasonable period, extending beyond their terms, where the advantages of lower rates and reliable and continued service may be essential factors in making the contract.

No contract between a utility and a municipality, by which the former furnishes light to the latter, can oust the jurisdiction of the Utilities Commission in respect to the supervision of the rates. In this regard, the contracting parties would be in no better position, by reason of the public or governmental nature of the municipality, than they would be had the contract been made with a private person. C. S. 1035 (3).

J. What constitutes necessary expenses.

To Ralph H. Ramsay, Jr. Inquiry: Please advise as to the constitutional and statutory authority of our Town to acquire a building for use as a city hall? The Town can secure a suitable building for $5,000 and can pay the principal and interest in installments of the exact amount it is now paying for rent.

(A.G.) We think that the Town has the authority, provided it does not exceed the debt limitation provided in Article IV, Section 4, of the Constitution. See Article VII, Section 7, permitting a city to contract a debt or pledge its credit without a vote for "necessary expenses," and Hightower v. Raleigh, 150 N. C. 659, holding a city hall a "necessary expense" in the case of a larger municipality.

K. Grants by cities and towns.

2. Public schools.

To Allen H. Gwynn. Inquiry: Does a City Council have authority to appropriate funds for teaching music in the public schools?

(A.G.) We regret to say that we find no authority for any appropriation or assistance by a municipality for the conduct of music courses in the schools. Such authority must be by very direct operation of some state law, and there is none in the general law pertaining to cities and towns, since the object of the appropriation is not sufficiently related to the purposes of the government.

Z. Workmen's Compensation and other employees' funds.

15. Reports to Industrial Commission.

To C. M. Brady. (A.G.) The North Carolina Workmen's Compensation Act provides that cities and towns must furnish certain payroll reports to the State Industrial Commission. A tax in this regard is also levied by Section 73(j).

VIII. Matters affecting chiefly particular local officials.

B. Clerks of the Superior Court.

1. Salary, costs, and fees.

To G. W. Jones. (A.G.) In our opinion, fees for services allowed by a Superior Court Judge who appointed a special solicitor to prosecute the criminal docket in your County during the necessary absence of the regular solicitor, are a valid and legal charge against your County and should be paid.

To B. D. McCubbins. Inquiry: Does the Clerk of Court have a right to tax the costs against a petitioner in a lunacy inquiry in which it is found that the respondent is of sound mind?

(A.G.) This proceeding falls in the category of a special proceeding before the Clerk, and under C. S. 1249 costs in such proceedings are allowed as in civil actions unless otherwise provided. In filing the petition, the statute indicates that any person may file it on behalf of the person supposed to be non compos mentis. The hearing, however, discloses that the person is not incompetent, and the proceedings are dismissed. In this case, the petitioner is responsible for bringing the petition before the court, the summoning of witnesses, and other costs incurred by the court. We believe, therefore, that you would be justified in taxing the petitioner with the costs in such cases.

6. Witness fees.

To B. D. McCubbins. Chapter 40, Public Laws of 1933, abolished witness fees for State Highway Patrolmen and other peace officers who receive a salary. However, under the Act creating the Patrol (Chapter 218, Public Laws of 1929), arrest fees and fees for service of process by State Patrolmen should be included in the bill of costs and should be remitted into the general fund of the county in which the cost is taxed.

10. Collection of process tax.

To C. C. Hayes. Under the provisions of C. S. 7880(78) no process tax should be charged in a bill of costs against the State. The State Highway and Public Works Commission being a State agency, no process tax should be charged in the bill of costs in a case in which judgment has been taken against such State agency.

20. Criminal appeals.

To George W. Jones. (A.G.) In order to save Clerks of Court some trouble in the matter, we suggest that it is only necessary to send the Attorney General's Office certificates of conviction and appeals to the Supreme Court in capital cases. Where the Defendant has been convicted of an offense less than capital and fails to perfect his appeal by serving his case on appeal and giving an appeal bond, or obtains leave to appeal in forma pauperis, you can notify the Solicitor and he can have his appeal dismissed in the Superior Court, or we can have it dismissed up here upon being furnished with your certificates showing facts which amount to a failure to perfect the appeal.

In all capital cases it is necessary for the Attorney General's Office to be advised promptly when appeal is taken to the Supreme Court and bond given, or the Defendant is allowed to appeal in forma pauperis.

26. Duties with respect to funds of incompetents.

To Dr. J. W. Ashby. Inquiry: Does the State Hospital have authority to disburse funds of a criminal insane inmate to pay lawyers' fees incurred at his trial?

(A.G.) No, in our opinion, the only method by which such funds can be disbursed is on the order of a guardian duly appointed for the incompetent by the Clerk of Court of the county from which he was committed to your care.

70. Entries on judgment docket.

To B. D. McCubbins. (A.G.) C. S. 613 provides that every judgment shall be entered on the Judgment Docket of the Court. "The entry must contain the names of the parties and the relief granted, date of judgment and date of docketing; and the Clerk shall keep a cross-index of the whole with dates and numbers thereof."

C. S. 952 (4) provides as follows: "Cross-index to judgments, which shall contain a direct and reverse alphabetical index of all final judgments in civil actions rendered in the Court, with the dates and numbers thereof, and also of all final judgments rendered in other courts and authorized by law to be entered on his judgment docket."

C. S. 613 requires that the judgment docket show the date of the judgment and the date of docketing. Of course, the more important entry is the date of docketing, as this ordinarily determines the date from which the lien of the judgment will depend. This is subject to other provisions of the law as to liens of judgments rendered at the same term of court. To be entirely safe about the form of the index, we suggest the advisability of showing thereon the date of the judgment and the date of docketing as well.

93. Juvenile Court—costs and fees.

To B. D. McCubbins. Inquiry: Is there any statute providing for fees to witnesses and officers in juvenile cases to be made a claim against the County?

(A.G.) You are doubtless familiar with the statutes regarding fees of officers and witnesses in criminal actions where the Defendant is unable to pay—C. S. 1259, 1281, 1284, 1287, and 1288. However, these statutes refer to criminal actions, and our Court held in State v. Burnett, 179 N. C. 735, that actions in juvenile courts are not criminal actions.

The only provision as to witnesses in juvenile cases seems to be C. S. 5044, and this provides that the Judge may, in his discretion, authorize the payment of the necessary traveling expenses incurred by any witness or person summoned, or otherwise required to appear, at the hearing of any juvenile case, and that such expenses, when approved by the Judge, shall be a charge against the county in which the petition is filed. This seems to be the extent of the compensation to officers and witnesses in juvenile cases.

M. Health and Welfare officials.

31. Health laws and regulations.

To Z. P. Mitchell. Inquiry: Is Chapter 71, Public Laws of 1919, "An Act to Prevent the Spread of Disease from Insani-

SLOT MACHINES

To W. W. Cohoon. (A.G.) The case of Calcutt et al. v. N. H. McGeachy, Sheriff of Cumberland County, et al. is now pending in our Supreme Court and will be heard within the next few weeks. On trial below the Superior Court upheld the North Carolina Slot Machine Act and rendered a declaratory judgment fully supporting the law.

Since the Calcutt Case was heard, slot machines have appeared in various sections of the state which are claimed to be a "Type 12" Machine such as was involved in that case. These machines are, in our opinion, illegal within the meaning of the decision in this case and within the language of the North Carolina statute. The Solicitor in this District, after a conference with the Judge who handed down the previous decision, has indicted persons here who had these machines in possession, and the cases are now pending in the Wake County Superior Court.

Under the decision in the Calcutt Case, the only legal slot machines are those which are expressly exempted in the statute, that is, purely merchandise vending machines and which invariably give the same merchandise at each operation.

tary Privies," constitutional in view of Section 13, which makes the act inapplicable to residences located more than one mile from the corporate limits of a town or geographical center of a village?

(A.G.) In our opinion, the provision does does not affect the constitutionality of the statute. The creation of sanitary districts and regulations is clearly within the police power of the State. The State itself may prescribe these regulations or may properly delegate to municipal corporations or special boards the making of such regulations within properly defined limitations. Such laws are not discriminatory under our Constitution, provided they are given State-wide application. State v. Hord, 122 N. C. 1092. It is unequal application or restriction to a particular locality which brings such an ordinance within the constitutional prohibition.

To Dr. J. A. Morris. (A.G.) Chapter 206, Public Laws of 1919, gives you authority, in the exercise of your duties as County Health Officer, to detain a person suspected of being infected with a venereal disease, to require such person to report for treatment to a reputable physician until cured, or to submit to treatment provided at public expense until cured.

The copy of the State Board of Health's "notice of failure to take treatment" and "venereal disease detention order" which you enclose have been formally approved by this Office and seem to be in accord with the Act.

P. Officials of Recorders' and County Courts.

1. Salary.

To D. Newton Farnell, Jr. Inquiry: Is the Assistant Solicitor for a General County Court a county officer so that his salary would be exempt from federal income tax? (A.G.) We think that such a salary would not be subject to federal income tax.

22. Sentences.

To Huber T. Taylor. (A.G.) It is our opinion that a common law misdemeanor is punishable by fine or imprisonment, or both, in the discretion of the court, according to the precedents of the common law by virtue of the authority of C. S. 4173. Under our statute a person so convicted could be assigned to the State Highway and Public Works Commission to work on the highways.

S. Mayors and aldermen.

10. Vacancies.

To Jackson Greer, Jr. Inquiry: How is a vacancy on the Board of Town Commissioners filled? (A.G.) Under the general law of vacancy on a Town Board is filled by a vote of the remaining members. Unless your charter contains special provisions to the contrary, this controls.

T. Justices of the Peace.

To Huber T. Taylor. Inquiry: Does a Justice of the Peace or Recorder have jurisdiction over offenses designated in a statute reading: "Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned at the discretion of the court"?

(A.G.) In our opinion, a J.P. does not have jurisdiction over such violations but a Recorder does have jurisdiction by virtue of our Recorders' statute, which gives Recorders jurisdiction over what is termed petty misdemeanors.

To Fred L. Kreeger. (A.G.) If a party comes into court and tenders a plea of guilty, and after hearing the evidence the court is of the opinion that the person is not guilty, the judge has the right, and we think it is his duty, to reverse the plea and enter one of not guilty against the Defendant.

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

DISPOSITION OF CONFISCATED LIQUOR SUPPLIES

To H. E. Litchford. Inquiry: Our County A.B.C. officers in destroying stills and pursuing their other duties frequently confiscate sugar, bran, glass jars, etc. Could we turn such materials over to the County Home and save the unnecessary expense and loss which would be involved in their destruction?

(A.G.) Section 13 of the A.B.C. Act provides for the destruction of any illegal liquors which are confiscated and for the sale of any confiscated vehicles and the payment of the proceeds to the Treasurer or proper officer for the school funds of the County. However, your question relates to materials used in making liquor and found at a distillery illegally operated.

C. S. 3398 makes it the duty of the officer to search for and seize any distillery or apparatus to be used for the manufacture of intoxicating liquors, and to deliver the same with any materials used in making such liquors found on the premises to the County Commissioners, who shall confiscate the same and cause the distillery to be destroyed, and who may dispose of the material, including the copper or other materials from a destroyed still, in such manner as they deem proper.

This provision is not a part of the Turlington Act and is not repealed expressly or by implication in the 1937 Law. We are, therefore, of the opinion that it is still in effect and controls the situation to which you refer. State v. Langley, 204 N. C. 687.

6. Liability.

To J. H. Harris. Inquiry: Is an A.B.C. Board immune, as a governmental agency, from damages caused by its delivery truck or by the cars of the A.B.C. enforcement officers? Or should the County or the Board take out liability insurance on such cars?

(A.G.) In our opinion, the A.B.C. Board is provided in the general scheme for the exercise of the police power in the control of the liquor traffic, and therefore, its members, to some extent at least, are exercising governmental functions. That being true, they would come within the rule laid down in Hipps v. Ferrell, 173 N. C. 167, and would not be liable as a board for injuries resulting from negligence in use of trucks. Nor would they be liable as individuals unless the injury complained of resulted from an omission of some duty or commission of some act through malice or want of good faith, or of negligence amounting to bad faith.

Y. Game Wardens.

30. Particular rulings affecting game laws.

To R. B. Etheridge. Inquiry: Must a person (other than persons expressly excepted from the license law) have a license to legally hunt unprotected as well as protected game?

(A.G.) Yes. Section 12 of the North Carolina Game Law requires that any person taking any wild animals or birds, without regard to whether or not such wild animals or birds are protected or unprotected, shall procure a license as provided in the Act.

To W. McNair Smith. Inquiry: Isn't it illegal to sell fresh water bream in North Carolina although caught in South Carolina or Florida?

(A.G.) This is a violation of Rule 11 of the State-wide inland fishing regulations, adopted by the Department of Conservation and Development under C. S. 1878, which we feel is sufficiently broad to cover this case.

To John W. Darden. Inquiry: What are the residence requirements in a prosecution for unlawfully hunting with a resident license?

(A.G.) This is purely a question of fact for the court to decide whether the licensee is a bona fide resident of this State. Under the game law a person who has not been a resident of this State can not acquire a residence for the purpose of securing a resident license until he has been in the State for at least six months. A person who at one time resided in this State but who has been living out of the State would be presumed to be a resident of the state in which he was actually living. We have recently advised the Department of Conservation and Development in such cases to require a person claiming to have retained his residence here to make an affidavit to this effect, including a statement as to the last place he voted.

Z. Constables.

10. Jurisdiction and power.

To George A. Gash. (A.G.) C. S. 976 provides that the jurisdiction of constables for the purpose of serving process shall be county-wide. Constables serving process anywhere in the county are entitled to the fees allowed by law to officers for such service.

IX. Double office holding.

25. State Departments and Boards

To W. C. Feimster. Inquiry: Is a Director of the State Hospital or of other similar charitable institutions an officer within the meaning of Article XIV, Section 7, of the Constitution, prohibiting double office holding?

(A.G.) After careful study we have come to the conclusion that a Director of a charitable institution of the kind you refer to is properly classed as a commissioner of a public charity, and the constitutional prohibition is, therefore, not applicable to such an officer.

XI. General and special elections.

D. School elections.

50. Cost of holding.

To F. M. Waters. Inquiry: Are the costs of an election for a local school supplement under Section 14 of the School Machinery Act payable by the City Schools, or should the cost be paid by the Commissioners from the general county funds? (A.G.) The expenses of such elections should be paid by the County.

H. Municipal elections.

50. Election contests.

To W. P. Kelly. (A.G.) The State Board of Elections has nothing to do with, and is not responsible for court costs in connection with, election contests.

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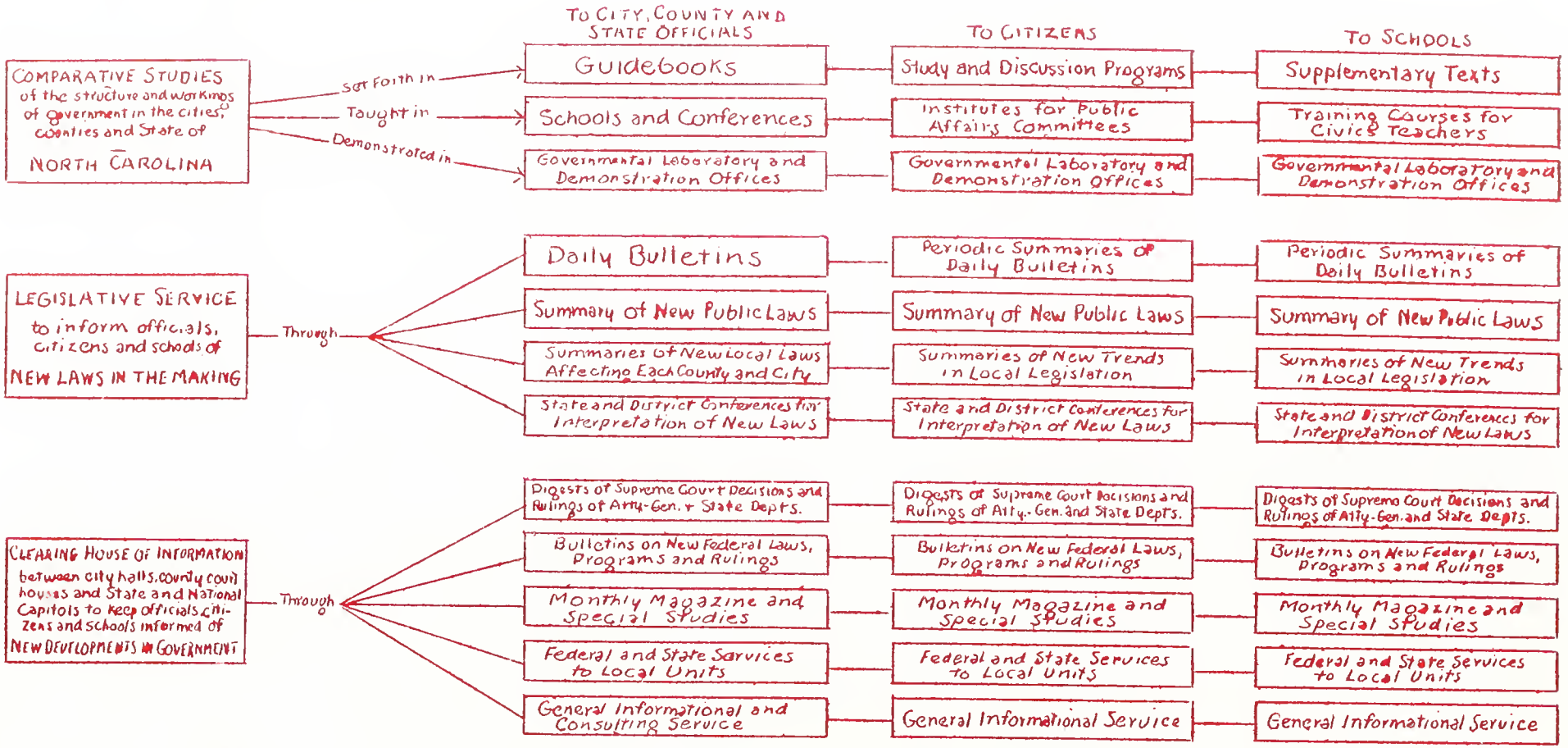

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