



HERTFORD COUNTY COURT HOUSE

Hertford is one of the leading counties in the northeast section of the State, and its officials have taken a leading part in the activities of the Institute of Government from the beginning.

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NEWS AND RULINGS OF INTEREST TO PUBLIC OFFICIALS AND LAWYERS



STORAGE COPY

POPULAR GOVERNMENT



HERE IS ALBEMARLE'S NEW SEWAGE DISPOSAL PLANT

Albemarle's new and model sewage disposal plant (above) has just been completed and put in operation. The plant, which was a PWA project and which cost a total of \$260,000, is of the *separate sludge digestion and trickling filter* type, with provision for chemical treatment in both the primary and secondary stages. After going through the various processes described in the accompanying note, the liquid is discharged into the creek, a clear and harmless effluent, and the solid matter is settled, dried, and taken off for use as fertilizer. The gas formed in the sludge digestors is also utilized to keep the sludge warm and to heat the various buildings and the operator's cottage.

The Stanly county seat did not have a sewage plant up to this time and might have gotten along without one for a few more years. This was because its lines emptied into a creek which flows through virtually uninhabited territory for a number of miles and along whose banks the city possessed easements. However, the population of the town and the adjacent territory served had grown to 10,000, and the city officials anticipated the coming problem and need. And in building for the future, they provided a plant with a daily capacity of 1,750,000 gallons as compared with the present flow of 750,000 gallons. They also made wide investigations of different sewage plants, and the type they finally settled on is said to embody the most up-to-date processes and equipment and to combine the maximum efficiency and economy for a town this size.

A modern incinerator with a capacity of 30 tons per day was also erected at the same time as the new sewage disposal plant. The two plants, which are under the general supervision of the Superintendent of the Water and Light Department, require the services of only one operator and two assistants, and the estimated annual operating cost is only \$7,500.00, or 75c per inhabitant of the territory served for sewage and garbage disposal service.

AND HERE IS THE WAY IT WORKS
How does an ultra-modern, stream-

GEORGE S. MOORE

Mr. Moore, who has served the town for 11 years as Water and Light Superintendent also has supervision of the new sewage disposal plant and incinerator.



BUILDERS AND EQUIPMENT SUPPLIERS

Engineer—W. C. Olsen, Raleigh
Contractor—Blythe Brothers, Charlotte.
Pumping Equipment—J. R. Purser, Inc., Charlotte (Representatives for DeLaval Steam Turbine Co., Trenton, N. J.; Ralph B. Carter Co., Hackensack, N. J.; and Yeomans Brothers Co., Chicago, Ill.)
Rotary Distributors and Gas Equipment—Combustion Engineering Co., Charlotte (Representatives for Pacific Flush Tank Co.)
Chlorinators and Chemical Dry Feeders—H. F. Davis, Dist. Mgr., Wallace & Tiernan Co., Charlotte, N. C.
Clarifiers—Link-Belt Co., Philadelphia, Pa.
Flash Mixer and Flocculator—The Dorr Co., Atlanta, Ga.
Comminutors—F. L. Bunker, Rep., Chicago Pump Co., Charlotte, N. C.
Incinerator—Pittsburgh-Des Moines Steel Co., Pittsburgh, Pa.

J. R. PURSER

SALES ENGINEER, Inc.
Independence Bldg. Charlotte, N. C.
Representatives for DeLaval, Carter, Yeomans and other nationally known lines.

General Contractors BLYTHE BROTHERS

Charlotte, N. C.
Public Works and Highways
A Specialty

lined 1938 sewage disposal plant operate? So many lay readers have put this question, the editors have attempted to outline in a non-technical manner this very technical process as it works in the case of Albemarle's model new plant. Public works officials will also be interested to compare their sewage disposal problems, plants, and methods with Albemarle's.

With this preliminary warning, here goes the description:

Flowing to the *Pump House (A)* by gravity, the raw sewage is pumped to the *top of the hill (B)*. The greater part of the solid matter settles in the *primary settling basin (C)*. From here the liquid flows on to two *dosing tanks (D and E)*, where it is dosed with chemicals. The liquid next passes through two *trickling filters (F and G)*, equipped with rotary distributors, to the *flash mixer house (H)*. Chemicals are added here—chlorine to purify the liquid and alum and lime to settle the remaining solids. The liquid flows now to the *flocculator (J)*, where it is stirred with huge paddles to get the remaining silt to mix with the chemicals or *floc*, then to the *secondary settling basin (K)*, where the remaining solids are settled. The liquid is now discharged into the creek—a clear, harmless effluent.

Now back to the *primary and secondary settling basins (C and K)*, and follow the path of the solid matter or *sludge*. The solids are pumped from the two basins to two *sludge tanks (L and M)* and are then run through the digestors in the *sludge treatment building (N)*, where lime is added to help digest them. A little liquid is still left, and from here the so-called solid matter flows to the *sludge beds (O and P)* and is spread out on sand beds to dry. The remaining liquid settles through the sand and under drainage system, and the sludge comes off in dry, sawdust form and is hauled up the *tramway (Q)* and dumped in trucks, ready for use as fertilizer.

(R) is the central or *control building*, where the main switch boards and controls are located, chemicals are fed, laboratory tests are run, etc. (S) is the new *incinerator*, which was built at the same time but which is separate from the sewage disposal plant.

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New Intangible and Gift Taxes Go Into Effect

MARCH 15, 1938, is the last date for filing returns with the State Revenue Department under the new gift tax and intangible tax schedules in the 1937 Revenue Act.

The gift tax is not of major concern to local officials. It does not supplant any tax hitherto levied and enforced by counties and cities, nor do the local units share in the proceeds from it. The number of persons subject to taxation under it is comparatively small. Those readers who are interested in its provisions are referred to the Revenue Act, to the State Revenue Department, and to a note on the subject in the February issue of the North Carolina Law Review.

On the other hand, the intangible tax not only affects a large number of taxpayers, but it is also of importance to local officials. Figures for 1937 are not yet available, but in 1936 counties, cities, and special taxing districts levied a total of approximately \$1,200,000 in property taxes on net solvent credits. Under the new system of intangible taxation, all net solvent credits will disappear from the local tax books. Of the taxes collected by the State, 50% will be distributed to counties and cities. This means that unless the new system produces a total revenue of approximately \$2,400,000 local government as a whole will suffer a loss of revenue.

It is not intended in this article to infer that the new system will be a failure if it does not produce this amount or that its fairness is to be gauged by the total revenue it produces. The intention is merely to point out that counties and cities still have a substantial stake in the revenue from intangible taxes, and that, to the extent of 50% of the

Local units to share in intangible levy—Urged to aid State in listing.

•
**BY HENRY
BRANDIS,
JR.**



revenue produced, they are benefitted by any cooperation given to the State Revenue Department by local officials.

Local Units Can Increase Share

This is particularly true of taxes levied on all major items except bank deposits, because the taxes on such items go back to the localities in accordance with the county in which the collection is made. The Guilford County Tax Supervisor, Mr. A. C. Hudson, has already furnished the State Department with a list of mortgages subject to taxation as shown by the Guilford records. Other counties can help to increase the revenue to which they are legally entitled by offering similar cooperation. They can also help by explaining the new system to taxpayers and by furnishing any information which may be sought by the Department's Intangible Tax Division, which is headed by Thomas W. Alexander, Jr. The point is that if local tax officials wash their hands of the matter merely because the major responsibility for administration has been placed on the State, they are costing their own governments as many dollars as they cost the State.

Except in connection with deposits in banks within this State (on which the tax is collected through the bank), it is the duty of each taxpayer owning taxable intangibles to file his return with the State Department and pay the tax not later than March 15. The Department is mailing out 100,000 return blanks, the recipients being primarily those who, in the past, have been filing income and sales tax returns. Failure to receive a blank does not, however, excuse the taxpayer from the necessity of filing a return. The blanks can easily be secured from the Department, as can a full set of regulations covering dozens of questions which might arise in determining the exact amount of liability.

Rules and Method of Distribution

There are too many provisions in the statute and the regulations to permit a full summary to be made here. The rates (per \$100) are as follows: bank accounts—10c; money on hand—20c; accounts receivable—25c; funds left with insurance companies—25c; shares of stock—30c; notes, bonds, mortgages, cashier's checks, certified checks, and like evidences of debt—40c. Funds under the control of fiduciaries, including Clerks, take the appropriate rate for the particular class of property. Various exemptions and deductions are provided which are fully explained in the regulations.

Fifty percent of the money collected from all sources will be allotted to the State. The remaining 50% of collections from bank deposits and from the section dealing with insurance company deposits will be distributed among the various counties (speaking of them as geographical units) on a population

basis. The remaining 50% of collections from other intangibles will be distributed among the various counties in accordance with the amount of collections made in the respective counties. The two sums thus assigned to a particular county will then be divided between the county and all incorporated towns therein on the ratio of the total tax

levy made by each on real and tangible personal property during the preceding fiscal year. The funds received by the local units are earmarked for school purposes by the statute. Just what this means to a city which, as such, has no school expenditures, is a question which has not yet been authoritatively determined.

New Tax Cases Important

FOR several years local tax collecting authorities have been anxious to secure a definite and authoritative determination as to whether or not section 7990 of the Consolidated Statutes is still in force as a method of foreclosing real property taxes. The question has been one of great importance because there is no statute of limitations on that section, whereas the method of foreclosure authorized by section 8037 must be employed not more than two years after the date of the tax sale certificate.

Some lawyers have felt that probably section 7990 is still in force and can be used so long as no certificate is in existence, but that sale of a tax sale certificate constitutes a binding election to proceed only under section 8037. However, the State Supreme Court, in a recent case, has taken a position opposite to the last part of the above view and authoritatively determined the matter in a unanimous opinion.

The case is *Morris v. Asheboro*, 212 N.C. 331, filed November 3, 1937. It seems clearly to mean: (1) that section 7990 is still in force; and (2) that it can be employed by a county or city, as distinguished from a private purchaser of a certificate, even though the county or city has become the purchaser of a tax sale certificate. In effect, therefore, the decision means that there is no time limit on the local government's right to enforce payment of taxes. All taxes, regardless of age, may be collected, except for such 1926 and prior taxes as were expressly wiped out by Chapter 181, Public Laws of 1933. A number of counties in the State were exempted from that Chapter; but the new decision would not serve to revive the 1926 and earlier taxes in counties to which it applied.

The Asheboro case, as it happens, involves a special assessment rather than an ordinary tax. However, the court treats the situation as if it had been a tax, and in demonstrating the permanent character of the lien it even quotes a section of the statutes which mentions annual taxes but does not refer to assessments. There seems no doubt about the intention of the court to uphold section 7990 as applied to tax cases, even though, in a technical sense, its opinion in this respect might be considered as dictum.

There is a distinct inference in the case that, when section 7990 is employed to foreclose special assessments, the ten-year statute of limitations on assessment collections does not apply. If this is to be followed, it opens the way to collection of many special assessments hitherto considered to be barred by the ten-year statute. However, attorneys considering this phase of the decision, might consider the following possibility. The two-year statute of limitations on foreclosure under section 8037 is included in that section itself. It is obviously not intended to apply to any other type of procedure. However, the ten-year statute of limitations on assessments is contained in a separate statute which does not relate to any specific method of foreclosure. It seems possible, therefore, that when this specific point has to be decided finally, it will be concluded that the ten-year statute is applicable even to actions under 7990. The question was raised in the Asheboro case, but it appeared that the ten-year statute had not been expressly pleaded by the defendant. Such inference as can be drawn from the case, however, is to the effect that the ten-year statute would not apply.

Property of Veterans' Loan Fund

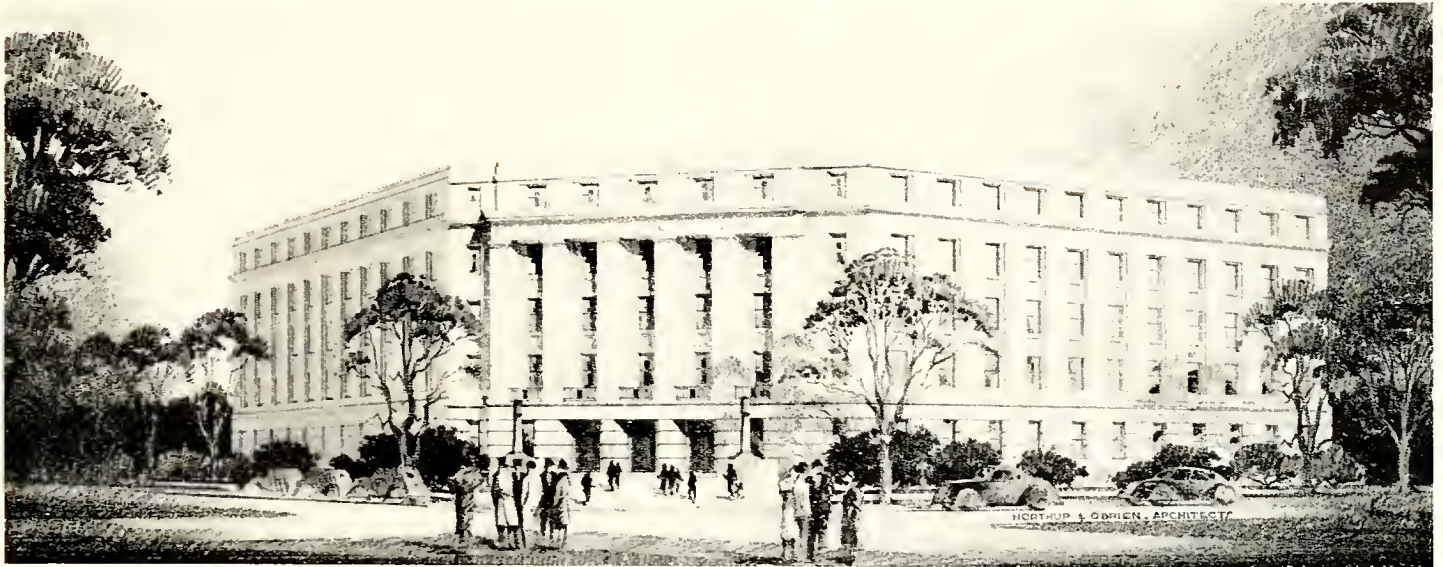
Another recent case of importance to local collection and assessment officials is *Weaverville v. Commissioner of Veterans' Loan Fund*, filed January 5, 1938. In that case the court decided, by the narrowest margin possible, that property owned by the State Veterans' Loan Fund, not used for a public purpose, is still exempt from taxation as State property.

It will be recalled by most local officials that in recent years, in two cases, the court held that city and county property, not used for a public purpose, is subject to taxation. The wording of the Machinery Act dealing with exemption of State property is probably broader than the wording of the Act dealing with exemption of county and city property; and this fact might be regarded as the reason for the difference in the result reached by the cases. However, the wording of the State Constitution is the same with respect to the property of both State and local governments, and the decision in the new case seems, to a large extent, to approach the matter from the standpoint of constitutional interpretation.

The decision in the case was by a four to three margin. Constituting the majority of four were Justices Devin, Connor, Barnhill, and Winborne. Dissenters were Chief Justice Stacy and Justices Clarkson and Schenck. It will be noted that the two Judges added to the court when it was increased in size furnish the margin of the majority.

In view of these circumstances, it is entirely possible that the case has importance beyond meaning merely that counties and cities cannot tax the properties which the Veterans' Loan Fund has acquired by foreclosure of its mortgages. It might mean (which is not by any means to say that it does mean) that, if the question is again presented to the present court, it would be held that county and city property is exempt from taxation regardless of the purpose for which it is used. The Constitution of the State does not contain any express language limiting exemption of such property to that used for a public purpose and, as already stated, constitutional considerations were apparently given great weight in deciding the

Continued on page four



OTHER states may have their 10 and 20-million dollar modernistic 10 and 20-story capitols to house all their agencies in one central building. North Carolina keeps the simple but handsome and stately Capitol which has centered the State's government for 98 years dating beyond Reconstruction and Civil War to pioneer days, and when its departments and agencies outgrow their quarters, it just adds another office building to Capitol Square.

This policy, which has saved the State's taxpayers several millions of dollars as well as preserved the beauty and tradition of its original buildings, was first adopted about 1900 when the State Departments Building was erected to house the overflow from the Capitol of the then small family of State offices. New governmental services, activities, and agencies followed one another until, in 1937, the State had added five other buildings, Supreme Court (1913), Revenue (1923), Agriculture (1924), Highway (1921), and Health (1928), and still was paying \$35,000 per year in rent on offices for State agencies scattered all over Raleigh.

The result was the building program authorized by the 1937 General Assembly, chief item in which will be the new and modern fire-proof State Office Building on Edenton and Salisbury streets at the northwest corner of the Capitol (above), which is now under construction and which is expected to cost the State around \$675,000.

No New Capitol for This State

North Carolina Just Adds a New Office Building to Capitol Square.

To Relieve Overcrowding in Other State Buildings and Save State Greater Part of \$35,000 Rent It Is Now Paying Each Year.

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

In addition, the Highway Commission has just purchased and remodeled a building on Greene Street for a laboratory at a total cost of around \$50,000, and the State is going ahead with plans for the addition of a new wing to the Revenue Building at an estimated cost of \$50,000.

Together the three additions, the new office building, laboratory, and Revenue Building Wing, are expected to absorb all the permanent State agencies which have been forced to find space in private buildings out in the city, and to save the State the greater part of the large sum it has been paying for rent each year. However, they will only take care of present needs and will not provide for future expansion. If the State's business continues to grow as it has grown in re-

cent years, the chances are that North Carolina will be looking around for another office building in a few years, but a new Capitol? —Never!

Plans for the New State Building

The New State Office Building will be constructed of white Mount Airy granite, which is known as one of the most beautiful as well as enduring materials and which, being a native stone, is particularly appropriate. The design, as will be seen from the architect's sketch, is best described as restrained modern (but not modernistic), and is in close keeping and harmony with that of the Capitol, whose stately columns will be matched by the six fluted pilasters of the new structure. The building, which will have six stories and a basement under the center, will be L-shaped with two wings each approximately 134 feet long and 46 feet wide and a center section approximately 76 feet wide and 65 feet deep.

The superstructure will be of structural steel, the street elevations and the ends of each wing of granite, the rear wall of brick, and the insulated roof of slag material laid on insulating board. The walls will be of granite backed with brick, furring tile, and plaster, while the floors will be the metal pan and concrete joist type with terrazzo in the offices and tile in the wash rooms. The windows will be the metal sash projecting type, and the passage doors will be wood with metal frame, while the doors to the stair towers will be of hollow metal. A

feature of the interior arrangement showing far-sighted planning is that, whereas the permanent partitions will be of hollow tile, other partitions between offices will be of gypsum block laid on the top of the finished floor, permitting future changes and alterations as needed. The lobby and the elevator lobby behind it will have marble walls and ornamental plaster ceilings, and metal base will be used throughout except where marble is used.

The general arrangement of the new building, which was designed by Northup and O'Brien and which is being erected by J. J. McDevitt Co. as general contractor, will be as follows. One wing of the ground floor will be devoted to archives and the balance to storage and work rooms. One wing of the first or main floor and the rear section off the elevator lobby will be given over to exhibits and the other wing to archives, exhibits, search and catalog rooms, and two offices. The upper stories will be used mainly for offices, work rooms, and vaults with a library on the third and a Hearing Room on the fourth floors.

The general contract for the new building was let for \$512,116, but this does not include the expenditures for the land, architect's fee, tunnel from the central State heating plant, and certain other items such as lighting and fixtures, hardware, shades, etc., and the total cost is expected to be just short of the \$675,000 authorized by the 1937 Assembly for the purpose.

Will Relieve Crowding in Other Buildings

The new building, according to tentative plans announced by the State Office Building Commission, of which Judge Walter D. Siler is Chairman and State Treasurer Charles M. Johnson is Secretary, is to house the following agencies: Unemployment Compensation Commission, Industrial Commission, Conservation and Development, Public Instruction, School Commission, Local Government Commission, Liquor Commission, and Historical Commission. Of these, the first two will be moved from expensive spaces in private buildings, and the others will be moved from State buildings, making space available for much needed expansion in the Agriculture, State Departments,

Revenue, and Supreme Court buildings, respectively. The new building will thus relieve overcrowding in each of the State buildings except the separate Health building and the Highway building, and the occupation of the new Highway laboratory, previously referred to, will make space available for expansion in the latter by the Highway, Purchasing, Probation, and Planning divisions.

No one is better qualified perhaps than Raymond L. Moore, Property Custodian of the Division of Purchase and Contract who handles all rentals for State departments, to speak on the situation as to office space and on the need for additional room.

"The Department of Public Instruction is working as many as 9 to 10 and the Board of Charities and Public Welfare as many as 6 to 10 people in one average sized office," Mr. Moore pointed out. "The Unemployment Compensation Commission has 250 employees crowded into 10,000 square feet of space when it should have 20,000 feet. The growth of new agencies has not only taken up every available foot of office space but has also absorbed all the committee rooms in the Revenue Building and even the Enrolling Office in the Capitol—space that must of necessity be cleared when each new session of the Legislature rolls around."

To Eliminate \$35,000 Rent Item

With all this crowding the State is still renting 22 office suites for 15 agencies scattered throughout Raleigh. Here is the list of agencies, as furnished by Mr. Moore, and the number of different buildings in which each is housed:

| | |
|---|---|
| State Employment Service .. | 5 |
| State Board of Charities and Public Welfare .. | 3 |
| Unemployment Compensation Commission .. | 2 |
| Industrial Commission .. | 1 |
| Conservation and Development .. | 1 |
| Inland Game and Fisheries Commission .. | 1 |
| Historical Commission .. | 1 |
| Probation Division .. | 1 |
| Colored Divisions of State Boards of Health and Public Welfare .. | 1 |
| Supreme Court Reporter .. | 1 |
| State Park Service .. | 1 |

| | |
|-------------------------------------|---|
| Works Progress Administration .. | 1 |
| National Youth Administration .. | 1 |
| Emergency Conservation Work .. | 1 |
| Rural Rehabilitation Corporation .. | 1 |

The rental of this space is now costing the State \$2,924.33 per month or \$35,091.96 per year. The New State Office Building and the two smaller additions will make space available for all the permanent State agencies listed above (but not the four emergency federal agencies at the end of the list to whose rent the State contributes) and save the State the greater part of the money it has been paying to private landlords. Another important result will be the bringing together of agencies like the Employment and Welfare departments, which have been scattered over four or five different buildings, in adjacent quarters and the provision of sufficient space for efficient operation.

NEW TAX CASES IMPORTANT

Continued from page two
Weaverville case. This possibility inherent in the case is perhaps of more importance to counties and cities than is the actual decision with respect to the exemption of the Loan Fund property.

TAX BURDEN MOUNTS

A forecast by the United States Chamber of Commerce predicts that the nation's tax load for 1938 will be \$13.5 billion, or about 20% of the national income—a ratio which this business organization regards as the danger signal.

The 1938 forecast is divided as follows: Federal—\$6.4 billion; State and Local—\$7.1 billion. The total volume of taxes in 1935 was about \$3.9 billion of federal and \$6.5 billion of state and local. The total volume in 1937, according to the Chamber of Commerce's figures, may reach as high as \$5 billion of federal and \$6.8 billion of state and local taxes.

Social Security Substitutes for Public Employees

NOT LONG after the War of Independence had come to a close, the Federal Government provided pensions for those who had served in the war. Since that time the federal practice has expanded until today, in addition to pensions for war veterans, hundreds of thousands of government employees are covered by the Civil Service System, providing for retirement compensation or pensions. Private business in many quarters has long since recognized the desirability of pensions for employees who have served long terms: almost everyone is familiar with the pension systems of the railroad companies. The recent enactment of Unemployment Compensation legislation has provided machinery for the payment of unemployment benefits under certain circumstances to unemployed persons in certain classes of business and industry, while Federal Old Age Benefits provide a measure of old age security for workers in covered industries. Many North Carolina towns have secured the enactment of special laws permitting the establishment of limited pension systems—usually confined in operation to the police department. Finally, the enactment of Old Age Assistance legislation has also provided in a small measure for old age security, but payments are made only on the basis of need.

With all the development along pension lines, state and municipal employees in North Carolina are, by and large, left without any provision for their retirement—except to be dropped from the payrolls when they become unable to perform their duties satisfactorily or when there is a change in administration. The employee has no security to which he can look forward after long years of service, except such as he has provided for himself through savings or insurance or some other method of private enterprise.

Although relatively little has been

Part I. Preliminary Considerations, Questions and Problems in Setting Up Municipal and State Pension Systems.



By
**HARRY
McGALLIARD**

of the Staff
of the
Institute of
Government

accomplished in this State towards comprehensive retirement systems for municipal employees, much has been done in other countries and in other states, and some beginnings have been made even in North Carolina. Before describing pension systems in use in other states and analysing their merits and demerits, as will be done in subsequent articles, it will be helpful first to enumerate some of the problems and complexities of pension systems, and to learn *what questions must be answered* before an attempt is made to find the *answers* in the study of pension systems.

How Provide Funds? Funds for a retirement system are usually provided in one of three ways: (1) by contributions made exclusively by the employing agency, State or municipal; (2) by contributions made exclusively by the employees; or (3) by contributions made both by the employing agency and the employees. The latter method is most widely used at present, and seems to be growing in popularity. Employee contributions may be collected on the basis of a fixed monthly sum, or—as is more usual—on the basis of a percentage of the employee's salary. Estimates must be made as to what return can reasonably be expected in the form of interest on pension funds investment.

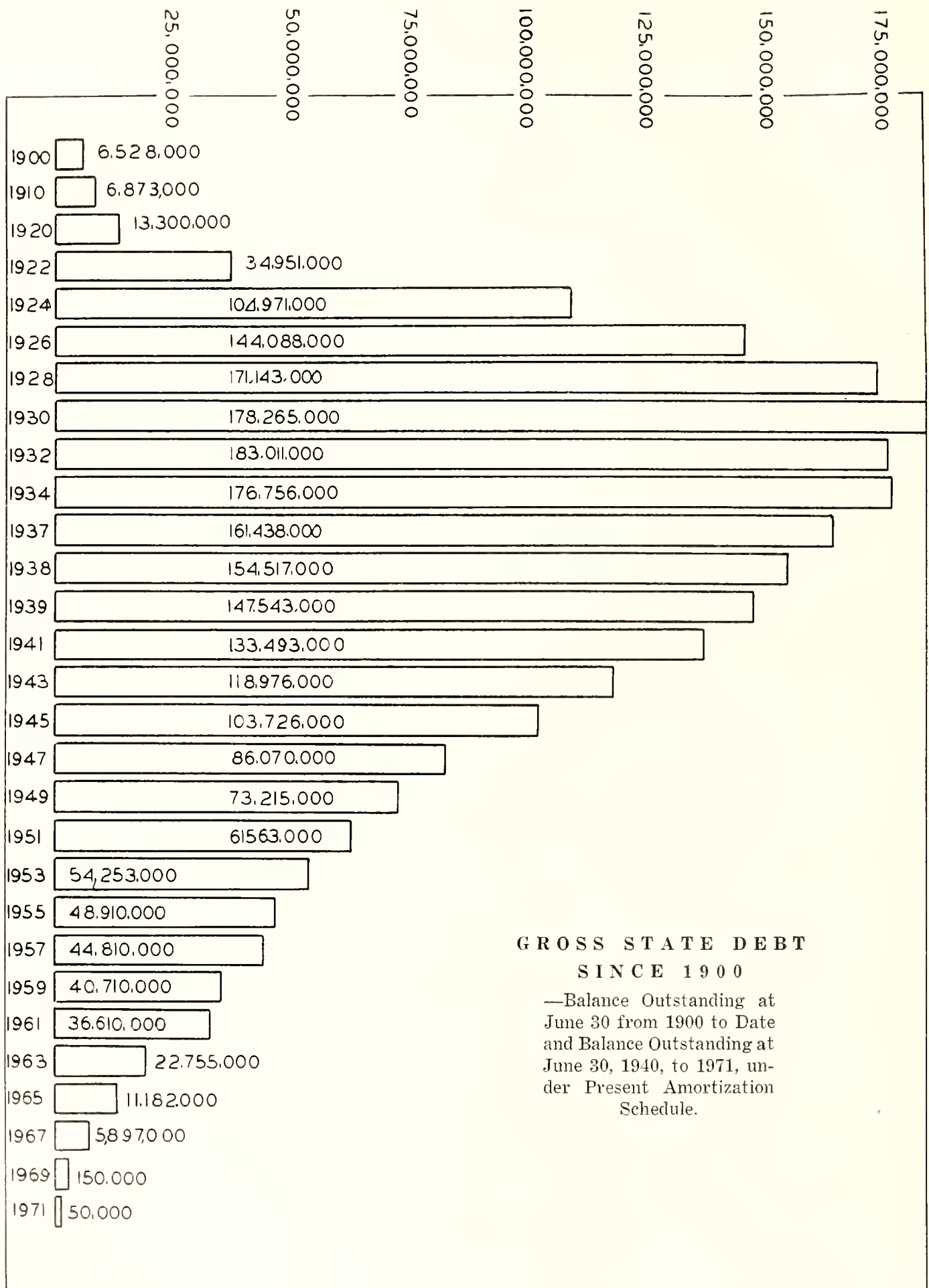
Employees to Be Covered. A first question of major importance is: what employees shall be included in the pension or retirement system?

All employees? All salaried employees? Elected officials? Appointive officials? Casual employees who work only by the hour or by the day? Political employees?—that is, those appointed for a limited term, usually co-extensive with that of the governing body, and dependent on the continued approval of the governing body for continuance in office?

Retirement Benefits. Many choices are possible in determining the basis for the payment of a pension. It may be paid when the employee reaches a certain specified age, or when the employee has performed a specified number of years of service, or when both requirements have been met—as when an employee has both performed a specified number of years of service, and has reached a specified age also. Regardless of which of the three methods is used, other problems remain. What shall be the retirement age—55, 60, 65, 70 or some other age? How many years of service shall be required—20, 25, 30, 35 or some other length of time? When the specified age is reached, shall retirement be (1) compulsory, (2) discretionary with some pension board, (3) discretionary with the employee, or (4) ordinarily compulsory, but with power in the pension board to make exceptions? Or would it be preferable to set up a minimum and a maximum age limitation, making retirement discretionary with the employee when the minimum age is reached, and compulsory when the maximum age is reached.

The Rate of the Pension. This furnishes one of the most troublesome questions in setting up a pension system. A favorite method of determining the amount of the pension of an employee is to use some percentage of the employee's salary. That immediately raises the question as to what salary, as of what date, shall be chosen. Shall it be a percentage of the final annual compensation, that is, a percentage of what the employee receives during the last year before his retirement, or a percentage of the average? (Continued on page eighteen)

This is the first in a series of articles on pension systems for public service employees. Subsequent articles will analyze existing pension systems used in this and other states, and will discuss the advantages and disadvantages of different systems.



GROSS STATE DEBT SINCE 1900

—Balance Outstanding at
June 30 from 1900 to Date
and Balance Outstanding at
June 30, 1940, to 1971, un-
der Present Amortization
Schedule.

North Carolina Paying Up

**Retirements for Past Six Years
Total \$28 Million or More
than Double Payments
for Prior 53 Years**

WHEN the North Carolina General Assembly of 1879 took stock of a badly shaken state, it found a debt of some \$15,000,000 outstanding. In those days such a debt was staggering, and the State effected a compromise, issued refunding bonds, and reduced this total to some \$6,358,000. Apparently, lulled to sleep by this stroke of financial magic, the State made no effort to repay or to provide for repayment of these bonds, and indeed, it began to issue more bonds from time to time.

At the turn of the century our State's bonded debt amounted to \$6,528,000. This total continued to grow, as shown by the chart on the opposite page, until by 1926 there were outstanding bonds amounting to \$144,088,000. The State felt unable to pay \$15,000,000 in 1879 and effected a compromise, but from 1879 to 1926 over \$138,000,000 of bonds were issued with less than \$500,000 being repaid.

Few, if any, of our people considered the 1926 total debt of \$144,088,000 as an item for much concern. All of which reflects the change in financial outlook during the forty year period.

Assembly of 1931 Calls a Halt

Although substantial principal payments were made annually subsequent to 1926, new bond issues exceeded retirements until in 1932 our State debt reached \$183,011,000. Much the same psychology apparently existed in the General Assemblies of 1931 and 1933 as in the General Assembly of 1879. The 1931 General Assembly called a halt upon borrowing except to cover operating deficits, and this action was followed by the 1933 General Assembly. However, funding bonds to cover deficits amounting to \$15,535,000 were necessary during this period. No further bonds were is-

sued until 1937, when \$3,019,000 in bonds were issued to finance permanent improvements at the various state institutions and an office building in Raleigh.

The total of all bonds issued by the State since it refinanced in 1879 is \$209,019,000, and here is what the two hundred odd millions have gone for:

| | |
|--|---------------|
| Highways | \$116,800,000 |
| School Buildings, Permanent Improvements to State Institutions, and Other Public Buildings | 63,877,300 |
| Operating Expenses and Excess of Expenditures over Revenues | 25,841,700 |
| World War Veterans' Loans | 2,500,000 |
| | <hr/> |
| | \$209,019,000 |

Referring to our chart we see that the State debt constantly increased from 1900 to 1932, and has constantly decreased since that date until our debt at June 30, 1937, amounted to \$161,438,000. This total had been further reduced until at December 31, 1937, it totalled \$159,342,000. Thus the State has had a net reduction of \$23,669,000 in bonded debt during the five and one-half years since June 30, 1932. This reduction is some \$10,000,000 greater than the total principal payments during the fifty-three years prior to 1932. An additional \$4,375,000 of bonds matured January 1, 1938, for which the money is safely in the hands of paying agents. These maturities, plus \$475,000 maturing before June 30, 1938, will bring our six year bond retirement total to more than \$28,500,000.

Maturities during the next ten years under our present amortiza-

tion schedule average about \$7,500,000 annually. If all goes well, and no great amount of new bonds are issued in the meanwhile, June 30, 1949, should see our gross state debt down to about \$73,215,000.

In addition to the principal retirements, the State created sinking funds in 1921 and thus began providing for the payment of large term and serial issues maturing in the far future. At December 31, 1937, these sinking funds amounted to slightly over \$15,000,000, some \$2,000,000 more than at June 30, 1935. These sinking funds are divided as follows:

| | |
|---|--------------|
| Highway | \$ 8,634,000 |
| World War Veterans' Loans | |
| School Buildings, Permanent Improvements, and Other | 6,409,000 |
| | <hr/> |
| | \$15,043,000 |

This money is invested in State and other bonds, and each year the interest is added to the fund and re-invested along with the State's new payments into the sinking fund for the year. The last of the present State debt does not mature until 1972, as can be seen from the chart on the opposite page. However, the sinking funds will accumulate until, beginning in 1953, they are calculated to be sufficient to meet all debt maturities excepting around \$50,000 annually.

The State's Great Bond Age, therefore, shows three distinct periods—1900-1932 or the borrowing period, 1932-1953 or the repayment period, and 1953-1972 or the sinking fund repayment period. The present period has been well-labelled "The Road Back." It has been a long, hard one, too, and it will continue to be for another 15 years. However, North Carolina taxpayers may have the satisfaction of knowing that their State has put the brakes on spending and worked out an orderly plan for the retirement of its debt, and that the bulk of this debt will be retired, barring large new issues, within the next few years. It is also worth noting that, whereas the General Assembly of 1879 considered \$15,000,000 beyond the realm of payment, the same State 58 years later is repaying that much every two years. So much have times changed!



**By T. N.
GRICE**

of the Staff of
the Institute of
Government

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

BILL JONES, a white man of 45 with a partial grammar school education, had been successfully employed as a finishing carpenter for about 20 years when a cancer on his right foot rendered him unable to carry on in his trade. Later the infection began to affect his leg and when examined by an orthopaedic surgeon, he was advised that an amputation was necessary to save his life. Following the advice of the surgeon, he agreed to have the operation performed, and his leg was amputated six inches below the hip. This, of course, incapacitated him for work in his vocation, and his attempts to find employment in various trades proved vain due to his lack of knowledge of these trades. For months and months he was forced to depend on his aged brother for a living, and after the death of his brother, he became an object of charity. He then made an appeal to the Department of Public Welfare, which in turn reported the case to the Rehabilitation Department.

Considering his age, disability, and cause, his case seemed almost non-feasible. However, the Rehabilitation Department registered his case and started him through the "mill" of counsel and advisement, test and measurement of his intelligence and general ability. An examination by an orthopaedic surgeon showed that he was free from recurrence of infection from cancer, he was supplied a pylon to condition his stump and then an artificial leg. As soon as he learned to walk with his limb well enough to work around machinery without falling into belts and pulleys, he was placed in employment training for shoe repairing instruction.

He progressed very rapidly, and within seven months he was able to do all jobs connected with the repair of shoes. Shortly afterwards he was placed in employment at a wage of \$18.00 per week with a promise of a raise. He writes: "I made a hit with the first pair of shoes I sewed. They were whole-soled and I was lucky to get them almost perfect. They were for the banker here, and he had been sending his shoes to New York to have

II. Some Cases from the Files of the North Carolina Division.

them repaired. He said he had never found any one around here that could fix a pair so he could wear them. But he was so well pleased he took them and went around to several of the business men in town and showed them what I had done."

Father and Daughter

Tom Smith, who had been a successful machinist until about forty-five years of age, lost his eyesight and his vocation as a result of an infection from having an eye ball pierced by a piece of steel. He was 51 years old when he learned of the Rehabilitation Department and made application. He was taught to weave baskets, at which he became quite successful, and which enabled him to earn a steady income.

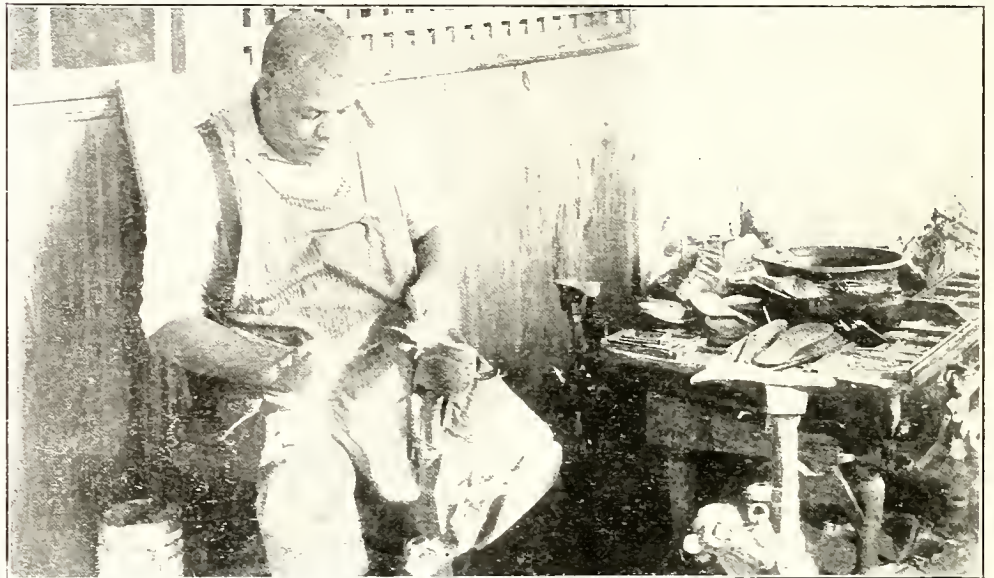
About this time his daughter, Mary, broke down with pulmonary tuberculosis. Through proper care the disease became arrested, she finished her high school course, and was then given business college training by the Department of Rehabilitation. Upon the completion of her course, employment as a

stenographer was secured with a local Real Estate firm where she worked several years until married.

Girl "Gone Wrong"

Miss E. is not the usual case of just another girl "gone wrong." She had, for a number of years the responsibility of caring for an invalid brother, due to the death of the mother. Her loyalty to him delayed her marriage to a sweetheart of several years to such length that he married another girl. Later he came back, stated he had made a grave mistake, promised to get a divorce and marry Miss E. It is a long story, but suffice it to say that Miss E. fell for her lover's "line" and found herself in a strange city where her son was born at a "Home."

An outraged, ignorant brother is still at the old home, but he states that he will leave if his sister returns. The invalid brother brooded over the continued unexplained absence of his sister and caretaker until he became violently insane and is now confined at Morganton. This adds to the determination of the brother still at home that his sister shall not return. Miss E., herself badly crippled, was thus



SHORT ON SUPPORTS BUT SELF-SUPPORTING

This man was a fireman on a railroad until an accident robbed him of his legs. For two years he had been a wheel chair inmate of a county home when found by the Rehabilitation Department.

Sent to A. & T. College and trained in shoe repairing, for the past four years he has successfully operated an electric shoe shop with an average income of \$20.00 per week. The county commissioners estimated that his support for the balance of his life would cost the county between \$3,000 and \$4,000. But his rehabilitation cost the State less than \$90.00



FROM PARALYSIS TO INDEPENDENCE

At eleven years of age this young man was run over by a wagon resulting in total paralysis of his legs and partial paralysis of both hands. He now owns and is successfully operating a job printing office and letter shop as a result of training furnished by the Department of Rehabilitation.

brought to the attention of the Rehabilitation Department.

Physical restoration is now complete, thanks to the Rotary Orthopaedic Clinic and a public spirited doctor. Miss E. has also completed her course of training in Business College and after weeks of discouraging effort to find work, the Rehabilitation office was successful in getting her placed at \$7.50 per week. It is pleasant to report that by sheer merit, she has won her own promotion to a better job and is now making \$90.00 per month.

The situation today is pleasant to contemplate. She is doing light housekeeping and her boy has been arranged for at the day nursery, while the little mother earns their keep. It is a cheerful picture as she returns from her work in the evening, her boy trudging manfully by her side, enjoying the present and facing the future unafraid.

Brothers Rehabilitated

George and Robert W. were both born with crippled feet. When brought to the attention of the Rehabilitation Department they were 16 and 18 years of age and dependent upon their mother.

After being examined at the Rotary Orthopaedic Clinic a corrective operation was performed on the feet of George, and braces were provided by the Rotary Club for Robert.

Four years later, upon the com-

pletion of high school, the Rehabilitation Department sent George to a Watch Maker's School, at Spencer, N. C., to learn watch repairing, and placed Robert in the Toombs Dental Laboratory, in Charlotte, to learn dental mechanics.

Today George is a successful watchmaker, and Robert is a salesman for a dental supply company.

A Family to Support

One day while following the barber trade Charles struck his elbow against a cash register. Blood poison developed, and amputations followed until the last of his arm was removed at the shoulder joint in order to save his life. With a wife and two small children dependent on him, with his trade gone and no work he could do, there is little wonder that the Rehabilitation Department found a most discouraged and despondent young man when it contacted Charles.

The rehabilitation adviser suggested several vocations that a one-armed man might follow, but none seemed feasible for Charles, because of his limited education.

Finally Charles and the adviser decided on show card writing, and training arrangements were made with a leading motion picture theatre in one of our larger cities. He labored at the trade for four months with slow progress and little courage. At this time he was transferred to another theatre, and im-

mediately his spirit grew better, and his work improved. He remained at this theatre while two trainers were hired and fired. Today he is not only doing all the show card and poster work for this second theatre, but all of the work for an additional theatre, and he is a cheerful, useful and independent citizen.

Back on His Feet Once More

William B. left for the coal fields when a young man and became a mine foreman before he was twenty-five years of age. One day, while sitting on the top of a train motor, the motor was unexpectedly started, bending him double and crushing his back against the rock in the top of the mine tunnel. For seven months both legs were completely paralyzed, then a gradual recovery set in. He underwent operation after operation with varied treatment over a period of seven long years before he was able to walk with the aid of braces and crutches. But William had the stuff in him that makes men win against the odds. He was determined to get back on his feet financially, as well as physically, so that he could support his wife and child, as well as himself.

When he came to the attention of the North Carolina Rehabilitation Department it was clear that if William was ever to become self supporting he must earn his living by mental rather than manual labor. Yet he had only a sixth grade education. The Department urged him to spend his time while recovering in improving his general education to prepare himself for a business course, and so while lying in bed or sitting in a wheel chair he studied his three R's.

Seven years from the date on which his injury occurred, he was ready to begin a commercial course, so the Rehabilitation Department sent him to a Business College while his wife worked to support herself and child. Having been out of school for 20 years, he found the work very difficult, but he worked hard and made a fine record, winning first prize in penmanship in a state-wide contest during his course.

In less than a year from the time he completed his training, he was managing a small store in Durham with a net income of \$240.00 per month.

Suggestions for Improvement of Municipal Utilities

THE VALUE of good records is one point which cannot be stressed too greatly. In a number of cases reliable records of municipal plants have been only partially kept or perhaps not at all. For true efficient management, the actual operating of the physical plant and the complete recording of these operations should go hand-in-hand.

We realize that circumstances peculiar to individual plants prohibit the setting up of hard and fast rules for all plants to follow in keeping records. However, a plant will not go wrong by adopting the accounting set-up prescribed by state commissions for private electric utilities. Regardless of what form is used, there are several items that should be kept by all plants. To name a few: 1. The capital investment, with a conservative depreciation reserve. 2. All operating and overhead expense accounts. 3. A complete analysis of the total K.W.H. generated or purchased by the plant during the year. 4. A complete file of all prints, plans, and diagrams of the physical plant. 5. Actual operating records of all equipment.

We have found that one of the most common shortcomings of municipal plant records is the lack of a breakdown of K.W.H. and Revenue for various classes of service. A complete breakdown of these items is one of the most essential parts of a plant record. Without a segregation of the various classes of services, the plant management has no accurate or definite means of determining just how much current a particular class of service is using, or just how much revenue is being produced by that service. The establishing of a fair rate for a specific class of service or a change in rates is greatly complicated by the lack of definite information on that service.

Records of Output and Revenue

By keeping a complete breakdown of both the current consumed and revenue produced, by each class of service, the plant management has a constant and reliable check on every service. Should a rate change

By R. E. McDONNELL

Burns & McDonnell Engineering Co.

seem advisable, the basic information for a change is readily available. Every class of service has its record, and a careful study of these records will enable the management to make an intelligent decision on its problem. Very little additional labor is required to keep these records, and we sincerely believe that the small amount of labor required is greatly outweighed by the benefits derived.

Another item we have noticed that seems to be more or less neglected, is the value of the plant and system. Of course, all cities have a definite value for their plant when the plant is first established and begins operation. However, as time goes on, this item of value is often neglected. We believe that a plant should have a very definite value at the close of each fiscal year, in order that the management may know exactly what they then have in their possession. This all goes back to the matter of proper records, and we find that plants that keep proper records have a definite value for their plants at all times. The present depreciated value of a plant is a very important item. It is the guiding factor in determining the necessary reserves to be built up for protection against the loss of capital investment. The value of course must be considered in establishing of rates and rate changes. From experience, and observation of many plants over a period of years, we strongly recommend that every plant have a definite and accurate

figure for its value. If this item has been neglected, an appraisal should be made; and a definite value established for the plant.

Evils of Making Power Plant Carry Tax Burden

We have noticed a growing tendency, abetted by the period of depression, to make the earnings of the municipal plants substitute for local taxes. This practice necessarily brings with it one of two evils, namely: high rates, in which the consumer pays for both current and local taxes, or actually bleeding the plant of its capital. No lengthy explanation of these points is necessary to show the unjustness of either. The amount of current consumed by an individual is no measure of the amount of taxes he should pay, and the indirect collection of taxes through electric rates is placing an inequitable tax burden on the consumers of electricity. An adequate reserve should be available to replace the obsolete equipment with more modern and efficient units, to replace worn out parts or to provide additional units. If no money is available to replace the equipment, then only the obsolete or worn out plant remains to represent the original capital investment and it may be listed as "another municipal failure."

Even though a municipal lighting plant may be doing well financially, there is no certainty that conditions will remain favorable indefinitely. Plant efficiency must be always maintained at its highest. A modern power plant five to ten years ago, is out of date today. The trend in rates is downward and it is only the thoroughly efficient plant that can meet rate reductions successfully.

Doubtless, the potential earning power of a municipal electric plant has been a motivating factor with many city councils, for the establishment of plants. However, when earning power alone is considered, the problem is being attacked from an angle that is not in harmony with the real objective of municipal ownership. A municipal plant can reasonably be expected to furnish a certain amount of free municipal service in lieu of payment of taxes. However, we do not endorse the policy of making a municipal plant pay the operating expenses of the city government.

The accompanying remarks and suggestions, which come from a company qualified by 40 years' experience as consulting engineers, are prompted by its vital interest in the operation of municipal electric plants, and are not to be construed as criticisms. In fact, some municipal plants have no peer in the electric utility field as to efficiency of operation, service to consumers, and reasonableness in rates. It is to the plants that lack some item necessary for real and efficient operation that the following suggestions are offered.

Low Rates and Increased Volume

We have noticed a tendency in many municipal plants, especially those serving cities of less than 5,000 population, to adopt a more or less self satisfied attitude toward their present loads. In many cases, the surface has merely been scratched, and a vast potential load awaits only a little favorable promotion in the form of more attractive rates. We are referring to the possibilities of introducing more current consuming devices, and of offering a rate to make the use of these appliances attractive to customers now

using only a small amount of current. This is especially applicable to plants now operating at a low percentage of their capacity. It is evident that, in serving this increased consumption, there would be no increase in fixed charges, and only a very slight if any increase in operating costs. Of course, the revenue would increase directly as the load is developed, and the final result is apparent. It simply means more revenue for the plant, a higher operating efficiency, and a commendable social contribution to the city.

Accident Prevention Bureaus: Their Value and Functions

WITH a rising tide of automobile accidents continuing to sweep over the country, more and more attention is being devoted to the study of their causes and to the means for their prevention. In recent months headlines have proclaimed highway fatalities not by one's and two's but by the car-load.

Some method of preventing accidents is a crying need in almost every city and town. Perhaps one of the most important steps taken to meet this need is the development in many places of *municipal accident prevention bureaus*. Of course, no one thing—short of the abolition of automobiles—is ever likely to prevent all accidents. But the experience of towns which have established accident prevention bureaus demonstrates that at least the accident rate can be reduced.

The accident prevention bureau is usually set up in the police department as a part of the traffic division. The primary purposes of the bureau are: to investigate all accidents that occur in a city, find out how they happen, determine the exact cause in so far as it may be ascertained after the accident has taken place, and fix the responsibility for the accident. This work not only leads to speedy punishment for those at fault but also lays the groundwork for eliminating traffic hazards and furnishes a basis for the intelligent administration of the three "E's" in accident prevention, "enforcement, education and engineering."

As has been many times pointed out, under present practices, drivers who violate the law but *don't* have accidents are punished more often proportionately, than those who *do* have accidents.

The establishment of an accident prevention bureau does not call for any great outlay of funds for additional personnel and equipment. The important thing is to train a selected group of the existing traffic division so that those men will know how to investigate accidents, and to see to it that every accident, no matter how small or insignificant, is investigated. The tendency all too frequently, particularly when only property damage is involved, and the drivers tell conflicting stories, is to dismiss the matter and let the parties fight the case out in a civil suit for damages. Too frequently, the driver not at fault is disposed to drop criminal charges so long as he receives payment for the damage inflicted, and law enforcing officers let the matter rest. The confusion and lack of thoroughness may be further accentuated by the fact that there are as many accident investigators as there are policemen on the police force. Each admittedly turns in the best investigative report he can, but the result is that no investigations are made by trained men, and the value of the investigations is lessened by the fact that every patrolman on the force, handling merely those accidents happening on his particular corner or "beat," has much less experience than could

be developed in a few men called to the scene of every accident occurring in a particular city.

Accident Reports and Records

Many excellent report forms have been devised for reporting accidents in detail. Accident reports furnish invaluable information in accident prevention work, enabling a police department to build up records as to persons involved in accidents and the places accidents occur. A "spot map," consisting of a map on which the place of every accident is marked with a pin or some other device, is extremely useful in giving an accident picture of a city, showing the dangerous places and indicating the need for changes either in traffic regulations, police patrolling, or street engineering. The advantage of trained men in building up these reports and records is obvious. There will be a greater consistency in the viewpoint of trained men who have a complete picture of the municipal accident situation in mind.

Training of Personnel

Officers selected for accident investigation work should receive special training in state and local highway and traffic laws, the investigation of hit and run driving, the collection of evidence, particularly the use of photographic equipment and scientific aids in crime detection, the rules of evidence, and the administration of first aid.

It should be stressed again that it is not necessary to hire additional officers or to buy new patrol cars. The important thing is to train some of the men already on the force, to assign them to all accident investigations, and to see to it that every accident is investigated. Perhaps these men will be occupied the greater part of their time in regular police duties. But when an accident occurs, the trained squad can be sent to the accident scene, and the areas of patrol for other squads temporarily widened to cover the areas left unpatrolled by the accident squad.

Any interested cities or individual officials may secure more detailed information as to report forms, drivers' records, accident location records, spot maps, bureau organization, equipment costs, etc., by writing to the Institute of Government at Chapel Hill.

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

New Congress. Except for the housing and crop-control bills, which have reached the joint conference stage, the new session of Congress faces practically the same job as the special session, plus action on routine appropriation bills.

The other main items on the calendar are: wage-hour legislation (defeated in the last House), executive re-organization, work-relief, anti-trust amendments, and tax revision. The President's message promised economies which would ultimately balance the budget, but not next year, and urged capital and labor to form a united front with government to work for prosperity. His Budget Message, which called for cuts in funds for roads, CCC camps, and other items, but for increases for national defense, indicates a \$1,088,129,600 deficit for fiscal 1938 and a \$950,000,000 deficit for 1939. Meanwhile, both Houses got off to slow starts due to wrangling over the anti-lynching bill, the Ludlow war referendum measure, and the proposed road and CCC cuts.

Crystal-Gazing. Here is the way the *United States News*, whose predictions are often uncanny for their accuracy, sizes up the situation: Unless Congress or business come forward soon with concrete plans to increase employment and check the recession, the President will take the initiative. Administration moves will likely include: revived government spending and pump-priming with increased expenditures for Army, Navy, WPA, and farm subsidies and continued highway and CCC expenditures; streamlining of Anti-Trust Laws to try to force more competition among the big units of industry; and use of the RFC and other agencies to bolster weak spots in the private finance structure and encourage increased private investment.

The weekly newsmagazine of national affairs sees an "increased official optimism about the future"

which is "based upon the idea that business will be forced by circumstances to go along with the Federal Government."

The *News* also thinks that the definite liberal majority on the Supreme Court almost assures approval of any reform legislation now contemplated, that Congress will be more important than the Court as a check upon the President, and that Congress now is more interested in listening to the President than it has been for more than a year.

Tax Revision. Tax revision in general, and revision of the unpopular undistributed profits and capital gains and losses taxes in particular, is thought by many to be the first move in reassuring business and checking the recession. The consensus is that important amendments in these and other tax laws are certain. However, the prediction in many quarters is that, while the change will relieve small corporations of the graduated tax on undistributed profits and temper the tax on large corporations with many stockholders, it will leave it fully applied against the income of large closely-held corporations.

Some of the conclusions and recommendations of the recent survey by the Committee on Taxation of the Twentieth Century Fund may be of interest in this connection:

The Undistributed Profits Tax "is a compromise that fails to achieve any of its objectives, except in some degree the economic aims," the report concludes. "It is not heavy enough to insure that all earnings will be distributed; it may not even induce the economic effects to any appreciable degree in the long run, in view of the stock dividend and stock right devices; and in so far as the corporation pays the tax instead of distributing its earnings, the tax fails in all of the aims."

The Survey's recommendation is to repeal the tax as it stands, and

instead, to require individuals by law to "value their shareholdings each year and enter the plus or minus difference for the year in their personal income tax returns," provided the practical difficulties of administration can be overcome. In applying this inventory plan, the survey recommends that "the capital losses in any one year . . . in excess of capital gains for the same year be deducted from other income, and, if there is any excess remaining, this excess be carried forward and deducted from income of all kinds in tax returns of future years until it is entirely absorbed."

On the other tax, the Survey recommended "that capital gains or losses continue to be reported in computing the individual's income tax liability" but that Congress repeal "the present system of including in the computation only capital gains or losses that are actually realized and the substitution for it of a tax on gains or losses as they accrue, even if not realized." The Committee urged "more liberal provisions" for capital losses, their allowance as deductions against income from all sources, and the carrying over of any net loss for the year until it is completely absorbed.

Taxing Bonds. Recent proposals to levy federal taxes on State and municipal securities have led to action by certain local interests despite opinions by lawyers that such a move would require a constitutional amendment. Miami has memorialized its Florida Congressmen to oppose such legislation, and the United States Conference of Mayors has undertaken a study of the proposal from the cities' viewpoint.

"Taxing municipal securities does not seem to make sense . . ." reads a statement from the New York State Comptroller in the last *U. S. Municipal News*. "If the owners of . . . municipal securities outstanding should have to pay a tax . . . the rate municipalities would have to pay would go up, in my opinion, one-half of 1%, so that municipalities would lose \$100,000,000 to gain a possible \$70,000,000 for the Federal Government. Taxpayers who seek tax-exemption of investment securities, it seems to me, pay pretty heavily for it (in low rate)."

The Proposed State Department of Justice

A SUMMARY of the findings of the Commission on a State Department of Justice and the issues thus far raised furnish a convenient starting point for this discussion. The studies of the Commission show: (1) that the words "Department of Justice" have one meaning when used by the United States Government, another meaning when used by State Governments, and still another meaning when used by the Commissioners on Uniform State Laws. They mean criminal and civil law administration in some and only criminal law administration in others. They not only mean different things in different states at the same time but different things in the same state at different times. And they mean everything from highly centralized control of all agencies involved in criminal and civil law administration in some states to highly decentralized control in others and to all stages of centralization and decentralization in between.

As a result of these studies the Commission concludes that North Carolina is not only free to decide whether she wants to establish a Department of Justice, she is free to decide what sort of Department of Justice she wants to establish and whether to follow patterns already cut in other states or to cut patterns of her own. The following issues have already developed before the Commission:

(1) Within the last thirty or forty years a number of state agencies have developed for the enforcement of specific laws, chief among which are the State Highway Patrol established in 1929 and the special investigators authorized in 1937 as part of the State Bureau of Identification to be established in the discretion of the Governor. Should all these state agencies be transferred from the departments to which they are now attached and placed under the control of the Attorney General? And to what extent, if any, should the Attorney General be given supervision or control over sheriffs, coroners, constables, and police?

(2) Prosecutions in criminal courts of North Carolina are car-

III. Preliminary Report of Commission's Findings.



This is the first report of the preliminary findings of the State Department of Justice Commission, of which Major L. P. McLendon (above) of Greensboro is Chairman. The other members of the Commission, which was authorized by the General Assembly of 1937 and appointed by the Governor to make a thorough study of the advisability and feasibility of establishing such a Department, are: Donnell Gilliam of Tarboro, Clayton Grant of Wilmington, G. Lyle Jones of Asheville, and Dixon McLean of Lumberton.

ried on at three levels: by the Attorney General in the Supreme Court and in a few instances in the trial courts, by solicitors in the Superior Courts, and by solicitors in the Recorders Courts. To what extent, if any, should the Attorney General be given supervision and control over the prosecution of the criminal dockets in the Superior and Inferior Courts, with power to intervene in criminal proceedings and supplement, supersede or supplant the solicitor?

(3) To what extent, if any, should the agencies of probation, the investigatory aspects of parole and pardon, and prison operations be transferred to the supervision and control of the Attorney General?

(4) To what extent, if any, should the state establish a fingerprint bureau? scientific crime laboratory?

(5) To what extent, if any, should the state undertake to collect statistics on criminal and civil law admin-

istration and should the supervision and control of this work be transferred to the control of the Attorney General?

(6) To what extent, if any, should state departments, institutions, and agencies be permitted to employ their own counsel? To what extent, if any, should the Attorney General have supervision and control over the counsel thus employed? To what extent, if any, should the Attorney General's office furnish the exclusive counsel for all state departments and agencies? To what extent, if any, should the power to employ special counsel be transferred to the Attorney General? To what extent, if any, should the advisory opinions of the Attorney General be binding on state department heads in the absence of Supreme Court decisions?

(7) What should be the relationship between the Attorney General's office and the Governor's office in the event a State Department of Justice is established under the control of the Attorney General?

(8) How far can the General Assembly go toward setting up a Department of Justice without the aid of a constitutional amendment and what can it do with the constitutional amendment that it could not do without it?

Other issues will arise as public interest develops and public discussion proceeds. The Commission invites the opinions of all people on all sides of these issues.

PWA Power Plants. The hotly disputed question of whether the government is legally entitled to finance municipal power plants in competition with private utilities was decided in the affirmative when the Supreme Court handed down the Duke and Alabama power cases this month. The result is understood to clear the way for the construction of around 52 municipal PWA power projects estimated to cost approximately \$84,000,000. The decision is also expected to have a far-reaching effect in the field of federal and municipal co-operation as well as deciding the particular problem involved.

Farm Census Pays State and Counties Dividends

NORTH CAROLINA enjoys the distinction of being the only Southern state making an annual farm census or survey of farm land, small grain, cotton, corn, tobacco, legume crops, hay, vegetable, fruit and livestock distribution. But why a farm census?

Establishment of *bases* for payment of agricultural benefits to farmers under the Soil Conservation program alone has justified the small additional work and the support of Boards of County Commissioners and auditors co-operating in compiling the annual Farm Census for the State Department of Agriculture. In addition, the information gathered by tax listers in various counties, under the supervision of the county auditor, tax supervisor and through the co-operation of the respective board of county commissioners, better enables farmer and businessman alike to:

1. Organize a county planning program.
2. Measure agricultural progress.
3. Plan farm business.
4. Purchase livestock and supplies.
5. Sell farm products.
6. Advertise the state, county and community alike.
7. Obtain accurate knowledge of the respective county and community agricultural life.
8. Solve transportation problems.
9. Better make agricultural loans and other investments.
10. Keep up-to-date information on changes in agricultural life in the respective counties.

Every year, tax listers are furnished with Farm Census Survey books in sufficient quantity to cover every township in the county. When the tax lister requests the individual citizen for his property holdings at tax-listing time, if the particular citizen is a farmer, the information for the Farm Census Survey is secured at the same time. When all information is obtained, the census books are sent by the county auditor to the State Department of Agriculture, where statisticians compile the information by townships,

By LOUIS H. WILSON, Editor

State Department of Agriculture

counties and for the state as a whole for distribution to all those who desire accurate data on agriculture.

Counties' Assistance Essential

The success of the Farm Census work, the value of agricultural information, and the accuracy of statistical information on farm conditions depend materially upon the appreciation of the work by the various boards of county commissioners. Therefore, each year, the State Department of Agriculture repeats its request to boards of county commissioners, auditors, tax supervisors, and tax listers for co-operation in the farm census survey.

Actually, the information for the farm census is obtained by the tax lister.

Why is the tax listing machinery of the respective counties used in obtaining farm census information? The reasons are: It is the only agency that (1) contacts the landowners regularly; (2) there is very little additional cost necessary; (3) farmers generally anticipate the census work and come prepared to answer the necessary questions; (4) a minimum of bias is possible; (5) farm agents are prohibited by federal statutes from this responsibility; (6) no other practical and economic agency is available for this service; (7) the county commissioners co-operate nicely in the present plan.

More and more the methods of the successful business man are becoming the methods of the successful farmer. In fact, accurate book-keeping and agricultural information is essential to successful farming today. The farm census furnishes a wealth of information to the farmer—information that better enables him to plan his farm program. Better planned farm programs inevitably result in stabilization of agriculture and rural happiness.

When the boards of county commissioners lend their support to the Farm Census Survey, they better enable the farmers to formulate an

economically sound agricultural program. Co-operation in obtaining farm census statistics pays dividends to the entire state.

Every farmer and virtually every businessman was familiar with the old AAA and is familiar with the relatively new Soil Conservation program. Under the Soil Conservation program, payments are made by the federal government after *bases* are obtained showing crop production for several years. Obviously, the federal government demands accurate information and bases before benefit payments can be made to farmers participating in the Soil Conservation program.

When the AAA was launched by the federal government, North Carolina was the only state in the South and one of the few in the United States that could furnish information which could be used in determining bases for benefit payments. When the AAA was succeeded by the Soil Conservation program, the same information was desired and the state still enjoyed the benefits of the Farm Census information which was readily accepted by the federal government.

Many farmers had not kept records of their farm production, many others had lost or misplaced crop information that would enable them to establish their right to acreage allotments under the federal agricultural benefit program. Those who kept no records themselves, or who had lost their records of past years turned immediately to the Farm Census Survey. Those farmers in counties co-operating in the Farm Census Survey invariably found the information they wanted and established a more equitable basis for benefit payments.

Today, the economic value of the North Carolina Farm Census work of the State Department of Agriculture is recognized. And the aid the census work has given the farmer participating in federal agricultural adjustment programs alone has more than justified the expenses of the service, the cooperation of the boards of county commissioners, the auditors, tax supervisors, and tax listers.

BROWN was killed while at work on a railroad trestle. His estate was paid several thousand dollars. His young widow quickly spent her portion. There were five small children, all less than ten years of age. Each of these children was entitled to one-sixth of the money. What provision is made to insure the proper use of the children's money?

Smith and his brothers and sisters owned a farm. He died, and it was necessary to sell his interest to pay his debts. There was a surplus for distribution. Smith had three minor children. Who receives this money and administers it for the benefit of the Smith children?

Young Jones was walking home from school. A reckless driver struck him, broke his leg and inflicted other injuries. The driver paid the hospital bill and a small additional sum in settlement of the case. Who keeps the money for the boy?

Children not infrequently become entitled to substantial sums of money. It may come from a sale of the dead father's property, from a compensation award or a court judgment, from a legacy in a will, or from an insurance policy. Frequently the children are young, and sometimes they are orphans. In many instances the money must be protected not only from the recklessness of the children but also from the poor judgment of the parents or persons with whom the children reside. In many cases these children would be paupers but for these funds.

Upon the Clerk of the Superior Court the law imposes the duty of supervising, or actually administering, such funds. If the sum exceeds \$1,000, usually some dependable person can be found to act as guardian for the minor. Wherever a reliable guardian can be found, the clerks usually prefer to let the guardian handle the funds. Clerks are generally confined rather closely to their offices, and it is difficult for them to make investigations as to the needs of the wards. Too, many Clerks have little time to keep detailed, individual records of receipts and disbursements for particular children. A number of Clerks follow the policy of handling no more money than is absolutely necessary; they realize that their bonds are

Poor Children's Money

Management of Indigent Trusts Only One of Clerk's Many Duties. But It Is One of Best Examples of Human Side of Public Service.

By DILLARD GARDNER



liable for errors in the handling of these funds and they wish to keep their potential liability at an absolute minimum. As a result, most funds handled for minors are administered by guardians or trustees. However, there is scarcely a Clerk's office in the State in which there are not some funds held by the Clerk in trust for minors. Although the total of these funds in a particular office may be several thousands of dollars, few of the individual funds are large. Generally these individual funds are less than three hundred dollars and are held for the benefit of minors with limited means of support; such funds are often referred to as "Indigent Trusts." In dealing with them the Clerk's duties somewhat resemble those of a guardian.

Requirements and Practices

The statute (C. S. 962) provides only for funds of less than \$300 of indigent or needy children for whom guardians cannot be procured. However, the Clerks in practice have liberally interpreted this statute to include payments to: (1) an indigent and needy minor, (2) for the sole benefit of the child, (3) in procuring necessities, (4) the payment to be made to a solvent and discreet adult. If the statute is strictly interpreted and followed,

all four of these conditions must exist to permit the Clerk to disburse a portion of one of these funds. The idea given effect by the statute is that when these conditions exist, the law ought to permit the disbursement of the funds by the Clerk, but that when these conditions are not complied with, the fund ought to be held in trust by the Clerk for delivery when the child has reached its majority. Upon the duty of the Clerk to act as a depository for the safe-keeping of the funds there has been grafted this modification permitting him to administer the funds as an active fiduciary. In practice the views of the Clerks as to their duties in the case of indigent trusts vary from the assumption that they are mere depositories to the hypothesis that they are fiduciaries for the piecemeal disbursement of the fund.

Although some Clerks disregard the \$300 limitation and handle all funds held by them for minors, irrespective of the amounts, in the same way, all Clerks require either oral or written proof of the need of the disbursement. Most Clerks require proof of the indigency of the child, i. e., that the child is in need of something which the parents or person caring for the child are not financially able to furnish. Some times the facts are stated orally by the person making the application for the child, sometimes by affidavit or letter. Often the Clerk consults the welfare or law enforcement officers in order to be certain of the needs in the particular case.

Guarding and Stretching the Funds

Having satisfied himself that there is a real need for the funds in the particular case, the Clerk examines the purpose for which the funds are sought. The Clerks generally permit expenditures only for strict necessities such as food, shelter, clothing, medicine and medical attention, and school books. In some instances graduation expenses, such as diploma fees, fees for caps and gowns, and even money for a class ring, are allowed as proper disbursements, and in a few cases money for music lessons has been allowed. However, Clerks universally refuse to allow these funds to be spent on such items as automo-

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MORE and more, commissions and administrative agencies are taking over functions traditionally discharged by the courts. Creatures of statute, they have appeared through legislative action and exist with the approval of the courts. In a sense they merge the functions of the legislature, the executive, and the judiciary, as they promulgate rules, administer them, and determine controversies, but it is in the field of fact-finding that they have made their greatest impact upon the judicial process. Administrative law bristles with legal questions. To what extent do the bureaus constitute a law unto themselves? How definitely are they subservient to the reviewing processes of the courts? Are their regulations effective as laws; if not, what effect do they have? In making rules which they themselves interpret and apply, do they not fly in the face of the doctrine of the separation of powers? Finally, how may a matter pending before a commission be properly presented to a court?

Modern administrative law was born only a half-century ago. In 1887 the Interstate Commerce Commission appeared, to be followed in turn by the Federal Reserve Board, the Federal Trade Commission, and the Federal Power Commission. War-time needs produced the United States Shipping Board. The present list includes the Federal Radio Commission, the Board of Tax Appeals, the Grain Futures Commission, the Securities and Exchange Commission, the Federal Deposit Insurance Corporation, the Bituminous Coal Commission, the Social Security Board, and the National Labor Relations Board. Findings of fact by these commissions, in most instances, are conclusive upon appeal to the courts (*Crowell v. Benson*, 285 U.S. 22).

The North Carolina Rates

The parallel development in this State was brought home to me recently when I was called upon to assist Hon. Ralph M. Hoyt compile a list of the North Carolina statutes and decisions relative to administrative agencies. (See Hoyt, "Shaping Judicial Review of Administrative Tribunals," *N. C. Law Review*, Dec., 1937, p. 1). As in the Federal government, the point at which a supervising agency first ap-

What about the Commissions?

Are They to Develop into Permanent and Useful Branch of Government or Dangerous Bureaucracy?

By DILLARD S. GARDNER

peared was in the field of railroad regulation. The N. C. Railroad Commission appeared in 1891. It was the forerunner of the former Corporation Commission and the present Utilities Commission. A chart of our State government prepared in 1936 indicated 96 boards, departments, commissions, and agencies operating in the following fields: Public Finance; Highways, Public Works, and Transportation; Penal and Correctional Institutions; Schools and Higher Educational Institutions; Institutions for Physical and Mental Defectives; Pardon and Parole; Social Service and Public Welfare; Pensions and Veterans' Aid; Conservation and Development; Banks and Utilities; Workmen's Compensation; Local Government; Elections; Agriculture; Cooperation with Federal Programs; and Examination, Licensing and Regulation affecting medicine, dentistry, law, cosmetology, barbering, contracting, plumbing, and similar trades and professions.

As indicated by Mr. Hoyt, at least forty-six of these are definitely administrative bodies, and as to these the statutes specifically refer to the right of appeal in only fifteen. That the swing toward administrative agencies is still in full force will be revealed by a cursory examination of the 1937 Public Laws. There we find provisions for the State A. B. C. Board, Social Security Board of Allotment and Appeals, Board of Examiners of Electrical Contractors, Bureau of Identification and Investigation, Dry Cleaners' Commission, Unemployment Compensation Commission, Tobacco Commission, Real Estate Commission, Planning Board Commission, and the Probation Commission.

First Called "Administrative Court"

As early as 1892 our Supreme Court had laid the foundation for the development of the administrative agency as a new mechanism of government. In *Express Co. v. R. R.*, 111 N.C. 463, the "obscure and confused" act creating the Railroad Commission was approved. That case made it clear that a commission (1) may be given authority to make administrative rules, and (2) may be made an inferior court of record, but it (3) must remain subservient to the courts. In *Caldwell v. Wilson* 121 N.C. 425 the Court decided that such agencies do not violate the Federal constitutional guaranty of "due process of law," as due process in a State is regulated by the law of that State. *Walker v. Sauvinet*, 92 U.S. 90. That case also denominated such an agency an "administrative court" as opposed to a "judicial court," stating that the grant of the power of a court of record was largely for the purpose of giving authenticity to the commission's acts and proceedings. In *Pate v. Railroad*, 122 N. C. 877, other earlier commission cases were reviewed, and it was pointed out that the Commission was an administrative court "somewhat like the board of commissioners" with the inherent power of all courts to punish for contempts but without the power to issue executions to collect fines and penalties levied by it. Its position was stated to be that of a "relator" rather than that of a "lower court," and it was pointed out that its orders and regulations were not to be directly enforced by it but were "merely the basis of judicial action" in the Superior Court to which appeals from the Commission were to be taken. Thus the basic law relative to the legal status of administrative agencies as *quasi*, or near-beer, courts has been established for nearly four decades. However, many important details have remained vague, and there are still questions in the field which can not be answered confidently from the authorities.

As the early opinions indicated a sympathetic attitude toward the commissions and a willingness to give effect to legislative provisions (within constitutional limits) dealing with the commissions, definite
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City Streets and the Law

By DILLARD S. GARDNER

During the past few weeks three crippled individuals have been told by the courts what care North Carolina requires its municipalities to exercise with respect to street maintenance. In one case (*Bell v. Raleigh*) a woman was injured when she stumbled because a section of sidewalk had sunk several inches; the court upheld her recovery. In another (*Oliver v. Raleigh*) a divided Court refused to allow recovery where a citizen in the night-time stepped from the curb into an old hole in the street in front of his storage room, fell, and broke his leg. In the last case (*Klingenberg v. Raleigh*, in the current *Advance Sheets*) a passenger in the back seat of an out-of-state tourist's car was severely injured when the car, driven along a city street at a moderate rate of speed, ran over a double valley-gutter and, bouncing her badly, broke several *vertebrae* in her back; in a six-to-one decision, recovery was denied.

The opinions in these cases provide a fairly general review of "Municipal Duty of Street Maintenance." The gist of the rule is briefly this: The governing body of a town must use reasonable care to keep a sidewalk in proper condition for walking and a street in proper condition for driving. A prudent citizen may assume that such proper care has been exercised by the city. However, when he leaves the sidewalk to go to his car, he uses a way primarily used for vehicles and must exercise "a higher degree of care for his own safety" than he would use on a sidewalk. Normally, then, the city must use reasonable care to keep its walks and streets in repair, and a citizen must use only such care as a person would use who assumed that the city had been careful.

However, there is one freak in the law which must be watched. If the defect in a street or sidewalk is one which was there as a part of the "original plan of construction," ap-

parently the city may ignore this defect although it is a trap for the unsuspecting. The traffic may be tremendously increased; the street may change from a quiet residential one to a business thoroughfare; and the street materials may be shifted from a poor quality of brick-paving to the finest re-inforced concrete, but if the city uses care not to alter "the original plan of construction," it appears that a city is not liable for injuries due to the most apparent negligence in the original construction of the street.

Ordinarily, then, citizens may assume that sidewalks are safe for walking and streets are safe for driving. But, they still must use "due care," and "due care," does not mean merely the ordinary absence of negligence and carelessness. "Due care," under the present law, means that when you step from the sidewalk to the street, you must watch your step, for if you are injured the law considers that you brought your injury on yourself. "Due care" also includes the joker just mentioned—care to avoid defective conditions originally approved, as a part of the plan of construction, by the governing authorities.

The point for citizens to remember is this: Unless you use ordinary care in looking where you are walking or driving, you are guilty of what is called "contributory negligence." If a person who is contributorily negligent is injured by a street or sidewalk defect, the city, however negligent, is not liable, because it is the policy of the common law to permit recoveries for injuries to persons who exercise at least ordinary care. This element of contributory negligence entered into both the *Bell* case and the *Oliver* case. In the first the court decided that there was not evidence sufficient for the court to say, as a matter of law, the pedestrian herself was negligent. However, in the *Oliver* case the court declared that, as a matter of law, the salesman neglected to use ordinary care to see where he was stepping; being negligent, he could not recover. All of these cases indicate a tendency to protect municipal coffers from claims of citizens who have been injured by street or sidewalk defects. The reason for this is clear. Municipal liability for injuries due to street

and sidewalk defects is an exception to the general rule that a city is not liable for injuries due to its negligence. Since tort recoveries from a city are ordinarily prohibited, the street-and-sidewalk exception to this general rule is strictly interpreted.

WHAT ABOUT THE COMMISSIONS

(Continued from page sixteen)

provisions relating to appeals and the power of review of the courts have been written into a number of the more recent acts establishing such agencies. However, the statutes in this field indicates a marked tendency to give such commissions the power to find facts conclusively but to preserve to the courts the power to determine jurisdictional questions and matters of law.

The characteristics common to these administrative agencies have been pointed out by Hon. James M. Landis: (1) They spring out of the necessities of modern civilization; (2) they specialize in particular professions or businesses; (3) they have limited legislative powers; (4) they have new sanctions aiding them in enforcing their will not given to the courts; (5) they may initiate action against individuals violating their rules and the laws relating to their fields; and (6) they have been partly removed from the political arena, and have been given a relative permanence of personnel resulting in greater continuity of policies.

In the commissions we find a new instrumentality of government, flexible enough to serve the new needs of an era of expanding governmental activity. The shaping of this administrative process, still to a great extent in the formative stage, will be largely in the hands of lawyers. That this relatively new medium has latent within it potentialities both valuable and dangerous is not to be denied. Whether, as was the case with Equity in the past, the administrative agency will fulfill rather than nullify the law, or whether it will degenerate into a bureaucracy beyond the law, such as the Chief Justice of England has characterized as "the new despotism," the next few years will determine.

SOCIAL SECURITY SUBSTITUTES

(Continued from page five)

age annual salary received during the entire period of employment, or a percentage of the average annual salary received during the last few years of employment—and if the latter, then for how many years? No matter what system of calculation is used there still remains the most important matter of all: fixing the exact per cent actually to be used.

Disability Benefits. Pension or retirement systems frequently embrace more than the payment of a pension on retirement after fulfilling service requirements. There is an increasing tendency to provide disability benefits, particularly in those branches of public service such as police and fire departments where there is a greater risk of becoming disabled. It must be determined whether disability benefits will be allowed at all, and if so in what amounts and on what basis. Should a person whose disability is service-connected or incurred in line of duty, be shown a preference over those whose disabilities are not service-connected?

Death Benefits. Another important phase of retirement plans in many instances is the payment of death benefits. Here the important things to be determined, if death benefits are to be included, are: In what amounts shall death benefits be allowed? Upon what basis shall they be calculated? Shall the same benefits be paid in the case of an employee who dies after one year of service as in the case of a man who has been employed for nineteen years. Shall a distinction be made in the case of service-connected fatalities and non-service-connected deaths? What part does Workmen's Compensation legislation already play in the case of accidental deaths of municipal and State employees and how could such legislation be integrated with a pension or retirement system?

Withdrawals. What shall be done with contributions made by an employee who withdraws from governmental service before he has satisfied the retirement qualifications? Shall his contributions be returned to him if he resigns voluntarily? If he is discharged for cause?

Setting Up the Retirement System. In addition to the problems set out above, many others call for careful consideration by any group interested in setting up a pension system. In the first place, when can the system be put into effect? In an average municipality of any size, the age range of the employees may vary from twenty to seventy, and the length of service rendered may vary from a month to thirty-five years. Suppose then, in view of this situation, it is decided to inaugurate a pension system immediately. The status of present employees must be determined. Shall all on the payrolls be given credit for all the years served prior to the inauguration of the pension system? Or assuming twenty-five years of service is fixed as the service requirement—should the city wait a quarter of a century before any pensions are paid? There are three courses open with respect to service rendered prior to the inauguration of the pension system: to allow credit in full, in part, or not at all. If no credit is allowed, it seems unfair to those who are oldest and have served longest, and who at first thought seem to have the greatest claim to consideration. If full credit is allowed, a heavy burden is immediately thrown upon a new system, entailing heavy collections from some source immediately—almost before anything has been accumulated in the retirement fund.

Actuarial Reserve. Many municipalities have inaugurated pension systems without taking the trouble to place the system upon a sound financial basis. Many factors must be analysed carefully in working out the provisions of a pension system, and these factors vary from one community to another. Because of the intricacies of a sound system—and sometimes even because of the hopelessness of setting up a sound system that will stand pressure through the years, some municipalities have haphazardly attempted to make arbitrary collections of contributions from employees, and then have awarded contributions on the sometimes incompatible bases of the need in a particular case, and the amount of money that happened to be available in the treasury at the moment, a plan not always satisfactory. Others have set their

standards of benefits too high, or have launched a system with inadequate information only to wind up eventually on the rocks.

To avoid these pitfalls, it is generally conceded that it is necessary not only that a retirement plan be grounded on a sound actuarial basis, but that, granting the necessity for an actuarial reserve, the data necessary for setting up the proper reserve must be carefully collected and assiduously analysed. All of which means nothing more nor less than that a survey must be made to determine what collections must be made to pay a given schedule of benefits to a particular class of employees in a particular locality. Just as the stability and soundness of life insurance is based upon statistics, so also must a pension system be based on statistics. What are the ages of present employees? How many will quit each year? Die each year? Be disabled each year? Work the entire length of service requirement? How long will employees live after they retire? In short, what will be shown by statistics, taken over a wide enough area or large enough group of employees to furnish the basis for reliable conclusions? What will the proposed pension system cost each year in a given locality? What will the pension system inaugurated today be costing annually in the future, 5 years, 10 years, 20 years or 40 years hence? What contributions must be collected annually to meet these costs?

Safeguarding Pension Funds—Provisions must be made for safeguarding pension funds—to determine how they may be invested, and what limitations should be placed on their investment.

Provisions must also be made for administration of the pension system.

These then indicate some of the many problems that enter into the establishment of a retirement system for public service employees. Future articles will analyse some of the more troublesome aspects, outline the advantages and disadvantages of the various features most often used in pension systems, and summarize the experience of some North Carolina cities and the experience of other cities, states and countries in administering pension systems.

COUNTRY LAWYER---

ALL knowledge is the domain alike of philosopher and lawyer. The lawyer must indeed be a philosopher, for the world of people is his library, the relation of humanity and logic the equation which he seeks, the eccentricities of human nature the evasive formula upon which he ponders. Human conduct of the past is brought to him for analysis and interpretation; human action of judge, jury, and witnesses must be forecast by him upon the basis of suppositions and hypothetical evidence as yet unknown. The lawyer's mind is the test-tube into which clients pour their fact situations. The lawyer, drawing upon his experience, adds to these the probable evidence of the opposition. Then, applying legal reasoning as the catalytic, he advises the client. He advises wisely and successfully to the extent that he is a master of legal principles, a keen student of the practical operation of the machinery of law in the particular locality, and a sage in knowledge of the functioning of the minds and hearts of his fellow-men.

The philosopher divorces himself from the earth, retreating from the mundane reality of relative values to some higher sphere of fourth dimensional absolutes. The lawyer realizing "the futility of reaching for the stars contents himself with catching fireflies"—but always with the gleam of star-dust in his eyes, even when his feet sink in the soggy clay. With a longing for the mountain-tops he remains in the cities of the plains, for he draws his life from the breathing, struggling, barbaric contests of men. Through his office runs, in a turgid stream, the life of his community—a puzzled workman seeking wages past due, a worried mill-owner threatened with a strike, a broken wretch seeking money for a body crushed under a truck, a selfish husband pleading freedom from a dull wife, a tearful mother frantic over the elopement of her baby-girl.

Here is his life, here the only life that could ever satisfy him. At times he may gaze wistfully towards the mountain tops, but he does so knowing that he must not leave the press of life. The sound of babbling brooks may be a poet's inspiration, but the half-sobbed thanks of a tortured woman is often the stipend he seeks. The multi-hued glory of a mountain sunrise may be the source of an artist's ecstasy, but the stammering appreciation of a foul-breathed negro saved from the electric chair causes his heart to sing. Dreams are for the poets. Splendid syntheses are for the philosophers. Humanity—crude, vulgar, raucous, tearful, joyful—is the life-blood of the lawyer. Neither wholly sage nor fully man, he knows the murky darkness at his feet and the piercing brilliance overhead. He would not have it otherwise. Mud-spattered saint. Star-dusted sinner. Country lawyer!

CASE AND COMMENT

Bonds—Refunding—Validating Acts—Notes were issued by a county to pay for roads and bridges, and funding bonds to cover these were issued. Later on an act of the General Assembly validated them, and sufficient taxes to discharge payments on principal and interest were levied. The action to restrain the bond issue was not brought within the 30-day period allowed by the ratifying act. *Held*, the bonds and the tax are valid, as the ratifying act is effective. *Jones v. Alamance County*, 212 N. C.

County—Lease and Option—Notice of Renewal—A county leased property with an option to extend the lease upon notice before expiration of the lease. The county accepted a sub-lessee, but no notice of renewal was given in time in accordance with the original lease and there was no waiver of this requirement. *Held*, the sub-lessee by failing to give the proper notice forfeited any right to the renewal even though he had been permitted to remain in possession beyond the lease period. *Oil Co. v. Mecklenburg County*, 212 N. C.

Municipal Corporations—Commissioner As Clerk—Compensation—A Commissioner of finance, whose flat salary was fixed by statute at \$25 per year, as Town Clerk performed unusual services to receive a P. W. A. grant and was voted additional sums for such services. *Held*, his election as clerk was void, as he could not through his office help secure his election to "a private snap," and he is limited strictly to his compensation under the statute as Commissioner of Finance. *Carolina Beach v. Mentz*, 212 N. C.

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Municipal Corporations—Liability for W P A Worker—With the aid of the W. P. A. a city secured certain park and playground improvements. The city furnished the plans, some labor, and general supervision but did not control those doing the work. One of the city's employees, with a city truck, while working under W. P. A. officials, backed over and mortally injured plaintiff's intestate. *Held*, since the truck and the employee were under the control and direction of the W. P. A., and not the city, the latter is not liable. *Shapiro v. Winston-Salem*, 212 N. C. . . .

Inferior Courts — Jurisdiction Over Misdemeanors—Under the express provisions of the governing laws both a municipal recorder's court and a general county court have "exclusive, original jurisdiction" of misdemeanors. Where there is a special court for a city, the "jurisdiction of the general county court in criminal actions shall be concurrent" with that of the special court. On a *habeas corpus* the Superior Court held that the recorder's Court, which was created after the general county court, had jurisdiction of a misdemeanor. *Held*, where there is a special court for a city or town in a county having a general county court, the latter has criminal jurisdiction concurrent with that of the city court. *Quaere*, whether the mayor upon accepting his appointment as recorder thereby vacated his office as mayor? *In the matter of Rosa Lee Barnes*, 212 N. C. . . .

Sheriffs and Fee Deputies—Workmen's Compensation—A fee-deputy was accidentally killed in the course of employment. The industrial commission held that he was an employee of the sheriff, but the superior court judge thought otherwise. *Held*, a fee deputy is not an employee of either sheriff or of the county, the status of the deputy being that of a vice-principal of the sheriff for whose acts the law makes the sheriff responsible. A fee deputy is not an employee entitled to Workmen's Compensation from the sheriff or the county. *Quaere*, whether a salaried deputy is an employee of the county? *Styers v. Forsyth County*, 212 N. C. . . .

Taxation—Foreclosure—Venue—County sued an out-of-county administrator under C. S. 8037 and C. S. 1463 who demanded removal to

the county of his appointment under C. S. 465. The statutes conflict. *Held*, C. S. 8037 being more recent than C. S. 465, governs, and the county where the land lies may sue the administrator for taxes without going to his county as required in other actions. *Guilford County v. Estates Administration, Inc.*, 212 N. C. . . .

Taxation—Sales Tax—Sales To Contractors—Sales were made by dealers in heating and plumbing equipment to contractors for use in installing heating and plumbing under lump contracts. The superior court held such sales liable for the 3% sales tax. *Held*, such sales are essentially retail sales, as no further sale is intended, and, as such, the 3% retail, not the wholesale, tax is applicable. *Supply Company v. Maxwell*, 212 N. C. . . .

POOR CHILDREN'S MONEY

(Continued from page fifteen)

bibles or radios. The money is paid out in small amounts as needed, and the Clerks try to make the funds last as long as possible.

Finally, the Clerks demand assurance that the child will get the sole benefit of the money. Usually the parent seeks the money, but sometimes a neighbor applies for it. In most cases the Clerk knows the adult, his habits, reputation, and general reliability. If he does not, he makes the necessary inquiries. With rare exceptions the Clerks are especially careful with respect to the character of the person to receive the money. When the money is delivered, the adult is warned that it must be used only for the use of the particular child and is usually required to keep a detailed account of the way in which the money is spent in order that a report to the court can be made.

Clerks rarely call for these reports, but the statute permits them to do so, and they sometimes demand reports when they are suspicious of the use of the funds. Many Clerks do not deliver the money to the adult but require the person to get sales slips covering the things needed. When this is done the slips are brought to the Clerk, who makes checks directly to the merchants or persons entitled to receive the money and files the slips in his office.

The mechanics of the office records in these matters are simple. Usually a card, or a page in a ledger, is set aside for each account, and the receipts and disbursements are posted at the time of the transaction. Some Clerks make only oral orders; others make a general order in each account; still others require an order for each disbursement; and a few sign all such orders as a matter of course and require the approval of a Superior Court judge before making any disbursement. Most Clerks handle these funds so that there will be a minimum of recording and, with few exceptions, no fees or commissions are charged. Often the records are so informally kept that some time is required to determine the total expenditures and the balance remaining, but the better records carry forward at all times the current balance.

In some offices the total of these funds is large enough to permit a portion of them to be invested. In this case the Clerks usually place them on savings account in a bank or buy federal, state or approved local government bonds. In one Clerk's office having only twenty-six such trust funds, the Clerk has a savings account for each fund and each receipt or disbursement is shown on the deposit book; in this way he may rely largely on the bank to do his bookkeeping for him.

The administering of indigent trusts is but one of the many incidental duties of the Clerk of the Superior Court, but it is a typical instance of the very human qualities revealed in the services of local officials. But for the sympathetic and intelligent aid of our hundred Clerks in hundreds of cases in recent years, without doubt the money belonging to these children would have been wasted by them, or been "borrowed" or used by adults who imposed upon the affections of the children. Every day in North Carolina dozens of children are fed, clothed, sheltered and sent to school by means of the judicious expenditure of indigent trusts. Each year minors reaching maturity are receiving from the Clerks funds which would long ago have been dissipated had not the Clerks and their predecessors guarded the funds for them, usually without compensation or reward except for a feeling of satisfaction from a worthy job well done.

Bulletin Service

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

5. Exemptions—city and county property.

To C. F. Geer. (A.G.) In our opinion, town property used in supplying light and power to its inhabitants is not liable to county taxes, and only such property, if any, which is located outside the Town and which is used in supplying power or water to patrons outside the Town limits is so taxable.

To C. C. Lamm. Inquiry: May our County tax the following property therein:

(1) A town-owned lot not used for governmental purposes? (A.G.) Yes. *Benson v. Johnston County*, 209 N. C. 751.

(2) A municipal swimming pool operated by a town for the use of the public? (A.G.) No.

(3) Town-owned property outside the town used for the purpose of supplying extraterritorial patrons with power or light? (A.G.) Yes.

To W. P. Smith. Inquiry: May our County tax a business operated by a private corporation for profit, whose real estate and buildings are owned by the city, having been purchased with funds from private donations given with the object of bringing the industry to the town and providing employment for its citizens?

(A.G.) Upon the facts stated in your letter, we are of the opinion that such property is liable for county taxes.

10. Exemptions—municipal bonds and notes.

To W. J. Webb. Are county and municipal bonds issued prior to a certain date and heretofore subject to taxation liable in like manner to taxation for the year 1937?

(A.G.) Yes. No change has been made with reference to the taxability of these securities for the year 1937.

12. Exemptions—veterans' compensation.

To W. P. Kelly. Inquiry: Are the proceeds of Government Bonds for Soldiers' Bonus or Adjusted Compensation taxable in a case where the bonds are sold or cashed and the proceeds deposited in a bank?

(A.G.) In our opinion, under the decision of the United States Supreme Court in the case of *Lawrence v. Shaw*, 300 U. S. 245, 57 Sup. Ct. 443, 81 L. Ed. 391, these funds so deposited would not be subject to ad valorem taxes.

21. Valuation of bank stock.

To A. J. Maxwell. Inquiry: Certain counties and municipalities have raised the question whether shares of stock in national and domestic banks owned by non-residents of this State are taxable at the location of the bank.

A thorough investigation and close reading of the National Banking Act convinces me that it is authority for the taxation of the shares of non-resident owners at the location of the bank, and that in this respect the ordinary prin-

ciples governing the taxable situs of intangible property do not apply.

30. Situs of personal property.

To A. J. Maxwell. (A.G.) Section 201 (4) of the Machinery Act requires that the intangible personal property of a domestic corporation shall be listed for taxes at its principal office in this State, and if it has no principal office in this State, its intangible property may be listed in any county in which it transacts business.

To G. W. Ray. (A.G.) Diamonds are tangible personal property and are taxable at their actual situs. Diamonds deposited in a safe box in New York City can not be taxed in this State.

100. Listing of trust property.

To E. O. Moore. (A.G.) C. S. 7985 makes it the duty of a receiver or other fiduciary, in whose care or control any property or estate, real or personal, may be, to pay the taxes thereon out of the trust funds in his hands, if any there be, and if he fails to do so, he becomes personally liable for such taxes.

We also call your attention to C. S. 1220, relating to the collection of taxes against property in the hands of a receiver.

10. Penalties, interest, and costs.

To Thad D. Smith. Inquiry: Does a public law enacted subsequent to a public-local law repeal the latter?

(A.G.) This question was definitely decided by our Supreme Court in the recent case of *Rogers v. Davis*, 212 N. C. 35:

"Where the provisions of a general law, applying to an entire state, are repugnant to the provisions of a previously enacted special law applying in a particular locality only, the passage of such general law does not operate to modify or repeal the special law, either in whole or in part, unless such modification or repeal is provided for by express words or arises by necessary implication."

To L. P. Dixon. Inquiry: What method is there to compel the agents of a corporation which has let its charter expire to list and pay Town taxes on the corporation's property out of funds they have in hand belonging to such corporation? The money was obtained by the sale of personal property of the corporation, and the sale was too long ago to levy on the property for taxes. The taxes are for real estate and personal property, but we fear that the real estate will not bring the amount of the taxes.

(A.G.) Under the law your Commissioners are empowered to subpoena witnesses and taxpayers and examine them under oath relating to their taxable property. We think perhaps that this would be the best method for you to follow.

To J. Ed Johnson. (A.G.) We think, when a town has sold a piece of property and, there being no bidders, has "bid the property in" for the amount of taxes due, this has fixed the purchase price of the property as the amount of the total

taxes due, and the sale should be reported at that purchase price, subject to confirmation. If confirmed, of course, this is the end of the matter.

In the case you put, it seems that the Town bid for more than the property was worth. The only remedy we can suggest in this case is to let the bid go unconfirmed, re-advertise, and let these owners purchase the property at a fair value.

65. Tax collection—garnishment.

To D. W. Newsom. Inquiry: Does the current tax collector have power to garnishee and levy for delinquent taxes after final settlement with the Board? Or does the delinquent tax collector have the same powers which formerly belonged to the current tax collector?

(A.G.) Any person authorized to collect taxes has the power to proceed to collection by way of garnishment. This applies to current as well as delinquent taxes.

A settlement with the regular tax collector merely relieves him of his official liability and the liability on his bond for such taxes. It does not deprive him of the power and duty to collect such taxes by garnishment or levy on the personal property of the taxpayer, or both.

However, it is competent for the county authorities to designate some other person to collect the delinquent taxes with all the authority given to the ordinary tax collector, including the power of proceeding by garnishment.

76. Tax collection—date lien of taxes attaches.

To H. J. Rhodes. Inquiry: An owner failed to list a certain piece of realty on April 1 and sold it on April 15. The omission was discovered and the tract added to his abstract. When does the lien of taxes attach, and who is liable for the taxes?

(A.G.) Section 507 (1) of the Machinery Act requires every person owning property on April 1 to list it for taxes, and Section 521 (1) empowers the County Chairman and Tax Supervisor to enter any unlisted property on the tax roll in the name of the owner or occupant as of April 1.

The owner having failed to list the property as required by law, it was properly listed by the county officials in the name of the owner as of April 1, and in our opinion, the county is fully protected in proceeding to advertise and sell the land for the taxes which are delinquent.

In case of foreclosure of the lien, the subsequent owner and any lienors should, of course, be made parties to the suit under the decision in the case of *Mayo v. Beaufort County*, 207 N. C. 211.

III. County and City License or Privilege Taxes.

A. Levy.

10. City automobile licenses.

To W. N. Rose. Inquiry: May municipalities levy city automobile license taxes? (A.G.) The 1937 Motor Vehicle Law prohibits cities and towns from collecting more than \$1 per year upon motor vehicles resident in such towns. Section 61, Chapter 407, Public Laws of 1937.

11. For hire cars and transfer trucks.

To H. P. Whitehurst. Inquiry: May a town levy Schedule "B" license tax on taxicabs under C. S. 2787 (36) in addition to the \$1 tax allowed on all motor vehicles resident in the town?

(A.G.) In our opinion, C. S. 2787 (36), even though it provides that municipalities may license and regulate persons engaged in the taxicab business, is superseded by Section 61, Chapter 407, Public Laws of 1937, which specifically prohibits

municipalities from levying "any license or privilege tax upon the use of any motor vehicle licensed by the State of North Carolina" except that municipalities may levy not more than \$1 per year upon any such vehicle. Section 61 (b) further employs the prohibition against the levy of "additional franchise tax, license tax or other fee" by counties, cities, and towns.

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

To A. C. McKinnon. (A.G.) After a further consideration, we are of the opinion that an apparatus attached to a soda fountain which dispenses Coca-Colas is not taxable as a carbonated draft arm under Section 144 of the Revenue Act.

40. License tax on peddlers.

To C. H. Whitlock. Inquiry: Please construe the peddlers' tax levied by Section 121 of the Revenue Act as it applies to peddlers of coal and ice.

(A.G.) Section 121 (f) excludes from the imposition of the tax the sale of ice and wood for fuel, but not coal, and we are of the opinion that anyone peddling coal must pay the peddlers' tax.

This does not refer, however, to the sale of coal in the ordinary way, which is taxed under a different provision of the law—Section 112, relating to coal and coke dealers.

Subsection (c) would perhaps control the general peddling statute (Section 121) and modify it to the extent that peddlers in coal who sell in quantities of not more than 500 pounds shall pay a State license tax of \$5. Under subsection (c) the town may levy a license tax not in excess of that levied by the State.

To M. O. Wyrick. Inquiry: May a town levy peddlers' tax upon persons who visit homes and take orders during the morning and make deliveries the same afternoon, delivering the identical goods that were displayed in the morning?

(A.G.) Under the judicial definitions of peddling, the peddler must carry his goods with him when they are offered for sale. It does not seem to make any difference how short a time elapses between the taking of the order for goods and their delivery. They are considered separate acts unless the person actually carries his goods with him to the place where the sale is made or attempted.

47. License tax on slot machines.

To C. V. Jones. Inquiry: What license tax may a city levy on slot machines? (A.G.) Sections 130 and 130½ of the Revenue Act set out the amounts that the State may levy on different types of machines, and Section 130 (j) provides that cities and towns may levy a tax not exceeding one-half of that levied by the State.

To W. A. Baker. (A.G.) The State and Federal Pure Food and Drug Acts both define food to include "all articles used for food, drink, confection, or condiment," etc., and the United States Supreme Court has held Coca-cola to be food within the meaning of the Federal Act. United States v. Certain Beverages, 242 U. S. 995.

We advise, therefore, that a vending machine which dispenses Coca-cola in bottles by the operation of a slot wherein may be placed a coin not to exceed 5c is exempt from taxation under Section 130 (a) of the Revenue Act.

48. License tax on oil companies.

To E. M. Browne. Inquiry: May a town levy a tax under the 1937 Revenue Act on a wholesale distributor of gasoline and oil not having its warehouse or place of business in the town?

(A.G.) We think not. Section 137 (a) provides that a town can not tax such a distributor unless it has "located an agency, station, or warehouse for the distribution or sale of such commodities" in the town.

B. Collection.

15. Penalties for non-payment.

To R. B. Lee. Inquiry: Under the Revenue Act may cities and towns impose a penalty on the amount levied for license taxes when the taxes are not paid when due?

(A.G.) Section 187, prescribing the penalties for delay in payment of license taxes, provides that the section shall apply to taxes levied by the counties, but no authority is given to cities or towns to impose the penalties prescribed. Without such authority, a town may levy only the amount of the original tax authorized by the Act without the addition of the percentage penalty.

IV. Public Schools.

B. Powers and duties of counties.

17. Apportionment of funds.

To Clyde A. Erwin. Inquiry: The School Machinery Act, of course, requires county-wide current expense funds to be distributed to the schools on a per capita enrollment basis. Does this apply to county funds expended for vocational education under Section 9?

(A.G.) In our opinion, vocational education funds do not have to be distributed on a per capita basis but in accordance with the needs of the schools which offer vocational training, as shown by the budgets which they are required to submit to the County Commissioners. The levy and collection of a tax for vocational training, and the distribution of the proceeds thereof to all the schools in the county, many of which do not offer vocational training, would be a violation of the requirements of the budgetary system and would be a misappropriation of the tax collected.

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

40. Transportation of pupils.

To R. B. Phillips. (A.G.) C. S. 2621 (f) requires a motor vehicle approaching a school bus taking on or discharging children to bring the vehicle to a full stop not less than 50 feet from the bus. If a person desires to pass, after coming to a full stop, he would, of course, be charged with the duty of using due care with regard to the safety of the school children who are entering or leaving the bus.

H. School health laws.

1. Compulsory medical examinations.

To C. H. Dula. (A.G.) Under C. S. 5567 it is the duty of a teacher in the public schools to make a physical examination of every child attending the schools and make the records thereof required by this law.

Such an examination, of course, could not be expected to be such as might be made by a physician. I think, too, if it is made under the supervision of the teacher by another person more expert in such examinations, this would also serve.

V. Matters Affecting County and City Finance.

P. Securing local funds.

10. Security furnished by local banks.

To C. W. Smedberg. Inquiry: During certain months when tax collections run high, the City experiences difficulty in obtaining sufficient depository coverage as required by law to cover its entire bank deposits. Please advise what course the City Treasurer should take in the event he is unable to obtain banks to put up

BUYING UNDER STATE CONTRACTS

To J. Benton Stacy. (A.G.) We understand that the State Division of Purchase and Contract has had a number of requests from counties and cities to assist them in purchasing various articles, and that the question has arisen whether the Division has a right, under the existing laws, to make such purchases or to extend the privilege of using its present contracts to counties and cities?

We have examined Chapter 261, Public Laws of 1931, creating the Division, and all laws amendatory thereof, and we do not find in them any authority whatever for the Division to make purchases for counties and municipalities. Nor do we find in them anything that could be construed as permitting the Director of Purchase and Contract to buy articles with the intention or ultimate result that they should be distributed or sold finally to counties or municipalities.

sufficient collateral to cover the entire account?

(A.G.) An examination of the pertinent statutes reveals that no provision is made by law for such a contingency. In the absence of a controlling statute, it is impossible for me to supply any omission in the law to take care of the situation.

T. Fire insurance.

10. Policies in mutual companies.

To W. E. Easterling. Inquiry: May counties and cities insure their public property in mutual fire insurance companies?

(A.G.) The Supreme Court, in the case of Fuller v. Lockhart, 209 N. C., held that a county had authority to insure school property in mutual companies. However, we do not think it was the intention of the Court to authorize the purchase of policies in companies where the liability for assessment is unlimited. A full consideration of the case leads to the conclusion that the Court intended to limit the power of municipalities to take out policies in mutual companies to such policies as upon their face limit and make certain the liability of the municipality.

VI. Miscellaneous Matters Affecting

Counties.

G. Support of the poor.

5. Old Age Assistance.

To Mrs. W. T. Bost. Inquiry: May a County voluntarily contribute funds for Old Age Assistance and Aid to Dependent Children in addition to the amounts which it is required to contribute under Chapter 288, Public Laws of 1937? A few of the counties which have reached their quota and exhausted the amount of funds allocated by the State would be willing to put up 50% of an amount for an additional quota to be matched by federal funds.

(A.G.) There is nothing in the 1937 Act which would prevent the various counties from contributing from available funds additional amounts to care for the needy aged and dependent children within their jurisdiction. And if such funds are contributed for this purpose, I am informed that the Federal Government will match the payments for Old Age Assistance and pay the proportion provided by the Federal Social Security Act as to dependent

children. We would suggest, however, that you secure confirmation as to the federal grants from the Federal Social Security Board. It is also understood, of course, that any such funds would be administered in accordance with the provisions of Chapter 288, Public Laws of 1937.

To Miss Elma H. Ashton. (A.G.) If the Board is satisfied that the person was married to a citizen of the United States, this would make her a citizen of this country and eligible for Old Age Assistance.

7. Aid to the Needy Blind.

To Dr. Roma S. Cheek. Inquiry: May a County appropriate an additional sum from its General Fund to meet the County's share of Aid to the Needy Blind when the original quota for the purpose has been exhausted?

(A.G.) In our opinion, the County is authorized to transfer from the General Fund any available sums for this purpose.

VII. Miscellaneous Matters Affecting Cities.

J. What constitutes necessary expenses.

7. City hall.

To R. M. Lee. (A.G.) If your town has funds in its treasury which are unappropriated, this is to advise that they might be expended in the erection of a city hall. If the town has no such funds, you might borrow money for such purpose, provided the limitation contained in Article V, Section 4, of the Constitution, would not be exceeded thereby.

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

5. Firemen's Relief Fund.

To W. P. Stradley. Inquiry: Do the trustees of the firemen's relief fund of our town have authority to grant financial aid out of funds under our control to the widow of a deceased fireman?

(A.G.) In our opinion, the Act creating the State Firemen's Relief Fund is sufficiently broad to cover the extension of the benefits under the Act to any "person dependent on any fireman" in order to prevent the same from "becoming a subject of charity due to other sickness or accident or condition not specified" in the Act. See C. S. 6069 (4).

VIII. Matters Affecting Chiefly Particular Local Officials.

A. County Commissioners.

5. Trading with member of board.

To George W. Tomlinson. Inquiry: Is it a violation of C. S. 4388, relating to a member of the Commissioners trading with the Board, for a County Commissioner to sell an insurance policy to the County Board of Education?

(A.G.) We think not. For a violation

of C. S. 4388, it is, in my judgment, essential for the party to be interested directly or indirectly in a contract made with the Board of County Commissioners or under its authority, and this element is wanting where the contract is made with the County Board of Education.

In this instance, all the County Commissioners have to do with the Board of Education and its various contracts and expenditures is to approve of the budget. When the needs of the Board of Education are set out, the Board of County Commissioners has nothing to do, as I see it, with the approval or disapproval of any contract in which these needs are supplied.

31. Appointive powers.

To George T. Davis. (A.G.) When a member of the County Commissioners resigns the Chairmanship and still remains a member, we are of the opinion that it is within the power of the Board to elect a new Chairman to fill out the unexpired term.

B. Clerks of the Superior Court.

1. Salary and fees.

To G. Lyle Jones. (A.G.) If a receivership actually was begun and carried through in the Superior Court, the Clerk is entitled to his fee under C. S. 3904 (h) for auditing the account of the receiver, regardless of the fact that the suit was a "friendly suit." Such a suit could not be carried through according to the procedure required by law without an audit of the account by the Clerk.

10. Collection of process tax.

To W. H. Young. (A.G.) In our opinion, the provisions in Section 157 (b), Chapter 445, Public Laws of 1933, excludes from the imposition of the process tax tax foreclosure suits, whether brought by a county, municipality or private individual. We should say that you are governed now by Chapter 127, Public Laws of 1937—the current Revenue Act—but the provisions of this law are exactly the same in this respect as the 1933 Act, and the same interpretation must be put on it.

12. Costs in suits in forma pauperis.

To F. F. Church. (A.G.) The procedure for pauper appeals in criminal cases will be found in C. S. 4651. When counsel has been appointed for the Defendant, as therein provided, the costs for his appeal would be taxable and paid for by the county in which he is tried. In the absence of compliance with the statute in all of its terms and in the absence of the appointment of an attorney to represent the Defendant in such an appeal, we are of the opinion that the Clerk could not charge the fee for certifying the case on appeal.

A different situation exists in civil cases. C. S. 649 provides that regardless of the fact that there is a pauper appeal, the Clerk is permitted to require a fee for a certificate and seal on appeal to the Supreme Court.

26. Duties with respect to funds of incompetents.

To Thomas E. Rhodes. Inquiry: Can a guardian invest a ward's funds in first mortgage real estate loans?

(A.G.) There is no statute expressly authorizing a guardian to make investments in first mortgages on real estate, except as authorized by C. S. 220 (a) 2 of Michie's Code, which authorizes investments in real estate loans guaranteed by the Federal Government under the National Housing Act.

Investments made under statutory authority or court order can not be chal-

lenged except for fraud or gross negligence on the part of the guardian. In the case of other investments, however, the good faith and due diligence of the guardian may be challenged, and if sustained, he is liable for any and all losses resulting from the investment.

For a full discussion of the rule governing this situation see the opinion in *Sheets v. Tobacco Company*, 195 N. C. 154.

27. Appointment of guardian.

To W. H. Sawyer. (A.G.) Notwithstanding the decision in *Groves v. Ware*, 182 N. C. 553, we are of the opinion it would not be competent for the Clerk of Court to appoint a guardian or trustee for an insane person upon the certificate of the superintendent of a private hospital in North Carolina. While the case is a close one, we are of the opinion, if the matter were squarely presented to the Court, it would be held that such appointment could be made only upon the certificate of one of the public, State-supported hospitals of this State.

50. Costs.

To J. E. Swain. Inquiry: What is the duty of the Clerk of Court in cases instituted or appealed to the Superior or General County Courts, when the parties make an adjustment between themselves and have judgment signed in accordance with the agreement, either dismissing the action or requiring the performance of certain conditions, and a clause is placed in the judgment directing that no cost shall be taxed by the Clerk?

(A.G.) It is impossible for any agreement between the parties to a civil action to have the effect of repealing the law relating to costs. A judgment following a compromise derives its force from the judgment of the parties, sanctioned by the Court; C. S. 1225 et seq. and *Cason v. Shute*, 211 N. C. 195. Therefore, in my judgment, it is impossible for a compromise judgment to be so drawn as to deprive the officers of the court of their costs, or to destroy the power and authority given by the statute for taxing the same.

We also do not think that this power resides in the Judge of a Superior Court, even in a case which is not disposed of by compromise, inasmuch as the statute plainly provides that the costs shall be taxed against the losing party.

To J. Shepard Bryan. (A.G.) In our opinion, the Statute of Limitations does not run so as to prevent the collection of costs in criminal cases. When such costs have not been paid, a capias may issue against the Defendant to subject him to the judgment, and he may be imprisoned for non-payment of such costs, subject to his right to be set at liberty upon taking out an insolvent debtor's oath.

60. Legal notice.

To W. E. Church. Inquiry: C. S. 3265 requires that the terms of a limited partnership should be published for six successive weeks. Does this mean once a day or once a week?

(A.G.) In our opinion, publication in a newspaper once a week for six successive weeks would fulfill the requirements of this section. It would not be required to be made daily. *Baking Co. v. Leach*, 169 N. C. 705.

D. Register of Deeds.

3. Bond.

To C. C. Francis. Inquiry: Should the County pay the bond of a Register of Deeds on fees?

(A.G.) While the law does not so specifically provide, the universal practice

UNINCORPORATED COMMUNITIES

To R. J. Scott. Inquiry: May the citizens of an unincorporated town erect a small jail by private subscription for local offenders, and would the town's officers have a right to confine offenders therein?

(A.G.) We think not. It is the duty of the Sheriff or other person making arrests to carry the offender immediately before some officer authorized to take bail. The law provides a set-up for officers and for the arrest and detention of persons charged with crime in the case of incorporated towns, but there are no such laws relating to unincorporated communities.

where county officials are required to give corporate bonds is that payment of the premiums is made by the county.

We think that such payment by the county is legitimate, as it results in greater security for the performance of the duties of the officer in charge, or at least the penalties for non-performance, misfeasance or financial liability.

20. Cancellation of mortgages.

To A. T. Outlaw. Inquiry: Is it the duty of a Register to cancel a deed of trust when a person presents the note and deed of trust, but only the note is marked satisfied?

(A.G.) Under C. S. 2594 (2), we think that you are not authorized to cancel a deed of trust or mortgage unless it is marked cancelled along with the notes secured thereby. See *Mills v. Kemp*, 196 N. C. 309.

L. Local law enforcement officers.

25. Prohibition—Wine Law.

To Robert W. Proctor. Inquiry: A 1917 public-local law prevented the sale of spirituous or malt liquors within four miles of certain churches. Does this bar the sale of wine in such territory now in view of subsequent public laws on this subject?

(A.G.) We are of the opinion that the public-local law is no longer in effect. Chapter 216 Public Laws of 1933, makes it lawful to sell beer or wine in the State, and Section 9 repeals all inconsistent public-local or private laws.

Chapter 127, Public Laws of 1937, Section 513, also makes it mandatory for the governing body of a municipality or county to issue licenses to applicants complying with the requirements of the Act,

PURCHASE OF SCHOOL BUSES

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

and Section 527 repeals all conflicting laws.

41. Operating vehicle while intoxicated.

To John W. Darden. (A.G.) We have examined the laws relating to driving vehicles while under the influence of intoxicants, and believe that C. S. 2621 (43 and 44) covers the case you cite, and that the driving of a horse-drawn vehicle upon the public roads by one under the influence of intoxicating liquors is an offense against this statute.

P. Officials of Recorders' and County Courts.

1. Salary.

To A. W. Baldwin. Inquiry: Do our County Commissioners have authority to decrease the salary of the County Recorder?

(A.G.) C. S. 1564 provides that the salary of the County Recorder shall be fixed in advance of his election by the Board of County Commissioners and shall not be increased or decreased during his term.

7. Process tax.

To J. R. Garriss. Inquiry: Should process tax be collected in actions in a Town Recorder's Court?

(A.G.) Section 157 (a) of the Revenue Act relates only to indictments on criminal proceedings finally disposed of in the Superior Court. Under subsection (e) the liability for process tax under this section would not apply in cases in the jurisdiction of magistrates' courts whether civil or criminal except upon appeals to the Superior Court from the judgment of such magistrates.

As to criminal proceedings, therefore, there is no liability for process tax to the State in the Recorders' Courts where no appeal is taken by the Defendant.

Under the provisions in subsection (b) there would be a liability for process tax in civil actions in Recorders' Courts because Recorders' Courts of this State are courts of record and this subsection specifically levies this tax on civil actions instituted in the "Superior Court or other courts of record."

It would not apply to cases in a magistrate's jurisdiction, nor would it apply to town ordinances, unless an appeal is taken to the Superior Court in such cases.

S. Mayors and aldermen.

6. Appointive powers.

To Dr. R. T. Stimpson. (A.G.) The statute providing for the appointment of Registrars of Vital Statistics by local mayors (C. S. 7089) fixes the term of the officer at four years. In our opinion, the appointing officer has no power or right to reduce or change the term of office, and the limitation of the term to one year is invalid.

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

30. Workmen's Compensation and employees' funds.

To E. C. Brooks, Jr. (A.G.) It is our opinion that by its wording the Act creating the Durham Peace Officers' Protective Association applies only to officers con-

nected with the Sheriff's Office of Durham County and members of the police force of the City of Durham, and that officers created by the 1937 Liquor Control Act are not eligible for membership in the organization.

IX. Double Office Holding.

20. County and city auditor.

To E. P. Covington. In our opinion, one person could hold the office of City Auditor and Notary Public at the same time without violating Article XIV, Section 7, of the Constitution, the Auditor not being an office within the meaning of this section. However, one person could not hold the office of Tax Collector and Notary Public at the same time.

22. County Commissioner.

To Jeter P. Ramsey. (A.G.) In our opinion, the offices of Registrar of Vital Statistics and County Commissioner are two offices within the prohibition contained in Article XIV, Section 7, of the Constitution relating to double office holding.

75. County political chairman.

To J. H. Yelton. (A.G.) While the law does not cover the subject in express terms, we are of the opinion that a County Democratic or Republican Chairman should not serve on the State Board of Elections on account of the incompatibility of the two positions.

100. Ex officio performance of other duties.

To E. P. Covington. (A.G.) This Office has formerly held that the offices of City Clerk and Treasurer, unless separately created by statute, may be consolidated and exercised by the same person, and likewise the positions of City Clerk and Tax Collector.

Attention, Superintendents of County Schools

If you want to save from 20% to 30% buy on your State Contract. We have been awarded contracts by the State Purchasing Department on the following items:

| | |
|-----------------|----------------|
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| Brake Lining | Gaskets |
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| Valve Guides | Horns |
| Valve Springs | Springs |
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| Roller Bearings | Piston Pins |
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| Spark Plugs | |

All of above items are nationally-known brands and meet the State's high specifications.

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We have school bodies in stock, as follows, at a very attractive price:

Two 19-foot Bodies for
195-inch Wheelbase
Two 17-foot Bodies for
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Bodies made per 1936 North Carolina specifications.

**Ford Body
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DE LAVAL Centrifugal PUMPS

De Laval 12 in. pumps to handle 2080 g.p.m. each of sludge containing one per cent of solids.

The INITIAL EFFICIENCY IS HIGH

and long sustained, primarily due to the De Laval Labyrinth Wearing Rings, which are used in all cases. As compared with older pumps, the higher efficiencies now obtained will repay the cost of De Laval pumps in a short time. Renewable wearing parts are used at all points subject to wear. As the pumps are built to limit gages, these parts are interchangeable and renewals ordered by number can be installed at minimum expense and without delay.

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Independence Bldg.

Charlotte, N. C.



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- Improves skidproofing efficiency of abrasives—stops skids quicker.
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- Reduces number of applications required—materials stay put; are not dislodged by wind or traffic.
- Prevents freezing of abrasives and stockpiles—materials ready at all times and at any temperature.
- Quicker and greater coverage—fewer return trips by trucks and spreaders for reloading.
- Quick acting—works by exothermic action (by generating heat).
- Effective at low temperatures. Solvay Calcium Chloride melts ice at 25 degrees or more below zero.
- Saves money—the savings in application costs and material more than pay for adding Solvay Calcium Chloride.

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If these accidents could be prevented, each year the lives of 15,000 people would be saved—a number equal to more than $\frac{1}{4}$ of all Americans killed during the entire World War.

Adequate street and highway lighting, alone, will prevent nearly half of these accidents, will save the lives of more than half these people. An investment in lighting will save taxpayers nearly three times its cost.

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