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MAY, 1938

VOL. 5, NO. 5



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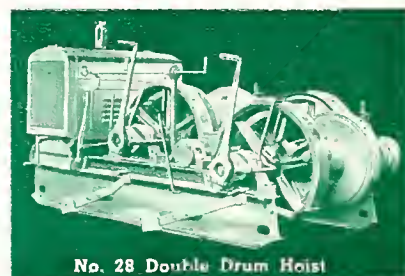
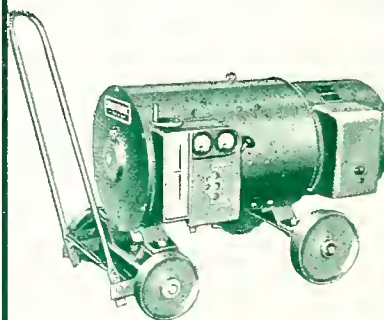
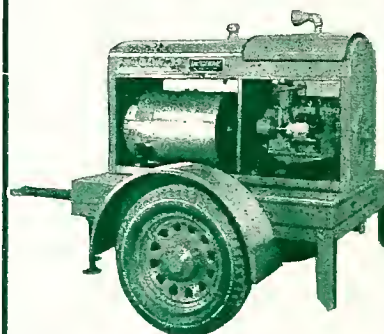
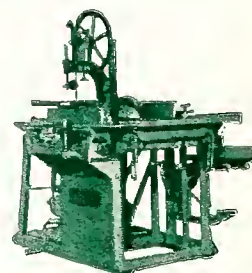
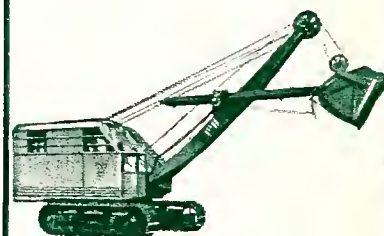
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POPULAR GOVERNMENT

VOLUME 5
NUMBER 5

PUBLISHED MONTHLY BY THE INSTITUTE OF GOVERNMENT

MAY
1938

Regulation of Roadhouses

FOR SOME TIME prior to the 1937 session of the General Assembly law enforcement in rural Guilford County had been hampered on account of the inability of the law enforcement authorities to exercise a sufficiently thorough and rigid supervision over certain types of businesses and places of entertainment.

Need for Special Act

Conditions had reached such a point that in some sections of the County citizens were making vigorous protests and demanding relief from abuses, to which relief they were obviously entitled. Liquor selling, drunkenness, gambling, prostitution and other forms of lawlessness, and noisy and boisterous conduct were complained of, and the citizens alleged in some instances that their property was being rendered less valuable, and their children were being subjected to unwholesome and unholy influences, and that the peace and quiet and ordinary enjoyment of their homes were being invaded. The law enforcement authorities were in thorough sympathy with the demands of these citizens, and co-operated to the fullest extent in an effort to eradicate conditions complained of.

Padlocking Insufficient

In those instances where sufficient proof could be had, padlock proceedings were instituted and vigorously prosecuted, and a number of the places complained of were closed by legal action under the nuisance statutes. In this way considerable relief from the undesirable conditions complained of was afforded, but it was not enough. Serious thought was given to the situation, and unqualified

Guilford County Experiments with Licensing of Tourists Camps and Roadhouses Outside City Limits



By GEORGE L. STANSBURY
*Chairman, Guilford County
Commissioners*

war was declared on the nuisances heretofore mentioned, and lawlessness in general.

Of course, one great difficulty encountered in the effort to stamp out the abuses, in many cases, was in obtaining sufficient evidence. This led to the thought that it would be most desirable for the County Commissioners to regulate the licensing of places of entertainment and certain kinds of business. There needed to be certain requirements of character for those desiring to operate such places. It was imperative that the undesirables be kept out.

The 1937 Law

So, a bill was prepared which it was thought would be of substantial aid in the fight on the nuisances referred to, and the Guilford delegation in the General Assembly caused it to be enacted into law, the same being Chapter 127 of the Public-Local Laws, Session 1937. The act requires a license from the Board of County Commissioners to operate outside the corporate limits of the incorporated cities and towns in Guilford County any tourist camp, dance hall, road house, place of entertainment, hotel, inn, or lodging or rooming house open to travelers or the general public.

Who May Obtain License

Operation without license is a misdemeanor. Applications for license must be in writing, and the Commissioners, before issuing license, must be satisfied that the applicant: (a) is of good moral character; (b) has never been convicted of a crime involving moral turpitude; and (c) has not, within two years prior to application, been convicted of violating State or Federal laws relating to prohibition, liquor control or prostitution. The Commissioners are authorized to promulgate rules for the operation of such establishments, including a requirement for keeping a register of all guests in tourist camps, hotels, inns and lodging houses.

License may be revoked for violation of such regulations, or if the place is allowed to become a nuisance, or is used for any unlawful, disorderly or immoral purpose. After revocation of license, the erstwhile licensee may not operate such business for two years. The Com-

(Continued on page fifteen)

"On Payment of the Costs"

DISCHARGED upon payment of the costs" in its various forms is probably entered in criminal court dockets in North Carolina more often than any other judgment. It is the mildest punishment which our courts can administer, and lawyers failing to secure acquittals rarely fail to petition the court that their clients be "let off with the costs."

What Are Costs?

The "costs" include the Clerk's fee for issuing, filing, and recording the papers, the officer's fees for arrests and summoning witnesses, the jail's fees, and such special fees charged as jury fees, judge's fees, solicitor's fees, law library fees, and officers' pension fund fees.

Costs Vary

These costs may vary in wide limits and almost invariably must be "figured" for each case. They may be in one case a nominal sum and in another quite a sizeable amount. They vary in cases in the same court with the different items, such as the number of witnesses subpoenaed and the days spent in jail, and frequently two officials in the same court will compute the same bill of costs differently. When we turn to other courts we find that each apparently has a fee schedule of its own. *Sixty days on the State highways* is everywhere sixty days in the State prison camp with certain fixed deductions for good behavior, but no so with the costs.

On January 1, 1937, the chairman of the State Highway Commission reported that the State's prisoners in four years, had increased from 4,700 to 9,044. Those who have watched our courts through the depression years know that a substantial percentage of these prisoners would not have been sent to the prison camps if they had been able to "get up the costs"; likewise with unnumbered hundreds sent to county jails. It is a matter of financial, as well as moral, concern that this constant stream of prisoners be reduced, and it would be reduced materially if all who were offered the opportunity could "raise the costs." How much are these costs which

By DILLARD
GARDNER



these unfortunate persons find it so difficult to pay?

Superior Court Costs

Most of the Superior Courts operate largely under general, statewide fee schedules, but the costs often are affected by variations in schedules due to local laws. The *minimum* criminal bills in the Superior Courts vary from sixteen or eighteen dollars to thirty or thirty-five dollars; probably the *average minimum* is about \$20.00. The criminal costs usually run from thirty to sixty dollars, but bills totaling a hundred dollars are not unusual, and one recently was reported (in a county under the general fee schedule) which totaled \$250. Judges sometimes order that the defendant be discharged upon the

payment of the "costs for which the county is liable"; where the bill is small this reduces the amount about fifty per cent and even in the larger bills is a substantial reduction.

Inferior Court Costs

Due to their multiplicity, it is much more difficult to present a satisfactory picture of costs in the inferior courts, which are more important than the Superior courts if judged solely on the basis of the number of criminal cases tried. The inferior courts are those courts above a justice of the peace but below the Superior Court. Among these are: the city police and recorder's courts, the township recorder's courts, and the county recorder's, criminal, and general courts.

There are dozens of different fee schedules, but almost without exception, the costs in an inferior court are less than those in the same case would be in the Superior Court of the county. The difference is well illustrated by the following case, which if not typical is certainly not unusual, and the facts of which were furnished by the Clerk of the Superior Court in the county in which the incident transpired.

Pyramiding Costs on Appeals

Notice that the higher the court, the higher the fees, the costs prac-

MINIMUM CRIMINAL COURT COSTS

COURT	Officer's Fees	Court Fees	Minimum Total Costs	Day in Jail (Extra)	Minimum Total Jail Case
<i>Justices of the Peace</i>					
Highest	\$2.00	\$ 2.25	\$ 4.25	\$3.00	\$ 7.75
Lowest	1.50	1.25	2.75	.90	3.65
Average	1.62	1.69	3.31	1.72	5.03
<i>Municipal Courts</i>					
Highest	2.00	9.50	11.50†		11.50
Lowest	1.00	1.55	2.55	1.00	3.55
Average	2.02*	5.32	7.35	1.51	8.86
<i>County Courts</i>					
Highest	2.00	19.95	21.95	1.60	23.55
Highest	\$2.00	\$ 2.25	\$ 4.25	\$3.00	\$ 7.25
Average	2.00	12.10	14.10	1.65	15.75

* The *average* officer's fee is higher than the officer's fee for the court having the highest total minimum costs, because the other courts considered had higher officer's fees, but lower total court costs, than the municipal court with the highest total court costs.

† Includes \$2.00 jail fee.

INFERIOR COURT COSTS

In order to secure information as to the variations in court costs among the inferior courts, ten inferior courts were selected at random throughout the State, in five counties ranging from the Atlantic to the Tennessee line. In each of these courts the officials were asked to compute the lowest possible bill of costs for a criminal case and to indicate also the additional costs where the defendant spends a single day in jail. The wide variations from court to court will be seen by a glance at the above table setting out the computations.

tically doubling between each court. Fortunately for defendants, cases appealed do not have to go to each of these courts in succession as they are carried to the highest court. Appeals from magistrates rarely go to municipal courts, more often go to the county courts, and usually go directly to the Superior Court. Appeals from municipal courts sometimes go to the county courts but generally go to the Superior Courts. Appeals from county courts always go to the Superior Court. Whenever a case is appealed to the Superior Court, the costs accumulate rapidly. The following example illustrates this pyramiding of costs:

A simple misdemeanor—such as permitting a child under 16 years of age to operate a motor vehicle, walking upon the lands of another after being forbidden to do so, pulling down a legal advertisement which has been tacked to a telephone pole, or letting your unleashed dog walk with you through the Capitol Square at Raleigh—is tried by a justice of the peace. You are convicted, and taxed with the costs (the average figures above being used) totaling \$3.31. You appeal to the county court and are again convicted and taxed with the costs. This time the costs are \$14.10 and \$3.31—total \$17.41. Still protesting your innocence you appeal to the Superior Court, but are again convicted and taxed with the costs. Having grown tired of your campaign to clear your name, you settle with your lawyer and go to the Clerk to settle the costs. You discover that the Superior Court costs are: \$20.00 and \$14.10 and \$3.31—total \$37.41!

In the case above you are likely to reflect that it might have been wise to have accepted the decision of one of the lower courts. Hundreds of defendants reach the same conclusion every year. The factor of pyramiding court costs on appeal is one of the most potent factors in restraining defendants from appealing to the higher courts. In most inferior courts only two or three per cent of the criminal cases tried are appealed.

Glance again at the accompanying table. Notice the difference between the lowest and the highest bill under each group of courts. The same case in one court may cost only slightly more than one-fifth as much as it would in another court of the same rank. A simple misdemeanor often may be tried either by a justice of the peace, a municipal court or a county court. As the table shows, the costs in this minor offense may vary all the way from \$2.75 before a magistrate to \$21.95 before a county court.

Two neighborhood boys who had been close friends and school-mates for years started courting the same girl. One day they met and one of them exclaimed, "You told my girl a story on me." Jealousy had set both on edge. The accused struck the accuser in the face. For some strange reason no other blows were struck, but after some heated words were exchanged they parted. The story of the "fight" spread through the community, and, fearing that the grand jury would present them, the boys went before a magistrate, and the one who struck the blow pleaded guilty to a simple assault. The magistrate witnessed the young men as they shook hands, taxed the more warlike with the costs and discharged them. Together they paid the costs—\$2.00—and went away. At the next term of the Superior Court, much to the surprise of both, each was indicted for the "affray." As is usual in affray cases each was used as a witness, a reluctant witness, against the other, and both were convicted. The costs in one case were about \$30 and in the other a few dollars higher. Result: J. P. Costs—\$2.00. Superior Court Costs—\$65.00.

"County Hotel" Rates

The table shows that there is a marked uniformity in the officer's arrest fees, as the officer's fee in all courts is approximately \$2.00. However, the jail fees vary almost as widely as the court fees. The price of spending a day in what old offenders sometimes call the "County Hotel" varies from 90c to \$3.00, these fees including meals and turnkey fees.

Reasons for Variations

Many factors have combined to produce the wide variation in fees. Probably the most important has been the general acceptance by law-makers, lawyers, and judges, of the idea that the problems of the inferior courts are matters of local concern, and that local and inferior

Tax Supervisors

The Tax Supervisors' Association and Supervisors' Division of the Institute of Government held their annual meeting in Raleigh on March 18 and 19, with nearly 100 Supervisors and other officials in attendance, representing some 70 counties.

High lights of the meeting included an address on "Principles of Assessment Practice," by Albert W. Noonan, Technical Director of the National Association of Assessing Officers, a discussion of the new intangibles taxes by T. W. Alexander, Jr., of the State Revenue Department, and discussions of various local tax problems led by a number of outstanding Supervisors.

At the close of an unusually successful meeting, those present went on record as favoring: (1) a January first listing date for property taxes; (2) legislation which would grant to all counties the option of conducting real estate revaluations with a small board of assessors having county-wide authority, as distinguished from the present township assessor systems; (3) appointment of a committee to work toward standardization of tax listing and tax record forms; and (4) appointment of a committee to study the feasibility of an assessors' manual for North Carolina.

courts should be self-supporting, if not show a profit. Moreover, fee schedules tend to increase rather than decrease, and in practically all cases where the schedule varies from the general, the special fee schedule will be found to be higher.

An enlightened self-interest alone should produce some sentiment toward securing a satisfactory fee schedule, at least locally if not for the State generally. However every proposal for a uniform, state-wide fee schedule for all courts of the same type, with its obvious advantages in interpretation and application, has collided squarely with local opposition and gone down to defeat. As a result, the picture of costs in the different courts of North Carolina presents a crazy-quilt, patch-work appearance, which might inspire either bewilderment, interest or ennui in the average citizen, but hardly pride.

Justice Barnhill Urges Reform--- Suggests Twelve Changes

Judicial Reform.—Twelve drastic reforms for the North Carolina judicial system were proposed by Associate Justice M. V. Barnhill of the Supreme Court at the meeting of the State Bar Association held recently at Pinehurst.

(1) Justice of the peace courts should be improved, but not abolished, as "These courts in an improved form constitute a necessary part of our system."

(2) Courts inferior to Superior Courts should be made uniform in jurisdiction and procedure. There should be two divisions, one for large counties and the other for small. Costs should be uniform.

(3) The number of judicial districts should be increased to eliminate special judges, as such jurists now have only questionable powers in "in chambers" proceedings. The constitutional provision for the identity of judicial and solicitorial districts should be eliminated.

(4) Superior Court judges should be relieved of some of the work they now are required to do, as it "is more than should be required of any public official." An administrative supervisory agency, under the Chief Justice of the Supreme Court, should be created to keep the lawyers and public informed of court conditions so that court terms could be adjusted to better meet demands.

(5) Rules of procedure should be changed so that a judge may consider prior to the day of trial any cause which necessarily would turn upon the decision of a question of law. Now the question cannot be presented to the judge until the plaintiff has presented his testimony and the defendant is putting on his proof.

(6) A rule day or pre-trial day should be held in each judicial district at which counsel would have to appear and stipulate non-essential or undisputed facts, and specifically admit or deny documentary evidence relied upon by the adverse party.

(7) Trial by jury should be abolished in all courts inferior to Super-

ior Courts where trial de novo in Superior Court is provided upon appeal.

(8) Masters or referees should be provided to serve certain territories for definite periods, as "our present reference procedure is weak."

(9) Rules of procedure should be prepared by the Supreme Court, instead of the Legislature, and the high court should prescribe the rules for all inferior courts. A committee of lawyers and judges should be created to consider suggestions for changes.

(10) Judges should not have to hear jury trials more than 40 weeks each year, and should hear all "in chambers" proceedings in their home districts each four or five weeks.

(11) Judges should be selected in a different way than by nomination and election, as now. One plan would provide for their appointment periodically, with the voters to approve or reject the appointees at the next succeeding election.

(12) Jury commissions should be named in each county to serve without pay, to select carefully prospective jurors; grounds for exemption from jury service should be narrowed.

Justice of the Peace Reform at Last.—Few lawyers in this State will deny the need for drastic change in our justice of the peace systems. Progressive magistrates, caught in a system whose defects they recognize, are equally insistent upon change. Frank Winslow (Rocky Mount), former President of the State Bar Association, during recent months has turned the spotlight of publicity on this problem. He has done more. He called on the Association's Justice of the Peace Committee to do something about it.

Nothing could please Chairman James MacClamroch (Greensboro) more. His Committee presented a bill to remedy major faults of the present system, and, at the Committee's request, a Committee of fac-



BAR PRESIDENT

Kingsland Van Winkle (above) was elected president of the North Carolina Bar Association at its annual meeting in Pinehurst early this month. Other officers elected included J. Burt James of Greenville, first vice-president; Frank C. Patton of Morganton, second vice-president; Miss Lee Smith of Albemarle, third vice-president. John C. Rodman, Jr. of Washington and D. Ed Hudgins of Greensboro were named to the executive committee.

ulty members from the State's three leading law schools studied the problem—and submitted a second bill. Both bills were submitted to the executive committee of the North Carolina Magistrates' Association, followed by a meeting with the Bar Committee.

From both bills the joint meeting selected those features which all could agree upon—and to these features were added those which the magistrates requested and which the Bar Committee was willing to approve. Dillard Gardner, of the Bar Committee, drafted the resulting bill.

Notable gains in the proposal are: Reduction of manner of securing office to one method—

(Continued on page fourteen)

OFFICIAL STATE BAR NEWS AND VIEWS

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

I THINK you're a fool," said the very young lady who had just driven her car up on the sidewalk directly in front of the town hall.

"Well," replied the city manager, "I'm glad you feel that way about it. Everybody else in town feels the same way and I'd hate for anyone to think that they were wrong."

The city manager may have been exaggerating when he spoke of what the citizens thought of him. However, it does illustrate the fact that a city manager, occupying the focal position in city government, must bear the brunt of every citizen's complaint and protest about the way the town is run. It is all a part of his job.

Just before the above conversation took place I had been in the city manager's office waiting for him to complete some work on tax listing reports. There were many people in the office wanting to get information about their property, all of whom seemed to want to talk to the city manager at one time.

Keys to the City

In spite of all the confusion, the affairs of government were progressing smoothly when suddenly we noticed that someone had driven a car up on the sidewalk in front of the town hall. There being no policeman in the immediate vicinity, the city manager went out to see just who was taking such liberties with the rules of driving. It turned out to be a very young lady, in town for a dance.

She was actually surprised that the city manager did not share her enthusiasm, and a slightly inebriated young gentleman on the back seat was positively indignant that a fair visitor should be shown such lack of consideration as to be denied the right to drive on the sidewalk if she so desired. No doubt they were planning to drive into the town office to receive the key to the city. Their ardor cooled somewhat when a police officer arrived and issued tickets around. Not tickets for any dance, however, but for appearance in police court the following morning.

No Typical Day

I was in the town office of one of our smaller towns to see just how the city manager spends a typical day. I wanted to find out his duties,

A Day With a City Manager

By SHERWOOD BROCKWELL

his problems, and how he solved them. Two things were evident. There is no typical day in his life. The routine matters must be handled in the little time that is left between the unusual situations that occur, and there is no time to answer any questions except those necessary ones pertaining to the needs of the citizens.

Building Inspection

Many new homes are being built in this particular town. As building inspector, the city manager has to look over all plans before construction begins and issue permits if they comply with the requirements of the building and zoning codes.

A building inspector must have more than written ordinances to attain a superior type of construction in his town. It is necessary to convince the builder that while the laws are for the benefit of the town as a whole the individual builder also benefits by following them. Of course, there are always some so-called rugged individualists who pay no attention to the approved plan. After all it is a woman's privilege to change her mind. This is particularly true when she is building without the aid of an architect or contractor. We called on one such builder and saw the results of her handiwork. Such a sight must be most discouraging to a conscientious building inspector. Especially when he is also the city manager trying to improve the town from an aesthetic as well as structural standpoint. Persuasion there was merely a waste of time. In fact the builder had hired two lawyers to tell her that she could build as she pleased. Hiring an architect and contractor would have been a wiser and more economical expenditure.

Supervision of Streets

Realizing that his time could be utilized more profitably elsewhere, the city manager moved on to see how the street maintenance crew was progressing. The low tax rate of the city and the resulting low ex-

penditure allowed for public works does not permit a street superintendent. Therefore, the city manager supervises as well as plans the work of repairing streets. As new houses are constructed it is necessary to cut the street surface to install water and sewer mains. No type of repairing can result in a street as good as it was before.

Tell It To the City Manager

The entire morning had gone by so we returned to the office, and the city manager was greeted by several people who had eaten early lunches and wanted to discuss various problems before returning to their places of business. Some people who live on the few unpaved streets wanted to know when these streets would be hard surfaced. They also wanted to know from which side the necessary land would be taken to widen the road bed. Naturally each property owner wanted the land taken from the opposite side so as not to shorten his own front lawn. The city manager must decide these questions after giving careful consideration as to what will be most economical for the town. The cost of hard surfacing is borne by all the citizens; the owners of property abutting the street pay only for the gutters.

These and other discussions were often interrupted by people calling in to report various happenings around the city. These happenings varied from ladies carrying on retail trade in private residences in violation of the zoning ordinance, to the fact that some children had removed the cap from a fire hydrant and were having a delightful time filling the hydrant with rocks. The first question and others like it will have to await the decision of the zoning board. The second bit of information had to be passed on to the water department so that they could clean out the hydrant before a fire occurred and before the city should incur unnecessary expense due to a damaged pump or a burst section of hose.

Twice a police officer came in to report that he had collected fees from peddlers who wanted to sell their wares on the street, fees which would not have been collected but for the diligence of the police. And

(Continued on page six)

Governmental Laboratory Building

THE Institute of Government has the funds to build the governmental laboratory pictured on pages 12 and 13 of this issue. Construction will begin as soon as funds can be procured to clear the building site. Efforts under way to procure these funds are meeting with success.

Purpose of Laboratory

We expect to make this building a place to which successive generations of officials, citizens, students and teachers of civics and government may come to see demonstrated in one place the governmental methods and practices they would now have to go to hundreds of city halls, county courthouses, state departments and federal agencies to find.

The one hundred counties, three hundred and more cities and towns and scores of state departments in North Carolina are undertaking to do similar things. They have developed different methods and practices in doing them. Some of these methods and practices are better than others.

In one governmental unit improved methods of tax listing in one year put four thousand new taxpayers and five million dollars in newly discovered property on the tax books. In some governmental units as low as forty per cent of the taxes may be collected and in others as high as ninety per cent. In some units in the midst of bank failures not a cent of public funds was lost and in others thousands and hundreds of thousands were lost.

Throughout the cities, the counties and the state of North Carolina new methods and practices in the administration of public affairs are constantly arising out of the initiative, resourcefulness and energy of public officials. These methods and practices, to the units making use of them, are worth their weight in gold. To other units they could be worth the same. The collection, comparison and demonstration of these methods and practices in this governmental laboratory building will lay the foundation on which we can raise the level of governmental performance by lifting the poorest practices to the level of the best.

Three types of materials for this laboratory are being collected:

(1) *Forms, records and reports* used by governmental units. To illustrate: In one county, authorities take a hundred forty-two successive steps in the process of tax listing, assessing and collecting. Some form, blank or record illustrates each successive step. One member of the Institute staff has already collected copies of the forms used in each successive step, filling them out as they are filled out in practice to show their uses, attaching a typewritten sheet or more of explanation to each form, with the purpose of giving a concrete demonstration of the successive steps in the process of tax administration. The same procedure has been followed in many cities and counties. Other members of the Institute staff have followed the same plan in the fields of Criminal Law Administration, Court Administration, Finance, and Accounting Administration, Welfare, Health and Public Works Administration, Federal, State and Local Relationships. Different groups of officials throughout the state are following this lead by preparing similar exhibits of their departments, and dozens of cities and counties have sent in their exhibits to the Institute. During the coming year we expect to receive these exhibits from all officials in all cities and counties in the State.

(2) *Books, pamphlets, special studies, maps and charts* in the governmental library number in the thousands. Hundreds of new pamphlets and books are being received each month.

(3) Nearly 200 *governmental magazines*, state, national, and foreign, are received regularly and furnish up-to-the-minute information on all phases of current activities and developments in the field of government. In addition, more than 100 daily and weekly newspapers are received regularly.

These materials are already fusing into a practical working governmental laboratory for the every day use of city, county, state and federal officials, citizens, and teachers and students of civics and government in North Carolina.

CITY MANAGER

(Continued from page Five)

the Fire Department mechanic, who also looks after all city-owned equipment, came in to say that a certain truck was repaired and back in service. While he was there he wanted to discuss with the city manager the problems pertaining to that department, which is under the city manager's supervision.

Garbage Disposal

After the crowd in the office dispersed, the city manager was able to visit the town's modern incinerator to see that the garbage was being properly disposed of. This important function of the city's government is also under the direct supervision of the city manager. Although garbage is collected only three days a week the incineration is practically a continuous operation. The city manager took a few minutes of his time to show me the sewer disposal plant located immediately adjacent to the incinerator.

Tax Lists

We returned to the office and the city manager got back to the tax lists that he had started on in the morning, but it seemed to be impossible for him to give them much consideration—too many interruptions. It was tax listing time, and a county tax lister was temporarily occupying a desk next to the city manager's. Many people wanted to list their property but did not know the location of it. Often it was necessary to go back through old records and trace through several owner-ships to know the particular land involved. And a person who came into the office for one purpose always had several other matters to discuss before leaving.

It was six o'clock and the city manager was ready to close up shop for dinner to return later in the evening to discuss more leisurely some of the ever mounting problems that confront a city manager. I commented on the variety of duties and the long hours necessary for their completion. With the city manager's parting remark that "Rome was not built in a day, some night work being necessary," I ended a most interesting and instructive day with a greater appreciation for the services being rendered all the citizens by able city officials.

Monthly Survey - - -

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

Courts and Records

Lawyers and Judges Might Study Good Manners.—From Stanly County comes this press comment in criticism of the brow-beating cross-examiner: "He shouts at gentle old ladies, he sneers at men who are known for their honesty and integrity, and he threatens the youngster with dire punishment if he should be able to tangle him up in such a manner as to cause him to answer a question incorrectly."

Jurors notice such tactics of counsel—and punish them with adverse verdicts. Lawyers who use such tactics, in time pay for their sadistic tendencies in the telling coin of lost clients.

The following comment of former Justice Van Devanter (now "retired" to the active arena of the trial courts) recently in New York, is one reflecting the matured wisdom of long deliberating upon a great appellate court. Reprimanding counsel, he admonished, "No, no, you must not call out those questions in that tone of voice. You must treat the witness with courtesy. He is presumably a gentleman." Press and bench alike cry out against discourtesy. Common decency, and ordinary consideration for others, demand that the courtroom and the drawing-room alike tolerate only the conduct of a gentleman.

Grand Juries May Accomplish Much.—From Roxboro comes news that Judge Cowper, in a grand jury charge, answered two popular criticisms of the grand jury system: (1) its "meddling in matters it has nothing to do with," and, (2) the claim that it has "lost its usefulness." As to the first point, there is ample precedent to the effect that a grand jury has a county-wide meddlers' license to examine almost anything touching the life of the people

(Continued on page fifteen)

Taxation and Finance

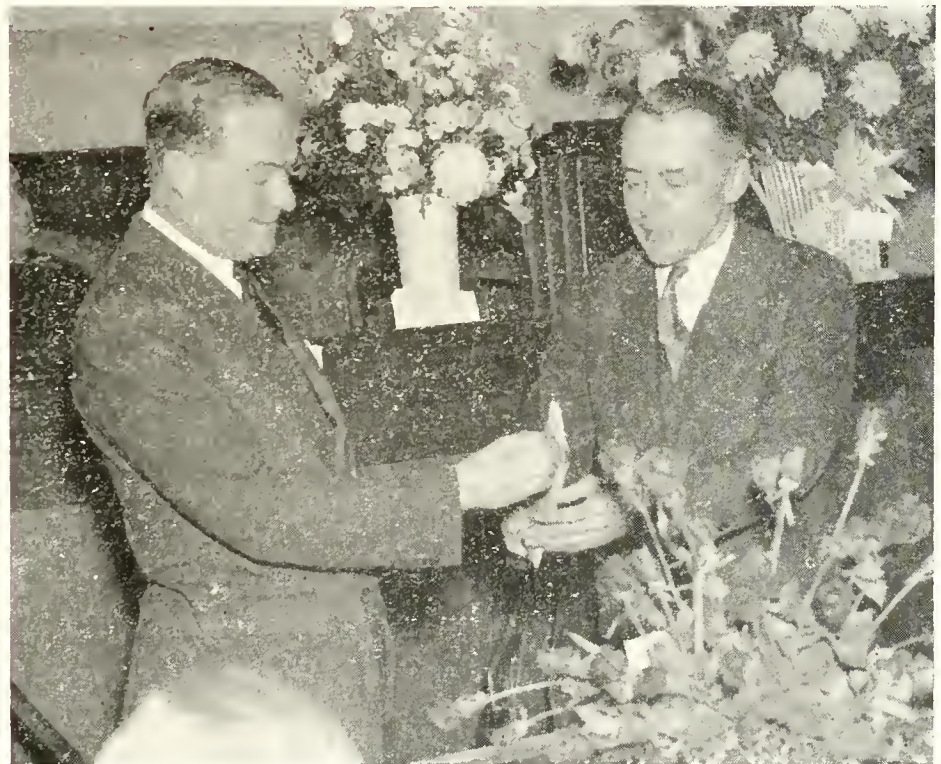
War Between the States.—Articles and advertisements bragging about relative advantages of state tax systems seem to be on the increase. For example, Nevada boasts its lack of an income or inheritance tax. Nebraska advertises that, "Nebraska alone has no income tax, no sales tax, no luxury taxes."

The Oklahoma Tax Commission has declared that, with Nebraska relying heavily on a property tax for state purposes yielding in the 1937 fiscal year approximately 25% of all state tax revenues, "what this really means is that one group of taxpayers is being forced to bear most of the burden of financing state

and local governments, and it is a group which is ordinarily the least able. In publishing such an advertisement Nebraska is merely pleading guilty to having one of the most inequitable tax systems in the country." And so the age old argument about methods of taxation continues.

"Seven Sins."—A recent issue of *Public Management* lists "seven sins" relative to annual municipal reports. They are (1) *silence* (failure to issue any report at all); (2) *uninterpreted statistics*; (3) *poorly interpreted statistics*; (4) *irrelevant statistics*; (5) *poor make-up* (unattractive reports); (6) *for C. P. A.'s only* (too technical); and (7) *the collector's instinct* (indiscriminate

(Continued on page fifteen)



"BOND-FIRE"

Kalamazoo, Michigan, paid off its last bond this past winter and became the first city in the United States with a population of more than 50,000 which was debt free, and definitely launched on a pay-as-you-go policy. It was an historic event calling for celebration when the last bond was paid off. The picture shows Mayor Arthur L. Blakeslee, left, putting a match to the last bond, which is held by the retiring Mayor, Paul H. Todd.

Public Works Officials

Trickle, Trickle.—Boston has inaugurated a novel plan for collecting delinquent water accounts. The secret of the system is to increase the pressure on the citizen by decreasing the pressure on the water. The "flow reduction campaign" was reported as successful, according to *Water Works Engineering*, at a conference of the New England Division of the American Water Works Association.

Swimming Pools.—From October 1, 1935, to October 1, 1937, WPA constructed 387 new swimming pools, improved 128 pools, constructed 1,496 new public wading pools and improved 45 wading pools in the United States.

Airports.—The Bureau of Air Commerce reports that at the beginning of 1938 there were 2,239 airports and landing fields in the United States. In North Carolina there are 27, twelve of which are municipally owned and one of which is an army field. Nine of the 27 are either partially or fully lighted.

Water Works Costs.—In the National Resources Committee report on "Technological Trends and National Policy," Malcolm Pirnie, consulting engineer of New York, writes: "The cost of water for household use for the average small family does not vary greatly from the cost of morning and evening newspapers or a daily street-car ride for the head of the house from his home to his work. When it is reflected that at least half of the investment in the average water works is justified by the fire protection it affords, and that in a city of 100,000 population the cost of furnishing fire-fighting capacity in the water-works system is less than half the cost of maintaining the fire department required to use it, there can be no doubt that municipal water systems contribute as much per dollar of cost to the present standard of urban living as any other commodity or service.

"As a commodity, water should be developed and sold in large volume as one of the least expensive contributions to higher living standards. There exists a definite trend in this
(Continued on page fifteen)

Law Enforcement



IDENTIFICATION DIRECTOR
Mr. Frederick C. Handy, recently named Director of the newly created State Bureau of Identification and Investigation.

What It Takes.—"If you have the wisdom of Solomon, the courage of Daniel, strength of Sampson and patience of Job, the leadership of Moses, the kindness of the Samaritan, the strategy of Alexander, faith of David, diplomacy of Lincoln, tolerance of Confucius and a complete knowledge of criminal law and police procedure, you are a police officer."—So says the Waltham, Mass., police chief, according to *The Robesonian*.

"The Good Old Days."—Sheriff Bill Shely of Nueces County, Texas, writes: "If you'll pardon a pun: crimes have changed. Crimes, and criminals, too, as well as the means of preventing the former, and catching the latter. And I've seen a good deal of that change in a half century of crook catching.

"I can't help thinking of the old days at times—especially when I see my boys loading up their radio-equipped cars with cameras, fingerprint equipment and all the other paraphernalia it takes to catch criminals these days.

"Back in those old days the well equipped ranger carried a six-shooter, a saddle gun and a slicker. The
(Continued on page fourteen)

Shortcuts and Savings

Tax Exemption on Municipal Purchases.—A series of changes in the federal revenue act have opened the way for considerable savings by municipalities. The federal exemptions apply to all goods bought for the "exclusive use of the municipalities or political subdivisions." Many cities thus far have not taken advantage of the federal excise tax exemption.

According to a recent report of the Municipal Finance Officers Association, "Articles frequently purchased by municipalities, on which the federal excise tax is levied, include: gasoline (tax 1c per gallon); lubricating oil (4c per gallon); tires (2½c per pound); inner tubes (4c per pound); trucks (2 per cent of the value); passenger cars and motorcycles (3 per cent of value); radios (5 per cent of value). Exemption has also been allowed on the 1c per ton coal tax imposed by the Bituminous Coal Act of 1937 if the fuel is used for governmental functions, such as waterworks.

"Cities secure the exemption from the dealer who sells them the goods by filing an exemption certificate. Taxes paid in error by states and local governments may be recovered up until four years have elapsed. The exemption is strictly applicable to purchases for governmental use only."

Fire Hydrants.—Cities may save a great deal of money by repairing instead of scrapping old fire hydrants, *The American City* reports. "An old story to many, but new to others, is the repair of water hydrants by bronze-welding. A new fire hydrant costs about \$57. In years past, a damaged hydrant body was worth about \$2.50 as scrap. Today, in Toronto, Canada, the Water Department is reclaiming hydrants for a very small fraction of the cost of a new one. The Water Department has set up two special tables fabricated by welding for this job. The tables are provided with dollies or rollers on which the hydrants can be turned to facilitate welding."

Women in Politics

Are Women a Success in Politics?
—Harold L. Ickes, outspoken Secretary of the Interior, says an unequivocal "Yes."

Raymond Clapper, whose pithy newspaper column is read from coast to coast, says "Not yet," but hastens to add "I don't say they can't be."

Their opinions on this arresting question appear in the May issue of *The Democratic Digest*, publication of the Democratic National Committee.

Secretary Ickes emphasizes at the outset of his article that he is not interested "in the success or failure of women as individuals" but "in the wise selection of policies which women as voters are in a position to determine and command."

"Women as well as men are doubtless qualified to consider all issues," he writes, "but I believe they will be most vitally and immediately affected by the social and economic problems for which we must find a solution."

"These control their everyday life and their personal and domestic well-being. The relief puzzle of the United States has not yet been solved. And the opinion of women on this problem, I feel, may be of greater value than that of men."

"Whose verdict on social security is more important than that of the American woman?" he asks.

Women in Public Office.—The Secretary—under whom more women have held responsible positions in the Interior Department than ever before in its history, incidentally—thinks that women's success in politics should not be based on the narrow criterion of how many jobs they hold, even though there have been "two women governors, four women senators, nineteen members of the House of Representatives, two ministers to foreign countries, directors of Federal bureaus, mayors, police chiefs, legislators, judges, etc." He feels, rather, that their importance lies in the aid they can give in preserving our democratic system by helping "to formulate a new and better conception of the social functions of government."

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Health and Welfare



PUBLIC HEALTH PRESIDENT
Dr. J. A. Morris, Granville County Health Officer, (pictured above), was recently elected President of the North Carolina Public Health Association. Other newly elected officers are: Dr. A. H. Elliott, New Hanover County Health Officer, vice-president; and Dr. Roy Norton, Assistant Director of the Division of Preventive Medicine of the State Board of Health, secretary-treasurer.

Venereal Disease Clinics.—North Carolina, with 105 venereal disease clinics, has more such clinics than any other state in the union, according to Dr. F. S. Fellows, consultant with the State Board of Health. "Each clinic is in charge of a qualified physician and is operated either by an organized county or city health department, or, in the case of a few exceptions, by the county quarantine officer or some interested local organization," according to Dr. Carl V. Reynolds, State Health Officer.

47,000 Receive Aid.—A total of almost \$375,000 was paid to around 47,000 needy aged and dependent children in the State during the month of April. The average April payment to the needy aged was \$9.49, and to children, \$5.70. Nathan H. Yelton, Director of the Division of Public Assistance of the State Board of Public Welfare, said that Guilford County was high in both groups, with 1,121 needy aged receiving \$15,749, and 956 children receiving \$15,749, and 956 children receiving \$15,749.

Here and There

Chain Telephone Calls.—Down in Mecklenburg County, the *Charlotte News* reports that a new wrinkle has been introduced into politics. The idea is to call a person on the telephone and urge that person to vote for a particular candidate, and then to call ten others and urge them to do the same thing. In theory one person would call ten others and each of those ten would call ten each, totalling a hundred, and so on. Just how effective this method of attempting to obtain votes will be remains to be seen.

Full Measure.—Mecklenburg County has appropriated a sum not to exceed \$50 to purchase equipment designed to test the accuracy of drug store scales. The county weights and measures inspector had reported to the commissioners that many drug scales were "far off" and that it was not unusual for customers to receive a smaller amount of a given drug than the doctor ordered. He said further that most druggists approved the inspection and were "grateful" when an inaccuracy was reported to them.

A State weights and measures inspector said that drug scales in Mecklenburg were no better, no worse than those found generally throughout the State. In many cases, the inspector declared, constant handling for many years, and the use of corrosive acids in cleaning the delicate weights were responsible for the "short weights."

Municipal Abattoirs.—According to a survey recently released by the International City Managers' Association and the American Municipal Association, 24 cities in the United States own and operate abattoirs. Five of the 24 are North Carolina cities: Greensboro, High Point, Raleigh, Statesville and Winston-Salem. In almost every instance, the revenues derived from fees, etc., exceed the operating costs. In 1936 the revenues from the Winston-Salem abattoir, totalled \$24,000 as against the operating cost of \$14,000. Four major advantages accrue from the operation of municipally operated abattoirs: (1) the maintenance of sanitary conditions and up-to-date slaughtering equipment at the low-

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Keeping Up with Raleigh

Work of the Probation Commission---Improvement of Secondary Roads

Employment.—The North Carolina State Employment Service reports that the month of April witnessed a steady week-by-week climb in the record of placements, the last week closing with a total of 1,765. This represents a 17% increase over the previous week's record and a 12% increase in April over March.

"On Probation."—Director Harry Sample recently released a report summarizing the activities of the State Probation Commission for the five months, November to March. Of a total of 542 probationers, only 20 have had their parole revoked so far—19 white men, and one negro. Superior and inferior courts have invoked the probation law about equally, with 254 persons being placed on probation by the Superior Courts, and 258 by the general county and recorders' courts.

The offenses for which persons have been placed on probation range in seriousness from nuisance and vagrancy to burglary and manslaughter. The offenses for which persons most frequently were placed on probation were larceny, 156, and violation of the prohibition law, 127. Farming was the major occupation of the probationers with 127 of the 542 listed as farmers. The wide variety of occupations represented by the probationers numbered 72, including one preacher and 17 housewives.

Almost half of the persons placed on probation, or 247, were under 21 years of age. Only one person was over 70. Two hundred and eleven of the 542 had not received any schooling beyond the fifth grade. Two were college graduates. During the five months period, officials and employees of the Probation Commission made a total of 8,199 supervision and investigation contacts by personal interview, telephone, telegraph and letter.

What Is an Employee?—The Un-

employment Compensation Commission of North Carolina recently ruled that where the owners and managers of a barber shop employ a manicurist and shine boys and the remuneration of the manicurist and shine boys is in the form of gratuities or tips, such individuals are employees of the barber shop within the provision of the Unemployment Compensation Act.

Secondary Roads.—The state highway and public works commission has divided \$1,825,000 among the 10 highway divisions for improvement of secondary or farm-to-market roads.

The remainder of the \$2,000,000 appropriated by Governor Hoey from the highway fund surplus for bettering county roads was earmarked for strengthening bridges on the secondary highway system.

This money is to be used to strengthen the weak spots in secondary roads. None of it will be spent on new construction work.

The money, the State Highway and Public Works Commission chairman said, was apportioned on the basis of area, population, road mileage and car registration in the various divisions.

Property Exchange.—The State Division of Purchase and Contract has set up a "Property Exchange" for the disposal and transfer of surplus property among the hundred odd State departments, institutions, and agencies. R. L. Moore, State Property Custodian, reports that practically every agency has an accumulation of this property and that much of the supplies, equipment, and machinery is still serviceable when transferred to agencies needing such items.

When surplus property is found to be obsolete, or unserviceable, or when no use can be found for it, Mr. Moore also looks after its salvaging and sale. The returns from salvaged property which would otherwise be thrown away mount up.

Worn out school bus tires furnish a good example. These have never been saved before, and the State uses about 16,000 of them a year. Since the addition of a Property Department, a plan has been worked out to collect the discarded tires in State Prison food trucks at no extra cost and bring them to Raleigh, where they have a ready market at from 50c to \$1.50 each. Figuring the price at the minimum, the State will net \$8,000 a year out of the salvage of tires, or more than enough to pay all the expenses of its property agent.

This Division also handles the rental of office space for State Departments and agencies and manages the "ERA surplus property" to which the State fell heir with the liquidation of this Federal agency. The ERA office equipment and supplies, of which there was a large quantity, are loaned to any State or Federal agency for use provided they are kept in first class condition, and their use saves the State many thousands of dollars on such items.

The two big needs now, as Mr. Moore sees it, to round out the State's property-control system, are warehouse space for storing the surplus property and records of State agencies and a centralized record or inventory of all items of permanent value owned by the State showing their location, original cost, present value, and when and how they are finally disposed of.

Justice Seawell Honored.—State Senator J. C. Pittman of Sanford held a barbecue dinner last week in honor of Justice Seawell. All associate justices of the Supreme Court, Lieutenant-Governor Horton, Revenue Commissioner Maxwell, Treasurer Johnson and a number of others from Raleigh and Lee County were on hand to join in the celebration.

Keeping Up with Washington

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

Municipal Bankruptcy Act Approved.—The Supreme Court recently upheld the 1937 Wilcox Municipal Bankruptcy Act which provides that insolvent taxing agencies including municipalities and special districts may effect compositions with creditors. A municipality desiring to take advantage of the Act, must file voluntary proceedings in bankruptcy along with plans approved by 51% of the municipality's creditors. It must be shown that the plan has been accepted, in writing, by creditors holding at least two-thirds of the amount of the indebtedness, before the plan of composition can be confirmed.

This is the second municipal bankruptcy act enacted by Congress within the last few years. In 1934 Congress enacted a municipal bankruptcy act in an effort to relieve the heavy strain on debt-burdened municipalities which had sunk into a financial bog during the depression. In 1936 the United States Supreme Court ruled that the act was unconstitutional on the ground that it violated states' rights. In 1937, Congress revised the law to meet the Supreme Court's objections and re-enacted it.

Supreme Court Rejects Circular Ordinance.—The town of Griffin, Georgia, attempted to declare the distribution of handbills a nuisance by an ordinance providing: "That the practice of distributing, either by hand or otherwise, circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold, within the limits of the City of Griffin, without first obtaining written permission from the City Manager of the City of Griffin, such practice shall be deemed a nuisance, and punishable as an offense against the City of Griffin."

The Supreme Court held the ordinance unconstitutional because its

broad character amounted to a denial of the right of liberty of the press. The ordinance is not limited to "literature" that is obscene or offensive to public morals or that advocates unlawful conduct. There is no suggestion that the pamphlet and magazine distributed in the instant case were of that character. The ordinance embraces "literature" in the widest sense.

Five Years of CCC.—Since the inauguration of the CCC program in April 1933, approximately forty-three thousand young men have been accepted for enrollment in North Carolina. During the five-year period an average of 56 camps have operated in North Carolina. At present there are 41 camps in operation. The work programs of the camps are carried out under the general supervision of the various technical agencies of the Department of Agriculture and the Department of the Interior. During 1937 an average of 59 camps were operated in North Carolina: 24 engaged in reforestation projects, 20 engaged in Soil Conservation projects, 2 on TVA projects, 2 under U. S. Biological Survey, 8 camps worked on National Park and Monuments and State Park Areas, 3 on Military Reservations.

Tax Exemptions of Governmental Salaries and Securities.—On April 25, President Roosevelt recommended the extension of the federal income tax to state and local employees, and to the incomes derived from state and municipal bonds; he further urged that states be permitted to tax future issues of federal bonds.

These recommendations have brought forth a storm of both approval and protest.

Today there is in existence a tremendous volume of tax-free securities. Federal securities, wholly exempt from taxation, have more than doubled since 1932, amounting at present to some fifteen billions of dollars. An additional twenty-two

billion dollars worth of federal securities, according to the *United States News*, are partially tax exempt, and between nineteen and twenty billion dollars worth of state and local securities are wholly tax exempt.

Whether or not taxation of governmental securities, and the salaries of governmental employees is wise remains to be decided.

In any case, conservatives contend that such action can not be taken by the federal government without submitting it to the several states as a constitutional amendment.

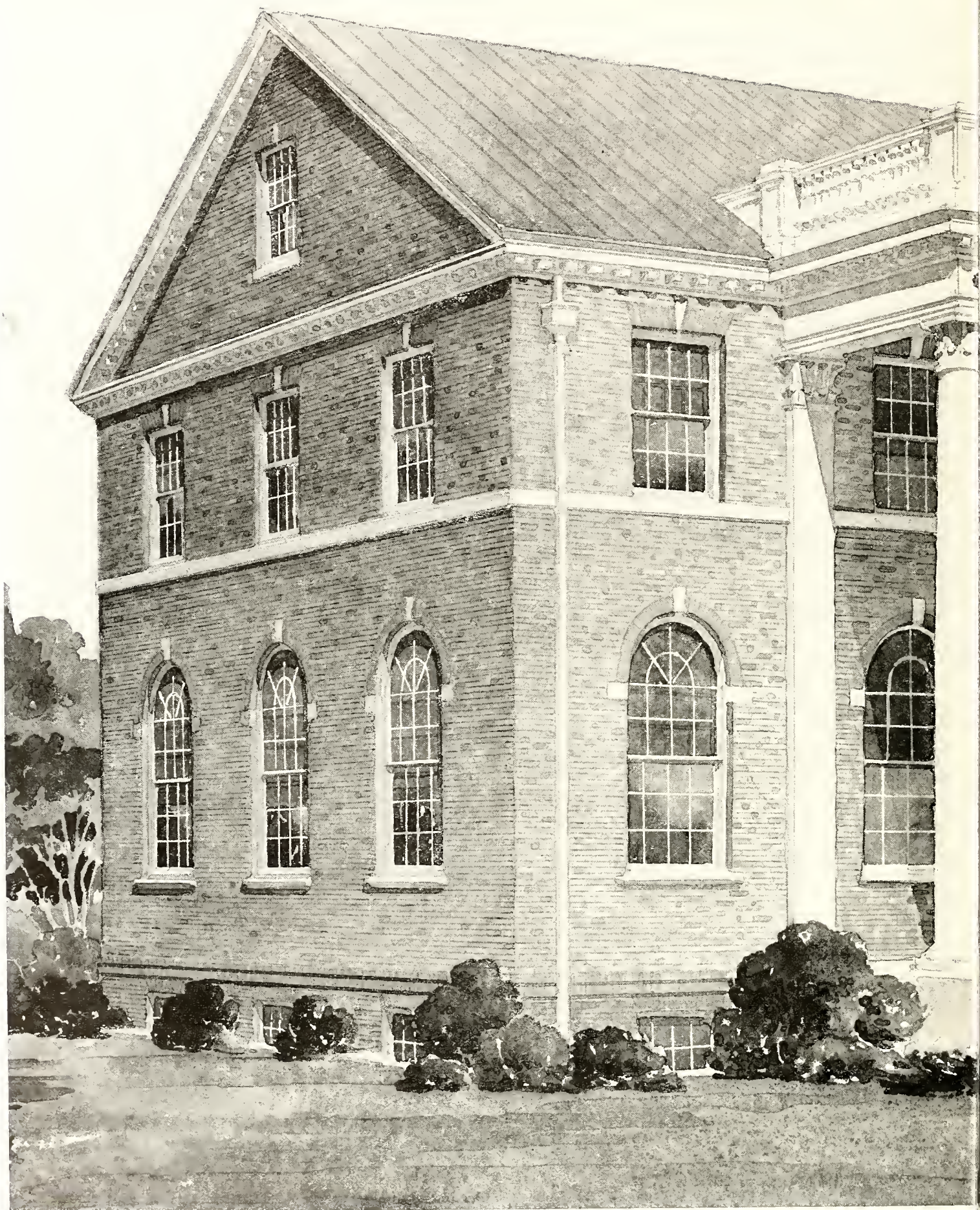
Liberals contend that the recent trend of Supreme Court decisions in tax cases indicates that the constitutionality of an act embodying such principles will be upheld by the court.

Already, a federal constitutional amendment has been suggested to give to the states the power to tax the income derived from all Federal securities and all Federal salaries, and also give to the Federal government the power to tax income derived from all state and local securities and all state and local salaries.



COVER PICTURE

The cover picture this month shows the branch office building of Guilford County recently completed at High Point. This building might be called the 101st County Courthouse. It will not only provide additional office space, but will also enable the county authorities to furnish better service to citizens in High Point and the surrounding area. The branch County office building in the populous High Point area some 16 miles from the County seat fills a long-felt need.





FIREMEN

The North Carolina Fire College and Drill School celebrated its tenth anniversary in Asheville on May 17, 18, 19 with the most successful session in its history. Albert Coates, Director of the Institute of Government, delivering the address at the closing sessions when certificates and diplomas were presented, pointed out three landmarks in the history of organized firemen in North Carolina.

"The first was the year 1887, when a handful of firemen formed the beginnings of an Association which includes 4,000 firemen today.

"The second was in 1914, when the State Insurance Commissioner procured the full-time services of a man to train firemen in local departments throughout the State in the effort to reduce loss of life and property because of fires.

"The third was in 1929 when local fire department training developed into the State-wide fire college and drill school, held annually in succeeding years.

"The remarkable growth of this movement has been due in large measure," said Mr. Coates, "to the inspiring leadership and organizing genius of Sherwood Brockwell, State Fire Marshall, who this year completes a quarter of a century of public service with the State of North Carolina."

The success of this fire school has attained national attention, and the conductor has been called upon to start similar training programs in Maryland, Virginia, South Carolina, Georgia, and Florida, and to give advice to many schools in more distant parts of the country. As in many other fields of endeavor North Carolina has taken the leadership in the field of firemen's training.

Fire Alarm.—The Charlotte Fire Department answered 1,412 fire alarms during 1937—or about one every six hours. Around one out of every eleven alarms was a false alarm. The number of fire alarms per month varied from 65 each for June and August to 195 for March.

Minimum Pay.—A member of the Houston, Texas, fire department recently won a court case wherein he

sought enforcement of a law setting up a minimum salary of \$150 per month for fire fighters in Texas cities of 75,000 or more population. But after the case was won it turned out that the city simply did not have the funds available. So Houston firemen will have to wait a little longer before they will enjoy the full benefit of their legal rights.

State Fire
Marshal



SHERWOOD BROCKWELL

Dilapidated Buildings.— Campaigns conducted by the Fire Prevention Bureau of the fire department and the Bureau of Building and Elevator Inspection in Milwaukee, Wisconsin, resulted in the tearing down of 720 dilapidated buildings, constituting fire hazards, in 1937—making a total of 5,321 buildings torn down in the past ten years as a result of fire prevention campaigns.

JUDICIAL REFORM

(Continued from page four)

election (with privilege of Governor to re-appoint present appointees of the Governor where deemed to be in the "public interest"), reduction of number—maximum schedule of magistrates on township basis; effective safeguard against congestion in populous centers—prohibiting magistrates from trying cases outside their own townships.

As the justices of the peace present were satisfied with the fee system now in force and indicated opposition to any salary system, no bill dealing with compensation has been drawn. However, it is probable that a local-option salary measure, permitting each county, through its legislative representatives, to provide for salaries in lieu of fees, will

LAW ENFORCEMENT

(Continued from page eight)

state paid him \$30.00 a month and gave him his grub—when he was where he could get it. And the state furnished him all the ammunition he could use—at the rate of one cartridge a day, 30 a month.

"With this elaborate outfit the ranger was pitted against horse and cattle thieves, smugglers, revolutionists and border raiders. And he caught them, too, just as a modern officer nails the streamlined crook of today.

"Any sheriff's office today is cluttered up with stolen car cases, forgeries, wife-beatings, and pick pockets. In the eighties there were no cars to steal, few people's pockets were worth picking, and wife-beating—if it existed—came under the head of purely personal business.

"Our routine business was the prevention of horse and cattle stealing and the catching of stage and train robbers. From time to time border raiders and Mexican revolutionists gave lots of trouble.

"Border raiders used to come across the river in bunches of 10 or 15 and scatter to raid. They would show up at a ranch settlement and take everything they could lay their hands on in the way of money, groceries, dry goods, guns, ammunition and other supplies. Then they'd hit for the other side of the Rio Grande, where there was a good market for their loot.

"We did have one big advantage then, though, that the modern officer doesn't have. When the bandits beat us to the river, we didn't come back and wire the governor to wire the Secretary of State to write the Mexican government to ask the Mexican governor to tell the Rurales to catch the bandit and bring him to the exact center-line of the International bridge so we could get him. We just splashed in after him, joined up with the officers on the other side and usually got him."—(Reprinted from the March, 1938, issue of the Texas Sheriffs' Association Magazine.)

be drafted by the Bar Committee. The report of the Bar Committee, and the proposed bill, was approved by the N. C. Bar Association and the N. C. Magistrates' Association at their 1938 meetings.

WOMEN IN POLITICS

(Continued from page nine)

Small Dent.—Mr. Clapper, on the other hand, feels that women have made a "very small dent in politics," considering that they compose half of the electorate and that in many states they were voting prior to their national enfranchisement twenty years ago.

To substantiate his charges, he points out:

"In a Congress of 531 persons, there are now six women. In the forty-eight states just two women have become governors, in each case because their husbands had been governors before them. In appointive office, women have been proportionately rare.

"I don't say women can't go places and do things in politics," he concludes. "All I say is that they haven't!"

GUILFORD EXPERIMENT

(Continued from page one)

missioners must give the licensee an opportunity to be heard before revocation, and appeal to the courts is allowed. The following rules were promulgated by the Board of County Commissioners: The licensee shall: (1) Comply with all the provisions of the above referred-to law; (2) Pay one dollar (\$1.00) for issuance of license; (3) Comply with all State sanitary rules and regulations; (4) Keep a register of all guests if licensee is a tourist camp, hotel or lodging house. The Board also requires that before license may be issued the application must be approved by the Sanitary Officer and Sheriff of Guilford County.

There can be no doubt that the enactment of the statute, and the regulations prescribed by the County Commissioners pursuant thereto, have had a very salutary effect. They have aided the law enforcing authorities in the performance of their duties, and have likewise been of benefit to law abiding citizens.

Sanitary conditions have been improved, and the officers, with a more thorough knowledge of the parties with whom they are dealing, have been better able to cope with the situation in general. Substantial progress has been made in eliminating undesirable conditions and practices which heretofore existed.

COURTS AND RECORDS

(Continued from page seven)

generally. On the second score, a comment from the *Norlina Headlight* shows that the recommendations of a grand jury may still be timely and useful; an editorial refers to the grand jury's suggestion that an audit covering a five-year period be made of the county finances.

County Officer Makes Recommendation as to Jury Compensation.—Down in Wilson County, Clerk of the Superior Court M. D. Owens some weeks ago called to the attention of the county commissioners the fact that \$2 a day, and no mileage, as juror pay, has been a valid cause of complaint from citizens forced to leave their regular employment for jury service. Clerk Owens deserves praise for his outspoken courage.

Whether the juror pay in Wilson County is sufficient or insufficient is not the point. What is significant is that here is a county officer, with convictions, who is willing to advocate changes which his experience commend to him as being advantageous to the citizenship for whom he acts.

TAXATION AND FINANCE

(Continued from page seven)

collection of unintegrated, separate, departmental reports).

Checking on the Property Owner.—A few years ago Congress passed a law, usually called the "Costigan Amendment," which permits local tax assessors to check federal income tax returns to discover unlisted property. The National Association of Assessing Officers reports that Washington, D. C. and Providence, Rhode Island, through use of the privilege of examining federal income tax returns, have added around \$1,000,000 in tax revenues. The information gained through examination of income tax returns is confidential and use of the information for any unauthorized purpose makes the guilty official subject to a stiff fine or prison sentence or both.

\$\$\$\$\$. "The governments of the United States—federal, state, and local—are spending about \$17,400,000,000 a year. Most of this money is obtained through taxes, which yield about \$12,600,000,000, or the

equivalent of about \$100 from every inhabitant . . . No less than 175,000 local government units in the United States, in addition to the several states and the federal government, have the power to levy taxes."—*Report of the Committee on Taxation of The Twentieth Century Fund.*

Exemptions of Household Furnishings.—More than three-fourths of the states now have laws of one sort or another relating to the exemption of household furnishings from property taxation. The exemption laws may be generally divided into five classes according to the character of exemption provided:

- (1) Full exemption in nine states;
- (2) Partial or limited exemptions in 21 states and the District of Columbia, varying from \$50 to \$1,000.
- (3) Limited lump-sum exemption on personal property of all types for all taxpayers, or householders or family heads, ranging, in seven states, from \$100 to \$1,000.
- (4) Limited lump-sum exemptions on personal and real property.
- (5) Exemptions available to persons whose household furnishings do not exceed a specified amount.

PUBLIC WORKS OFFICIALS

(Continued from page eight)

direction by its use in connection with refrigeration and air conditioning, and in swimming pools now being constructed in many communities to offer clean-water bathing as an attractive and much more healthful alternate to the polluted waters of the neighborhood streams, ponds, and shores.

"More than half of the value of all the water works in the country lies buried in the system of distribution pipes, valves, hydrants, meters and other accessories amounting to a total of 1½ billion dollars, the greater part of which is invested in cast iron pipes."

HERE AND THERE

(Continued from page nine)

est possible cost to users; (2) centralization of meat inspection at place and time of slaughter; (3) providing of cold storage space for merchants and farmers; (4) enabling farmers to sell some of their animals locally.

Recent Supreme Court Cases

ATTORNEY AND CLIENT

Disbarment—Crime Against Nature. (A lawyer, convicted of an attempt to commit a crime against nature, was declared guilty of an infamous crime, and the trial judge ordered him disbarred.) **Held**, there was no error in this order, as the courts have the inherent power to disbar "unfit and unworthy" lawyers. This "inherent power" is in addition to the power of disbarment granted the State Bar. *State v. Spivey*, 213 N. C. 45.

CONSTITUTIONAL LAW

Debt Limitations—Constructing Schools. (A county which failed to decrease its debt during the previous year sought to issue bonds to build a necessary high school building, without a vote of the people.) **Held**, such bonds are prohibited as they do not come within the four classes of permitted debt increases named in Art. V, s. 4, of the North Carolina Constitution. Even debts for "necessary expenses," unless the people vote their approval, must be kept within the new constitutional limits. In determining the total "debt," all bonds (even those voted upon) must be counted, with the exception of the four classes of debt named in Art. V, s. 4. In this case, the people must approve the bonds—or they cannot be issued. *Halyburton v. Board of Education*, 213 N. C. 9.

CRIMINAL LAW

Children's Criminal Responsibility—15 Year Old Rapist. (A fifteen-year-old negro boy was convicted of rape and sentenced to die. Defendant claimed protection of the Juvenile Court Act.) **Held**, the superior, not the juvenile, courts have jurisdiction to try 15 year-old boys for capital felonies, and the provision for sentencing boys under 16 to a reformatory is permissive not mandatory. A child under 7 is conclusively presumed to be incapable of crime; a child from 7 to 14 is presumed incapable of crime, but if it is an aggravated offense and the child is shown to know right from wrong, it may be punished; a child over 14 years is treated as an adult, in so far as mental capacity is concerned. *State v. Smith*, 213 N. C. 299.

Search Warrants—Complaint by Officer on Information. (The search upon the warrant issued on affidavit of an officer revealed unlawful possession of liquor.) **Held**, it is not necessary that the person signing the affidavit shall state therein who his informant is; nor is it necessary that the informant make the affidavit. *State v. Cradle*, 213 N. C. 217.

Slot Machines—Gambles Once Removed. (Twelve different types of slot machines were involved in this test of the 1937 slot machine law. In only one of these was there any serious question as to whether the machines were prohibited. In these latter machines the result of each play of the machine was indicated in advance, but upon each play an otherwise unforeseeable "pay-off" for the next play was shown in advance of the succeeding play.) **Held**, the 1937 law is constitutional, there being "a reasonable relation" between such slot machines and those giving a premium of unpredictable value (the evil sought to be prohibited). As "there is a chance to make varying scores of tallies," the element of chance is present in the class of machines debated—

and where this element is present, the operation of the machine may be prohibited as a valid exercise of the police power in seeking to suppress gambling. *Calcutt v. McGeachy*, 213 N. C. 1.

MUNICIPAL CORPORATIONS

Bonds—Electric Power Plant. (A city sought to issue bonds for construction of a power plant without a vote of the people, surplus power to be sold outside the city. The bonds were to be payable solely from the revenues of the electric system, and these were pledged to such payment.



MR. JUSTICE SEAWELL

Associate Justice A. A. F. Seawell, appointed to the Supreme Court bench on April 30, was born on October 30, in 1864. He attended the Jonesboro High School and the University of North Carolina, receiving a Ph.B. degree in 1889. He studied law under Chief Justice Shepherd and Dr. John Manning and was admitted to the bar in 1892. He entered the practice of law in Lee County at Sanford (then part of Moore county). Justice Seawell has been several times a member of the legislature, serving in the House in 1901, 1913, 1915, 1931, and in the Senate in 1907 and 1925. Mr. Seawell played a prominent part in the legislative sessions he attended, serving as a member of the Board of Managers in 1901; as manager of the Lee County Bill in 1907; was active in behalf of the six months high school bill, child labor legislation, and served on several important commissions in 1913; was active along with the late Attorney General Brummitt in securing passage of the state-wide primary law in 1915; and authored the Seawell Act to reorganize the State Banking Department in 1931. In July, 1931, Mr. Seawell was appointed Assistant Attorney General; in 1935 he was appointed Attorney General, and in 1937 he was elected Attorney General which position he held until his elevation to the Supreme Court bench on April 30.

Associate Justice Seawell was married to Bertha Alma Smith April 12, 1905, and has four sons, two daughters, and two grandchildren.

A P. W. A. grant in aid of this project was granted. The city has its own distribution system yielding a \$200,000 annual profit, although it now purchases its power, but the proposed plant and lines (touching three counties) will yield three times the power now needed for the city, its inhabitants, and environs. These bonds, in total, far exceed the amount by which the debt of the city was decreased during the past year.) **Held**, (1) such revenue-producing bonds are not such a "debt" as is prohibited by the constitution ("the special fund doctrine"), (2) the city, under its charter and the Revenue Bond Act of 1935, has no power to issue such bonds, and (3) the city has no power to acquire and construct the proposed electric system. The essence of the holding, apparently is that since a city operates a power plant, not in discharge of its governmental, but in its proprietary, functions, such an enterprise must be operated primarily "for its own use or for the use and benefit of its inhabitants," and not for the purpose of profit or the service of the general public. *Williamson v. High Point*, 213 N. C. 96.

Tax Rate Limitation—Tax to Pay Refunding Bonds. (A city sought to refund its bonded indebtedness, but the tax to pay such bonds would exceed the rate allowed by local law at the time of the refunding though not in excess of the rate allowed at the time the original bonds were issued.) **Held**, the old power governs; otherwise the taxing power pledged in favor of the original bonds would be decreased. Accordingly, in issuing refunding bonds to replace bonds existing when the limitation on tax rates was passed, this limitation is not bonding. *Bank v. Bryson City*, 213 N. C. 165.

Use of Streets—Sledding Producing Injury. (A mother, sledding with her eleven-year-old daughter, ran into a parked car, and was injured. The little girl was on the front of the sled, but the mother was steering. It was at night and the coasting was on a city street. A city ordinance prohibited coasting on a street, but the car struck was not parked in accordance with the parking ordinances.) **Held**, the mother was guilty of contributory negligence in running into a car, parked near a street light, as she purposely kept near the curb in going down the hill at a high speed when she had a twenty-foot clearance on the street. *Grimsley v. Scott*, 212 N. C. 110.

QUASI-PUBLIC CORPORATIONS

Contracts with Power Companies—Objections By Non-Members. (Plaintiffs resided in the area for which a Rural Electric Membership Corporation was organized to serve, but had not succeeded in securing memberships in the corporation. These plaintiffs attacked a compromise agreement made by the corporation giving the power company a monopoly in the area where plaintiffs reside.) **Held**, no right of plaintiffs has been violated, and, since plaintiffs have no standing in court, their action was rightly dismissed. *Bailey v. Power & Light Co.*, 212 N. C. 768.

SCHOOLS

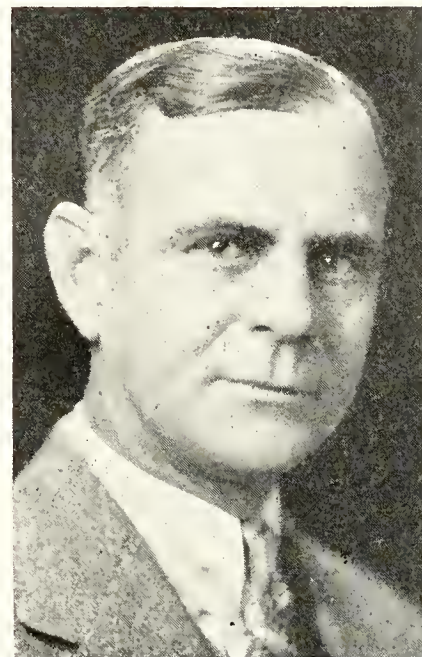
Location—Negro School Near White Residents. (Old white school (no longer used) in a section in which only a few white residents remain was allocated by the school authorities for use as a negro school.) **Held**, the exercise of discretion by the school authorities was not unreasonable, and, therefore, cannot be disturbed by the court. *Messer v. Smathers*, 213 N. C. 183.

Bulletin Service

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



Prepared by
H. W. McGALLIARD of the Staff of the Institute of Government



NEW ATTORNEY GENERAL

Mr. Harry McMullan, appointed Attorney General of North Carolina on April 30, was born on July 23, 1884, in Hertford, North Carolina. He attended Edenton Academy and the University of North Carolina, receiving his LL.B. degree in 1905. After being admitted to the bar in February, 1905, he practiced law for a year in Edenton and then moved to Washington where he engaged in the practice of law from 1907 to 1933. He served as Director of Collections and Assessments, 1933-1934, as Chairman of the Industrial Commission, 1934-1936, and as Assistant Attorney General from 1936 until his appointment as Attorney General last month.

I. AD VALOREM TAXES.

A. Matters Relating to Tax Listing and Assessing.

1. Exemptions—religious and educational organizations.

To P. V. Critcher. Inquiry: The Community Church, Inc., of Davidson County owns a theater building, garage building, and an apartment house—all of which are leased and the income received is devoted to religious purposes. Is this property subject to local ad valorem taxation?

(A.G.) No. Sec. 600(7), 1937 Machinery Act, specifically exempts property held by churches under such circumstances as you describe.

3. Exemptions—property of state agencies.

To Messrs. Harding and Lee. (A.G.) Real property, the title to which is held by the World War Veterans' Loan Fund, is exempt from local taxation.

8. Exemptions—mutual agricultural and marketing associations.

To Vernon W. Flynt. Inquiry: Is real property owned by a local unit of the Grange organization subject to local ad valorem taxation?

(A.G.) In my opinion, the real property owned by this organization is not exempt from taxation.

12. Exemptions—veterans' compensation.

To John C. Gambill. (A.G.) In my opinion, a note held by a World War Veteran, which represents a loan made by him of money received as adjusted compensation, is taxable under the laws of North Carolina.

To Graham K. Hobbs. (A.G.) Property bought by a World War Veteran with bonus money is subject to ad valorem taxation. See *Martin v. Guilford County*, 201 N. C. 633, and *Lambert v. Guilford County*, 210 N. C. 67.

19. To whom property is assessed.

To T. L. Covington. Inquiry: In whose name should automobiles received on consignment, secured by promissory notes, be listed for taxation—the consignor or consignee?

(A.G.) If no title has passed, conditionally or otherwise, the property should be listed in the name of the consignor; otherwise, in the name of the consignee. This is a fact question to be determined on the basis of all the facts of the particular situation in question.

To T. L. Covington. Inquiry: If a dealer claims that certain automobiles he has in his possession are merely being held temporarily—repossessed on account of delinquent payments, but to be returned when the delinquent payments are caught up—in whose name should the automobiles be listed for taxation?

(A.G.) Here again, it is a question of fact. If the dealer has terminated his relationship with the purchaser, then the property should be listed in the dealer's

name. But if the possession amounts to nothing more than temporary storage and detention pending settlement with the purchaser, then the cars should be listed in the purchaser's name.

25. Revaluations.

To A. T. Grant. Inquiry: Is it compulsory under Chapter 291, Sec. 300, of the 1937 Public Laws, that the Board of County Commissioners should horizontally decrease or increase the value of property this year (assuming they choose not to appraise each parcel of property separately)? In other words, is the Board compelled to take some action, one way or the other, or may it, where in its opinion the old appraisal is fair and just, let the old appraisal stand?

(A.G.) It is my opinion, that if the Board shall find, after due consideration, that there has not been any increase or decrease in the general level of real property values in the county, then, upon such finding, they could declare that the present listed valuations of real property shall constitute the value for the quadriennial period, without either a general horizontal increase or decrease.

29. Exemptions—\$300 personal property.

To Warren Watson. Inquiry: Is a taxpayer entitled to a \$300 personal property exemption when his property is listed in three townships?

(A.G.) Under Sec. 601(9) of the Machinery Act, a taxpayer is entitled to exemptions not exceeding \$300 on certain types of personal property. The exemption is not confined to the township in which the taxpayer resides, but may include property of the exempted class, up to \$300, in any township in the county. Furthermore, a taxpayer is entitled to a deduction against all solvent credits listed by him in any township in the county of the full amount of his bona fide indebtedness, whether due or not due within the tax year.

30. Situs of personal property.

To A. J. Maxwell (A.G.) When funds are held by a trustee in bankruptcy for a non-resident of this State, who does not have a business situs in this state, there is no tax liability thereon, under the provisions of Sec. 701, 1937 Revenue Act.

To F. W. McGowan. (A.G.) A non-resident of the state, who holds notes secured by real estate mortgages on property within the state, is not liable to taxation within the state upon such intangibles unless they have been so dealt with as to acquire for them a business situs within the state. The mere fact that the items are secured by real estate mortgages in this state would not serve to fix the situs here.

31. Cotton in bonded warehouses.

To John R. McLaughlin. Inquiry: A cotton merchant has several thousand bales of cotton stored in a local warehouse. He has borrowed on this cotton

an amount equal to 75% of the value of the cotton. May this indebtedness be deducted from the value of the cotton for county tax purposes?

(A.G.) No. The deductions for bona fide indebtedness permitted by Sec. 602(1) of the Machinery Act excludes a deduction of indebtedness except in the case of the original producer of the article named in Item 22 of Sec. 900.

65. Intangibles tax law—1937.

To Messrs. Ervin and Butler. Inquiry: Is a taxpayer entitled to a refund of taxes paid to a county for 1937 on the ground that the State now taxes intangibles?

(A.G.) No. Under the 1937 Revenue Act, there is a period of overlapping during which time intangibles are taxed both by the county and by the State. This is not double taxation, since formerly both the county and the State levied and collected taxes concurrently upon the same source. However, for the year 1938 and following, the power to tax intangibles is taken away from the local units and, thereafter, this is reserved as a subject of taxation by the State only.

To Dan C. Boney. (A.G.) It is my opinion that a building and loan association paying tax under section 138 of the Revenue Act is not liable for taxes on bank deposits and money on hand under the provisions of sections 701 and 702 of the Revenue Act, and is not required to list such property for local taxation.

To A. J. Maxwell. (A.G.) We are of the opinion that credit balances in the hands of brokers should be taxed as "accounts receivable" under the provisions of section 703 of the 1937 Revenue Act.

91. Homestead exemption.

To Roy J. Moore. (A.G.) The amendment to the State Constitution adopted at the last general election abolished the homestead exemption formerly provided by Art. V, Sec. 3 of the Constitution.

92. Credit to hospitals for charity work.

To A. E. Guy. Inquiry: Under Sec. 602, par. 2, of the Machinery Act shall I accept bills for charity cases when the service was rendered in years other than the year for which the tax was imposed?

(A.G.) It is my opinion, although it is not entirely clear, that the General Assembly contemplated, in the provision referred to, off-setting current bills (for services rendered) against current tax bills, and that the hospital would not be permitted to present bills for services rendered in prior years to off-set current taxes.

120. Extension of city limits—time new property subject to taxes.

To Mr. E. F. Redding. (A.G.) Property brought within the city limits by virtue of an act of the 1937 General Assembly, extending the corporate limits, is subject to ad valorem taxation by the town for the present fiscal year.

B. Matters Affecting Tax Collection.

10. Penalties, interest and costs.

To J. H. Price. (A.G.) Under chapter 560, Public Laws of 1933, the interest and penalty on tax certificates is 8% per annum. If the taxpayer, listing personal property, also lists real property which is sold for delinquent taxes, the taxes due by the taxpayer, including poll and personal property taxes, are a lien on the land sold, and if the county is the purchaser at the sale and the tax certificate is issued covering the amount of the taxes or the amount bid at the tax sale, this certificate draws interest at the rate of 8%. If the taxpayer owns no real property which is sold for taxes, but owns only personal property or lists only a poll, the only penalty provided by the 1933 Machinery Act, chapter 204, sec. 805, is a penalty of 4%. The same provisions obtain in 1935, chapter 417, sec. 805, Public Laws of 1935. For taxes, therefore, which have accrued prior to the year 1937, under the above stated circumstances, the only penalty collectible is the 4% charge. The Machinery Act of 1937, sec. 1403, subsec. 8, imposes a penalty, in addition to the 4% penalty, on delinquent taxes which are not included in a certificate of sale, of one-half of 1% a month, or 6% per annum. Therefore, on personal property taxes or poll taxes which are not included in a tax certificate of sale, in addition to the 4% penalty, interest can be charged at the rate of one-half of 1% a month, or 6% per annum.

18. Delinquent taxes—who may collect.

To W. L. Matheson. Inquiry: May the Board of County Commissioners, by a proper resolution, confer upon the assistant clerk of Superior Court the duty of collecting delinquent taxes?

(A.G.) In my opinion, this procedure would be proper.

28. Payment of tax by mortgage.

To John R. McLaughlin. Inquiry: A mortgagor of real property listed the mortgaged property with his personalty

for taxes for the years 1935 and 1936. The mortgagee foreclosed and bought in the land. The mortgagor subsequently moved out of the county, taking his personalty with him. The 1935 and 1936 taxes remain unpaid. Does the tax lien against the real property include the tax due on the personalty?

(A.G.) We are of the opinion that in order to release the real property in this case from the tax lien to which it is now subject, it will be necessary that the mortgagee pay all of the property taxes assessed against the mortgagor during the years in question.

31. Tax collection and foreclosure—procedural aspects.

To L. T. Hammond. Inquiry: Tax foreclosure actions have been instituted against a piece of property for 1931, 1932 and 1933 taxes, starting a separate action each year for the town and county, making a total of six actions. Recently, I sold this piece of land using the 1932 county foreclosure to sell under. At the sale I received a bid covering all taxes due on the land for both town and county. The time has not expired for confirmation, and the property owner now wants to pay the 1932 taxes and costs for the county and thus stop the sale. Am I compelled to accept this, or may I force him to pay all the taxes and costs due for 1931, 1932 and 1933?

(A.G.) Since the time has not expired for the confirmation of the sale of the property referred to, wherein the tax foreclosure action was brought only upon the tax sale certificate for the 1932 tax, we are of the opinion that the property owner would have the right to come in and pay the tax and costs of the action, and it would then be your duty to dismiss it. We suggest that your only remedy, at this time, would be to institute an action covering subsequent years. Of course, chapter 560 of the Public Laws of 1933, limits the court costs to \$6. This is still the law, and we advise further that unless the sale referred to in your inquiry is confirmed, you would not be entitled a commissioner's fee for the sale of this property.

To J. W. Ellis. Inquiry: Does a municipality have the right to proceed with a tax foreclosure suit where a decedent's estate is involved and is in the process of administration—assuming, of course, that there is no personal property belonging to the estate?

(A.G.) Yes. The administrator is required to pay the taxes due on the estate under the provisions of C. S. 7985. This section provides in part: that if the administrator permits such property to be sold by reason of his negligence to pay the taxes when he has funds in hand, he shall be liable for all actual damages incident to such neglect. In the foreclosure proceeding, the administrator should, of course, be made a party defendant.

To J. W. Ellis. Inquiry: Under C. S. 93, upheld in the Bourne case, 205 N. C. 337, taxes constitute a third class lien. If the estate of a decedent is sold, to make assets and the property does not bring an amount sufficient to pay the taxes, is the tax lien thereby discharged?

(A.G.) The lien of taxes held by a county or city is in no manner discharged by anything except payment in full of the taxes or the completion of a foreclosure sale under the provisions of the tax foreclosure act, or in accordance with the other provisions of law. A sale by the administrator to make assets, which fails

to produce a sufficient sum to pay the taxes, does not discharge the portion of the taxes unpaid, and the purchaser at the administrator's sale would not secure a title to the property freed from the lien of unpaid taxes.

To W. H. McElwee. Inquiry: In suits brought on tax sales certificates under Sec. 8037 (Michie), must a six-months notice of pendency of a suit be published in a newspaper in cases where personal service on each defendant is had?

(A.G.) We are of the opinion that the general advertisement referred to in the statute is necessary in addition to the personal service process required under Sec. 8037.

To J. Shepard Bryan. (A.G.) In the law as it now stands it is provided that "any party to an action desiring to claim the benefit of notice of lis pendens, whether given formally under the article or in the pleadings filed in the case, shall cause such notice to be cross-indexed by the Clerk of Superior Court in a docket to be kept by him," etc. And in Sec. 502 it is provided: "From the cross-indexing of the notice of lis pendens, only, is the pendency of the action constructive notice to a purchaser or encumbrancer of the property affected thereby . . ."

33. Statute of limitations.

To Fred P. Parker, Jr. (A.G.) There is no statute of limitations which may be pleaded against the county in an action to foreclose the lien of taxes authorized under C. S. 7990.

To Mr. Ira T. Johnston. Inquiry: Is an action upon a tax certificate of sale of land barred in two years from the date of the certificate if within two years an act is passed by the General Assembly, extending the time in which to bring action upon such certificate?

(A.G.) No, it was held in the case of Wilkes County v. Forrester, 204 N. C. 163, that a tax certificate which had been barred by the statute of limitations could not be revived by an act of the General Assembly, extending the time in which to bring action upon such a certificate. The court intimated, however, that if the prior statute had not already barred the action at the time the second statute had been enacted, the second statute extending the time in which to bring action would be valid. To the same effect is McIntosh on Practice and Procedure, page 105.

36. Tax foreclosure—estates by entirety.

To Albert M. Noble. Inquiry: May the county collect personal property tax owed by a taxpayer from land held by the taxpayer and his wife as an estate by entirety?

(A.G.) We are of the opinion that to attempt to sell such property to secure payment of taxes owed by only one of the owners is prohibited.

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

To Ira T. Johnston. (A.G.) Under Chapter 245 of the 1935 Public-Local Laws, it is competent for the commissioners of Ashe County to accept notes for taxes. Accepting notes is in some instances of doubtful value, but the acceptance of quite a number of counties has been very favorable in this respect.

65. Tax collection—garnishment.

To H. L. Sanders. (A.G.) C. S. 8004 (a) specifically provides that the wages of state employees may be garnished for taxes.

To William G. Royster. Inquiry: If a taxpayer is delinquent in the payment of his taxes for a period of several years, can the tax collector garnishee rents from his property for all of the delinquent years?

(A.G.) We know of no statute of limitations in this connection, and we are of the opinion that the tax collector under this statute could garnishee rents from the taxpayer's property for all the delinquent years. However, we think that this is a matter about which you should consult your city attorney before taking action.

77. Tax collection—priority of lien.

To Messrs. Ratcliff, Hudson and Ferrell. (A.G.) We are of the opinion that, under Section 812 of the Revenue Act, C. S. 7987 is repealed insofar as the lien therein prescribed for taxes affects taxes due the State, and that the lien for state taxes is of no greater dignity than that prescribed by Section 812 of the Revenue Act. That is to say, the lien for state taxes will attach to real estate of a taxpayer only from the date of the recording of the order or certificate of the Commissioner of Revenue, and then only from the date of the docketing of such certificate in the office of the Clerk of the Superior Court of the county in which the taxpayer has property.

102. Refunds.

To J. C. Gambill. (A.G.) Under the general authority of the County Board of Commissioners, if it were found that an honest mistake had been made in double listing property, the power of the Board to make a refund would not, in my opinion, be questioned.

103. Special attorney to handle tax foreclosures.

To W. L. Russell. (A.G.) A county may employ a special attorney to handle tax foreclosures if it so desires.

III. COUNTY AND CITY LICENSE OR PRIVILEGE TAXES.

A. Levy of Such Taxes.

11. For hire cars and transfer trucks.

To Messrs. Hamilton and McNeill. (A.G.) In our opinion C. S. 2787(36), specifically providing that municipalities may license and regulate persons engaged in the taxicab business, is superseded by chapter 407, sec. 61, of the 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. Subsection (b) of section 61 further emphasizes the prohibition against the levying of "additional franchise tax, license tax, or other fee" by counties, cities and towns.

11. Privilege license—beer and wine.

To N. C. West. Inquiry: Is it mandatory that the governing body of a municipality issue a license (to sell beer and wine) to any person demanding the same and tendering the license fee, even though formerly a public-local law prohibited it?

(A.G.) Yes. Under Sec. 513 of the 1937 Revenue Act, issuance of such a license is mandatory provided the conditions set forth in Sec. 511 are complied with. The act permitting sale of wine and beers repeals former public-local laws.

B. Collection of License Taxes.

25. Fees for collection.

To J. L. Cornwell. Inquiry: Should a

sheriff receive a commission for collecting county Schedule "B" taxes?

(A.G.) Under C. S. 1322, 8042, sheriffs and tax collectors are entitled in addition to other fees and salaries received by them, to a commission of 5% on all privilege and license taxes collected by them under Schedule "B" of the Revenue Act.

IV. PUBLIC SCHOOLS.

A. Mechanics of Handling School Funds.

9. Sale of school building site when no longer needed.

To John D. Warlick. (A.G.) Under C. S. 5470(a) the County Board of Education has authority to sell property no longer needed for school property. The time when such sale should be made is within the sound discretion of this board. Permanent use of the building as a community center after it is no longer needed for school purposes is probably not authorized under the law, but there seems to be no objection to permitting a temporary use of the building for such a purpose until the board sees fit to dispose of the property.

15. Conformance with budget.

To Clyde A. Erwin. (A.G.) The county commissioners do not have any authority to transfer money from any surplus of the current expenses fund to the capital outlay fund to construct a music practice room on the site of the school building.

B. Powers and Duties of Counties.

17. Apportionment of funds.

To J. N. Hauss. Inquiry: What is the method for disbursement of funds when taxes are levied for capital outlay to supplement State funds?

(A.G.) Sec. 20 of the 1937 School Machinery Act provides the method for paying out such funds. Subsection (2) directs that all county and district funds shall be paid out only on warrants signed by the Chairman and Secretary of the Board of Trustees for city administrative units, and countersigned by such officer as the county government laws may require.

To Wiley M. Pickens. Inquiry: What is the basis for the apportionment of current expense funds and capital outlay funds between a county board of education and the trustees of a city administrative unit in the county?

(A.G.) Sec. 15 of the 1937 School Machinery Act provides that, "All county-wide current expense school funds shall be apportioned to county and city administrative units and distributed monthly on a per capita enrollment basis. All county-wide capital outlay school funds shall be apportioned to county and city administrative units on the basis of the budgets submitted by said units to the county commissioners and for the amounts and purposes approved by the commissioners . . ." Where a county Board of Education fails and refuses to make a settlement with a city administrative unit, the remedy would probably lie in the courts in a mandamus proceeding.

25. Use of county funds.

To R. B. Phillips. Inquiry: Mitchell County has on hand an unused general county surplus fund of \$14,000. The County Commissioners and the Board of Education want to use this money to erect a new school building. May this lawfully be done?

(A.G.) If the purposes for which the taxes were levied for the general fund have been fully served and after that

there remains an unexpended and uncommitted surplus of \$14,000, it is my opinion that the Board of Commissioners would have the power to transfer this fund and use it for the purpose of building a school building necessary for the operation of the six-months school term. The Commissioners would undoubtedly have the right to levy taxes for this purpose, and having that right, they would also have the right to expend available surplus funds which they now have on hand.

To Jack W. McMahon. Inquiry: How can a police officer lawfully hold a person for investigation?

(A.G.) I know of no law which permits an officer to arrest a person on a technical charge for investigation and hold such person without bond. For a full discussion of the duty of law enforcing officers in making arrests, with or without warrant, I would refer you to the Guidebook for Law Enforcing Officers in North Carolina, published by the Institute of Government in two parts, Part I and Part II. I believe that you would find them very valuable to you in instructing your officers.

H. School Health Laws.

5. Compulsory vaccination.

Messrs. Ervin and Butler. Inquiry: May a County Board of Health require pupils entering school in 1938 for the first time to furnish a certificate or other satisfactory evidence of successful vaccination against smallpox and immunization against diphtheria, and exclude from the public schools those not complying with such a regulation.

(A.G.) Yes. C. S. 7162 expressly authorizes such procedure with reference to smallpox. Perhaps it would be wise also to include acceptance of evidence of a previous attack of smallpox. There is no express statutory authorization with reference to diphtheria immunization. However, C. S. 7065 sets forth a general power which would seem to include the right to make this regulation. Compare *Hutchins v. School Com.*, 137 N. C. 68. C. S. 5545 requires school authorities to obey the rules and regulations promulgated by the Board of Health.

I. School Property.

11. Proceeds from sale of school property.

To J. H. Rose. (A.G.) C. S. 5470(a) provides that when any schoolhouse site or other public school property has become unnecessary for public school purposes, the property may be sold at public auction, in the manner therein provided, and the statute provides specifically that the "proceeds (from such sale) shall be paid to the treasurer of the county school funds."

14. Coverage by fire insurance.

To Clyde A. Erwin. Inquiry: Who is responsible for the payment of insurance premiums on school buildings located in city administrative units, title to which is vested in the Board of Trustees of such unit?

(A.G.) I think it is a clear intent of the law that the local governing board should pay the insurance charges out of the expense funds which are apportioned to the administrative unit under Sec. 15

of the School Machinery Act. I think that this is equally true when title to the school property in the unit is in the County Board of Education.

V. MATTERS AFFECTING COUNTY AND CITY FINANCE.

A. Refinancing.

3. Agreements with bondholders.

To John A. Guion. Inquiry: The county has appointed a committee to work out an agreement with bondholders for refunding bonds, exchanging them and declaring the agreement operative. This the committee has proceeded to do, but one bondholder refuses to act with the committee. May the county negotiate with this bondholder on different terms than those of the committee agreement which has been accepted by many bondholders?

(A.G.) (1) In case the county attempted to deal separately with bondholders who refused to accept the committee plan, it could not be restrained from making settlements with them by bondholders who accepted the plan. (2) The county without being embarrassed by the acceptance of the committee agreement by certain of the bondholders may now deal with those who are standing out under conditions which might be more favorable to these bondholders than those proposed in the accepted plan. (3) By dealing separately with bondholders who refuse to come under the committee agreement, the county would not be liable in damages to the committee or to other accepting bondholders. This opinion is advisory, and not official.

B. Defaults.

10. Funds applicable to defaulted interest and debt service.

To C. H. Twiddy. (A.G.) When school bonds provide that the interest shall be paid thereon from date until paid, interest must be paid upon the bonds after their maturity, just as before their maturity, down to the actual date of the payment of the bonds. The payment of such interest by the debt service treasurer requires no more authorization than he originally had to pay interest before the bonds matured. A suit by the bondholders to recover interest would be brought against the unit issuing the bonds. The board of trustees would, of course, be named in such a suit. The treasurer would not be a proper party to the suit unless he had funds in hand for making the required payments and refused to apply them.

12. Payment of interest on past due bonds where coupons not paid.

To W. T. Ralph. (A.G.) Where municipal bonds carry coupons representing the interest, which coupons have not been paid, the town is liable for the interest on these coupons from their maturity. Where all the coupons have been paid or have become delinquent, then only would the question arise as to accrued interest. In my opinion, where the bond requires the interest to be paid annually, and it is not so paid, the interest may be compounded, notwithstanding the fact that it is not represented by a coupon.

1. Issuance of Bonds.

2. Debt limitation amendment.

To S. R. Hoyle. (A.G.) If a town has not reduced its indebtedness in the sum of \$4,500 during the past fiscal year, it cannot issue bonds in the sum of \$3,000 without submitting the question to a vote of the people.

VI. MISCELLANEOUS MATTERS AFFECTING COUNTIES.

B. County Agencies.

10. A. B. C. boards and stores.

To J. B. Boyce. Inquiry: May a county A. B. C. store be located within 105 feet of a church?

(A.G.) There is nothing in the A. B. C. Act, chapter 49 of the 1937 Public Laws, which prohibits the selection of such a site for the location of an A. B. C. store. The site of the location of the store is within the A. B. C. board's discretion, and you would have to determine whether or not the location of a store within the proximity of the church would be inimical or hurtful to the morals and religious sentiment of the community.

30. County agricultural society.

To Thad Eure. Inquiry: Must a county agricultural society file an incorporation certificate with and pay a filing fee to the Secretary of State?

(A.G.) No. Under Secs. 4941-4948 (Michie), relating to such societies, there is no requirement for the filing of an incorporation certificate with the Secretary of State.

D. Liability for Tortious Acts and Negligence.

1. Torts of law enforcing officers.

To Fred P. Parker, Jr. Inquiry: Is a county liable for the tortious acts of the sheriff and his deputies?

(A.G.) No. As to a county, I know of no case at all rendering the county liable for a tort on account of the negligence or misconduct of its officers. It does not make any difference whether the law enforcing officers are on a salary basis and allowed travel expenses and the use of their own personal cars or otherwise. See *Threadgill v. Commissioners*, 99 N. C. 353, and *Bell v. Commissioners*, 127 N. C. 85. It is true, of course that such officer would be personally liable for his torts. The county commissioners are not personally liable, however, unless they are guilty of gross negligence, amounting, in fact, to bad faith. See *Hipp v. Ferrall*, 173 N. C. 167.

G. Support of the Poor.

5. Old age assistance.

To Mrs. W. T. Bost. Inquiry: A person who was a legal resident of X county, receiving \$12 per month as old age assistance in X county, moved to Y county. After three months Y county began to pay this person from old age assistance funds. Three months later the person became ill and hospitalization was required. Which county is responsible for the hospitalization?

(A.G.) X county is responsible because no legal settlement has been gained in Y, and a person is eligible for outside poor relief for one year after leaving a county under the state settlement laws, which is quite unaffected by the old age assistance laws.

6. Dependent children.

To Mrs. W. T. Bost. Inquiry: Should aid to dependent children be awarded when the children are stepchildren and the stepfather fails to provide support?

(A.G.) No. There is no legal liability on the part of the stepfather, but, in my opinion, there is such a moral obligation that the aid should be denied.

To Mrs. W. T. Bost. Inquiry: Would a child living in the home of a woman who adopted the child's mother be eligible for aid under the Aid to Dependent Children Act?

(A.G.) Yes, such a child would be within the terms of the act. Even the illegitimate child of an adoptive daughter residing with the adoptive daughter's mother would be eligible.

Z. Workmen's Compensation.

20. Group insurance.

To Fred P. Parker, Jr. (A.G.) I know of no reason at all why the employees of a county may not legally buy group insurance. That is a matter with the insurance companies which propose to sell the insurance.

VII. MISCELLANEOUS MATTERS AFFECTING CITIES.

J. What Constitutes Necessary Expenses.

9. Community house.

To S. R. Hoyle. (A.G.) The building of a 'community house' by a municipality is not a necessary expense within the meaning of Art. VII, Sec. 7, of the Constitution.

15. Parking lots.

To H. C. Wilson. (A.G.) A municipal parking lot would not be a necessary expense or for a necessary purpose so as to permit a municipality to establish one without a vote of the people. One could be established only under legislative sanction, coupled with a vote of the people approving it. Furthermore the municipality is not authorized to rent a lot from the owner and sub-let it to other individuals to operate as a parking lot, and it could not join with other organizations in setting up parking lots.

N. Police Powers.

20. Regulation of trades and businesses.

To A. G. Qualls. (A.G.) C. S. 2787(36) authorizes a town to adopt an ordinance requiring taxicab operators to procure liability insurance, before operating on the streets of the town. The statute was upheld in *Watkins v. Isley*, 209 N. C. 256. We also think that the town could adopt a valid ordinance regulating the parking of taxicabs in certain sections of the city.

To John B. Lewis. Inquiry: May a town board of commissioners adopt an ordinance making it a misdemeanor for any person to change his residence within the city limits without registering his name and address with the city police department?

(A.G.) In my opinion the police powers of a town are not sufficiently extensive to authorize the adoption of such an ordinance.

VIII. MATTERS AFFECTING CHIEFLY PARTICULAR LOCAL OFFICIALS.

A. County Commissioners.

31. Appointive powers.

To T. W. Ferguson. Inquiry: When a duly elected constable vacates his office by death, how is the vacancy filled?

(A.G.) Under C. S. 975, it is the duty of the county commissioners to appoint a constable to fill a vacancy, "who shall be qualified and act until the next election of constables."

B. Clerks of the Superior Court.

1. Salary and fees.

To A. L. Hux. Inquiry: May fees in addition to the regular \$3 for the recording of incorporation certificates be charged for the recording of by-laws of a Credit Union?



Virginia children watching a school play. Courtesy Virginia State Chamber of Commerce.

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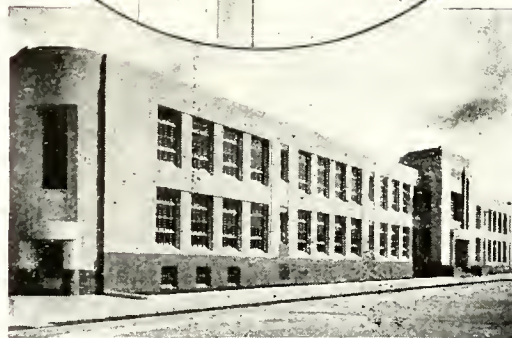
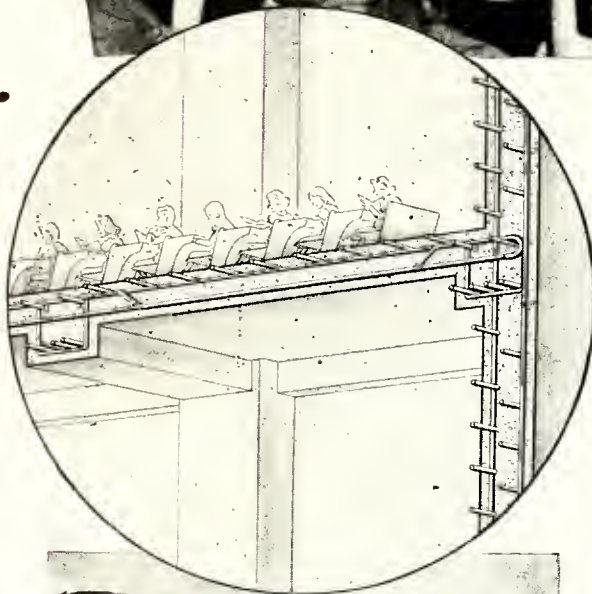
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(A.G.) No. Under C. S. 5212, the recording fee is limited to \$3 in the case of a Credit Union.

2. Fees of commissioners in special proceedings.

To W. H. Young. Inquiry: Does Sec. 766(a) (Michie's Code) repeal Sec. 3896 as regards fees of commissioners in special proceedings?

(A.G.) Yes, because it appears that the two laws are in conflict and the 1923 act supersedes Sec. 3896.

12. Costs in suits in forma pauperis.

To C. B. Skipper. Inquiry: May a person sue for alimony in forma pauperis?

(A.G.) It is not necessary for the plaintiff in an alimony suit to give any undertaking to secure such costs as the other party may recover. The process tax shall not be demanded of a person suing in forma pauperis. *Morris v. Rippey* holds that C. S. 494, by allowing a person to sue as a pauper, excuses such party from paying fees to any officer, deprives him of the right to recover costs, but does not excuse him from liability for his witnesses.

27. Appointment of guardians.

To Roy R. Blanton. (A.G.) An examination of C. S. 2286 discloses that the certificate of a superintendent of a hospital such as those therein referred to "shall be sufficient evidence to authorize the appointment of a guardian." However, we do not think that this statute would require the clerk of court to have such certificate before him when it becomes necessary to appoint a guardian ad litem in a case where an incompetent person is the defendant in an action. This is especially so in cases where the clerk has himself adjudged such person to be incompetent.

To John R. Morris. (A.G.) Where a judge orders a defendant to pay one-half the costs for a city traffic ordinance violation, only 50% of the fees provided in chapter 49 of the 1937 Public Laws (for Identification Division and Law Enforcing officers pension fund) should be collected.

79. Decedents' estates — distribution and administration.

To W. H. Sawyer. Inquiry: May aliens take property by descent in North Carolina inasmuch as Chapter 243 of the Public Laws of 1936 purportedly repealed not only the sections covering adoption laws, as was manifestly intended, but also, apparently inadvertently, included in the repealing clause the section dealing with the right of aliens to take property by descent?

(A.G.) We feel certain that the purported repeal of the statute relating to aliens would be construed to be a clerical error which the courts could correct and hold the statute relating to aliens not to be repealed.

To W. H. Young. Inquiry: If a personal estate amounted to only \$300 in value, would the widow receive the whole amount as her year's support to the exclusion of children not living with her?

(A.G.) Yes. C. S. 4108 authorizes the widow's allowance. C. S. 4111 provides for an allowance to the children when the intestate leaves no widow. The widow is not entitled to an allowance for children not living with her, (C. S. 4110, *Holloman v. Holloman*, 125 N. C. 29), or for her intestate husband's children living with her

if she refuses to support them—in which case money for the children is paid to their guardian. In *re Stewart*, 140 N. C. 28.

C. Sheriffs.

1. Fees.

To O. L. Williams. (A.G.) It is provided in C. S. 3908 that for every notice of execution made by the sheriff, either in a civil or criminal action, he is entitled to a fee of 50c. It is further provided that any collections made by him by virtue of the execution, or any collections received from the defendant by the plaintiff while the execution is in the sheriff's hands, entitles him to a fee of 2½% of the amount collected or paid. For levying an attachment, the fee of the sheriff under Sec. 3908 is \$1. For levying upon personal property for the purpose of collecting a judgment, the sheriff would be entitled to a 2½% commission on the amounts collected, as above stated.

45. Term of office.

To F. D. B. Harding. Inquiry: Under chapter 241 of the 1937 Public Laws, will a sheriff elected this fall be entitled to hold office for four years if the proposed constitutional amendment extending the term is adopted at the same election?

(A.G.) No. The proposed amendment, if ratified, would not take effect until certified by the Secretary of State. Hence, a person elected prior to such certification would hold office under the terms of the existing constitutional provision.

D. Register of Deeds.

5. Probate and registration.

To William B. Campbell. Inquiry: Does photostatic reproduction of an instrument constitute 'registering' within the meaning of, and so as to fully meet the requirements of the registration laws?

(A.G.) Although statutes do not expressly authorize the use of photostating process except as to certain maps and documents of like character, and the court has not passed on the question, it seems probable that a photostatic reproduction would fulfill the requirements of the registration laws.

25. Index.

To John Davis Larkins, Jr. Inquiry: Under C. S. 3561, is it necessary that a landlord's waiver of lien be indexed?

(A.G.) In my opinion, the waiver of the lien of the landlord would not be required to be indexed under this section. The landlord conveys no property, but merely waives the benefits conferred by statute. It might be that if a landlord joined in an instrument itself as grantor and executed it as such, it would be necessary to comply with C. S. 3561.

L. Local Law Enforcement Officers.

28. Liquor advertising.

To Schloss Porter Advertising Co., Inc. Inquiry: Can whiskey lawfully be advertised anywhere in North Carolina?

(A.G.) Chapter 398 of the 1937 Public Laws provides that it shall be unlawful for any person, firm or corporation to advertise any of the alcoholic beverages described in the 1937 liquor control act.

31. Lotteries.

To E. D. Kuykendall. Inquiry: An admission fee of 25c is charged to a room in which 'bingo' is played. A person may play a maximum of 25 games, and each winner is awarded a prize. Would this transaction violate the lottery laws?

(A.G.) Yes. In my opinion, the game

or transaction is a lottery offensive to the state lottery laws.

To L. J. Phipps. Inquiry: Certain bottlers operating in this territory are using what is commonly known as 'flicker crown'; that is, certain crowns contain the figures 5c, 10c, 25c, 50c, or \$1. These crowns are redeemable by the merchant and in turn by the bottler, according to the figures appearing on the crown. Does such a practice constitute a violation of the lottery and gambling laws?

(A.G.) Yes, such a transaction would violate the lottery and gambling laws.

38. Automobile drivers' license act.

To R. Ray Ingram. Inquiry: Is it mandatory under C. S. 2621(171) that prison sentence be imposed upon conviction of operating a motor vehicle while the operator's license has been suspended or revoked?

(A.G.) The language of the statute, "shall be punished by imprisonment for not more than six months," would indicate that the court would be required by the very terms thereof to invoke some term of imprisonment where there has been a conviction.

41. Operating vehicle while intoxicated.

To R. Ray Ingram. Inquiry: A minimum punishment of a \$50 fine or 30 days imprisonment is provided for conviction of operating a vehicle while under the influence of intoxicants. Is any minimum punishment prescribed for a second offense?

(A.G.) No. The maximum is raised in the case of a second offense, but the statute fails to prescribe any minimum punishment.

47. Punishment of offenders.

To A. Pilston Godwin. Inquiry: Is it proper in case of motor vehicle law violations resulting in personal injuries, to take into account medical and hospital bills and order them to be paid by the convicted defendant?

(A.G.) I think, of course, that the use of the criminal docket to collect civil debts is a thing that should be carefully avoided. There are cases, however, particularly those showing a deliberate intention to injure, or gross negligence resulting in injury in which it has been not considered amiss by our wisest judges to take into consideration reparation by the convicted party as an element in considering the character or magnitude of the sentence to be imposed.

50. Bail bonds.

To John C. Harris. Inquiry: Under Chapter 257 of the 1937 Public Laws requiring that an officer immediately inform a person on taking him into custody as to the charge against him, have bail fixed in a reasonable sum, if he is not charged with a capital offense, and permit him to communicate with counsel and friends, what is the officer's duty?

(A.G.) The arresting officer is not required to go out of his way for the purpose of finding someone who will give bond for the defendant. The requirement that the officer give the arrested person the right to furnish bond does not mean that the arrested person must be released or that the officer must go with him for the purpose of getting a bond. The same principles hold true with reference to the defendant's communicating with friends. The officer must permit him to communicate with friends if means of communication are readily available, but the officer need not go in search of friends for him. In any case when a person is taken into

custody on a charge of drunkenness, the arresting officer is not required to permit the defendant to give bond and be released prior to the time when he becomes sober.

60. Powers of an officer.

To Thomas M. Duckett. (A.G.) A constable elected in a particular township may serve process anywhere in the county.

To W. D. Hines. (A.G.) A township constable may make arrests anywhere in the county. See *State v. Corpening*, 207 N. C. 805.

To J. J. Johnson. Inquiry: May a Highway Patrolman require an automobile to stop at a weighing station for inspection purposes?

(A.G.) Even though there is no specific language which would require such, the duty of motorists to stop upon signal by such officer is implied from the very fact that certain officers are out on the highways of the state for a specific purpose, that is to say, to enforce the motor vehicle laws.

To N. C. West. (A.G.) State Highway Patrolmen have state-wide territorial jurisdiction to make arrests.

100. Witness fees and rewards.

To J. L. Newborn. Inquiry: Under a statute requiring the county commissioners to pay to the capturing officer the sum of \$5 for the capture of each distillery captured in the county, would it be lawful for the commissioners to order such sum to be included in the costs of a criminal proceeding against the person operating the still?

(A.G.) We do not think your commissioners could lawfully require that this item be added to the bill of costs in a criminal proceeding where a person has been convicted of a violation of the prohibition laws.

103. Benefit funds.

To George Ross Pou. Inquiry: Who will be eligible for aid under chapter 349, 1937 Public Laws, setting up a "law enforcement officers benefit fund?"

(A.G.) Under this statute, in my opinion, those only are eligible to participate in this fund (a) who are dependents of officers killed in the discharge of their duty, and (b) such officers as are seriously incapacitated as the result of injuries incurred in line of duty.

P. Officials of Recorders and County Courts.

3. Qualifications of recorder.

To E. A. Maultsby. Inquiry: Is a statutory requirement that a judge of recorder's court be a lawyer in good standing constitutional?

(A.G.) Some public-local laws provide that the recorder must be "a lawyer in good standing with the North Carolina Bar, Inc." But the case of *State v. Bateman*, 162 N. C. 589, construing Art. VI, Sec. 7, of the State Constitution, held that the General Assembly could not impose the requirement that a recorder be a licensed attorney-at-law.

4. Appointment.

To R. I. Mintz. Inquiry: May a member of the Board of County Commissioners vote for himself to fill the position of judge of the county court?

(A.G.) I am convinced that a county commissioner has no right to vote for himself in such a case, and that if his vote is necessary to his election, I think the better opinion is that such election would not be sustained by the courts. Such a transaction, in my judgment, would be void as against public policy. See *Carolina Beach v. Mintz*, 212 N. C. 578, and *Snipes v. Winston*, 126 N. C. 374.

lina Beach v. Mintz, 212 N. C. 578, and *Snipes v. Winston*, 126 N. C. 374.

10. Deposit of jury fees.

To A. R. Crisp. (A.G.) In my opinion, when the defendant has demanded a jury, as provided in the recorder's court law, and the jurors have been summoned and attended, and the case against the defendant non-suited, such defendant would not be entitled to demand a refund of the deposit made for the jury.

S. Mayors and Aldermen.

4. Jurisdiction of mayor's court.

To T. D. Bryson, Jr. (A.G.) In the absence of extension of territorial jurisdiction by local laws, a mayor would have no jurisdiction to try and determine cases originating outside the city limits.

8. Costs and fees in mayor's courts.

To Scott and Collier. (A.G.) Chapter 349 of the 1937 Public Laws requires the collection of \$1 additional costs in mayor's courts.

26. Trading with members of the board.

To W. I. Godwin. (A.G.) The mayor of your city, in my judgment, would not be eligible for employment as an attorney to bring tax foreclosure actions for the town. C. S. 4388.

T. Justices of the Peace.

4. Service of process—deputizing process officer.

To Fred M. Nivens. (1) Can a justice of the peace deputize a 'Special Constable' under C. S. 974 on condition he give bond of \$1,000 payable to the State? (A.G.) No. He can only designate or deputize some person to serve a warrant in a special instance where no proper officer can be found.

(2) A justice of the peace cannot legally serve his own mandate though he cannot get service otherwise.

(3) While it is possible for a justice of the peace to hold a deputy sheriff's commission, under the Constitution, the offices are clearly incompatible, and it would be against the policy of the law for a justice of the peace to issue process as a court and serve it as an executive officer or a deputy sheriff.

7. Residence.

To F. S. Hall. Inquiry: If a justice of the peace, commissioned by the Governor for one township moves to another township in the same county, would the justice's appointment lapse?

(A.G.) C. S. 1469 provides, that a justice of the peace, duly commissioned to serve in a particular township, loses his authority if he moves from that township for a period of six months. In our opinion, this statute clearly prevents a justice of the peace, in the case set out, from acting in the capacity of a justice of the peace until he has been reappointed by the Governor.

13. Territorial jurisdiction.

To George A. Kittrell. (A.G.) The jurisdiction of a justice of the peace is county-wide, and he has a right to try a case anywhere within the county.

50. Vacancies.

To W. G. Byers. (A.G.) Under C. S. 1647, as interpreted in the case of *Gilmer v. Holton*, 98 N. C. 26-29, the Clerk of Superior Court would be authorized to fill a vacancy (created by the death of an incumbent) in the office of a justice of the peace, originally appointed by the Governor.

U. Notary Public.

2. Qualifications and appointment.

To John T. Manning. Inquiry: May a minor serve as a notary public.

(A.G.) No. Under *State v. Knight*, 169 N. C. 333, a notary public was held to be a public office. And under the Constitution, only voters can hold office. Since a minor is not permitted to vote, he consequently could not serve as notary public.

IX. DOUBLE OFFICE HOLDING.

The following positions were held not to be offices within the provisions of Articles XIV, Section 7, of the Constitution: School Teacher (Letter to J. W. Stewart). Trustee of Fayetteville Normal School (Letter to Richard M. Lilly).

The following positions were held to be offices within the provisions of Article XIV, Section 7, of the Constitution:

City Commissioner (Letter to A. R. House).
City Tax Collector (Letter to A. R. House).

Clerk to Board of Town Commissioners (Letter to A. R. House)—Unless he acts in an ex-officio capacity.

County Board of Education Member (Letter to Wade E. Brown).

County Board of Elections Member (Letter to Mark Squires).

County Commissioner (Letter to A. Corey).

County Health Officer (Letter to Clyde A. Erwin).

Game and Forest Warden (Letter to A. S. Mitchell).

Local School Board Member (Letter to A. R. House).

Mayor (Letter to W. N. Rose).

President of Bank which acts as county Treasurer (Letter to Wade E. Brown).

Prosecuting Attorney of Recorder's Court (Letter to A. R. House).

Representative in the General Assembly (Letter to W. N. Rose).

Trustee of School District (Letter to A. S. Mitchell).

It was pointed out again that under the provisions of Article XIV, Section 7, a justice of the peace is permitted to hold another office, and a member of a board of charities is permitted to hold another office. (Letters to A. W. Craven, and Robert H. Atkinson, respectively).

30. Member of board of elections.

To J. N. Moody. Inquiry: Is a justice of the peace eligible to serve as a member of the county board of elections?

(A.G.) Yes, if the justice was appointed by the Governor under C. S. 1468; No, if the justice was elected to office under the provisions of C. S. 1463.

31. Registrar or judges of elections.

To Graham A. Barden. Inquiry: Can a county or state employee including members of the Board of Education serve as elections officials?

(A.G.) C. S. 5928 provides, "No person holding any office or place of trust or profit under the government of the United States, or of the State of North Carolina, or any political sub-division thereof except justices of the peace, shall be eligible to appointment as an election official. No person who is a candidate shall be eligible to serve as a registrar or judge or assistant."

125. Penalties.

To F. P. Bacon. (A.G.) The acceptance of a second public office would have the effect of automatically vacating the office which is held at the time the second office is accepted.

HEALTH AND WELFARE*(Continued from page nine)*

ceiving \$7,708.50. Perquimans was low with \$490 paid to 73 needy aged, while Hyde was low in aid to children with 33 children receiving \$132.

Greensboro Wins. — Greensboro was one of the five cities, in the 50,000—100,000 population class, to win an award in the 1937 City Health Conservation Contest. The other four were Sacramento, California, Evanston, Illinois, Newton, Massachusetts, and Saginaw, Michigan. Prizes were not awarded on the basis of the healthiest cities, but on the basis of the most effective efforts to meet local health problems. "Some of the activities considered in judging the contest were: safety of water supply, satisfactory sewage disposal, adequate supervision of milk supply, planned medical and nursing service for mothers and infants, safeguarding the community by recognized preventive measures, with especial emphasis on school health and control of tuberculosis and venereal diseases."

Birth Control.—The North Carolina Federation of Women's Clubs and the North Carolina Conference of Social Service have both gone on record as unanimously favoring "a scientific birth-control program, under medical direction, through channels of public health, for indigent mothers in this State."

Jailing the Insane.—More than

1,000 persons were confined in jail in North Carolina at one time or another, for varying lengths of time during 1937 on the ground of "insanity." Applications were made to place slightly more than half, or 55.2% of these, in State institutions.

In addition to jail accommodations for the insane, county homes housed many also.

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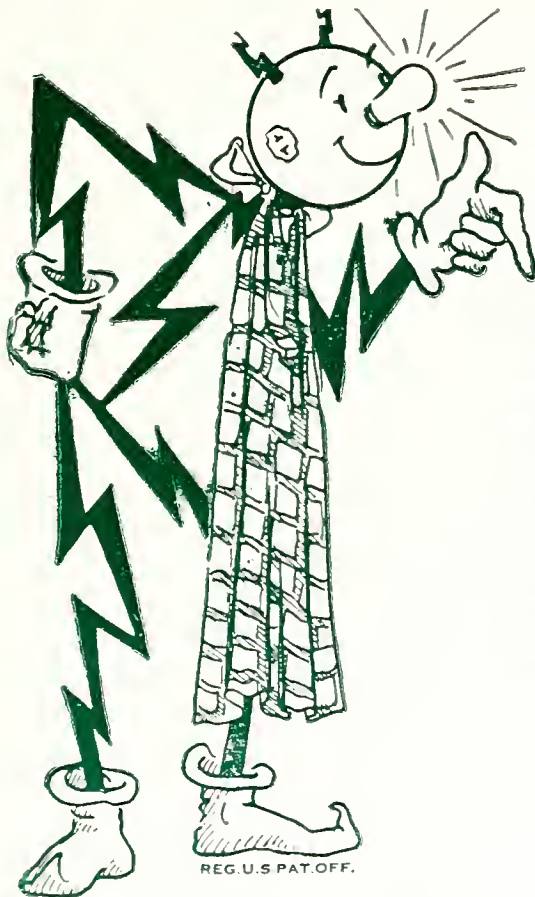
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Charlotte, N. C.

REMINDERS

by Reddy Kilowatt

Here is something for you, my
masters, to think about:



The expenditures of the Federal Government, according to the budget, and exclusive of debt retirement and adjustment compensation payments, will amount to \$7,512.799,000 for the fiscal year 1937. A saving of but 10 per cent in Federal expenditures would be enough to pay all the electric bills of all of the more than 21 million homes and farms in America that are today enjoying electric service.

Does that startle you? It at least shows you how cheaply you can have my services.

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Reddy Kilowatt*

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Charlotte, N. C.



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2. Saves on maintenance and blading costs.
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New York

Branch Sales Office:

212 South Tryon Street, Charlotte, N. C.

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Calcium Chloride