



GREENSBORO CITY HALL

The Greensboro City Hall, constructed at a cost of \$415,000 and occupied in 1925, houses in addition to the general administrative offices the police department, the municipal court room, and the city jail.

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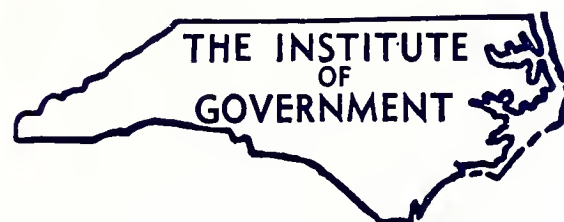
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POPULAR GOVERNMENT

STATE PRINTING PLANT

For Students Should Be In The

N. C. STATE COLLEGE

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The Printing Industry of North Carolina employs those able to earn the best salaries. This industry requires a continuous number of artists, copy writers, salesmen, junior executives, and in fact, employees of highest technical skill in every line of endeavor pertaining to our complex workaday world. Yet, this great industry is forever short of such men. The Printing Industry of North Carolina can absorb all the trained printing executives who could be educated in this great profession at a plant located in the State College.

The Printing Industry of North Carolina is not an overcrowded industry, but actually an undermanned one. It is forced to go outside the state for its better trained men.

With the splendid material offered in our High Schools to fill these needs, this material should have as its right the opportunity to secure a complete course in printing in the State Printing Plant, and that Plant should be located in the North Carolina State College.

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TECHNICAL EDUCATIONAL COMMITTEE

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RALEIGH, NORTH CAROLINA

JUST RELEASED

The Collection and Foreclosure

of

County and City Property Taxes

In North Carolina

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REVISED EDITION
230 Pages

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Institute of Government
Chapel Hill, N. C.

POPULAR GOVERNMENT

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Zoning Ordinances and the Police Power

DURING the past ten years dozens of municipal zoning ordinances have been adopted in North Carolina. Most of them rest upon the authority delegated to city councils by the General Assembly through our 1923 general zoning statute. This general zoning statute in turn rests upon the police power which constitutionally resides in General Assemblies and which, to a limited degree, has been conferred by the General Assembly upon city councils.

Basis of Zoning Ordinances

In recent years zoning ordinances have been approved by both the United States Supreme Court and the State Supreme Court. In all of these cases the ordinances have been upheld as bearing a substantial relation to, and in the interest of, either the public (1) health, (2) safety, (3) morals, or (4) general welfare. In more recent years there has been a decided tendency on the part of state and federal courts to adopt an expanding view of the "police power."

For a time it appeared that the courts had forgotten the old landmarks—health, safety, and morals—as the limits of the power; courts began to justify zoning and similar ordinances as valid exercises of the police power in the interest of such vague purposes as "public convenience," "public comfort," "community prosperity," and "the aesthetic sense of the community."

Students of law and of government have often wondered what new limits would finally mark the extent of legislative powers which more and more, in the name of the public, have impinged upon and curtailed individual liberties. A few

Ordinance Must Be Reasonable—Supreme Court Lays Down Rules for Testing Validity

By DILLARD GARDNER



days ago the Supreme Court of North Carolina divided sharply on the validity of a zoning ordinance, thus marking what may be the beginning of the end of the era of the "unlimited" police power. The case was *In re Appeal of Dr. Parker*.

Majority Approves

Justice Barnhill wrote the majority opinion, approved by Justice Schenck and Justice Seawell. Justice Clarkson sharply dissented, and both Chief Justice Stacy and Justice Winborne indicated their disapproval of the majority view.

The majority view stated that an ordinance which placed a limit upon the height (5 feet) and solidity (not exceeding 60%) of walls and fences around residence lots will be approved unless it is clearly unreasonable and bears no substantial relation to the public health, morals, safety, or welfare, even when a particular incidental result of it may be

"harsh" and the specific wall prohibited be "innocuous."

Declaring that "when the uses to which the individual puts his property conflict with the interest of society the right of the individual is subordinated to the general welfare and incidental damage to the property resulting from governmental activities or laws passed in the promotion of the public welfare is not considered a taking of the property for which compensation must be made," the majority ordered that the portion of the wall conflicting with the ordinance be torn down.

Dissent

Justice Clarkson, in his dissent, pointed out that the ordinance was so ambiguous as to make it "well nigh void for uncertainty," that it could be reasonably interpreted so as to be favorable to the owner of the wall, and that, as zoning ordinances are in derogation of the right of private property, exemptions in them are to be liberally construed in favor of the property owner. He pointed out that all ordinances must be reasonable in order to be valid, and that whether they are in fact reasonable is always a question of law for the courts.

He observed that "an ordinance which permits appellant's wall to stand provided he fill his back yard with dirt but condemns it if he leaves it a garden, rests upon no solid foundation. . . . If this ordinance is valid, then a privet, spruce or white pine hedge around, or partly around, a man's home could be destroyed by the whim of a municipality inclined to nervous particularity bordering on absurdities."

(Continued on page twenty-four)

Police Officers Pension Fund

Approximately \$30,000 Accumulated in Law Enforcing Officers' Benefit Fund

CHAPTER 349, section 9, of the Public Laws of 1937 provides for the setting up of "a special fund to be known as 'The Law Enforcing Officers' Benefit Fund' which shall be used to aid the dependents of the law enforcing officers killed or seriously incapacitated while in the discharge of duty." The statute further makes provision for a committee for the purpose of deciding and determining the recipients of such benefits, and the amount thereof to be paid.

Broad powers are granted in this brief statute to this committee. In the words of the statute, "Such committee shall, under the direction of the Governor, promulgate rules and regulations for the proper disbursement of the funds and fixing eligibility as to those who shall be adjudged to be proper recipients of such benefits."

Scope of This Study

It is the purpose of this study to indicate some of the problems which must be solved and questions which must be answered in determining the nature of the rules and regulations which should be promulgated.

Officers within the Terms of the Act

The first question to be answered is: what officers are covered by the provisions of the statute? Paragraph 2 of section 9 of chapter 349 as quoted above uses the blanket phrase "law enforcing officers." Paragraph 3 of the same section, on the other hand, reads as follows: "Law Enforcement officers in the meaning of this Act shall include sheriffs, their appointed deputy sheriffs, police officers, prison wardens and deputy wardens, prison camp superintendents, prison stewards, foremen and guards, highway patrolmen, and any citizen duly deputized as a deputy sheriff by a sheriff in an emergency."

The question immediately arises as to whether or not this list is complete and exclusive of all other types of law enforcing officers or



By
**HARRY
McGALLIARD**
of the Staff
of the
Institute of
Government

whether it is merely illustrative of what is meant by the term law enforcing officers. If it is intended to be exclusive, then the benefit fund could not be applied in the case of constables, A.B.C. Board law enforcing officers, probation officers, gasoline and oil inspectors, investigative agents of the Bureau of Investigation, probation officers, bird, game, fish, and forest wardens, weights and measures inspectors, special policemen of state institutions, railroad police, and bank examiners—all of whom are specifically given either limited or general powers to make arrests for criminal law violations.

Even beyond that, if the statute is taken literally, deputy sheriffs who are selected by the county commissioners would not be eligible be-

Committee Studies Pension Problems—Makes Rules and Regulations Governing Benefits

cause the statute specifically lists only appointed deputy sheriffs in general and citizens deputized as deputy sheriffs in an emergency.

It is apparent that it is important to determine in the very beginning just what officers will be regarded as coming within the terms of this Act because the number of officers eligible will, of course, be of paramount importance in determining types and amounts of benefits to be paid.

Ordinarily, when a statute is made applicable to a single class of persons or things which the statute itself defines, such definition or listing is exclusive. On the other hand, if the intent of the legislature is merely to illustrate and to indicate the types of officers it intends to include, then such listing in the statute could be added to. On the one hand, it would seem likely that constables whose duties are primarily those of law enforcing would be included whereas bank examiners whose law enforcing powers are purely incidental to their bank examining duties would probably not be intended to come within the class of officers this legislation is intended to cover.

Who Is a Dependent

Once it is determined which officers shall be included within the scope of the statute the next important question to be answered is, who is a dependent of an officer? Here our statute is vague and it is apparently intended that the committee shall exercise its own discretion on this point. The possibilities are many. For example, it might define as a dependent any person living in the officer's home and actually drawing his chief support from him, his wife or widow, any minor child, any child under 16, any minor child who is unemployed, any parent, or any parent incapable of earning a living because of physical or mental disability.

There are, of course, additional

POLICE PENSIONS

This article is part of a study prepared by Harry W. McGalliard of the staff of the Institute of Government and submitted to the committee appointed to work out rules and regulations for the administration of the law enforcement officers' benefit fund provided for by the 1937 General Assembly and totalling at present some \$30,000. This committee is composed of State Auditor George Ross Pou, Bureau of Identification and Investigation Director Frederick H. Handy, Sheriff Joe Phipps and Chief of Police Jimmy Hanes.

possibilities with reference to other relatives such as grandparents, grandchildren, uncles, aunts, step-children or step-parents which, in many instances, are as integral a part of the family unit as a child, widow or parent. Equally important is the question of the status of the officer himself.

So far as the wording of the statute is concerned, no provision is specifically made for the payment of benefits to an officer who has no dependents but who is seriously incapacitated while in the discharge of duty. Of course, it can be said that the officer is dependent upon himself and hence would be eligible—although the statute fails to make this clear.

"Dependents," In Other States

A "dependent" is variously defined in the pension laws of other states as the officer's wife, his widow, the widow as long as she remains unmarried, the widow as long as she is of good moral character, a child under fourteen, a child under sixteen, a child under eighteen, a child over eighteen but physically or mentally incapable of earning a living, a parent, a parent dependent on the officer for a living, a parent dependent on the officer as long as the parent remains unmarried, the brother or sister living with and dependent upon the officer. The word child is usually defined to include a legally adopted child.

On What Basis Should an Award Be Made

The question of the basis for making a benefit award is probably the most troublesome one in the entire field. Should the award be made only on the basis of need in a particular case or should benefits be paid automatically as a matter of right, regardless of need in the case of death or serious injury? Should benefits be paid in a lump sum or on monthly instalment plans? Should the benefits be based on a percentage of the officer's salary at the time of death or injury or on the basis of his average salary over a period of years? If a salary basis should be used, then how would officers who are paid by fees be treated?

Should the benefits paid in any particular locality be related to the sums paid into the pension fund through court costs collections in

that particular locality? If this latter were taken into account, what, then, would be the basis for state officials such as highway patrolmen?

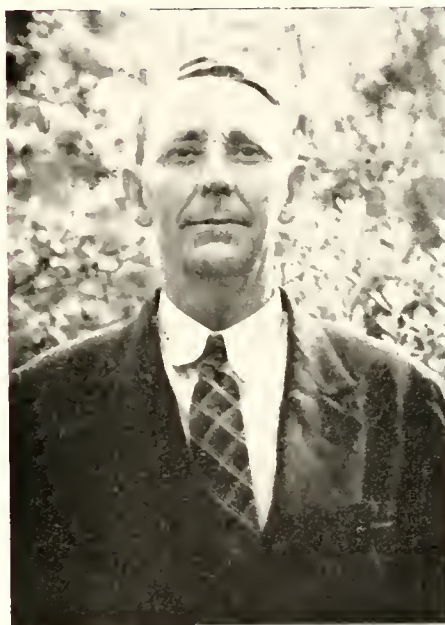
What relation should a state pension award bear to any payment that might be received by the officer in any local pension system? Other matters which should be taken into account in determining the basis in making awards are such things as whether the officer is married or unmarried, the number of dependents he has, whether his pay is continued while he is unable to work, whether he actually holds or is physically and mentally able to hold some other type of job even though unable to continue in police work, whether he has private means, what the policy of the payment of awards should

be with relation to possible eligibility of dependents for social security benefits under the statutes providing for Old Age Assistance, Aid to Dependent Children, and Aid to the Needy Blind, whether or not the officer through a personal damage suit is able to recover damages from private individuals as, for example, when an officer is injured in an automobile accident through the negligence of another, and whether he is covered by the Workmen's Compensation Act.

Obviously, if the benefits are paid on the basis of need the funds available are likely to go much further than if paid to every officer injured regardless of need. On the other hand, a governmental unit making
(Continued on page fourteen)

IN MEMORIAM

By DAN TOMPKINS



CHARLES C. MASON

"After having held courts in 50 of the counties of North Carolina," said Judge Felix E. Alley, at the funeral of Sheriff Charles C. Mason, at Dillsboro, "I think that I can say, in this solemn presence, that Charlie Mason was the best Sheriff in North Carolina." By his life, his work, his pleasing personality, Sheriff Mason did much to raise the standard of morality and respect for law, in Jackson County.

Only 54 years of age, Sheriff Mason met an untimely and unexpected death, when he went to the home of a man supposed to be mentally unbalanced, on June 16. As he drew near the house, the insane man fired upon him through a window, killing him almost instantly, and then committed suicide. Sheriff Mason was serving his second term as sheriff of Jackson county, and had been overwhelmingly renominated for a third term. Prior to his election as sheriff, he was chief deputy sheriff under Sheriff John Maney. During the Wilson administration he served as a United States Deputy Marshal, from 1912 to 1920.

A popular, courageous man, an officer who took his duties seriously, Sheriff Mason was known and loved throughout Western North Carolina. The people of his own county held him in great esteem, and had implicit confidence in him as a man and an officer. By his just and kindly treatment of those whom he took into custody, he held their friendship and admiration.

He came to his death in the performance of his duty, and to him duty was a sublime word.

The commissioners of Jackson County have elected his widow to fill his unexpired term.

«Matching Jobs and Men»

THE YEAR 1933 marked the establishment of a free, public employment service in North Carolina. During the five years that have intervened since that date, employment offices have been located in all but 7 cities in the State having a population of over 5,000.

Civil Service in North Carolina

In these field offices and the State Administrative Office are some 330 regular staff members. From junior interviewers through state directors, these officers have been selected by merit examinations conducted by the United States Employment Service. These examinations are given each year to recruit new personnel and to provide a promotional basis for present employees.

The State Employment Service is the first State agency in North Carolina to operate under the civil service principle.

Today the Employment Service comprises 45 white offices, 10 negro offices, and 146 service points, so strategically located that every person within the State, seeking work and every employer searching for qualified personnel may entirely without cost make use of its facilities.

From 1933 to date, 78 per cent of the gainful workers in the State have registered with the Employment Service. This represents a total of 816,633 or 25 per cent of the entire population of the State. During this time 511,362 placements have been made, 193,052 of which were in private industry.

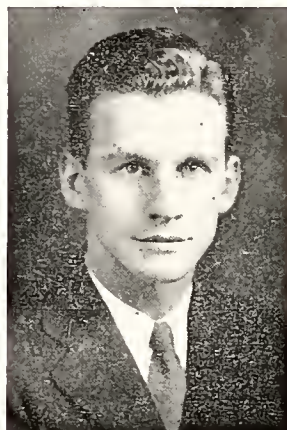
How Service Is Operated

The North Carolina State Employment Service, affiliated with the United States Employment Service, is a part of a national network of employment services, operating not alone in the communities in which the individual offices are located, but, by means of a clearance system, bringing to the disposal of the local office the resources of every other office in the country. Committed, primarily, to the task of "Matching Jobs and Men," the North Carolina State Employment Service is constantly seeking qualified applicants to meet the needs and demands of

State Employment Service Lifts Burden from Cities and Counties

By **MAYNE ALBRIGHT**

Director, State Employment Service



private employers, and is endeavoring to assist those who want work to find it.

In filling local as well as clearance orders, applicants are selected for referral to a particular job on the basis of their peculiar fitness for that job. To determine their fitness, the Service makes use of proficiency tests, trade questions, and other scientific techniques of selection. At present, it is placing in employment an average of 2,000 persons each week, over half of whom are placed on regular, private jobs.

Employers Use Service

Each month, an increasing number of private employers are availing themselves of this free, specialized service, and calls are being received for every kind of worker—for skilled and unskilled labor, for domestic servants, textile workers, insurance salesmen, typists, stenographers, bookkeepers, salespeople, nurses, opticians, governesses, machine operators, engineers, and many others.

To young people, 16 years of age and over, the Employment Service offers a special counseling and guidance service. At any one of its offices, the youth seeking job infor-

mation and job opportunities may come for assistance. He will be interviewed, his work capacities evaluated, and he will be given information about jobs of various kinds, the training required and where such training may be secured.

In compliance with the Wagner-Peyser Act, the North Carolina State Employment Service is affiliated with the Department of Vocational Rehabilitation, State Department of Public Instruction; the Placement Service for Persons with Defective Sight, State Commission for the Blind; and with the Bureau of Labor for the Deaf, State Department of Labor. By agreement of affiliation, these agencies became a part of the State-controlled system of public employment offices. Physically handicapped applicants appearing at offices of the State Employment Service are interviewed by persons specially designated in each office.

Co-operation with Relief Agencies

Although not a relief agency, the Employment Service cooperates with every organization engaged in the work relief program—the CCC, the NYA, the PWA, and the WPA. Since the Employment Service is constantly gathering information concerning the nature and extent of unemployment, job specifications and requirements, job equivalents and a vast amount of other data relating to occupational trends, it seems the only logical service through which a public works program can be effectively co-ordinated with private industry.

The inclusion in the Social Security Act of a provision requiring "payment of Unemployment Compensation solely through public Employment Services in the State" makes this Service the only agency through which Unemployment Compensation can be administered. Hence, the Employment Service Division and the Unemployment Compensation Division must work as one, in closest cooperation.

Through the establishment of the public Employment Service, the first step has been taken in a scientific

(Continued on page sixteen)

Municipal Utility Boards

What They Are and How They Function

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

ALTHOUGH a strong believer in and advocate of municipal ownership of public utilities, I have, after forty years of observation and contact with public utilities, realized that one very serious criticism of public ownership has been the charge that municipal plants are poorly managed because of the frequent change in the personnel of the city council. The argument is rightfully made that where a management is subject to change because of the election of new councilmen and the mayor, then that management cannot be as satisfactory as a management that is free from any change or interruption.

There are, of course, many excellently managed water, light and gas utilities where men of high character and intelligence give their time and attention toward securing good results; but, good mayors and good councilmen cannot be assured of re-election year after year. With changes occurring in their personnel every two years it becomes impossible to have a continuity of policy or a long-time program for any utility. I have on numerous occasions observed mayors and city councilmen who were doing a most splendid job of operating the utilities and yet these same officials themselves dreaded to think of what might happen to the utilities if some of their political enemies should come into power at the next election. This very thing has happened so frequently that it is a common occurrence nowadays for mayors and city councilmen themselves, who are sincerely interested in the success of the utilities, to give thought and study to the creation of a utility board of high-class citizens who could give their attention to the operation of the utilities without fear of removal or a change at every election.

Political Management Annoys

Nearly every superintendent or manager of a utility has at some time or other experienced the an-

noyance of political management, but very few have carried on any intelligent program of combatting the evil. These same managers and superintendents serving under mayors, councilmen, or commissioners dislike to bring before their bosses the question of board management, fearing that by bringing up or mentioning the subject they may incur the ill will of the city officials; and it is therefore not easy for the superintendent or manager to bring about any changes in management. Such recommendations for changes in management should, therefore, originate, if possible, outside of the city administration thru civic organizations and others interested in the success of the utility.

When everything is going along smoothly with a municipal water, light and gas installation there is then a feeling that the management is fine and nothing can upset it. But, when everything appears most peaceful and calm is the proper time to recognize the defects and exert all our efforts to cure the evil and secure a utility board management that will take the utility out of politics. Politics and business do not mix well. There is an old saying that, "There are only two injurious things that cannot be taken out of water: one is salt, and the other is politics."

I have known city commissioners and councilmen who were giving such excellent cooperation and fine support to the manager and superintendent in the operation of the utilities that anyone would hesitate to suggest any change. Yet, as election time approaches the fear comes in the mind of the loyal friend of public ownership that a change might occur. It frequently means a change of management and operation, rates are often tampered with, and worst of all, many of these municipal elections are based upon a program of utilizing the funds of the utility for other municipal purposes than the up-keep and maintenance of the plant.

Need Long Time Planning

The most successfully operated utility, whether it be water, light or gas, has found it absolutely essential and necessary to prepare and work out a long-time program. The long-time program covers not only the setting aside of reserve funds for replacement of antiquated units in the system, but the replacement of distribution lines; and, this long-time program should cover the retirement of bonds, reducing the fixed charges.

One can well imagine how impossible it is for a councilman or mayor elected for a two-year term to plan or carry out a long-time program that may involve 10, 15 or 20 years; and with changes occurring in their personnel every two years it becomes impossible to have a continuity of policy.

A rate schedule very often requires years of experience and study, and cannot be revised off-hand without serious interference with the revenues. A well-designed, continuous policy of management, relating to rates, operating expenses, revenues, depreciation reserve, major and minor improvements, with an intelligent forecast into the future requirements, is essential to the success of every utility, whether privately-owned or municipally-owned.

A superintendent or manager likes to look upon his position as permanent. He and his assistants can render a far better service in behalf of a municipality if he knows that his position is permanent and not dependent upon political changes. A superintendent employed under utility board management feels that he is a part of the permanent organization, and he himself can take up with his utility board long-time planning and provision for future extensions and enlargements that any superintendent or manager would hesitate to consider if he knew that his entire council were going out of office within a few months.

Personnel of Boards

In my forty years of engineering service to municipalities I have had opportunities of serving city managers, mayors, councilmen and utility boards. My relations with all of these officials have been so extremely pleasant and satisfactory that I

(Continued on page sixteen)

Highway Collision Fence

"To prevent automobiles from skidding off the road and over-turning, a new type of guard rail has been invented in Denmark and already installed on dangerous curves. This "Autovaernet" . . . consists of a bow-shaped fence one foot high made of white cement. The outstanding characteristic of this collision fence is that whereas previous installations of a similar nature have caused considerable damage and injury to the cars and occupants they were intended to protect, the curve of the "Autovaernet" wall is so designed that a colliding vehicle sustains little damage, and the wall itself is practically indestructible.

"The armored concrete lining of the fence is constructed of "bent" castings of concrete 10 cm. thick, with a curved surface facing the road. The slope of this outer surface is constructed so that the air pressure in the automobile tires absorbs the greater part of the impact in any collision. The fence is mounted on heavy concrete posts sunk into the ground at approximately 3-ft. intervals.

"In a recent demonstration of the Autovaernet a test car driven by an expert was deliberately skidded on a specially prepared surface and crashed against the fence at a speed of 25 m.p.h. The car came out of the collision without a scratch. It was then skidded sideways into the Autovaernet at a speed of 40 m.p.h. The air-filled tires and the springs of the car absorbed the whole of the impact, while the friction between the rubber of the tires and the concrete fence had a strong braking effect on the car. Neither the automobile nor the Autovaernet was damaged. Finally a heavy truck with full load was used in the tests. It escaped with a bent front axle.

Night tests revealed that the new collision fence, because it is constructed with pure white cement, stands out with extreme clearness when spotted by the headlights of an approaching car, constituting a warning of curves ahead and defining their slope and angle."—*Highway Research Abstracts*.

CRIME DOESN'T PAY--- But Somebody Pays for Crime!

THE Federal Bureau of Investigation estimates that 7,859 murders and 5,705 cases of negligent manslaughter occurred in the United States last year—an average of one unjustifiable homicide every forty minutes throughout the year. Director Hoover says, "that the slayers of the more than 13,000 persons who are our annual homicide victims are extremely blessed by the kindness of lax criminal laws, the eagerness of shrewd and often unscrupulous attorneys, and professional crime magicians, the soft-heartedness of many state parole and pardon boards, and the apathy of the public to the extent that the average murderer in the United States now spends less than 54 months in prison as the result of his crime . . . there are roaming at large in the United States some 200,000 potential murderers who during their lifetime will account for the deaths by violence of more than 300,000 persons unless the present murder rate is reduced."

Aggravated Assault

An estimated 45,478 aggravated assaults took place during the year—or an average of 125 each day.

Robbery, Burglary, Larceny and Auto Thefts

There was, says FBI Director, J. Edgar Hoover, "a robbery every ten minutes, a burglary every two minutes, a larceny every 44 seconds, and a case of automobile theft every two and a half minutes during 1937." On the basis of statistics reported by 138 cities with population of more than 25,000, the average value of the property stolen in the course of 220,907 offenses averaged as follows:

	Aver. value per offense
Robbery	\$ 89.36
Burglary	59.19
Larceny—theft	29.37
Auto theft	333.38

Increase in Crime

During 1937, crime increased on all fronts, with the single exception of aggravated assaults, and it is estimated that the "criminal army of America is composed of over 4,300,000 persons."

How Old are Our Criminals?

Director Hoover declares "that more than 18 per cent of all our crime is being committed by youths of 21 years or less. Moreover, during the first nine months of 1937, persons under 21 years of age committed 13 per cent of our murders, 28 per cent of our robberies, 41 per cent of our burglaries, and 51 per cent of all automobile thefts." Of 520,153 persons reported arrested during 1937 in units sending in crime reports, more than 180,000 were under 25 years of age.

North Carolina Cities

Seven North Carolina cities, having populations in excess of 25,000, are listed in the FBI statistics as to major crimes by cities. The accompanying table shows the number of major offenses in these towns during 1937.

MAJOR OFFENSES—1937

CITY	Murder, non-negli- gent man- slaughter	Robbery	Aggravated Assault	Burglary, breaking or entering	Larceny Over \$50	Theft Over \$50	Auto Theft
Asheville	8	38	358	232	54	433	91
Charlotte	37	114	258	715	103	573	334
Durham	11	51	80	270	73	488	206
Greensboro	13	30	*	394	141	286	178
High Point	8	23	220	122	41	231	105
Wilmington	7	11	271	130	12	265	83
Winston-Salem	22	48	274	438	51	762	164

* Not reported.

Ancestors of the Consolidated Statutes

CODIFICATION of statutes is a regular and recurrent need. Only fifty years after our first legislature, prior laws were codified and all other prior laws repealed. This was in 1716. More than two centuries later the same problem is still with us. The manuscript of the 1716 law is now in the custody of the North Carolina Historical Commission. It required that each year in open court the clerk should publicly read the codified "book of laws." Modern clerks may be thankful that they no longer need perform this onerous duty.

First Printed Code

Not until 1746 did we recognize the need of a *printed* compilation. In that year, under the royal government, it was noted that due to a "want of the laws being revised and printed . . . the people transgress many of them through want of knowing the same." Whether for the same reason or not, we could, with fair accuracy, repeat this two-hundred-year-old conclusion in 1938. To meet the need of that day, Swann's *Revisal* appeared in 1751, as the first official, printed compilation of North Carolina laws. It was also the first book printed in the State.



JAMES G. W. MACCLAMROCH

James G. W. MacClamroch's work on Bar Committees in recent years has played an important part in initiating reform of Justice of the Peace Courts.

After the Revolution

In 1776 the revolutionary spirit of the Halifax Constitutional Convention produced a distinguished commission (among others, James Iredell, Samuel Spencer, and Samuel Johnston) to revise the laws and recommend new ones. As an outgrowth of the work of this commission, in 1787 the General Assembly appointed James Iredell to prepare a revision of the laws. Iredell's *Revisal* followed in 1789.

By authority of the General Assembly, Francois X. Martin, translator - editor - printer - soldier - jurist, published his collection of Statutes (1792), his *Collection of Private Acts* (1794), and his *Revisal* (1804), the latter bringing forward Iredell's *Revisal*.

In 1817 Chief Justice Taylor, Judge Potter, and Bartlet Yancey were named to revise and consolidate the public laws. This was published under the supervision of Judge Potter in 1821, being popularly cited as Potter's *Revisal*.

The *Revised Statutes* (1837) were prepared under legislative authority by Governor Iredell, Chief Justice Nash, and Justice Battle, but this distinguished commission, interpreting its powers strictly, failed to use its full powers of re-writing in the codification and revision of the laws. Theirs was scarcely the sentiment of Chief Justice Clark, who, in a later era, was wont to remark, "All the laws should be burned every thirty years." The conservative attitude of these commissioners was a warning to commissioners Biggs and Moore who prepared *The Revised Code* (1855), which represents, apparently, the first attempt to compile, re-write, and consolidate, in code form, the existing laws. Thus, *ante-bellum* North Carolina possessed a rather carefully-compiled codification of its laws.

After the Constitution of 1868

However, scarcely had the status of old English laws in this State been settled before a new problem arose—what old laws were consistent with those of the United States, under the provisions of 1868? Battle's *Revisal* (1873)

sought to answer this question, but it was never officially accepted by the General Assembly. However, in 1883 *The Code of North Carolina*, prepared by Dortch, Manning, and Henderson, was enacted into law as the first code officially adopted after the War Between the States and the new constitution.

In preparing *The Revisal of 1905* Commissioners Womack, Gulley, and Rodman found the aid of a young Mr. Pell invaluable. *The Revisal* appeared in two volumes, as had *The Code* (1883). However, *The Revisal* was not annotated to the cases, as had been *The Code* (1883), the *Revised Code* (1855), and the *Revised Statutes* (1837). To meet the demand for an annotated code, the young man mentioned above (the late Judge Pell), extended the scope of his earlier efforts. Having secured authority to reprint the sections of *The Revisal*, he published Pell's annotated *Revisal of 1908*, followed by a supplement in 1911. To keep this work up-to-date, there were issued in 1913, 1915, and 1917, respectively, Gregory's *Supplements to Pell's Revisal*.

Consolidated Statutes of 1919

In 1919 interest once more turned to an official compilation. In that year our last official revision—the Consolidated Statutes — appeared. The late Dean L. P. McGehee, under the direction of the Revision Commission (Chairman Harry W. Stubbs, Lindsay C. Warren, Harry P. Grier, Stahle Linn, and Carter Dalton) prepared the statutory material, and Dr. A. C. McIntosh, the dean of contemporary legal text-writers in the State, annotated the sections. The need of a comprehensive index was immediately recognized, and in 1924 a *Supplement to the Consolidated Statutes* (listed as Volume Three of this work) was published. The 1924 *Supplement* (Continued on page fifteen)

OFFICIAL STATE BAR NEWS AND VIEWS

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

Monthly Survey - - -

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

Taxation and Finance

Taxing Motorists

A hodge-podge of more than 40 widely varying systems of taxing motorists is being used as states raise funds to match federal highway appropriations, it was revealed in connection with House consideration of the federal-aid bill for 1940 and 1941.

Estimating that the states are gathering more than \$1,000,000,000 annually through special taxes and fees levied upon owners and operators of motor vehicles, the National Highway Users Conference has just completed and made public a formal report on motorist-taxation which shows how greatly taxing operations change at State borders.

Methods used in computing the levies, as well as the range of rates, vary to even greater degree than the types of imposts, the Conference's report indicates. For example, more than 20 different bases are used by the various states in computing registration fees. Among these are horsepower, gross weight, value, list price, age, size of tires, number of times registered, number and size of cylinders, kind of power, mileages and type of use.

BOOKS

Tax Relations Among Governmental Units.—Tax Policy League, New York. Today the Federal Government, 48 state governments and some 175,000 local tax-levying units are attempting to raise revenues by taxation. The multiplicity of tax-levying units has caused increasing confusion as governmental units have expanded their functions. The Tax Policy League regarded the problem of tax relations among governmental units as of sufficient importance to devote its 1937 symposium to the subject.

The result is set forth in 16 chapters dealing with Federal-State Tax
(Continued on page seventeen)

Firemen



JEROME B. FLORA

Jerome B. Flora, Mayor of Elizabeth City, who is also president of the North Carolina State Firemen's Association.

1937 Fire Loss

According to Robert F. Moulton, technical secretary of the National Fire Protection Association, preliminary estimates place the losses by fire in the United States during 1937 at \$285,000,000—slightly lower than the 1936 fire loss. The Hindenburg disaster at Lakehurst, New Jersey, in May, 1937, was the largest single loss of the year, with property damage amounting to approximately \$4,000,000. Mr. Moulton pointed out that during 1937 there were 23 fires which resulted in losses of a quarter of a million dollars or more, as against 42 such fires in 1936.

Fires in Small Communities

"Seventy per cent of the fire loss occurs in communities of less than 20,000 population, and it is said that 43 per cent of the establishments destroyed by fire are not rebuilt," says
(Continued on page fifteen)

Public Works

Municipal Ownership of Utilities

Small municipalities in North Carolina own and operate an impressive variety of public utilities, according to data furnished in the 1938 Municipal Year Book. Only towns between 5,000 and 10,000 population are covered in the accompanying table. All of the towns listed below and also Canton, Lenoir, Asheboro, and Mount Airy own water works, and all except Canton own cemeteries.

Burlington: sewage-disposal plant.
Greenville: electric light plant; gas plant.

Henderson: sewage-disposal plant.
Hendersonville: sewage-disposal plant; airport.

Hickory: sewage-disposal plant.
King's Mountain: electric distribution system; sewage-disposal plant.

Lexington: electric distribution system.

Monroe: electric light plant; sewage-disposal plant.

Mooreville: sewage-disposal plant.
Morganton: electric distribution system; airport.

Reidsville: sewage-disposal plant.
Tarboro: electric light plant; airport.

Washington: electric light plant; sewage-disposal plant; port facilities.

Sewer and Water To Be Provided on Mt. Mitchell

Sewer and water system work has been resumed atop the highest peak east of the Rockies, Mt. Mitchell, as personnel of a CCC camp moved into the Mt. Mitchell State park.

The state department of conservation and development said about 100 workers will begin the work, being moved from the CCC camp at Walhalla, S. C. Due to the altitude
(Continued on page fifteen)

Law Enforcement

Thumbs Down on Caging Drunks

Mayor William E. Kane of Woburn, Mass., recently proposed to parade drunks about the city in a lion's cage—already purchased for that purpose and ready for 'lions.' The proposal was submitted to a vote of the people, who turned it down, 2,456 to 1,896.

Moonshine

"The fabled moonshine of Southern hills and swamps, in spite of the tall tales told about it, makes a poor showing in the test tube. And, government experts say, 'it is getting worse every day.'"

"S. W. Holman, chemist at the Atlanta office of the Federal Alcohol Tax Unit, has been testing moonshine for fifteen years. Of the modern crop, he says:

"Call it mountain dew, white lightning, white mule, Georgia, Carolina or Alabama corn, or what you will, it is loaded with stuff that ought to be used to make paint and embalming fluid.

"And I am talking about what shows up plainly in analysis. There are peculiar odors and flavors in modern moonshine. These, no doubt, come from cockroaches, chickens and small animals falling into the mash barrels and sometimes from a shovelful of barnyard manure tossed in to hurry up fermentation."

"W. D. Hearington, Alcohol Tax Unit District Supervisor, explains the decline of moonshine thus:

"We keep so hot after them they can't make good liquor. Most of them are shiftless and ill-informed anyway and would not do much better if we let them alone. Many of the good distillers have found legitimate employment."

"Holman says some of the mixtures are charged with aldehydes, closely akin to formaldehyde, a substance used in embalming fluid, and fusel oil, an ingredient of quick-drying paints and varnishes.

"In an average month, in South Carolina, Georgia, Alabama and Florida, investigators will seize mash and liquor equivalent to 10,000 gallons of spirits, wreck some 350 stills and make 450 arrests."—*Sheriffs' Association of Texas Magazine.*

Health and Welfare

Helping the Blind

To provide staff for state-wide services, and provide rehabilitation, sight restoration and prevention of blindness, the Commission for the Blind receives a state legislative appropriation of \$29,882.

Dr. Roma S. Cheek, Executive Secretary of the North Carolina Commission for the Blind, writes: "In servicing the blind, we find them falling logically into one of five groups: *First*, the exceptional blind who enter successfully the professional world. A few of this group are very successful, and having conquered blindness, have been able to surmount all other difficulties. For the small group who seem capable of entering the professional world, the most important service is the affording of academic educational opportunities needed, by aiding with the payment of college expenses and in providing specialized training after college. The Commission offers this assistance and is now aiding twenty-one in college and graduate work. For this group, the services needed are: equipment for some, placement for others, and available to all are informational services, either in suggesting improved mechanical devices for alleviating some of the every-day problems of blindness or for adapting

(Continued on page seventeen)

Courts and Records

Courthouse Yarns

Bias on the part of a trial judge is certainly not the rule. Possibly for this reason the oral tradition of lawyers' rooms has preserved in anecdote many reputed instances of departure from the norm of judicial impartiality. Like most amusing tales they are exaggerations, but they conceal truths.

A certain Federal judge, whose convictions with respect to liquor were pronounced, was reported by the counsel for defense to have charged the jury somewhat after this fashion:

"Now, gentlemen, you are to pass upon the credibility of the witnesses. You are to test their worthiness of belief by the rule of reason; that is, if you believe their evidence to be such that its truthfulness would not appeal to the reason of the ordinary, prudent man, then you are to discard it as unworthy of belief. To illustrate, gentlemen, it would be unreasonable for you to conclude that any of the witnesses offered by the United States would tell you an untruth, as they come here in behalf of the great country which both you and I revere and respect. On the other hand, gentlemen, it would be quite reasonable for you to conclude that the defendants' witnesses, who came here at his request and as his

(Continue don page eleven)



T.B. TRAILER

Difficulty in making tuberculosis examinations in rural districts led to the development of the traveling X-ray clinic by Dr. William P. Richardson, health officer of the Orange-Person-Chatham Health Department. Nine clinics have been held at the health office in Chapel Hill, Roxboro, Hillsboro and Pittsboro. The Fluoroscopic X-ray installed in the trailer may be operated in any place where electricity is available. Clinics are held at rural schools during the winter. So far as it is known, this is the first traveling clinic of its kind in the country and Dr. Richardson has been asked by the American Public Health Association to prepare pictures and descriptions to be used as part of an exhibit of important developments in public health at the annual meeting of the United States Chamber of Commerce in Washington.

Women in Politics

Should Married Women Be Denied Employment?

"No!" says the National League of Women Voters. "A poll taken by the American Institute of Public Opinion a year ago indicates that an amazingly large number of persons in the United States subscribe to the idea that married women as a class should be prevented from working.

"In many cities throughout the country, school boards refuse to employ married women teachers and many drop women already employed when they marry; officials of state government compel married women to give up their positions and this carries over into private employment.

"And although five years of continuous effort finally resulted in the removal from statute-books of the iniquitous Section 213 or "Married Persons Clause" of the 1932 Economy Act (under which 2-3 of the dismissals were of married women)—still, opposition to the employment of married women does not die down."

It is said that: 'Government employment should be given to those in need,

'Married women are not in need, for their husbands support them,

'Therefore, married women should be dismissed.'

"Jobs, and particularly government jobs, should be allocated on the basis of merit and qualifications alone. To suggest any other criteria for appointment is to undermine the merit system and to waste the taxpayer's money.

"One state supreme court has declared: 'If a teacher becomes inefficient, or fails to perform a duty—then a good or reasonable cause for dismissal would exist. The act of marriage does not, of itself, furnish a reasonable cause . . . a rule which assumes that all persons do become less competent and efficient because of marriage is unreasonable. . . . If a teacher is just as competent and efficient after marriage, a dismissal for marriage would be capricious. If a teacher is neglectful, incompetent, and inefficient, she ought to be discharged whether she is married or single.'" — *Oregon Supreme Court*

(Continued on page fourteen)

Equipment and Materials

New Diesel Auto Patrol

A heavy-duty, self propelled road grader, the Diesel No. 12 Auto Patrol, has been announced by Caterpillar Tractor Co.

Designed for efficient and economical road building as well as road maintenance work, the new machine has a range of useful blade positions surpassing even the modern blade grader. In addition to high or low bank cutting positions, the blade can be turned completely around on the full revolving circle. With ample clearance both front and rear, the blade is thus positioned for working in reverse gear. This feature will be valuable for sub-grade work, shaping bad spots, working short stretches or where turning is difficult.

With the blade mounted in the center position on the blade beams, the new Auto Patrol permits a correct ditching position on either side, with the toe of the 12-foot blade directly behind the front ditch wheel, and ample clearance to prevent clogging.

A six-cylinder "Caterpillar" Diesel Engine delivers 66 brake horsepower, and is mounted over the driving axle to best utilize its weight in preventing wheel slippage. A gasoline starting engine insures easy

(Continued on page seventeen)

Here and There

Bicycle Regulations

Last year 24,200 children were injured in accidents throughout the country while riding bicycles. The Attorney General of North Carolina recently ruled that there are no state laws regulating the operation of bicycles on the highways of this state. Through inadvertence or otherwise—bicycles are not included in the definition of a vehicle in the Motor Vehicle Act.

The rules and regulations on the use of bicycles, as set forth in a pamphlet issued by the Hawthorne, New Jersey, Police Department, illustrate the types of regulations deemed advisable in the operation of bicycles. They are:

1. Do not ride on the sidewalks at any time, but keep on the right side of the road near the curb.

2. Do not ride on the wrong side of the road, but travel in the direction of traffic.

3. Do not ride two or more abreast, but keep in a single line.

4. Do not ride another person on the handle bars.

5. Do not cross the street between intersections, unless there is no other vehicle directly behind or coming towards you.

6. Do not ride along holding on the back of an automobile or bus.

7. Do not make a left turn at an intersection unless you have first

(Continued on page seventeen)



DIESEL AUTO PATROL

PAYMENT OF WITNESS FEES---

The Clerk's Duties

THE collection and disbursement of witness fees is a troublesome matter. Under the traditional practice this has been handled by the Clerks of the Superior Court. Answering inquiries of witnesses as to fees, distributing fees on the records, keeping records of every fee collected and disbursed, and actual receiving and disbursing of the funds, all require time. In some of the larger counties the handling of witness fees alone will absorb most of the time of one deputy. At the same time, the orthodox procedure has not been satisfactory to witnesses. In many cases witnesses receive no fees, in others only half-fees, and in practically all cases they must wait weeks or months before receiving their money.

Right to Demand Fees

For seven decades our law has provided (C. S. 1273) that a civil witness who has attended court for one day may demand his fees from the party subpoenaing him, and if not paid, may refuse to attend court further. For at least four decades civil witnesses have been permitted to recover judgments before a justice of the peace, upon their tickets, against the party who had them subpoenaed (C. S. 1275).

Witnesses in criminal cases who have not been paid their fees, after one or more days in attendance, are not excused, but they may, just as civil witnesses, recover compensation from the party who subpoenaed them (*State v. Massey*, 104 N. C. 877). However, witnesses heretofore have rarely availed themselves of these rights. They have relied instead upon the Clerk, and if the fees were not paid the Clerk, they received no compensation.

Who Pays Witness Fees

Parties seldom pay witness fees unless ordered to pay the costs. Consequently, many witnesses entitled to compensation are never paid. In some cases this is due to a lack of desire to force payment by the party, but more often it is due to the witness' ignorance of his legal rights.

Anxious to improve this condition

in his county, the Clerk of the Superior Court in Forsyth recently made a search of the statutes and decisions to determine the extent of his duty in the handling of witness fees. Much to his surprise he found no authority anywhere for the traditional practice of Clerks in collecting and disbursing individual witness fees. Accordingly, he changed his practice. He states, "in the future, all witnesses in both civil and criminal actions (except State's witnesses) must collect their fees directly from the party summoning them instead of filing their tickets with the Clerk to be taxed up in the bill of costs and having the Clerk issue a check to the witness, after the cost is paid, for his fee."

The Clerk continues to collect and disburse fees for State's witnesses, because of the particular statutes governing these fees (C. S. 1280, 1281, 1282, 1284). Too, witness fees paid out by the winning party in each case are taxed in the bill of costs against the loser, as heretofore.

As a result of this change in the practice the collection and payment of witness fees generally in Forsyth is now a matter handled by witnesses and litigants; the Clerk is no longer responsible for them. Witnesses still prove their attendance and are issued tickets, or certificates, but they are immediately referred to the party who subpoenaed them. The witness tickets carry, on the reverse side, copies of the law justifying this practice.

Courts Approve

The Clerk of Forsyth reports that two Superior Court judges have upheld the new practice of requiring witnesses to collect their fees directly from the litigants and states that he does not believe the question will be carried before the Supreme Court. He is enthusiastic concerning the results of the new practice. He has noted the following improvements: (1) Fewer witnesses now go unpaid; (2) witnesses are invariably paid more promptly; (3) the work of his office has been lighten-

COURTS AND RECORDS

(Continued from page nine)

friends, are shiftless characters unworthy of belief whose evidence would convince no reasonable man and whose palpable fabrications would prevent no jury from discharging its sworn duty. Take the case, gentlemen."

According to the second story, an elderly superior court judge was trying a very old man for wilful trespass. The evidence indicated that there was a long standing dispute as to the boundary line, and the judge's sympathies were plainly with the aged defendant. He concluded his charge with these words, delivered with the measured emphasis used only by judges seeking to convey far more than the ordinary implications of the words uttered: "Now, gentlemen of the jury, there are those who believe that when the hand of the Almighty has rested upon a man as heavily as it has upon this defendant, it is high time that the persecuting hand of his fellowman be lifted from him. Retire, gentlemen, and make up your verdict." When the jury returned with an acquittal, the judge turned to the Solicitor and remarked, "Beat you." The Solicitor, incensed and sullen, replied, "You beat me." The old judge, in the same even tone and with the easy complacency of one who has just attained an expected triumph, merely added, "That's what I said, 'Beat you'."

ed materially; (4) there are fewer continuances, as litigants press for an early calendaring and trial in order to save expense; and (5) less time is consumed in the trial of cases, as litigants insist upon speed in the disposition of the case and the discharge of witnesses.

Any practice which accomplishes what the Clerk of Forsyth reports has already been accomplished in his county can not be ignored. Judges, lawyers and Clerks of the Superior Court are urged to examine the practical and legal aspects of this practice, and to send the Institute of Government any criticisms, modifications, or suggestions which occur to them in this connection.



Services of Field Biologists Free

Services of the field biologists of the game and inland fishing division of the Department of Conservation and Development are available to all landowners in the state interested in game propagation or management, whether they sign cooperative agreements or not, according to Commissioner John D. Chalk, chief of the division.

While the field biologists naturally spend most of their time counseling and assisting the many farmers and landowners who are participating in the farm-game management program, they will be glad to cooperate with any others who are interested, Mr. Chalk said. Several farmers who have not signed cooperative farm-game agreements are following the recommendations of the field biologists and making wildlife improvements on their farms.

Forest Fire Wardens are "Cracking Down"

An increasing number of arrests by forest fire wardens is being reported, indicating that wardens are determined to prevent as many fires as possible by prosecuting those responsible for them, according to Assistant State Forester W. C. McCormick, in charge of forest fire prevention for the Department of Conservation and Development.

From March 1 through April 14, forest fire wardens made 131 arrests and secured 122 convictions—approximately 93 per cent of the arrests. In addition, \$1,195.27 was collected in fines, costs and fire suppression costs. One fine of \$120 was imposed upon the operator of a moonshine whiskey still whose "still" fire got away from him and caused a forest fire.

Increased enforcement activity by forest fire wardens is helping greatly in educating the public to be more

careful in the prevention of forest fires and is also reducing the number of fires, McCormick said.

Parole Facts

Commissioner of Paroles Edwin Gill has recently released a report on parole activities. At the time of the report, there were 1,481 persons under active parole supervision in North Carolina. Of this number 1295 are working in private employment, 54 in public employment, and 132 are unemployed. The number of parolees varies by counties from none in Clay and Currituck to 71 in Guilford, with an average county roster of 14. The number of paroles in any given county bears a close relationship to the population of the county and the size of the staff of the local welfare office.

Commissioner Gill writes:

"The public hears much about parole failure and little about parole success and yet there is much of solid accomplishment in the story that we have to tell.

"Hundreds of individuals are waging a valiant fight to attain a satisfactory status in community life. They are working quietly with the aid of parole and welfare authorities and under the watchful eye of the law itself.

"As a condition precedent to parole, we require that a plan be worked out for the rehabilitation of the prisoner. A job must be secured. Domestic problems must be solved. Community attitude must be considered. There must be reasonable assurance that the prisoner will not become a public charge. In other words, sound parole procedure is more than a system of release from prison. It is more than a system of surveillance after release. It is, rather a mechanism to aid the individual in the difficult transition from prison life to community life. The sensational failure, here and there, has caused the public to think of parole only in terms of its de-

fects. It has been almost impossible for the public to think of parole except in a highly emotional and distorted way. Of course, there have been failures and we shall continue to have failures. A human being is unpredictable with exactness. However, much progress is being made in the appraisal and selection of parole material and the public is beginning to realize that in many instances parole failure is simply another word for community failure.

"As the public mind begins to realize the economic and social aspects of crime, parole will grow in public confidence. The public is beginning to realize that there is no magic in the parole itself—that you cannot transform a man from a criminal to a good citizen by the mere act of turning him loose; that you cannot rehabilitate him simply by spying on him after he has been released.

"The Parole System is a focal point for an experiment that has its prison and community phases. We must work with the material made available by the penal institution and we must work with community resources that are available for the parole experiment. Within prison walls there should be a plan preparing the prisoner for his return to civil life; on the outside there should be a parallel program preparing the community for the prisoner's return."

Hog Health

A survey of North Carolina's hog population will be made by the State Department of Agriculture immediately looking toward the eradication and control of swine diseases, beginning July.

Dr. William Moore, chief of the department's veterinary division, has announced the employment of four registered veterinarians to make the survey and conduct the swine disease program.

"An effort will be made to place
(Continued on page sixteen)

Keeping Up with Washington

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

The "Twenty Billion Dollar" Congress

The Seventy-fifth Congress, just ending its third session in two years, set a peace-time record for appropriations. A total of around twenty billion dollars was appropriated—twelve billion of which was appropriated during the session which recently came to a close. These appropriations set a new record, except for one year during the World War.

Excluding resolutions and private laws, only 584 new laws were enacted by Congress during 1937-1938.

Operating expenses for Congress included such items as: a \$47,000 deficit incurred in operating the restaurant for Senators; \$13,500 to fold speeches of Representatives; \$18,000 to fold speeches of Senators; \$700,000 to pay for clerical assistance for Senators; \$2,000,000 to pay for clerical assistance for Representatives.

South Carolina and the Supreme Court

In 1933, South Carolina enacted a law restricting the weight and width of trucks permitted to use the public highways. Motor vehicle gross weight was limited to ten tons, and vehicle width to 90 inches. Motor carriers protested against the law as violating the commerce clause of the federal constitution. The trial court "found that interstate carriage by motor trucks has become a national industry; that from 85 to 90 per cent of the motor trucks used in interstate transportation are 96 inches wide and of a gross weight, when loaded, of more than 10 tons; that only four other states prescribe a gross load weight as low as 20,000 pounds; and that the American Association of State Highway Officials and the National Conference on Street and Highway Safety in the Department of Commerce has recommended for adop-

tion weight and width limitations in which weight is limited to axle loads of 16,000 to 18,000 pounds and width is limited to 96 inches.

"It found in detail that compliance with the weight and width limitations demanded by the South Carolina act would seriously impede motor truck traffic passing to and through the state and increase its cost; that all but 100 miles of the specified highways are from 18 to 20 feet in width; that they constitute a connected system of highways which have been improved with the aid of federal money grants, as a part of a national system of highways; and that they constitute one of the best highway systems in the southeastern part of the United States." The trial court granted an injunction against the South Carolina State Highway Department enjoining enforcement of the law.

The Supreme Court reversed the decision and upheld the South Carolina law, declaring that inasmuch as Congress had not undertaken to regulate the weight and size of motor vehicles in interstate motor traffic, the state was authorized to enact regulations. However, it was pointed out that power probably does rest in Congress to enact uniform regulations fixing limits as to weight and size of vehicles moving in interstate commerce, and that such laws, when and if enacted, would take precedence over state laws. (*South Carolina State Highway Department v. Barnwell Bros.*, 58 Supreme Court Reporter 510 (1938).)

Federal Juvenile Delinquency Act

The principal features of the recently enacted Federal Juvenile Delinquency Act are as follows:

1. It applies to all persons under eighteen years of age.
2. It applies to all Federal offenses committed by juveniles, other than offenses punishable by death or life imprisonment. However, the Attorney General is to be granted the option of prosecuting a juvenile on a charge of juvenile delinquency or for the substantive offense of which he is



accused. The purpose of this provision is to make it possible, if it appears desirable, to prosecute the more serious juvenile offenders in the same manner as adults.

3. Juvenile delinquents are to be prosecuted by information and tried before a district judge, without a jury, who may hold court for that purpose at any time and place within the district, in chambers or otherwise. Informal procedure of this kind has been found in many of the States conducive to attaining the humane and beneficent objects of such legislation. The consent of the juvenile is, however, to be required to a prosecution for juvenile delinquency under the Act, instead of for the substantive offense. It has been held that minors may waive the constitutional right to a trial by jury, in the same manner as adults.

4. It is proposed that in the event the juvenile is found guilty of juvenile delinquency, he may be placed on probation or may be committed to the custody of the Attorney General for a period not exceeding his minority, but in no event exceeding the term for which he could have been sentenced if he had been convicted of the substantive offense. The Attorney General is to be empowered to designate any agency for the custody and care of such juveniles. The purpose of this provision is to make possible the use of such state and local institutions and quasi-public homes, as may appear to be suitable.

5. The Attorney General is to be notified of the arrest of any juvenile and may provide for his detention in a juvenile home. The purpose of this provision is to reduce the detention of juveniles in jails to a minimum.

6. The Parole Board is to be given power to parole a juvenile at any time.

7. A saving clause is contained as to the District of Columbia, in view of the fact that the District has its own juvenile delinquency statute.

The number of juveniles in the Federal system to be affected by the legislation is indicated by the fact that during the current fiscal year ending June 30, 1938, approximately two thousand juveniles under eighteen years of age will have passed through the Federal Courts.

WOMEN AND POLITICS

(Continued from page ten)

Decision, (Richards v. District School Board, 78 Or. 621, 153 Pac. 482, 1915.)

Women at Work

"According to the 1930 Census, there are 43 million women over 15 years of age in the United States, of whom 10½ million are gainfully employed outside their homes. One and three quarter million of these have been married but are either widowed or divorced. Three million more are married and are living with their husbands.

"One woman in every 4 in the United States is gainfully employed and 1 out of every 8 married women has a job away from home."

	%
1,110,000 of the married women working are in domestic and personal service for other people	36
610,000 are working in industry	20
364,000 are in clerical work	12
340,000 are in trade	11
294,000 are engaged in professional occupations	10
282,000 are in agriculture, forestry, and the extraction of minerals	9
70,000 are in transportation and communication	2

POLICE PENSIONS

(Continued from page three)

a practice of continuing the payment of salary, at least for a limited period of time, of an injured officer might discontinue this practice on the theory that the officer might as well be paid out of State funds.

Police Pension Laws of Other States

More than 1/3 of the States make no provision for police pensions. In other states varying types of systems are in force. In some states cities are permitted to set up pension systems more or less according to their own desires; in others, an optional system is set up by the state. In still others, pension systems are often limited to state police officers sometimes through special police pension systems, sometimes under a general state employees retirement system. No State has enacted a pension law very similar to the North Carolina statute.

Thus pension systems apply to different groups in different states: in Arkansas, to police in cities of population of more than 16,000; in

California, to state employees; in Colorado, to towns over 100,000; in Connecticut, to all cities voting for the pension system; in Delaware, to state police; in Illinois, to city police in cities of different population classes beginning at 50,000; in Indiana, to state police; in Iowa, to all cities with an organized police department; in Kansas, to towns of varying population classes; in Kentucky, to all cities adopting the state act; in Louisiana and Maryland, to state police; in Massachusetts, to state police and city police; in Michigan, to members of the department of public safety; in Missouri, to towns over 500,000; and in North Dakota, to towns over 25,000.

Of course, in addition to these general laws in the various states literally hundreds of special local acts have been enacted in most states, including North Carolina, providing for local city or county police pension systems.

Police Pension Regulations

The committee for the Administration of the Law Enforcement Officers' Benefit Fund recently adopted the following regulations, for the present making provision only for death benefits.

1. That the following law enforcement officers shall be eligible to receive the benefits by Chapter 349; Public Laws 1937

Sheriffs

Deputy sheriffs, including those selected by County Commissioners

City and town police officers

Prison wardens and deputy wardens

Prison camp superintendents

Prison stewards, foremen and guards

State highway patrolmen

Constables

Any citizen duly deputized as a deputy sheriff by a sheriff in an emergency

2. That no benefits shall accrue under authority of the Act, and the rules and regulations promulgated thereunder, until a thorough investigation is made by a member of the committee or its duly authorized agent and it is found by the Committee that the injury and death arose out of and in the course of the actual performance of official duty.

3. That no claim for benefits will be allowed under authority of this Act, unless a claim therefor is made in writing to the Committee within twelve months following the date of death.

4. That, until further information is available and proper action taken by the Committee, benefits payable under these rules and regulations shall be limited to benefits on account of death, and that such benefits shall accrue in all cases of death occurring on or subsequent to January 12, 1938.

5. That the following death benefits shall accrue and become payable after each claim has been duly investigated and approved by the Committee:

- To the widow of the deceased officer or, if no widow survives, to the deceased officer's father and if father not living to the deceased officer's mother, and if neither father nor mother survives, then to some relative designated by the Committee or to the personal representative of the deceased for burial expenses \$200.00.
- To each dependent child under 18 years of age at the time of the death of the deceased officer, including each legally adopted child, step-child or child in esse \$100.00.
- To each dependent son or daughter over 18 years of age who is physically or mentally incapable of earning a living \$100.00.
- To the widow of the deceased officer, provided she is legally married and living with the deceased officer at the time of his death or living apart for justifiable cause or by reason of his desertion at such time \$500.00.
- If no eligible widow exists then the sum of \$500.00 may, in the discretion of the Committee, be paid pro rata to the eligible children; if no eligible children then to the surviving dependent parent or parents; and if no surviving dependent parent then to a surviving dependent brother or sister under 18 years of age or surviving dependent brother or sister over 18 years of age who is physically or mentally incapable of earning a living. Provided, that in cases where there is no eligible widow or child and more than one eligible dependent exists, the benefit payment of \$500.00 may be pro rated on a basis determined by the Committee.

Provided, that the total benefit that may be paid under a single death claim shall not exceed \$1,500.00.

6. That benefits accruing to the eligible children of the deceased officer shall be paid to the eligible widow, if any, and held and used by her for the benefit of such children. If no eligible widow exists, benefits accruing to eligible children shall be paid to the duly appointed guardian of the child or children.

7. That no claim for benefits under these rules and regulations shall be assignable, and all benefits paid and claims therefor shall be exempt from all claims of creditors and from taxes.

PUBLIC WORKS

(Continued from page eight)

and early winter the camp will be abandoned about October 1.

CCC workers already have constructed a 5,000-gallon pure water reservoir at the top of the mountain.

PWA Grants

More than a quarter of a million people in North Carolina municipalities, ranging in size from Winston-Salem to Pikeville, will be directly benefited by the \$3,242,117 water and sewerage improvement program made possible through PWA grants, says Warren H. Booker, director of the State Board of Health's Division of Sanitary Engineering.

"It is interesting to note that 24.4 per cent of the projects in the entire country were for waterworks and sewerage, but that in North Carolina the 22 projects that were allotted grants represent 46.8 of the total number for which allocations were made," Mr. Booker pointed out. "From this," he continued, "you will see that we are nearly twice as well off in the number of projects for waterworks and sewerage as the other States."

Over three years ago, he said, the State Board of Health, through its Sanitary Engineering Division, began working in behalf of this improvement program, designed to promote public health. Representatives have addressed civic clubs, mass meetings of citizens, and various other groups, giving information as to what a waterworks and sewerage plant should be, in order to meet the minimum requirements for adequacy and the promotion of public health, always urging the importance of extending water and sewer systems to eliminate the "fringe of privies" usually found on the outskirts of towns and cities. "A privy has no social or sanitary standing in any incorporated municipality in North Carolina," is the slogan of the Division of Sanitary Engineering, Mr. Booker said. "There are a few 100 per cent watered and sewerd towns in North Carolina, including Boone, Chapel Hill, Cooleemee, Crossnore, Highlands, Carolina Beach, Kures Beach, Proximity, Roanoke Rapids, Roaring Gap, and Sanford. Asheville rates 99.5 per cent in this respect, Winston-Salem

99.1, and Charlotte 98, among the cities in the larger brackets."

The municipalities and the amounts involved in their respective water and sewer improvement programs are:

Archdale-Trinity, sewer system	\$172,727
Asheboro, sewer improvements	75,000
Battleboro, waterworks	50,909
Burlington, waterworks improvements	367,733
Creedmoor, water and sewer	75,000
Denton, water and sewer	87,273
Durham, waterworks improvements	190,000
Fair Bluff, water and sewerage	76,363
Four Oaks, waterworks	80,000
Goldsboro, waterworks improvements	95,545
Greensboro, waterworks and sewerage	373,659
Hickory, waterworks and sewerage	275,000
Lincolnton, waterworks	110,909
Kenly, waterworks	110,909
Pikeville, waterworks and sewerage	45,000
Rich Square, waterworks and sewerage	103,636
Rockwell, waterworks and sewerage	80,000
Rural Hall, waterworks and sewerage	72,727
Sparta, waterworks	56,000
Wilson, waterworks and sewerage	595,000
Winston-Salem, waterworks	136,000
Winterville, waterworks and sewerage	61,818

ANCESTORS OF THE CONSOLIDATED STATUTES

(Continued from page seven)

contained the index to the two earlier volumes and also brought forward the legislative enactments for the period from 1919 to 1924. A commission (Chairman E. S. Parker, Jr., Victor S. Bryant, and S. J. Everett), named by the General Assembly, secured Harry B. Skillman, of Washington, D. C., to prepare this index of the *Consolidated Statutes*, and also was responsible for the last official codification of North Carolina laws (those from 1919 to 1924). Volume Three of the *Consolidated Statutes*. For the past fourteen years the State, the profession, and the bench have been served by a private, out-of-state corporation, which has published unofficial codes as a commercial enterprise.

Federal Code

The most recent Federal codification is only five years old (the first official Federal compilation appeared in 1878, another in 1924), but it has been nearly two decades since an official codification of our State laws was prepared. As we have noted, there are many kinds of codification.

Soon the General Assembly will face the problem of a new codification of North Carolina laws. The answer seems to lie in making provision for continuous codification work not only for the purpose of revising the code but to keep the code up-to-date.

The manner in which the job is done will affect the bread-and-butter of every practitioner. The task should be done well. With the efforts of the profession this can be assured but not otherwise.

FIREMEN

(Continued from page eight)

the *American City*. "The essential value of having a strong, efficient fire department is seen by a casual look at fire losses. Take any month, say, October, 1937, and run your eye down the list of municipalities. Here, for example, are the per capita losses in round numbers for ten communities:

Municipality	Population	Fire Loss Per Capita
Cushing, Okla.	9,301	\$ 9
Ephrata, Pa.	5,000	12
Kane, Pa.	6,232	8
Lexington, Mo.	4,595	11
Lewisburg, Pa.	3,308	21
Lynden, Wash.	1,564	32
Moody, Tex.	1,041	50
Ruston, La.	4,400	17
Thomasville, Ga.	11,933	5
Wortham, Tex.	1,404	36

"How many of these places," asks the *American City*, "are equipped with (1) adequate water supply for fire purposes; (2) first class fire-alarm systems with a sufficient number of boxes; (3) modern fire apparatus and sufficient hose of good quality? This little table is only a sample of what is happening every month."

UTILITY BOARDS

(Continued from page five)

look back upon this experience with much satisfaction. The question of graft and dishonesty is something that we hear considerable about but in actual reality I have encountered so little of it that it seems a rare exception when we do really encounter dishonesty and graft connected with the management of utilities, whether it be by council, city manager or board. I have formed many pleasant acquaintances among mayors, city councilmen and others, but, in balancing up my dealings with all the officials, I must say that with few exceptions the most satisfactory relations have been with utility boards. I have in mind one case where we have served in an engineering capacity to the same board that has been in charge of the water, light and gas utilities for over 25 years; another board has been served over a period of 18 years; one over a period of 12 years. It can readily be seen that this engineering service is quite different where rendered to a board continually in charge of the utilities, rather than to be making the acquaintance of and serving new councilmen, mayors and managers every few years.

In general, we find utility boards more keenly interested in the successful management and operation because they realize that they have in their direction the permanent up-building and maintenance of the property. It is not a temporary job with them. It is usually a life-time job with them. Almost universally these boards are interested in having the manager and superintendent visit other utilities, inspect new installations, keep abreast of modern improvements, gathering in new ideas, attending conventions and conferences, such as meetings of Municipal Utility Associations. The utility boards realize the value and need of having employees attend utility association meetings, sending the superintendents and managers at the expense of the utility board, for it is really in behalf of the utility and municipality that they should go.

Three Types of Boards

Three general types of boards exist: One, merely an advisory board; one, a semi-independent board under

council control; and one an entirely independent utility board.

The Kansas City, Kansas, board is a good illustration of the third type or an entirely independent utility board with charge of both the water and lighting utilities.

Boards thruout the country consist of three members, four members, five members, and, in a few instances eight members. The predominant membership seems to be about five. Jamestown, New York, and Lansing, Michigan, both have outstandingly successful municipal utilities with eight members on their boards.

The tenure of office of the board members varies from three to five years. Vacancies on the board are frequently filled by the mayor and council; and occasionally by election. Boards are elected in quite a number of places, but more frequently the boards are appointed and confirmed by the council. Most of the elected boards are elected from the city at large rather than from wards or districts. In some cases board members are elected at the regular city election, and in others at a special time for the election of board members only.

Where city managers prevail, boards are often named by the city manager, with council approval.

In a few instances the board is removable by the mayor and majority of the council. In Kansas City, Kansas, where the board is elected, the board is removable only by popular recall.

Vacancies are usually filled in the same manner as the original selections were made. However, there are instances where vacancies in an originally elected board are filled by appointment, and where vacancies in an originally appointed board are filled by election. At Eugene, Oregon, the board has power to declare vacant the office of any member who shall absent himself from three consecutive regular meetings without an excuse satisfactory to the board.

MATCHING JOBS AND MEN

(Continued from page four)

approach to the problem of unemployment; to the problem of determining training courses which meet the economic need of individuals

and communities; and to the problem of bringing the supply and demand of labor together in the shortest possible time, to the employer in securing competent workers, and to the employee in securing work commensurate with his training, experience, and ability.

The Employment Service has given a new dignity to the job of seeking a job. The applicant for employment is not a seeker of charity. He is a self-respecting member of society, legitimately seeking the guidance of a specialized, governmental service to aid him in the laudable enterprise of finding congenial employment.

Benefits Cities and Counties

The employment office is essentially a community institution and should become the employment center of the community which it serves. Every job-seeker should make registration with the Service his first step in seeking employment. Every employer requiring workers should turn first to the employment center. Every community agency seeking information or help concerning the problem of unemployment should turn to the employment office as the logical clearing house for men, jobs, and facts about jobs.

KEEPING UP WITH RALEIGH

(Continued from page twelve)

the veterinarians in areas where ordinary veterinary service cannot be obtained by the farmers," Moore said.

Citing that North Carolina has more than 1,133,000 hogs valued at \$11,123,000 the veterinary chief declared that "this important industry has been relatively neglected, insofar as disease control work is concerned."

"Hog cholera can be found in virtually every county where hogs are produced commercially and the annual loss from this disease alone will run into the thousands of dollars," Dr. Moore said, adding that "the general practice of vaccinating hogs in an effort to stamp out cholera has not reached the point that any material change in the hog death rate has been noticed."

HERE AND THERE

(Continued from page ten)

given the car behind or approaching you the proper signal with your left hand.

8. When approaching an intersection where traffic lights are installed, proceed only when the light shows green.

9. When riding at night after sun-down, see that your bike has a light on the front, and either a lamp showing red or a red reflector on the rear.

10. When about to cross an intersection, first come to a stop, look to the right and left, if the road is clear, only then proceed to cross.

11. No bicycle shall be equipped with or shall any person use upon any bicycle any siren or whistle.

EQUIPMENT AND MATERIALS

(Continued from page ten)

starting regardless of atmospheric temperatures.

The transmission offers six forward speeds and two reverse. A low speed of 1.8 m.p.h. provides maximum pull for the heaviest jobs, and slow speed for fine grading. Second speed is 2.8 m.p.h., permitting faster operation on most ditching and other heavy work. Four higher speeds of 4.3, 6.8, 9.6, and 15.2 m.p.h. give ample speed range for road mix, snow removal, travel, etc. Reverse speeds are 2.4 and 3.8 m.p.h.

The Diesel No. 12 Auto Patrol is equipped with two speed mechanical power controls. A simple shift of a lever in the gear box gives faster control for the longer blade movements on coarse work. For close finishing work, requiring extreme accuracy in blade settings, the slower control is quickly available.

TAXATION AND FINANCE

(Continued from page eight)

Relations, Interstate Tax Relations, Federal and State Aid, and State Control of Local Finance. These articles undertake to analyse existing conditions, to point out problems and to suggest the questions that must be answered if any solution is to be found to simplify the growing confusion in the field of tax relations among governmental units.

HEALTH AND WELFARE

(Continued from page nine)

ordinary facilities to a quicker use by the blind.

The second group of blind are those who have sufficient executive ability to manage a small business of their own if given some training and furnished with equipment and stock. Stands in public buildings, private office buildings, factories, and on street corners offer the best opportunity for employment, although small stores, filling stations, mattress, poultry and stock-raising businesses and other small enterprises often afford an opportunity for self-support. After establishment in business, continued service in supervision and planning are necessary. The Commission gives training, and in co-operation with local groups, furnishes equipment and materials in establishing blind persons in these types of work. Lack of funds prevents the greatly needed expansion of such opportunities to the blind.

The third group of blind are those who can produce eight hours a day but need careful supervision. For this group, five work shops have been established in cooperation with local groups. Brooms, mattresses, mops, brushes, chair caning, rug-making, basketry, mat-making, mattress renovating, upholstering, leather and novelty work are done in these shops. The number which can be taken into these shops is, of course, limited, and there is great need for the expansion of this activity. The cost of workshop maintenance is extremely small, compared to the costs of assistance grants. At present there are fifty blind working in shops and many more who could be profitably employed if funds were sufficient to provide an expansion of this occupational opportunity.

The fourth group of blind are those who have ability to make certain types of articles after careful training and with periodic supervision in their homes and who can be established in home industries, earning a small weekly wage. It is this group that the Commission plans to have instructed by blind home teachers as soon as these teachers have completed the preparatory training program now in pro-

cess. Home teaching at present is being done in only a few counties. It is necessary to have a revolving fund for the furnishing of materials. The Commission hopes to develop this phase of the work in the future and to have a home teaching program available to all of the counties.

The fifth group of blind are those who, because of old age or other physical or mental handicaps, can not produce for market consumption but who can be taught simple handicrafts and how to take care of themselves and to be as little dependent as possible."

Wassermann Test

At its annual meeting in Pinehurst, the North Carolina Public Health Association unanimously endorsed a resolution asking the General Assembly to make the Wassermann test for syphilis a requisite of issuance of a marriage license for both men and women. New York recently enacted such a law. Kentucky has passed a similar law, effective in 1940. Rhode Island is considering the proposal, while Virginia has already turned it down. The New York statute contains additional provisions requiring physicians treating expectant mothers to examine for venereal disease.

New Hygiene Laboratory

The way was opened for immediate construction of the State Board of Health's new Laboratory of Hygiene in Raleigh to be erected on the corner of Jones and McDowell Streets, with the announcement received from Washington by Dr. Carl V. Reynolds, State Health Officer, that a PWA grant for \$130,909 had been approved. Added to this is \$160,000 realized from a bond issue authorized by the 1937 General Assembly, making the total amount for this new building and equipment of the farm, located west of the City of Raleigh, \$290,909.

Dr. Reynolds emphasized the fact that the services performed by the laboratory saves the taxpayers of the State approximately \$2,500,000 a year, at a cost of around \$125,000.

"The people of the entire State should appreciate the value of the Laboratory's work in the prevention of various diseases. The good that is accomplished through this medium cannot be overestimated."

Recent Supreme Court Cases

ATTORNEYS

Disbarment—On Motion in Felony Convictions. — Attorney was convicted of forgery in both Federal and State courts, but in disbarment proceedings by the State Bar demurred on the ground that the offenses were committed before the State Bar was created. *Held*, as the facts of felony convictions are admitted, the court disbars the petitioner on motion of the Attorney General without passing upon the demurrer. *In re Brittain*, 213 N. C. —.

CLERKS

Court Fines — Collection Fees. — From fines collected by a municipal court the clerk deducted, under the general statute, 5% as commission. The statute permitting such commissions was attacked as unconstitutional. *Held*, the act is unconstitutional and the clerk, therefore, is not entitled to such commissions. *Board of Education v. High Point*, 213 N. C. 636.

CORONERS

Unauthorized Autopsy — Body Found in Swimming Pool. — Boy's body was removed from swimming pool. The coroner finding the neck unbroken and no water in the lungs, ordered an autopsy which revealed that death was due to an acute heart attack. The father sued the coroner for wrongful mutilation. *Held*, there was evidence for the jury, as the coroner was without authority to order an autopsy without an inquest or the consent of next of kin. *Gurganus v. Simpson*, 213 N. C. 613.

MUNICIPAL CORPORATIONS

Street Assessments — Limitation on Double Assessment. — City charter prohibited assessments for permanent improvements oftener than once in ten years. Corner lot was assessed for improvements on one street and within ten years owner signed petition to approve side street also. Side street was improved, assessments made, and two installments paid before property sold. Purchaser sought to enforce ten year limitation. *Held*, owner waived exemption, ratified lien and set up estoppel to assert the ten-year limitation, and purchaser under

mortgage executed after the assessment is barred likewise to assert the ten-year limitation. *Insurance Co. v. Charlotte*, 213 N. C. —.

Street Assessments—Estoppel to Deny Validity. — Property owner signed petition for street improvements and, after assessment roll was opened to public inspection, paid two installments without objection. Eight years later when suit was brought to enforce the assessment liens, the owner attempted to defeat the lien by attacking items improperly included in the assessment. *Held*, owner received the benefits of the improvements without objection for eight years, and such conduct estops him from denying the validity of the assessment. *Wake Forest v. Guley*, 213 N. C. —.

Streets—Injury Due to Defect. — Pedestrian in the night-time traversing a marked cross-walk in the street stepped into a depression in the street surface and was injured. Plaintiff testified that she was not looking where she was going. *Held*, the case should have been nonsuited; no negligence on the part of the city was shown, and there was ample evidence that plaintiff herself was negligent. *Houston v. Monroe*, 213 N. C. —.

Streets — Projecting Ramp in Street. — Plaintiff and his sister were injured when driving, at night, along the street he struck a ramp which projected at an alley entrance out to the asphalt. Plaintiff did not see the ramp before he struck it. The ramp was used to make it easier to drive over the curb and was beveled in such a way that one edge was level with the gutter, the other level with the curb. The city had had notice of the extending ramp for three years. *Held*, there is sufficient evidence of negligence on the part of the city to go to the jury, and, further, the evidence of plaintiff-driver's negligence was not sufficient to bar his recovery as a matter of law. *Ferguson v. Asheville*, 213 N. C. 569.

Suit for Bond Interest — Verified Complaint. — Separate actions before a justice of the peace for interest on city bonds were instituted on summons without written com-

plaints. Demurrer was filed on the ground that the complaints were not in writing and verified. *Held*, the demurrer is good, as by statute every action against a municipality must be in writing and verified. *Kalte v. Lexington*, 213 N. C. —.

Zoning—Regulation of Fences. — A zoning ordinance sought to limit the height and construction of fences but excepted a retaining wall. A retaining wall was built above the street level of the lot, the lot at its highest point being twenty feet above the street. The court ordered it cut down until it was level with the natural level of the lot at the fence line. *Held*, (four to three) that the ordinance is valid as thus interpreted. *Clarkson, J.* dissented on the ground that the ordinance is ambiguous, that it could be reasonably interpreted so as to permit the wall to remain, and that the interpretation upheld constitutes an unwarranted interference with the rights of property owners. *In re: Appeal of Marker*, 213 N. C. —.

NUISANCES

"Padlocking" — Roadhouses. — Roadhouse and tourist camp with bad reputation for permitting fighting, immorality, drunkenness, etc. The personal property was ordered sold, the defendant restrained from operating the place of business, and it was ordered that the real estate remain idle for a year. *Held*, this nuisance was properly abated. *Carpenter, Solicitor v. Boyles*, 213 N. C. —.

REGISTER OF DEEDS

Recording — Error in Grantor's Name, Probate. — In transcribing a deed, at the place for the signature one of the two commissioners' names was spelled incorrectly. A special proceeding in the Clerk's office showed the name correctly and elsewhere in the recording of the deed itself the name was correctly indicated. The title was challenged as defective. *Held*, the errors were merely clerical which are calculated to mislead no one and, therefore, were not fatal defects in the title. *Realty Corp. v. Houston*, 213 N. C. 628.

SCHOOLS

Building—Mandamus to Compel Building. — Mandamus to require an adequate school building to be built. (Continued on page twenty-three)

Bulletin Service

Opinions and rulings in this issue are from rulings of Attorney General and State Departments from April 1 to June 1

★
Prepared by

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

KEY:

(A. G.)—Attorney General.

I. AD VALOREM TAXES.

A. Matters Relating to Tax Listing and Assessing.

1. Exemptions—religious and educational organizations.

To John A. Guion. (A. G.) A clubhouse owned and used by a woman's club would be exempt from ad valorem taxation under the 1937 Machinery Act.

To J. R. Morgan. Inquiry: Is property owned by a foreign educational corporation, the income from which is used exclusively for educational purposes in North Carolina exempt from taxation?

(A. G.) Yes. Where the income is expended for educational purposes within this State, the property would be tax exempt under the 1937 Machinery Act. But if no income at all were derived from the property then it would be subject to taxation inasmuch as the exemption applies only when income is received and is expended within the State for a religious, charitable, educational or benevolent purpose.

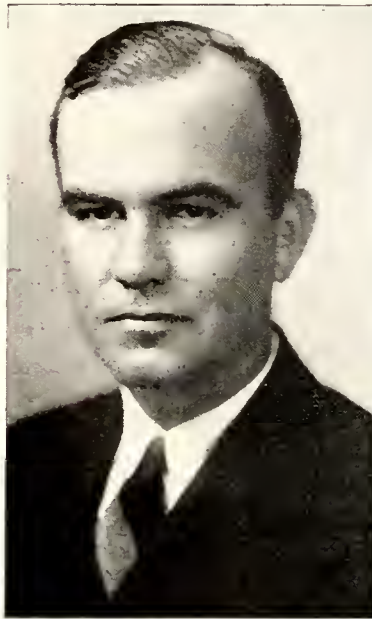
19. To whom property is assessed.

To Walter D. Brown. (A. G.) Real estate should be listed for ad valorem taxation in the name of the person holding the legal title.

21. Valuation of bank stock.

To Miss Katie Cobb. Inquiry: What is the proper construction of Section 1500 of the 1937 Machinery Act?

(A. G.) The last sentence in Section



T. WADE BRUTON
Assistant Attorney General

1500 does not mean that shares of stock in banks shall be taxed under the intangibles tax division of the above act. It simply means that shares of stock in banks shall not be taxed at a greater rate than moneyed capital in the hands of private individuals or corporations engaged in similar activities.

Banks make their reports to the State Board of Assessment which Board determines the value of shares of stock and certifies this value to the counties and municipalities for ad valorem tax purposes. Of course, the rate in effect in the county and municipality for ad valorem tax purposes will be the rate at which this bank stock is taxed.

25. Revaluations.

To W. P. Kelly. (A. G.) In our opinion section 301 of the 1937 Machinery Act contains provisions whereby timber land from which the timber has been removed since the last revaluation year, may be reassessed. Subsection (3) of section 301 states the conditions under which real property may be revalued and clause (c) authorizes such revaluation where the property has been decreased in value to the extent of \$100.00 by the destruction, damage or removal of appertenances from it.

In our opinion this provision is sufficiently general in its terms to justify reassessment of real property from which the timber has been removed since the last valuation.

65. Intangible tax law—1937.

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.

92. Credit to hospitals for charity work.

To Messrs. Scott and Collier. Inquiry: A doctor owns all of the capital stock of an incorporated hospital. This doctor in his own name owns real estate on which the hospital is located and which he permits the hospital to use. May claims for charity work under section 602(2) of the Machinery Act be used to offset taxes assessed against the real estate?

(A. G.) No. The offset could not properly be allowed because the real estate is neither owned, listed nor assessed in the name of the hospital institution.

B. Matters Affecting Tax Collection.

1. Turning over tax books to collecting officer.

To C. V. Jones. (A. G.) We agree that section 1103 of the 1937 Machinery Act has no effect on the provisions of Chapter 114, 1937 Public Laws, prescribing the time for the advertising and sale of property for taxes. Section 1103 provides that the tax stubs for 1938 taxes shall be turned over to the collector on the first Monday in September "provided he has made settlement as by law required." Since under chapter 114 it is impossible that the collector settle for 1937 taxes prior to October the above provision of the Machinery Act can be effective in 1938 only in those counties and cities excepted from chapter 114.

14. Delinquent taxes—requirement of advertising.

To C. L. Williams. (A. G.) C. S. 1334 (48) provides that real estate shall be advertised for sale for the collection of taxes on the first Monday in May of each year. This law has been amended by c. 114,



LEE OVERMAN GREGORY
Assistant Attorney General



ROBERT H. WETTACH
Assistant Attorney General

A. B. C. BOARD WITHOUT AUTHORITY TO ENFORCE LIQUOR LAWS IN DRY COUNTIES

To Cutlar Moore. (A. G.) In my opinion the State A. B. C. Board does not have jurisdiction or authority in dry counties to engage in enforcing the prohibition laws in such counties.

1937 Public Laws, insofar as 1936 and 1937 taxes are concerned. The above amendment states that the advertisement occurs in August. In advertising property for the collection of 1937 delinquent taxes, you are to be governed by this law.

16. Tax collection—corrections and discoveries.

To Messrs. Scott and Collier. (A. G.) This office is of the opinion that C. S. s. 7971 (50), subs. (4), would not permit the listing of property, which has escaped taxation, for a longer period than five years prior to the discovery of the property.

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

To A. R. House. Inquiry: Is a municipal corporation authorized to accept past due bonds owed by it in payment of city assessment?

(A. G.) A municipal corporation does not have this authority in the absence of a special law conferring such authority.

65. Tax collection—garnishment.

To H. L. Sanders. (A. G.) In our opinion rents due a taxpayer would constitute a debt subject to garnishment for delinquent taxes under C. S. 8004.

II. POLL TAXES AND DOG TAXES.

A. Levy

5. Exempted classes.

To Junius D. Grimes. Inquiry: Is a prisoner working on the roads exempted from poll tax?

(A. G.) There is nothing in the Constitution or the statutes exempting or authorizing county or city governing boards to exempt from poll tax on the basis of imprisonment. It might be, of course, that such prisoner could be exempted under the powers to exempt on account of poverty or infirmity.

6. Persons on welfare projects.

To Thomas L. Covington. (A. G.) In our opinion employees of the CCC as well as persons living on an installment project in your county would be subject to the payment of poll tax in the same way and manner as other residents in your county.

7. Amount of levy.

To W. P. Kelly. Inquiry: May a Board of County Commissioners levy a poll tax in excess of \$2.00?

(A. G.) No. Such action would be unconstitutional.

III. COUNTY AND CITY LICENSE OR PRIVILEGE TAXES.

A. Levy of Such Taxes.

7. Government contractors.

To Messrs. Thorpe and Thorpe. (A. G.) In our opinion a municipal license tax on a contractor engaged in the performance of a contract with the United States Government is not to be considered as a burden on the federal government, and such a tax may constitutionally be levied.

15. Privilege license on businesses, trades and professions.

To S. R. Hoyle. Please explain what license taxes may be levied and collected

under the provisions of Section 155 of the Revenue Act.

(A. G.) In our opinion a person is required to have only one license in order to practice all of the occupations listed in Section 155, plumber, electrician, etc. The proviso to the section that a licensed plumber who employs only one additional person shall pay only one half tax applies only to plumbers and not to persons who install electrical equipment or engage in the other businesses set out in the section. If the population of the town is under 2000, the city could only levy a tax of \$2.50 and a license so received would entitle the licensee to engage in all businesses enumerated in the section.

To Mr. G. S. Quillin. Inquiry: Under subs. (f), sec. 122, 1937 Revenue Act, may a city by proper ordinance, under a graduated scale based upon the total contract price or estimated cost of each project, levy a license tax as a fee for a building permit, not in excess of \$10 for each project to be built within the city?

(A. G.) We are of the opinion that such an ordinance would be valid.

40. License tax on peddlars.

To W. H. Hammond. (A. G.) We do not think that a party who solicits orders for motor fuels one day for delivery the following day would be subject to the peddlars tax levied in section 121, 1937 Revenue Act.

60. License tax on laundries.

To Warren McNeill. (A. G.) Section 139, current Revenue Act, authorizes cities and towns to levy a license tax on persons engaged in the business of pressing and dry cleaning, not exceeding a fixed statutory maximum. No such authority is granted to the counties. Section 150 of the current Revenue Act authorizes both counties and municipalities to levy a license tax on laundries not to exceed one-half the tax levied by the State.

73. License tax on solicitors of students for commercial colleges.

To T. E. Brown. (A. G.) Section 7½, Chapter 184, 1937 Public Laws, levies a license tax in the amount of \$2.00 against all persons soliciting students within this State for commercial colleges located within or without the State of North Carolina. The tax is not levied against the school but against the persons who solicit students for the school.

90. General powers to levy.

To W. L. Currie. Inquiry: What limitations are placed on counties in the matter of licensing businesses as trades or professions?

(A. G.) Counties are not given general authorization to levy privilege taxes on businesses, trades, or professions in the same manner as municipalities are under C. S. 2677. This is to advise, therefore, that if the Revenue Act does not authorize the county to levy a license tax for the privilege of engaging in occupations therein outlined the county would be without authority to levy a license or privilege tax.

IV. PUBLIC SCHOOLS.

D. Powers and Duties of Present School Districts.

5. Erection of school buildings.

To J. Henry LeRoy. (A. G.) Since the 1933 school machinery act the Board of Trustees of what was formerly a special charter district or what is now a city administrative unit is not authorized to take title to a school site upon which the erection of a school building is contemplated. Such property must be purchased by the

county at the instigation of the County Board of Education and title is taken in the name of the Board of Education.

42. Liability for injuries to pupils.

To Emery B. Denny. (A. G.) It is fairly well established that an administrative unit or special school district is not liable for torts arising out of the negligence of drivers of trucks used in transporting children to and from school. In view of this no new liability in this respect is incurred by school districts by virtue of signing a contract with the State School Commission, purporting to assume liability for damages arising out of school busses used during the ninth school month.

F. School Officers.

5. County Board of Education—rules respecting teachers.

To J. K. Hall, Jr. Inquiry: May a local school board adopt and enforce a resolution to the effect that no person who has a child under six years of age will be employed as a teacher?

(A. G.) In my opinion such a resolution is improper and has no validity in the law. It is true, however, that when the school board came to the selection of a particular person who was an applicant for the position of teaching the Board has a very large discretion and if it refused to select a teacher who has a child under six years of age I do not see how the selection could be challenged.

14. Members, county and city boards—vacancies.

To John Blue, Jr. (A. G.) A vacancy on the County Board of Education should be filled by action of the County Executive Committee of the political party of the member causing the vacancy—such appointment to be effective until the next regular session of the General Assembly, and then for the residue of the unexpired term by that body.

To Mr. T. C. Roberson. (A. G.) When a school committeeman moves out of the school district for permanent residence it creates a vacancy and it would be competent to appoint someone in his stead.

20. School district committeemen.

To P. G. Gallop. Inquiry: What are the voting rights of the chairman of a local school committee?

(A. G.) In the case of a local school committee the chairman is actually a member thereof. Consequently, we feel that the general rule would apply, and that the chairman would have the right to vote on any question and the right to cast a second vote in case of a tie.

I. School Property.

3. Condemnation of school sites.

To Clyde A. Erwin. (A. G.) If satisfactory terms cannot be arranged with adjoining property owners in an effort to secure property to enlarge the school grounds which are at present insufficient, the County Board of Education could bring condemnation proceedings unless the property in question is of such character as to be exempt under the statute from condemnation proceedings.

COURT COSTS

To J. L. Wooten. (A. G.) A \$5.00 additional cost authorized to be charged against a defendant convicted of violating the game laws does not apply to persons convicted of violating fishing laws.

14. Coverage by fire insurance.

To Lloyd Griffin. Inquiry: May State School Boards and public bodies having the duty of insuring school property do so in a mutual company, where policies are made non-assessible.

(A. G.) This question was decided in the affirmative by the case of *Fuller v. Lockhart*, 209 N. C. 61.

V. MATTERS AFFECTING COUNTY AND CITY FINANCE.

I. Issue of Bonds.

45. Purchase and cancellation.

To W. E. Easterling. Inquiry: A county has used sinking funds to purchase bonds the sinking funds were intended to retire. These bonds have been acquired over a period of three or four years. If all the bonds acquired over this period of several years are cancelled now, will the entire amount of bonds cancelled constitute a debt reduction within the meaning of the constitutional debt limitation provision, Art. V, Sec. 4?

(A. G.) In my opinion, only the bonds purchased with sinking funds during the current year may properly be regarded as reductions of debt within the meaning of the debt limitation amendment.

VI. MISCELLANEOUS MATTERS AFFECTING COUNTIES.

B. County Agencies.

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

To F. G. Jacobs. (A. G.) C. S. 4388, would prohibit a member of an A. B. C. Board representing a wholesale house from selling paper bags for use in the A. B. C. store.

To F. C. Harding. Inquiry: May a county A. B. C. Board transfer liquor seized by its law enforcement officers to local hospitals?

(A. G.) I am of the opinion that a county A. B. C. Board would be without such power. It is probably based upon a worth while motive; however, we can find no legal justification therefor. The statute expressly provides that confiscated liquors shall be destroyed.

G. Support of the Poor.

5. Old Age Assistance.

To Mrs. W. T. Bost. (A. G.) We are of the opinion that under the State law one witness is all that is necessary to witness the endorsement by mark of checks payable to old age pensioners.

To J. B. Hall. Inquiry: When a pensioner under the old age assistance act dies prior to his endorsement of his assistance check what is the proper procedure?

(A. G.) This situation is not covered by any provisions in the Old Age Assistance Act. In our opinion it would be proper for the Clerk of Court to endorse the check and pay the proceeds to the proper person. Inasmuch as recipients of such aid are usually poor their assets are unlikely to exceed \$300, in which case no administration of their estate would be necessary.

To C. G. Robinson. Inquiry: Does the County Board of Public Welfare have authority to employ the personnel it needs in the local administration of Old Age Assistance and Aid to Dependent Children?

(A. G.) In our opinion under chapter 288 of the 1937 Public Laws, sections 13(c) and 43(c) are in themselves sufficient authorization to the County Welfare Board—acting, of course, in accord with the standard set up by the State Board of Public Welfare.

To Mrs. W. T. Bost. (A. G.) A person convicted of a felony if otherwise entitled, is not deprived of his right to Old Age Assistance because of loss of 'citizenship' in the sense of his inability to vote or hold office.

6. Dependent Children.

To Mrs. W. T. Bost. (A. G.) During the waiting period—pending final order of adoption—I do not consider that adoption proceedings have advanced to such a point as to constitute the petitioners a father or mother within the meaning of the Aid to Dependent Children Act.

19. Pauper—settlement.

To M. G. Fulghum. (A. G.) When a family having a legal settlement in one county leaves that county, remains away eighteen months, but fails to reside in any one county for a year the family retains a legal settlement in the original county.

23. Illegitimate children.

To D. A. Troutman. (A. G.) Under our present bastardy laws the begetting of an illegitimate child is not a crime. The criminal act consists of willful failure to support the illegitimate child and hence no crime can be committed under this statute prior to birth of the child. However, the issue of paternity may be tried before birth and the accused may be required to give an appearance bond conditioned on his appearance at a later hearing at the next term of court or at some later date fixed by the court after the birth of the child.

P. Costs Payable by the Counties.

15. Court Costs—statute of limitations.

To P. C. Hyatt. (A. G.) Court costs are a part of any judgment rendered by a court of competent jurisdiction and when the statute of limitations runs against a judgment it of course would run against the costs attached thereto. The statute of limitations prescribed for civil judgment is 10 years beginning as of the date of docketing.

VII. MISCELLANEOUS MATTERS AFFECTING CITIES.

F. Contractual Powers.

30. Contracts with town officials or their corporations.

To J. W. Ellis. Inquiry: (1) May a city contract for gasoline purchases with a company in which a member of the city council is a stockholder and officer? (2) May a city purchase insurance policies from an insurance agency of which a member of the city council is owner and manager? (3) May a city purchase automobiles and trucks from an automobile agency when a member of the city council is the principal stockholder and President of the agency? (4) May a city award advertising contracts to a newspaper whose publisher is a member of the city council?

(A. G.) No. Under C. S. 4388 it would be improper for a city to do business with the firms mentioned.

X. Ordinances.

1. Validity of ordinance.

To W. N. Rose. Inquiry: Would a town ordinance regulating the hours of opening and closing stores during week days be valid?

(A. G.) In our opinion such an ordinance probably would not be valid; at any rate, it is not so clearly within the police power of a town as to be beyond question.

To Philip C. Cocke, Jr. Inquiry: Can a city by ordinance establish a minimum rate to be charged and restrict the number of taxi cabs operating within its territory?

CONFISCATION OF BEER

To E. Osborne Ayscue. (A. G.) We find no authority either in the 1937 A.B.C. Act or in the Wine and Beer Act which would authorize representatives of counties or municipalities to confiscate beer being dispensed by persons not licensed to carry on this business.

We call your attention to the last paragraph of section 517, 1937 Revenue Act, which authorizes the Department of Revenue, through any of its agents, to confiscate any stock on hand, on display, or in storage of any dealer who has not complied with the provisions of the taxing act. This, apparently, applies only to wine containers which bear no stamp.

(A. G.) No. The power of regulating the rates of public service corporations is vested in the first instance in the State under its general police powers. Such power may be delegated but an examination of the statutes fails to disclose any such power delegated to municipalities with reference to the regulation of the taxi cab business.

VIII. MATTERS AFFECTING CHIEFLY PARTICULAR LOCAL OFFICIALS.

B. Clerks of the Superior Court.

1. Salary, costs and fees.

To J. E. Swain. (A. G.) Careful examination of the statutes seems to indicate that counsel by agreeing on and themselves preparing the record of a case for appeal cannot thereby deprive the Clerk of Superior Court of his right to the fees prescribed by C. S. 3903. See also C. S. 645, 649.

16. Prison commitments.

To Fred F. Church. Inquiry: What date should be inserted in the commitment of a convicted defendant to indicate the date sentence is to begin?

(A. G.) In *State v. Vickers*, 184 N. C. 676, it was stated that the commencement date of a sentence begins at the time at which the defendant actually begins to serve his sentence.

87. Extension of filing time in civil suits.

To Leonidas Hux. Inquiry: Does the Clerk of Superior Court have the right to extend the time for the filing of an answer in a case in which a copy of the complaint is served with the summons?

(A. G.) Under C. S. 509 as amended by c. 66 of the 1927 public laws you may extend the time for filing an answer or demurrer, but not more than one time nor for a period of time exceeding 20 days, except by consent of the parties. It is my opinion that the effect of the 1927 amendment is to authorize the Clerk of Superior Court to grant this extension.

D. Register of Deeds.

1. Fees.

To A. W. Graham, Jr., Inquiry: Does the addition of sentence or clause to the statutory short form mortgage set out in C. S. 2575 alter the form of the mortgage to such an extent as to remove it from the provisions of c. 584, 1937 Public-Local Laws, providing for a fee of 10c for probating a chattel mortgage executed in the statutory short form?

(A. G.) We are of the opinion that any deviation which has the effect of changing the terms of the instrument or of adding new clauses thereto, e.g., a war-

BICYCLE REGULATION

To Messrs. Thorpe and Thorpe. (A. G.) Through inadvertence or otherwise—bicycles are not included in the definition of vehicles in the 1937 Motor Vehicle law. This is to advise, therefore, that there is no State law in North Carolina today which would regulate the operation of bicycles on the highways of the State.

ranty that the property conveyed is the property of the grantor and is free from incumbrances, would remove the instrument from the terms of c. 534, 1937 Public Local Laws.

2. Vacancies.

To John Kerr, Jr. (A. G.) A Register of Deeds appointed to fill a vacancy, in a county where the General Assembly has increased the term to four years, would, under C. S. 3546 serve the entire remainder of the four year term.

9. Marriage—licenses.

To A. T. Outlaw. Inquiry: Section 159, current Revenue Act requires in part: "The Register of Deeds of each county shall submit to the Commissioner of Revenue on the first Monday in January, April, July and October a sworn statement or report in detail" with reference to the issuance of marriage licenses. Does this mean that the Register has a choice of submitting either a report in detail on the one hand or a sworn statement as to the total licenses issued and license fees collected?

(A. G.) In our opinion under the language of the statute the Register would be required to submit a sworn statement in detail giving an itemized list of the names of the persons to whom he has issued marriage licenses.

K. Coroners.**10. Inquests.**

To F. E. Van der Veer. Inquiry: With whom should verdicts rendered by coroners be filed?

(A. G.) A Coroner's verdict should be filed with the Clerk of the Superior Court of the county in which the inquest is held.

L. Local Law Enforcement Officers.

13. Prohibition law—possession for sale.
To Brooks P. Wyche. Inquiry: C. S. 3379 makes possession of more than one gallon of intoxicating liquors prima facie evidence of possession for sale. Is this statute applicable in case of liquors purchased at an A. B. C. store?

(A. G.) Yes. We are of the opinion, that under *State v. Langly*, 209 N. C. 178—although this case construed the 1935 liquor control law—that C. S. 3379 is still in force.

25. Prohibition—wine law.

To Garland S. Garriss. Inquiry: Is it lawful for the proprietor of a cafe not licensed to sell wine, to allow patrons to consume on the premises wine legally procured in some other town?

(A. G.) The cafe proprietor's only legal duty in this respect is to refrain from the sale of wine.

31. Lotteries.

To Ira Harrelson. Inquiry: Would the operation of the scheme set out below constitute a lottery?

It is proposed that in a movie theater cards containing the same numbers as the seats of the theater shall be placed in a box. On particular nights several of these cards will be drawn at random from the box. Persons occupying seats with num-

bers corresponding to those drawn from the box will then be entitled to answer certain questions of fact addressed to them. Prizes are given for correct answers.

(A. G.) Inasmuch as an element of chance exists in the drawing of the seat numbers in order to arrive at which persons shall be asked questions, the operation of such a scheme would constitute a lottery.

To Roses 5, 10 & 25c Store. (A. G.) The giving away of a radio to the holder of a ticket drawn from tickets furnished to purchasers when sales are made would violate the North Carolina lottery laws.

To John A. Wilkins. Inquiry: Would the following scheme constitute a lottery? A photographic machine is set up in the lobby of a theater. The camera appears to take pictures every few seconds as persons pass in front of it walking through the lobby of the theater. Actually, it takes a photograph only a few times a day. No admission ticket is necessary in order to walk in front of this camera. Periodically the management develops the photographs and enlarges them. On specific nights an enlargement of a photograph taken by the camera in the lobby is exhibited inside the theater. If the person whose photograph is exhibited is in the theater at the time the management offers to give him the picture and then offers to pay him \$5.00 to buy it back.

(A. G.) Such a scheme would constitute a lottery under the North Carolina laws inasmuch as it is necessary to have purchased a ticket to the theater in order

PRACTICE OF LAW

To R. W. Johnson, Jr. (A. G.)

We know of no legal reason why a person should not engage in the practice of law and at the same time serve as a justice of the peace.

to be in the theater at the time the photographs are exhibited and the offers of purchase are made.

38. Automobile Drivers' License Act.

To Morris W. Monday. Inquiry: Must a chauffeur carry with him at all times while operating a vehicle both his chauffeur's license card and chauffeur's badge?

(A. G.) Yes. Section 2(e) of chapter 52, 1935 Public Laws specifically requires that he carry both the license card and the badge.

43. Public Drunkenness.

To A. T. Kimzey. Inquiry: Is there any statewide law relative to public drunkenness?

(A. G.) Chapter 49, 1937 Public Laws, makes it a misdemeanor, punishable by a maximum fine of \$50 or a maximum term of imprisonment of thirty days, for any person to become intoxicated, or to make any public display of any intoxicating beverage at any public place in North Carolina.

50. Bail bonds.

To S. O. Riley. Inquiry: When a defendant is released on bond in a criminal court and the bondsman desires to be relieved of bond and to surrender the defendant to the jailor is it necessary for the bondsman to apply to the court and have the defendant properly "called out" in court before he can be surrendered?

(A. G.) No. One who has gone on a bail bond for the appearance of any person in court may, at his election, surrender such person without a court order

and before the defendant has been "called out" in court.

60. Powers of an officer.

To J. B. Hall. (A. G.) I know of no legal reason why an officer of the law should not apprehend and hold a minor that escaped from a training school in this State.

92. Search warrants.

To E. Earle Rives. Inquiry: Is evidence obtained as the result of an illegal search, in the absence of any search warrant, admissible in evidence in this State?

(A. G.) Yes. The rule that evidence obtained by an illegal search is admissible in criminal actions when no search warrant is used at all is unaffected by chapter 339 of the 1937 Public Laws which excludes only evidence obtained by reason of an illegal search warrant.

M. Health and Welfare Officials.**28. County Board of Health—powers.**

To J. B. Hall. (A. G.) C. S. 7194 provides in effect that all persons who shall be confined or imprisoned shall be examined for, and, if infected, treated for venereal diseases by the health authorities or their deputies. This is to advise, therefore, that you would have the authority to treat, with or without his consent, an infected boy who has been committed to the Morrison Training School.

P. Officials of Recorders' and County Courts.**3. Qualifications of Recorder.**

To W. C. Davis. Inquiry: Is it proper for a statute to impose the requirement that a Judge of Recorder's Court must be a licensed attorney-at-law?

(A. G.) In the case of *State v. Bate-man*, 162 N. C. 589, construing Article 6, section 7 of the Constitution it has been held that the General Assembly is without authority to impose such a requirement.

5. Costs and Fees.

To W. S. Riddick. Inquiry: The defendant in a criminal action for violation of the bad check law tendered to the complainant the amount of the check, whereupon the complainant withdrew the warrant. Who becomes liable for the court costs?

(A. G.) The procedure adopted in this case was hardly regular. Upon withdrawal of the warrant by the prosecuting witness the action should have been dismissed. The complainant would have then become liable for the costs.

Q. Municipal Officers.**15. Firemen.**

To George L. Peterson. Inquiry: May persons in a volunteer fire department use sirens on privately owned vehicles while attending a fire?

(A. G.) Under chapter 407, section 88,

SHIPPING LIQUOR

To Cutlar Moore. Inquiry: Does an express company have the right to accept shipment of a gallon of whiskey from a distiller outside of North Carolina and transport the whiskey to a person within the state?

(A. G.) Although Section 22, c. 49, Public Laws, permits a person to purchase one gallon of whiskey outside North Carolina, and bring it into the state, we are of the opinion that this is a personal privilege extended by the Act, and one that cannot be delegated to an agent or any other person.

subsection (b), Public Laws of 1937, I think that members of a volunteer fire department would have such a right. Of course, it would be improper for them to use these sirens at any time other than while attending a fire.

S. Mayors and Aldermen.

20. Power to administer oath.

To F. R. Sifford. (A. G.) We have been unable to find any authority which would permit the Mayor to administer oaths except when such Mayor, by virtue of his office, is acting as a magistrate and conservator of peace with the jurisdiction which is conferred upon him under the provisions of C. S. 2634.

U. Notary Public.

3. Powers and duties.

To R. L. Harlow. (A. G.) (1) Under C. S. 3177 it is necessary for a notary public to state after his signature the date on which his commission expires, in every instance.

(2) Under our State law the person who acknowledges the instrument, or signs the same when acknowledgement is taken must always be present before the notary public who certifies. The same is true as to affidavits, depositions, or other sworn statements.

Y. Game Wardens.

1. Compensation and fees.

To George L. Peterson. (A. G.) Under chapter 486, 1935 Public Laws, only those deputy game and fish wardens who are not working on a salary basis are entitled to receive fees for making arrests under the game laws.

IX. DOUBLE OFFICE HOLDING.

The following position was held not to be a public office within the meaning of the Constitutional provision prohibiting double office holding:

Chairman County Democratic Executive Committee (Letter to Wade A. Gardner).

The following positions were held to be public offices within the meaning of the Constitutional provision prohibiting double office holding:

City Treasurer (Letter to Messrs. Harding and Lee)

Clerk of Recorder's Court (Letter to Messrs. Harding and Lee)

County Tax Collector (Letter to A. D. Wilson)

Deputy Register of Deeds (Letter to C. R. Dickerson)

Deputy Sheriff employed by Sheriff (Letter to Fred F. Church)

District School Committeeman (Letter to E. C. Guy)

Mail Carrier, substitute rural (Letter to W. W. Pearsall)

Mayor (Letter to Wade A. Gardner)

Notary Public (Letter to E. G. Shore)

Town Alderman (Letter to E. C. Guy)

County Commissioner (Letter to Wade A. Gardner)

X. PRIMARIES.

A. Qualifications and Rights of Voters.

2. Residence.

To William J. Bost. (A. G.) C. S. 5937 would permit you, while in Governmental service, as an employee of the Bureau of Internal Revenue, to retain your residence at the place you last resided at the time of your removal to enter the government service, and would permit you to vote there unless you exercise your right to vote at such new location after your removal.

6. Property.

To J. Allen Gragg. (A. G.) No property qualification exists with respect to right to vote in bond elections.

7. Challenge of vote.

To Mr. Hugh Thompson. Inquiry: When may a vote be challenged?

(A. G.) The election law sets apart a certain day on which challenges may be made, and requires the Registrar to attend and keep the books present for the persons who desire to make challenges.

However, the vote of any person registered may be challenged at another time, as is distinctly provided in C. S. 5972.

8. Party affiliation.

To John R. Hoffman. (A. G.) This office has formerly held that Republicans cannot participate in the Democratic primary, and a Republican, therefore, would not be permitted to vote in the June primary for a Democratic Congressional candidate, even though there is no Republican candidate in the district.

XI. GENERAL AND SPECIAL ELECTIONS.

B. Ballots.

10. Absentee ballots.

To Junius D. Grimes. (A. G.) Under C. S. 2962-a, permitting an absent voter to secure ballots by giving a written or-

der to the Chairman of the Board of Elections or to the registrar of his precinct, it is our opinion that such order should be signed personally by the individual voter himself.

We see no reason why a form of application could not be prepared and signed personally by a number of individual voters all of whom are voters in a particular county or precinct.

XII. STATE LICENSE TAX.

A. Levy.

5. Sale of seeds.

To D. S. Coltrane. (A. G.) A farmer residing in North Carolina is not required under section 3, chapter 300, 1937 Public Laws, to obtain a state seed license to sell seeds raised on his own farm.

9. Practice of law.

To A. P. Godwin. (A. G.) The privilege tax imposed under section 109, Chapter 127, 1937 Public Laws, upon the practice of law is purely personal in its nature. In case there is more than one attorney in the firm, each attorney must pay the required license fee.

RECENT SUPREME COURT CASES

(Continued from page eighteen)

The Board of Education and County Commissioners resisted on the ground that many preliminary matters had not been passed upon, such as whether to repair an old one or build a new one, the approval of the plans for a new building by the State Superintendent, etc. *Held*, (four to three) that the mandamus does not lie in such a case. *Mears v. Board of Education*, 213 N. C. —.

SHERIFF

Deputy-Jailor—Workmen's Compensation.—The Industrial Commission found that deceased was killed in the course of employment either as deputy or as jailor and allowed compensation. *Held*, the cause is remanded for a specific finding as to whether he came to his death while acting in the capacity of jailor. *Gowens v. Alamance County*, 213 N. C. —.

TAXATION

Certificate Foreclosure—Priority in Estate Administration.—Owner was assessed prior to death and thereafter county purchased tax sale certificate and sought to foreclose on it by action. *Held*, the county acquired a first lien on the property and may maintain the action, as C. S. 93 making taxes claims of the

third class relates only to the duty of an administrator in administering the personal estate. *Guilford County v. Estates Administration, Inc.*, 213 N. C. —.

Constitutional Limitations—Levy for Special Purposes.—A county levied a series of special taxes totaling 67c on the \$100 for such items as courthouse and grounds; tax listing; elections; Accountant's, and Farm Agent's salaries; holding courts; and miscellaneous expenses. These levies were largely approved by local laws but not by vote of the people. *Held*, that general and usual attorneys' fees, maintenance of courthouse, listing taxes, holding courts and elections, and maintaining prisoners in jail are necessary expenses but are not special purposes, and levies for these purposes are invalid. Levies for Accountant's and Farm Agent's salaries are necessary expenses and special purposes, and are valid. *Power and Light Co. v. Clay County*, 213 N. C. —.

Deductions—Unearned Premiums in Hands of Insurance Company.—Insurance companies claimed that unearned premiums on hand were deductible as liabilities in listing solvent credits for 1937 ad valorem taxation. *Held*, (three to three—not to constitute a precedent) that such unearned premiums are not deductible. *Piedmont Fire Ins. Co. v. Stinson*, 213 N. C. —. *Mutual Fire Ins. Co. v. Stinson*, 213 N. C. —.

ZONING ORDINANCES*(Continued from page one)*

"I can not," he said, "put from my mind that which I have through most of my four-score years regarded as fundamental—free governments primarily exist for the protection of the rights of the individuals governed, not for the destruction of those rights."

"Reasonable Ordinances"

Although the ordinance in the instant case was upheld, the fact that the Justices were divided as to whether it was a valid exercise of the police power stands as a warning to cities having upon their books vague or unreasonable ordinances. Further proof that the Court will weigh, with care, ordinances resting upon the police power is found in the strong dissent of Justice Barnhill in the recent case of *State v. Lawrence*.

In this dissent Justice Barnhill declared that the majority has exceeded the recognized limits of the police power in upholding the new photographers' licensing act. There he points out that in every valid exercise of the police power there

must be a "social interest to be protected which is more important than the social interest in personal liberty." Limitations placed on the rights of individuals by a city ordinance, can only be justified where the social or community interest paramounted is more important than the private or individual rights

impaired and where the means used to sublimate the social purpose bears a direct and substantial relationship to the protection of that purpose.

Cities and towns will do well to examine carefully their present ordinances and to measure them by the yard-stick of "reasonableness."

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bringing together the laws, cases, rulings, and actual practices relating to the chief offices.

State and District Institutes and Conferences

for the interpretation of new laws, imparting of information, and discussion of common problems.

Periodic Bulletins and Summaries

on new laws, cases, and rulings; Federal and State agencies and activities, etc.

Monthly Magazine

summarizing new developments, methods, and practices to keep the official's information up-to-date at all times.

General Information and Consulting Service

covering any phase, problem or question in the work of any of the unit's officials.

Legislative Service

Every day during the session of the General Assembly sending to the city halls and county courthouses a brief digest of every bill introduced in the Senate and House to keep officials in touch with the progress of legislation, and within ten days after adjournment of the General Assembly preparing for officials summaries of all local and statewide laws passed affecting their respective City or County.

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