IN THIS ISSUE

PROGRAM OF EVENTS
FIFTH BIENNIAL INSTITUTE
SATURDAY, MAY 24, CHAPEL HILL

Summary and Interpretation

of the

Statewide Laws

Enacted by the

1941 General Assembly

NEWS AND RULINGS OF INTEREST TO
PUBLIC OFFICIALS AND LAWYERS

THE INSTITUTE OF GOVERNMENT

POPULAR GOVERNMENT

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Statewide Laws--1941 General Assembly

Summary & Interpretation

POPULAR GOVERNMENT

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MAY
1941

Governor Broughton and Majority Leader McCormack To Lead

Interpretation and Discussion of Laws

1941 General Assembly and National Congress

Affecting Cities and Towns, Counties and the State of North Carolina

FIFTH BIENNIAL INSTITUTE CONDUCTED BY THE INSTITUTE OF GOVERNMENT

12 O'CLOCK SATURDAY, MAY 24, CHAPEL HILL

Members of the North Carolina delegation in the National House of Representatives and the Director of the Institute of Government greet Majority Leader John W. McCormack in the Ways and Means Committee Room in the National Capitol and give him advance welcome to North Carolina and Chapel Hill, where he will speak on Saturday, May 24, at the Fifth Biennial Institute conducted by the Institute of Government for the discussion and interpretation of laws of the 1941 General Assembly and National Congress.

Seated left to right: Robert L. Doughton, Ninth Congressional District; Majority Leader John W. McCormack of Massachusetts; Albert Coates, Director of the Institute of Government; John H. Kerr, Second Congressional District. Standing left to right: Graham Barden, Third Congressional District; W. O. Burgin, Eighth Congressional District; J. Bayard Clark, Seventh Congressional District; Carl T. Durham, Sixth Congressional District; Herbert C. Bonner, First Congressional District; Zebulon Weaver, Eleventh Congressional District; A. L. Bulwinkle, Tenth Congressional District; and Harold Cooley, Fourth Congressional District.

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University Student Government Officers welcome local, state and federal officials from their respective congressional district. Seated, left to right: Leon Roebuck, First Congressional District; Terry Sanford, Speaker of the Student Legislature; Truman Hobbs, President of the Student Body; Orville Campbell, Editor of the Daily Tar Heel; Harry Belk, Eleventh Congressional District. Standing, left to right: Ridley Whitaker, Third Congressional District; Thomas B. Nordan, Fourth Congressional District; Ferebee Taylor, Fifth Congressional District; Dan Whitley, Sixth Congressional District; Albert Stewart, Seventh Congressional District; John McCormick, Eighth Congressional District; Henry Blalock, Ninth Congressional District; Jick Garland, Tenth Congressional District.

Program of Events

Saturday, May 24

12:00 Noon: Registration, Institute of Government Building.

12:30 o'clock: Joint luncheon, all groups, University Dining Hall. Greetings from representatives of the Institute of Government and the University of North Carolina. Music from the University Orchestra and Glee Club Quartette. Coordination of city, county and state governmental units and activities in the program of National Defense.

2:00 o'clock: Joint meeting of all groups in Gerrard Hall. Interpretation and discussion of laws of the 1941 General Assembly affecting cities and towns, counties and the State of North Carolina, led by **Governor J. Melville Broughton, other State Officials, members of the General Assembly, and the Staff of the Institute of Government.**

Followed by special meetings of separate groups of officials and citizens for the discussion of 1941 laws and other matters of particular interest to these groups.

6:30 o'clock: Dinner meeting, all groups, University Dining Hall. Greetings from members of the North Carolina delegation in the National Congress. Music from the University Orchestra and Glee Club Quartette.

8:00 o'clock: Joint meeting, all groups, Hill Music Hall.

Interpretation and discussion of laws of the National Congress, affecting officials and citizens of cities and towns, counties and the State of North Carolina, led by **Congressman John W. McCormack of Massachusetts, Majority Leader in the National House of Representatives. Governor J. Melville Broughton will present certificates to law enforcing officers completing 7-day training school.**

Followed by a reception in the Graham Memorial Building in honor of Governor J. Melville Broughton, Congressman John W. McCormack, North Carolina Representatives in the National Congress, members of the General Assembly and visiting State and local officials.

Law Enforcement in a Democracy

By Governor J. Melville Broughton

"One of the real tests of democracy is whether or not it has the capacity to enforce the laws which are made by the people or its representatives. A breakdown at this point would mean a vital default. Recent months have disclosed that the failure of France, a great democratic nation, was not so much a military failure as a collapse from within. The people had lost that durable quality of self-discipline, and were unable to withstand any real aggression.

"It is all the more encumbent that we re-examine and improve all of the processes of government in our state and nation. Particularly is it important that law enforcement agencies recognize this essential principle of government in a democracy.

"Every public official charged with any responsibility for law enforcement, from the Chief Executive down to the township constable, should give serious concern to these problems in these days which will test our very national existence. Even the humblest law enforcement officer may well feel that the faithful discharge of his duties not only helps to preserve peace and order in his community, but is a real contribution to the cause of democracy.

"The Institute of Government has already rendered the State of North Carolina great service in respect to matters of law enforcement and other essential governmental processes. Its usefulness has been demonstrated in a hundred different ways, and the state at large has acclaimed its constructive achievements in the public interest. At this crucial time in our state and national life the work of the Institute is even more important than ever before. The better training of law enforcement officers, exchange of ideas between them as made possible by the meetings held under the auspices of the Institute, the crystallization of a higher and finer public sentiment are all matters of the highest importance at this time.

"The State looks to the Institute of Government to give leadership in these essential undertakings. Every county and municipality will do well to encourage the fullest cooperation in the work of the Institute, to the end that we may together go forward to a higher degree of proficiency in law observance and law enforcement, and thus render our contribution towards the enhancement and preservation of democracy in North Carolina and in America."

Taxation and Finance---1941 Model

NEW PICTURE IN OLD FRAME

Laws Affecting County and City Revenue and Taxation

Greater State Aid in Maintenance and Construction of City Streets.—During the last biennium the legislature appropriated only $500,000 per year for the maintenance and construction of city streets constituting a part of the state highway system. For the coming biennium the appropriation for this purpose has been substantially increased. As originally introduced the bill called for $3,000,000 per year, but when finally passed, the appropriation had been whittled to $1,000,000 per year. (Ch. 217 & Title XII of the Budget Appropriation Bill). To provide equality in the distribution of the funds among the various cities and towns without sacrificing the needs of the state highway system, an ingenious method of apportionment was devised. One third is to be allocated as between the cities and towns upon the relation that the population of each city or town bears to the total population of all cities and towns; one third upon the relation that the mileage of streets in each town which form a part of the state highway system bears to the total mileage of streets which form a part of the system in all cities and towns; and the remaining third on the basis of relative need among the various cities and towns as determined by the State Highway and Public Works Commission. The funds are not limited exclusively to the construction and maintenance of connecting links in the state highway system. Upon the recommendation of the governing body of each city and town, the state highway commission allocates the funds first to the maintenance and construction of streets which form a part of the state system, then to the streets which form important connecting links to the state system, the county highway system or farm-to-market roads. The state may do the work itself or it may contract with the city or town to do the work; in all cases the work must conform to the specifications of the Highway Commission.

To aid the towns and cities in the maintenance of streets where no state funds are provided, such as the dirt streets in the smaller towns and villages, the legislature, in Ch. 299 (HB. 671), authorizes the Highway Commission to lease to municipalities road maintenance equipment at a rental which will at least equal the cost of operation, wear and tear. But the commission need not furnish the equipment where to do so would interfere with the maintenance of streets under its control.

Local Unit's Share in Intangible Proceeds. — When intangibles were taxed as separate classes of property for the first time in 1937, counties and cities received only 50% of the proceeds, the remainder being retained by the state to be spent in the maintenance of the public school system. In 1939 the general assembly increased the percentage to be allotted to counties and cities to 60% of the total. Ch. 50, s. 8 (8) (HB. 11) further increases this percentage to 75%, leaving to the state only 25% to be used in the maintenance of the public school system. For the year ending June 30, 1940, total intangibles tax collections amounted to $1,518,000. Of this amount about $875,000 was distributed to counties and cities, the remaining $643,000 being retained by the state. Under the new distribution percentages, therefore, local units should receive in the aggregate well over $1,000,000 per year for the coming biennium.

PRESIDING OFFICER
—of the Senate, Lieutenant-Governor R. L. Harris.

Distribution of Revenue from TVA Paid in Lieu of Taxes.—Decreasing sources of state and local revenues resulting from withdrawal of business properties from the tax books by federal acquisition is a well known story. One of the chief inroads in North Carolina is that of the TVA in the western part of the state. To the state, losses in franchise, income and license tax revenues result; to the counties and cities, property and license taxes. To compensate for such losses the federal government authorized the TVA to pay to the state for benefit of state and local units affected a certain amount each year, measured by a formula based on gross receipts. In order to insure an equitable distribution of this lump payment among the state and local units affected, in Ch. 85 (HB. 378), the legislature provides as follows: the state board of assessment shall ascertain, on the basis of current tax laws, the total taxes which would be due on the properties if not own-

PRESIDING OFFICER
—of the House, Speaker O. M. Mull.

ed by the TVA; the funds received from the federal government shall then be pro-rated on the basis of percentage of loss of taxes to each unit, and distributed to the local units by the state treasurer. For purpose of determining the share of local units the tax rate for the preceding tax year must be used, but in no case may payments to a unit be less than the average annual tax on the property taken by the TVA for the two years next preceeding the taking. The county accountant or other financial officer of each local unit affected is required to certify the following information to state officers: (1) to the state board of assessment and the state treasurer, the tax rate fixed by the governing body of the unit; and (2) to the treasurer, a monthly statement of the amounts received by the unit direct from the TVA.

PROPERTY TAXATION

Counties Permitted to Postpone Revaluation of Property.—A somewhat restricted Act, Ch. 282 (HB. 560), permits boards of county commissioners, in their discretion, to defer or postpone the revaluation and assessment of real property required for the year 1941 by the Machinery Act of 1939, and validates all proceedings and actions already taken by such boards as to postponement or as to revaluation by increase, reductions or actual appraisal; the boards are also authorized, in their discretion, to defer revaluation and reappraisal for the year 1942. The provisions of this Act do not apply to Ashe or Rowan Counties, to any county for which a revaluation board of assessors or a board of equalization and review has been created or provided for by the General Assembly of 1941, nor does it repeal or affect any Public-Local or Private Act of 1941, or the Local Government Act.

The secretary of state is authorized, upon advice of the Attorney General, to insert in the Machinery Act of 1939, the amendments and supplements enacted by the General Assemblies of 1939 and 1941, and to print in codified form three thousand copies to be delivered to the state board of assessment for distribution. Ch. 204, s. 2 (HB. 633) authorizes the secretary of state to insert the amendments to the Revenue Act and print 5000 copies for distribution.

Non-Stock, Non-Profit Charitable Hospitals Exempted from Taxation.—Ch. 310, s. 600 (7), P. L. 1939, exempts from taxation real "property beneficially belonging to or held for the benefit of churches, religious societies, charitable, educational, literary, benevolent, patriotic or historical institutions or orders, where the rent, interest or income from such investment shall be used exclusively for religious, charitable, educational or benevolent purposes, or to pay the principle or interest of the indebtedness of said institutions or orders." By s. 600 (8) of the 1939 Act the exemptions granted by s. 600, except the exemption of burial places, are made applicable to real property of foreign religious, charitable, "educational literary", benevolent, patriotic or historical corporations, institutions or orders when such property is used exclusively for, or the income therefrom is used exclusively for, religious, charitable, educational or benevolent purposes within this state. In addition, s. 601 (5) of the 1939 Act, exempts "Personal property belonging to . . . hospitals . . . which are not conducted for profit and entirely and completely used for charitable and benevolent purposes." By s. 600 (7) of the 1939 Act the personal property exemptions, except wearing apparel, household and kitchen furniture, farming instruments, libraries, etc., are made applicable to foreign religious, charitable, educational, literary, benevolent, patriotic or historical corporations, institutions or orders when the property or the income therefrom is exclusively used for religious, charitable, educational or benevolent purposes within this state. However, in s. 602 (a) of the 1939 Act it was provided that "private hospitals shall *not* be exempt from property taxes and other taxes lawfully imposed, . . .", but, in consideration of the large amount of charity work done by private hospitals, counties, cities and towns are authorized to accept as valid claims against them, the bills of such hospitals for attention voluntarily rendered to the afflicted or injured residents of the county, city or town who are indigent and likely to become public charges. In *Hospital v. Guilford County*, 218 N. C. 673, (1940), the court, by construing sections 602 (a), *supra*, and 600, *supra*, together, arrived at the conclusion that the exemption granted by s. 600 (real property) was intended to exempt non-profit, benevolent and charitable hospitals only if such corporations were *public* corporations as section 602 (a) expressly made *private* hospitals subject to taxation. However, the court held "with respect to the personal property of the plaintiff [hospital] . . ., only so much thereof as is held for and exclusively used for charitable purposes would be exempt from taxation under s. 601 (5) of the Act of 1939." The court then added, by way of dictum, that property held by the private charitable corporation, for commercial purposes, even when a part of the hospital building, was not exempt from taxation, saying: "as to that portion of the building, on the first and second floors, which is rented out for commercial and business purposes, the rule laid down by this court in *Odd Fellows v. Swain, supra*, [217 N. C. 632, 9 S. E. (2) 365] must be held applicable, and determinative of the question of exemption against the plaintiff [hospital]. Anything in Ch. 310, P. L. 1939, which attempts to exempt this portion of the building from

taxation must be held in excess of the granted power of the General Assembly. [N. C. Const. Art. V, §5]."

Ch. 125 (HB. 183) was enacted as a result of the above cited case. The draftsman was careful to employ language that would bring it within the purview of the constitution, the dictum of the court being followed very carefully. The new act supplies what the court held was not present in the 1939 act, *supra*, —a provision exempting *private* charitable, non-profit hospitals from taxation when the property held by such hospitals is held for charitable purposes. The Act provides that real and personal property held for or owned by non-stock, non-profit, charitable institutions shall be exempt from taxation, notwithstanding the fact that patients able to pay are charged, if the fees received from such patients are used, held or invested for the purposes for which the corporations were organized. The Act also provides, in accordance with *Hospital v. Guilford County, supra*, that where hospital property is used partly for hospital purposes and is partly rented out for commercial or business purposes, then only such proportion of the value of such building and the land on which it is located as is actually used for hospital purposes shall be exempt from taxation. The 1941 act applies to taxes and assessments for the year 1936 and all years subsequent thereto. It also makes such hospitals public hospitals for the purpose of taxation. As a result of the enactment of Ch. 125 the only hospitals subject to taxation are private hospitals operated for profit, and that portion of the property of charitable hospitals held for commercial or business purposes. The exemptions of the Act are applicable to foreign corporations, institutions, etc., when the property or the income therefrom is used exclusively for religious, charitable, educational or benevolent purposes within this state.

Hospital service corporations exempt from local taxation. — In Ch. 338 (S. B. 128) hospital service corporations exchange relative freedom from regulation for substantial tax-exemption. On the one hand, the law places them under the regulation and supervision of the insurance commissioner, and gives him broad powers of regulation over every aspect of the business; on the other, it declares them to be charitable corporations, exempt from all state and local taxes with the exception of a franchise tax of ⅓ of 1% of gross receipts, (except receipts from "cost plus" operations) for defraying the expenses of administering the act. Hospital service corporations are defined as corporations organized on a non-profit basis to provide hospital care, or to contract with hospitals to furnish this care, to their subscribers. Insurance laws not specifically mentioning them are made inapplicable to such corporations.

Among other things, the Act regulates the manner of incorporation; form and content of contracts with hospitals and with subscribers; rates; reports required; expenses; permissible investments (they must be made from the "trust list" of investments); reserves; licensing of agents. Group contracts are permitted. The commissioner of insurance is given broad power to regulate and control these hospital service corporations in the particulars named. He may visit and inspect their operations, and may dissolve, subject to appeal of the courts, corporations not complying with the law or with his rules and regulations. "Cost plus" service to employee groups is permitted. Hospital service plans limited to employees of a single concern and their families are exempted from operation of the act.

Farm products exempted from property taxation for one year after grown.—S. B. 106, 1941, c. 221. The Title of Ch. 221 (S. B. 106). "An Act to Provide for an Adequate Time in Which to Market Agricultural products by Exempting the Same From Taxation for the Year Following the Year in Which Grown," is an almost complete abstract of the Act. It provides that farm products need not be listed until one year after they are grown, and exempts them from taxation within that year if held by the original producer for himself or a farmers' cooperative.

In addition the law permits the taxpayer to deduct, from his personal property declaration, amounts owed by him on the purchase of fertilizer for his own farm use in the current year, and amounts similarly owed in the purchase of cotton. This would seem to mean that only the taxpayer's equity is taxable.

The one year farm products exemption would seem to raise a question of constitutionality. Art V, § 5 of the state constitution says the legislature "may exempt" certain specified articles from taxation.

COMMITTEE OF THE WHOLE
In the House, as Finance Committee Chairman Bryant explains the Revenue Bill.

Farm products are not on the list. If the principle, *inclusio unius est exclusio alterius*, applies, the legislature would seem without power to exempt from taxation anything not specifically menitoned in that section. "The power to grant exemptions under authority of the second sentence in Art. V, § 5, which may be exercised in whole, or in part, or not at all, as the General Assembly shall elect, is limited to property held for one or more of the purposes therein designated." *Odd Fellows v. Swain*, 217 N. C. 632 (1940). Whether that broad principle will be modified remains to be seen.

COUNTY AND CITY SCHEDULE B TAXES

Riding Devices. — S. 107 of the 1939 Revenue Act is amended by Ch. 50, s. 3 (HB. 11), to allow counties, cities and towns to levy a license tax of not in excess of $5 per week for each device for the privilege of exhibiting riding devices not a part of any show or carnival; heretofore, they were prohibited from making any levy.

Photographers.—Under the 1939 Act both cities and counties could levy an annual license tax on photographers not in excess of $25 per year; s. 109 is amended to prohibit a levy by either county or city on photographers who have paid the state-wide license.

Dealers in Metallic Cartridges.— S. 145 is amended to reduce the tax which counties and cities may levy on this business from $10 to $5 per year.

Amusement Slot Machines. — In P. L. 1935, Ch. 37, as amended by P. L. 1937, Ch. 196, the legislature made illegal any slot machine which was operated as, or was readily adaptable to be operated as, a game of chance. In Ch. 158, s. 130, P. L. 1939, however, the legislature permitted the state, counties and cities to levy license taxes on pin-ball and other amusement machines which in fact did not vend a thing of value which could be used in the further operation of the machine or for which cash could be received; this section was construed by the attorney general to legalize the machines licensed therein, although they might otherwise come within the provisions of the Flanigan Act. Recent experience under the act has shown, however, that it is impossible to separate gambling and the pin-ball and other amusement slot machines, and that to legalize the machine resulted in fact in legalized gambling. Consequently, the 1941 General Assembly, in Ch. 50, s. 3 (HB. 11), repeals the provisions in s. 130 of the 1939 Revenue Act permitting the licensing of various types of amusement machines, and again leaves them within the prohibition of the Flanigan Act.

Slot machines which remain legal and subject to license taxes under s. 130 include music machines, weighing machines, and all types of merchandise vending machines. The whole section has been rewritten and clarified and the scale of tax rates on the machines substantially revised. The many problems of construction arising under the old act have been eliminated so that administration of the section should present no difficulties .

Other Amendments. — For a discussion of other amendments affecting state, county and city schedule B taxes, see the section entitled *State Revenue and Taxation*.

BONDS, NOTES AND DEBT ADMINISTRATION OF LOCAL UNITS

Local Government Act Extended. —In Ch. 191 (SB. 277) the Legislature makes all the provisions of the Local Government Act relating to the issue of bonds and notes, and the powers and duties of the Local Government Commission, apply to every unit having the power to levy ad valorem taxes; prior to this session the act had applied only to counties, cities and towns. In Ch. 147 (HB. 405) the legislature makes the Local Government Act apply to the funding and refunding bonds of all units as well as to the new issues of bonds and notes of such units, in spite of previous special and local legislation to the contrary.

School Debt. — In Ch. 450, P. L. 1935, the Legislature authorized the continuance of all existing school districts having debts outstanding until the retirement of the debts. It authorized city governing bodies to issue refunding bonds and levy taxes for those districts whose boundaries were co-terminous with the limits of the city or town; the refunding bonds and taxes of all other districts were to be handled by the county governing bodies. In Ch. 148 (HB. 575) of the present session the Legislature clarifies the above statute by providing that "in case the governing body of any city or town is the body authorized by law to levy taxes for a school district," it shall do so "whether the territory embraced in such district be wholly or partly within the corporate limits." In Ch. 200 (HB. 497) the Legislature amends s. 15 of the School Machinery Act, which provides for the apportionment of county-wide debt service funds among the county and city administrative units, by adding the qualification that such apportionment shall apply only to debt service for capital outlay obligations incurred by counties and cities prior to July 1, 1937, except in those counties where special legislation permitted the issuance of school building bonds in behalf of school districts and special bond tax units. The amendment does not apply, however, to refunding bonds issued for capital outlay obligations.

Revenue Bond Act Extended.—In Ch. 207 (HB. 702) the Revenue Bond Act of 1938 is amended to extend until March 1, 1943, the period during which counties, cities and towns and sanitary districts may issue *Revenue Bonds* under it; "clubhouses and golf courses" are added to the list of revenue-producing enterprises which such units may own and operate and for which bonds may be issued.

Special Assessments.—In Ch. 160 (HB. 216) the Legislature has extended until July 1, 1942, the power of municipal governing bodies under C. S. 2717 (b) to defer the time for payment of principal, interest and costs on special assessments. Ch. 342 (SB. 173) amends C. S. 5319, which authorizes the clerk of court of a county to specially assess the lands included in a proposed drainage district to obtain sufficient revenue to pay the expenses incident to the duties of the board of viewers in establishing the district, to constitute such special assessment a first lien on the lands, second only to state and county taxes, to be collected in the same manner and by the same officers as county taxes.

Miscellaneous.—By Ch. 266 (HB. 459) the provisions of the County

Finance Act as regards the preparation, issue and transfer of county bonds and notes are made inapplicable to loans which county boards of education secure from the State Literary Fund. The Legislature in Ch. 141 (SB. 221) removed a conflict between the Local Government Act and C. S. 4392, concerning the manner in which notice of bond sales by local units must be given, by repealing C. S. 4392 in its entirety and further providing that bonds previously sold pursuant to the Local Government Act were not illegally sold because of failure to observe C. S. 4392. Ch. 142 (SB. 222) validates drainage district bonds previously sold pursuant to the Local Government Act and not pursuant to C. S. 5357, which also prescribes a method in which notice and sale of such bonds must be made. Ch. 203 (HB. 626) provides that after being listed in a permanent record, surrendered bonds of a city or town shall be burned "in the presence of the mayor, treasurer or auditor, city attorney and secretary of the governing body," who shall each certify in the record that he saw the bonds destroyed. Ch. 293 (HB. 625) provides a similar procedure for the destruction of county bonds.

State Revenue and Taxation

Recognizing that economic conditions are apparently on the upswing, and predicting resulting increased state income during the coming biennium, the 1941 General Assembly made the largest appropriations in the history of the state without increasing tax levies or substantially changing tax rates, despite new exemptions from sales and gasoline taxes and notwithstanding an estimated substantial yearly increase in local units' share of intangible tax proceeds. Offsetting the state's decrease in revenue will be augmented revenues resulting from broadened coverage of intangibles, from use tax extension and from the Revenue Commissioner's new power to require parent and subsidiary corporations to file consolidated balance sheets for income tax purposes. Numerous changes in state tax schedules were for the most part aimed at clarification of existing ambiguous statutes and at eliminating administrative difficulties.

Inheritance and Gift Taxes. — A provision in S. 1 of the 1939 Revenue Act, which taxed property transfers in cases of compromise settlements of wills contests and of claims under intestate succession laws, as distinct from property transfers by will and by intestate succession, was confusing to taxpayers and productive of tax evasion. The 1941 amendment (Ch. 50, s. 2, HB. 11) provides that all property transferred at death shall be taxable either as though it passed by will or under intestate succession laws. S. 7 (a) is amended to allow a deduction from the gross estate, for inheritance tax purposes, of 100% of ad valorem taxes accruing on the estate during the calendar year of death.

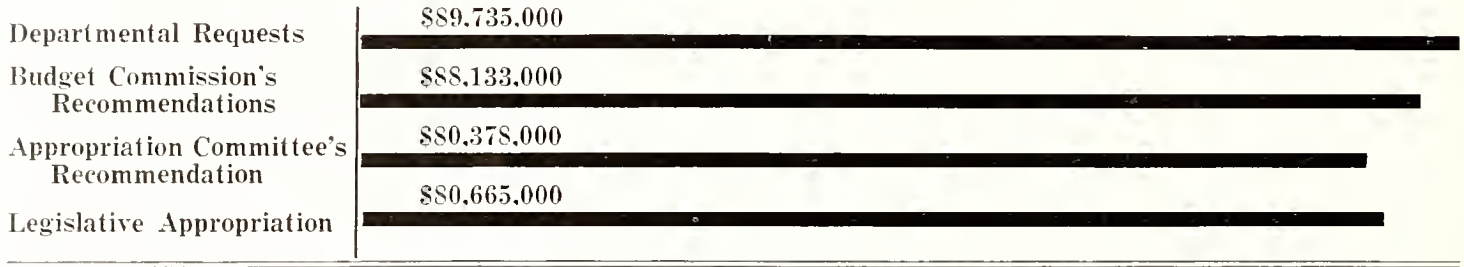
The United States Supreme Court held in Curry v. McCanless, 307 U. S. 357 (1939), that two states may each impose death taxes upon the transfer of an interest in intangibles, which is held in trust by a trustee in one state, and which passed under the will of a beneficiary decedent domiciled in the other state; and in Graves v. Elliott, 307 U. S. 383 (1939), that the state of a decedent's domicile may tax the relinquishment at death of a power to revoke a trust of intangibles held by a trustee in another state. These decisions gave rise to suggestions that S. 1 of the 1939 Revenue Act was broad enough to permit, perhaps to require, levy of inheritance tax on intangibles held by trustees in this state for non-residents, even though the intangibles were not used in connection with any business here. Fear that this construction would cause heavy withdrawal of intangibles from North Carolina banks and trust companies was set at rest in short order, however, when the department of revenue ruled that "business situs," as used in the 1939 Revenue Act in connection with taxing intangibles, should be interpreted to mean that intangibles must be employed in the state in some business engaged here, in order to be subject to the inheritance tax. The 1941 Legislature followed suit, removing the doubt and expressly providing that the inheritance tax shall not apply to transfers by non-residents of intangibles not having a business situs in North Carolina. Ch. 50, s. 2 (HB. 11). No changes were made in the 1939 gift tax law.

State Schedule B Taxes.—Several minor changes were made in Ch. 50, S. 3 (HB. 11) in Schedule B levies, although no additional occupations were taxed. S. 112 is amended to exempt coal and coke dealers selling and delivering only to state institutions or public schools; it is further

JOINT COMMITTEE
of Senators and Representatives consider the record Appropriations Bill.

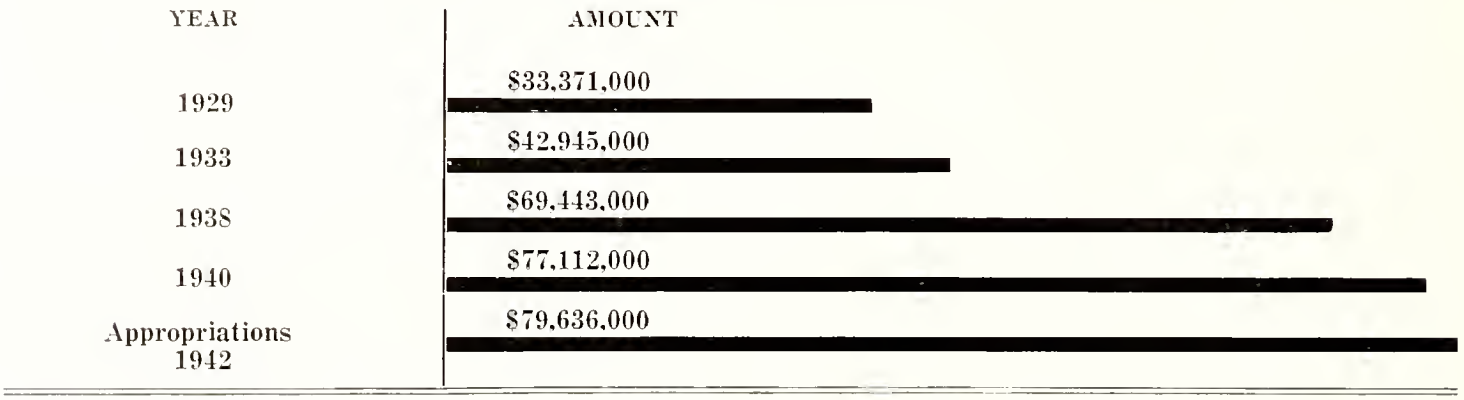
Chart Showing Total Average Yearly Requests, Recommendations and Appropriations for All Stat Functions

For Biennium 1941-43



(Scale: 1 in. = $1,500,000)

Actual Total State Expenditures for 1929-1940, Compared with Total State Appropriations for Year Ending June 30, 1942



(Scale: 1 in. = $1,500,000)

Average Yearly State Appropriations For The Biennium 1941-43—By Functions

Compared with Actual Expenditures For Fiscal Year Ending June 30, 1940

	1940	Departmental Requests	Budget Com. Recommendations	Appropriation Committee Recommendations	Legislative Appropriations
Legislative	$ 5,710	$ 100,000	$ 100,000	$ 96,250	$ 96,250
Judicial	458,812	455,225	455,225	455,225	455,225
Administrative:					
General	2,530,930	3,353,929	2,604,749	2,639,589	2,644,589
Agricultural Fund	526,561	528,490	545,440	620,700	620,700
Highway Administration	167,052	175,000	175,000	175,000	175,000
Higher Education Institutions:					
University of North Carolina	705,474	898,565	680,387		
N. C. State College	346,350	569,601	366,736	1,567,597	1,567,597
Woman's College	294,303	459,637	317,661		
Other	834,689	1,306,162	801,759	993,760	993,760
Charitable and Correctional	2,255,437	3,000,762	2,431,981	2,485,107	2,485,107
Public Welfare	2,331,825	2,732,859	2,346,200	2,059,114	2,059,114
Pensions	297,649	244,737	229,238	229,238	229,238
Contingency and Emergency		500,000	500,000	500,000	750,000
Public Education:					
Public School System	25,909,497	29,224,589	28,514,546	29,070,278	29,070,278
Vocational and Adult Education	329,160	850,000	455,000	685,000	685,000
Retirement—Teachers and State Employees		1,509,076	1,549,076	1,549,076	1,549,076
Debt Service:					
General	4,691,280	4,888,778	4,888,778	4,888,778	4,888,778
Highway	8,859,771	8,224,061	8,224,061	8,224,061	8,224,061
Highway Maintenance Fund	26,567,802	30,713,312	32,947,251	24,138,954	24,171,454
TOTALS	$77,112,302	$89,734,783	$88,133,088	$80,377,727	$80,665,227

amended to allow coal dealers operating their own mines in this state to deduct from their license tax the amount of ad valorem taxes on their mines, paid to the county. The statute is not clear, however, as to whether this deduction may be taken from the state tax, the city tax, or both. Some question as to the constitutionality of this provision might perhaps be raised, on the theory that it classifies and discriminates, on what may be considered an unreasonable basis, between (1) coal dealers operating a mine in this state, (2) dealers not operating a mine and (3) coal dealers operating a mine outside the state. S. 115 (a) is amended to allow auctioneers purchasing horses and mules from out-of-state for resale in the state, who under the 1939 Act were made *primarily liable* for the $3 per head privilege tax levied thereon, to shift this primary liability to subsequent licensed dealers purchasing the stock; where the auctioneer disposes of the stock by sale to unlicensed dealers or private persons, however, he remains primarily liable for the tax. S. 121 (e), levying a tax on itinerant merchants using temporary rooms or stands to display and sell goods, is repealed, removing from the statute books a law which was declared unconstitutional in Best v. Maxwell, 61 S. Ct. 334 (1940). S. 123 is amended to reduce the state license tax on firms engaged in reporting financial ratings, but which do not publish a statewide credit-rating book, from $250 per year, which was found prohibitive, to $100 per year. S. 145 is amended to reduce the tax on persons dealing in metallic cartridges from $10 to $5 per year. Ch. 50, S. 7 (a) (HB. 11) amends S. 517 (e) to authorize the commissioner of revenue to sell "tax paid" crowns or lids for beer at a discount of 2% as "sole compensation" for lid losses in the production and sale of the beverages. For a full discussion of S. 130, levying privilege taxes on slot amusement and merchandise vending machines, see laws affecting county and city taxation.

Ch. 246 (SB. 144) as introduced was "An Act to Repeal" Ch. 414, P. L. 1937, as amended, which levied a privilege license tax on scrap tobacco dealers. As passed, it raised the tax from $250 to $500 and purported to exempt warehouses and redrying plants from the tax in cases where the producer delivers his scrap tobacco to the plant himself. These amendments leave the scrap tobacco law in a state more confused than before.

The new confusion arises in this fashion. Section 1 of the 1937 law, as amended in 1939, levied a $250 license tax on "every person, firm or corporation desiring to engage in the business of buying and/or selling scrap or untied tobacco. . . ." Section 3, among other things, levied a $500 tax on processors or manufacturers or redriers buying and selling scrap tobacco. (Such, at least, was the administrative interpretation of a badly-worded law.) Section 3 refers to Section 1 in terms which show that the framers of the law thought that Section 1 covered persons, firms, or corporations having "a warehouse, office or fixed place of business"; (Such persons were required to display their licenses prominently.) There were in the law after the 1939 amendments, then, two sections, Section 1 and Section 3, which could reasonably be construed to levy a tax on redrying plants and warehouses dealing in scrap.

Ch. 246 as passed added to Section 1 an amendment which read: "Provided, that the tax *herein* levied shall not apply in cases where the producer delivers his scrap or untied tobacco to a tobacco warehouse or tobacco redrying plant,"

The result is that if the warehouse or redrier buys scrap only at his plant from the producer, he is not subject to a tax under Section 1. Whether he remains subject to a tax under Section 3, *quaere;* it depends on whether "herein" will be construed as including both section 3 and Section 1, or whether it is confined to Section 1. In any event, he is taxable under Section 3 if he buys in any manner except at his plant from the producer as authorized by the amendment.

Franchise Taxes. — Ch. 50, s. 4 (HB. 11) amends s. 208 of the 1939 Revenue Act to reduce the franchise tax on "insurance rate-making companies" from $350 to $200 per year. Also amended is s. 210, which prescribes the franchise tax levy on domestic and foreign corporations, to provide that all capital advanced by a parent corporation to its subsidiaries, including outright loans or guarantees of indebtedness, shall be considered a part of the franchise tax base of the subsidiary corporation for franchise tax purposes.

State Income Taxes. — Lack of space prevents full discussion of all minor administrative changes made by Ch. 50, s. 5 (HB. 11) and Ch. 204, s. 1 (b) (HB. 633), in the income tax law. Most important change is the amendment to s. 318½, under which the Commissioner of Revenue, when he suspects that reports of subsidiary corporation income do not disclose their true income, is now empowered to require the concern to file consolidated returns covering operations of the parent corporation plus all its subsidiaries, in-state or out-of-state. The amendment's purpose, of course, is to prevent tax evasion by intercompany transactions in such manner as to show the least possible tax-

(*Continued on page twenty-six*)

State Appropriations

With prospective increases in revenues without corresponding increases in the tax levies in view for the coming biennium, the legislature provided for the largest total appropriations in the history of the state. A conception of how state spending has increased in recent years may be gained from the chart above. In 1929 the peak year in state spending before the state took over schools and roads, it reached a total of over $33,000,000. In the following four depression years, in spite of great reductions in expenditures through salary cuts, reorganization of departments, reduced commodity prices and elimination of some functions, the relief to local units by taking over the schools and roads caused our annual spending to continue upward to about $43,000,000 in 1933; as the state began its long climb out of the depression, gradual restoration of salaries, extensive building programs, increased spending on roads and education, and the taking on of new state functions, along with increasing commodity prices has rapidly enlarged her total bill so that for 1942 it is expected to reach the all time high of around $80,000,000.

Clerk of Court, Register of Deeds

CHANGES AT THE COURT HOUSE

Clerk of Superior Court, Estates, Trusts and Guardianship

Several laws in this group deal with insane persons and inebriates. Ch. 179 (SB. 140) authorizes the Clerk of Superior Court to order the confinement of allegedly insane persons in the county jail pending judicial determination of their sanity, if the affidavit declaring the person insane states that he is dangerous to himself or others, or if the officer serving the warrant believes him so to be. Ch. 145 (HB. 146) permits a hearing upon the question of restoration of sanity to be held before the clerk of court in the county where the insane person is held, provided that in all cases where a guardian has been appointed, he shall be made a party; the action must be held in the county where the guardianship is pending. Ch. 226 (SB. 139) authorizes the clerk to issue a warrant requiring an alleged inebriate to be brought into court for a hearing on the question of restraint, care and treatment, upon petition of two citizens of the county, if there is no wife, husband, child, committee of the estate or next friend.

Most of these laws, however, are of chief interest to representatives, guardians and trustees. Ch. 126 (HB. 163) re-writes C.S. 157, governing commissions allowed to representatives. It adds "testamentary trustees" and "other personal representatives or fiduciaries" to the former list of "executors, administrators and collectors" who are entitled to receive commissions, and fixes allowable commissions at not over 5%, in the clerk's discretion, on expenditures and receipts, including "the value of all personalty when received." The clerk is authorized to allow commissions "at any time" during administration, within the allowable total maximum. A curious sentence says that when land is sold to pay debts "or legacies," commission is to be computed only on the proceeds actually applied in the payment of debts "or legacies." This seems to mean that the representative is entitled to commissions on legacies paid out of proceeds of sale of land, but the last sentence says that "Nothing in this Section shall be construed to allow commissions on . . . distribution of shares of legatees . . ." It seems probable that this last sentence negatives the apparent attempt to increase allowable commissions in this respect.

Ch. 243 (SB. 287) re-writes C.S. 19 so that now the $4,000 bond therein required of public administrators, if furnished by an authorized surety company, need not be renewed every two years, as is true of individual surety bonds. Personal surety bonds, as formerly, must always be double the value of the personalty in the administrator's hands; but surety company bonds need be only one and one-third times that amount. Land proposed to be sold to pay debts is now included in the bond coverage.

Ch. 26 (HB. 104) amends C.S. 2151 (which empowers parents to dispose of custody and tuition of their children during minority) to permit the parent so disposing of his child to direct specifically, by will or deed, that the guardian need give no bond; in such case bond is unnecessary, unless the clerk finds the minor's best interests require it. This is an exception to C.S. 2161, which requires bonds generally of infants' guardians before they can receive any property of the ward.

Gravestones.—C.S. 108 forbade a personal representative to spend over $100 for his decedent's gravestone without a court order. Without such an order, a greater expenditure was unlawful, even though the estate was amply solvent. See, generally, In Re Bost, 211 N.C. 440, 190 S.E. 756 (1937). Ch. 102 (HB. 356), to remedy this situation, permits the representative to spend up to $500 for a marker without a court order if the value of the net estate exceeds $15,000. While it may be still true that the representative acts at his own risk until 12 months have passed or all the claims of creditors are in and it can be told whether the *net* estate exceeds $15,000, the act would nevertheless seem to simplify this phase of settling large estates.

Ch. 271 (HB. 470) amends C.S. 93, regulating order of payment of debts of a decedent. Under C.S. 93, medical services for 12 months before death were paid in the sixth class, ahead of the seventh class of "all other debts and demands." The 1941 amendment places drugs and other necessary medical supplies for a similar 12 month period in the sixth class along with medical services, so that now the druggist shares equal preference with the doctor over the landlord and grocer.

Ch. 38 (HB. 867) allows non-residents' wills to be proved in the state by display of a certified *copy* of the will along with the foreign probate before the proper officer. But, as formerly, in order to dispose of North Carolina realty the will must have been properly executed according to North Carolina law.

Ch. 79 (HB. 245) and Ch. 80 (HB. 246) deal with transfer of fiduciary powers upon consolidation of banks and trust companies. Ch. 79 provides that when one bank or trust company absorbs another company which was an executor or trustee under a will, the fiduciary powers devolve upon the successor; Ch. 80 in more general terms, provides that when any corporate fiduciary absorbs or consolidates with another, then the fiduciary powers and duties of the former companies devolve upon the resulting combination or survivor. Ch. 115 (HB. 74) provides that upon application of the holder

(*Continued on page thirty-two*)

Administration of Justice

CRIMINAL LAW, PROCEDURE AND COURTS

New and Amended Criminal Laws

Fortified Wines. (Ch. 339, HB. 101) Governor Broughton in his inaugural address informed the legislature that the sale of fortified wines was a statewide evil. Accordingly, the legislature passed a law relating to the sale of fortified wines. As introduced, the bill seemed simple enough; it forbade the issuance of licenses for the sale of fortified wines (as defined in the Revenue Act of 1939, Article VI, Schedule F, Ch. 158, s. 501(c)) in any county not authorized to operate ABC stores, and provided that the Turlington Act should apply in dry counties. As passed, the bill presents difficult questions of construction.

Coverage. An initial difficulty is what beverages are covered by the law. Section 2 makes it unlawful for any person, firm or corporation, except ABC stores, to sell or possess for sale "any fortified wines *as defined herein.*" (Italics added.) Section 1 defines fortified wines as "any wine or alcoholic beverage made by fermentation of grapes, fruit and berries and fortified by the addition of *brandy or* alcohol or having an alcoholic content of more than fourteen per cent of absolute alcohol, reckoned by volume." (Italics added.) This seems plain enough, considered alone. But it is not so plain if compared with Section 6. That section legalizes the sale of "sweet wines" in hotels, Grade A restaurants, drug stores and grocery stores, in counties having ABC stores, under ABC regulations. "For the purpose of this Act as amended, sweet wines shall be any wine made by fermentation from grapes, fruits or berries, to which nothing but *pure brandy* has been added . . ." and not having less than 14% nor over 20% alcohol by volume. Section 6. It is apparent that the "sweet wines" defined in Section 6 are the same beverages defined as "fortified wines" by Section 1.

This raises the question of reconciling the two sections. Section 4 makes the Turlington Law (1923, c. 1, as amended) apply to "fortified wines," "except as otherwise provided by law." Is it otherwise provided by law that "fortified wines" may be sold in wet counties? In terms, it does not seem to be so provided, except that Section 4 allows ABC stores to sell fortified wines. Section 6 does not mention fortified wines at all; it allows sale of "sweet wines," only, and it is highly possible that the courts will have to decide whether the permission to sell sweet wines is a pro tanto nullification of the Turlington Law on fortified wines. The probable result will be that although the definitions are confusing, wines fortified with brandy up to 20% may be sold in wet counties under Section 6, in hotels, Grade A restaurants, drug stores and grocery stores. And since as a matter of fact it seems that the usual and cheaper method of fortifying wines is with brandy (rather than the grain alcohol that has been inveighed against as a noxious ingredient), the end result probably is that sale of fortified wines in wet counties, in the types of stores named, would not seem to be materially affected at all, from a commercial point of view. Thus the "purpose" of the law, as set out in Section B—"to prevent and prohibit sales of fortified wines at any places in the State except through county operated Alcoholic Beverage Control Stores and to regulate such sales"—would seem to be belied by the later sections, although verbally it is possible to say that "fortified" wines may not now be sold even in wet counties, except in ABC stores.

Grocery Stores. A knotty problem of definition is, just how much groceries need a wine seller in a wet county stock, in order to come within the term "grocery stores" of Section 6?

Mail Orders. Section 2 makes it "unlawful for any person to purchase on order and receive by mail or express from any such Alcoholic Beverage Control Store fortified wines in quantities *not* in excess of one gallon at any one time." (Italics added.) This wording, the product of an amendment, seems to outlaw mail order sales by ABC stores in quantities of *less* than one gallon! A question arises whether, taking the wording literally, it has any real meaning at all. Section 3 of the Act revises the "alcoholic beverage" definition of 1937, c. 49, s. 24 to include alcoholic beverages of any kind containing above 14% alcohol by volume. Wines of above 14% would, then, seem to be outlawed in dry counties by the ABC law. Section 14 of that law permits any person to transport not over one gallon of alcoholic beverages from a wet to a dry county, in sealed containers; transportation of over one gallon is unauthorized, and mail orders in excess of one gallon are also not specifically authorized. Therefore, it is possible that the outlawry of such transactions by the new act adds nothing to existing law. A quite possible interpretation is that the words may be given a meaning opposite their literal meaning, so that mail orders not in excess of one gallon will be *lawful.*

Effective Date. The effective date of the Act was for a time the most acute point of controversy. Section 7 says that the Act shall take effect at midnight of July 1, 1941, as applied to "sale of fortified wines," but gives wholesalers 15 days to dispose of their stocks. Section 8, however, says that the act shall take effect *May* 1, 1941; and under Section 4, "effective May first," the pro-

visions of the 1939 Revenue Act applicable to licenses for manufacture and sale of fortified wines are repealed, and an 8½% tax levied on sale of "fortified wines" through ABC stores. Thus, the act contains two different effective dates.

There is strong evidence that the presence of the May 1 effective date is the result of an error in enrolling the amendment which inserted Section 7, the July 1 effective date section, which was meant to repeal and replace the May 1 effective date. On this theory Governor Broughton called a conference with Attorney General McMullan and others concerned with the administration of this act, which group agreed upon July 1 as the effective date, in order to eliminate the confusion arising from the inconsistency.

Another difficulty arises as to the effect of the law on legality of bottling fortified wines in the state. If the Turlington law applies generally to fortified wines, it seems highly doubtful if even wine-bottling would be allowed; this is another issue which awaits clarification.

CAPITAL PUNISHMENT

Burglary Verdicts.—C. S. 4641 authorized the jury, on a first degree burglary indictment, to render a second degree verdict "if they deem it proper so to do." Apparently, broad discretion was thus given the jury; but in State v. Fleming, 107 N. C. 905, 909 (1890), this discretion was said to be limited; such a verdict should not be independent of the evidence; a second degree verdict was proper only if there was evidence to support it; the statute did "not give them a discretion against the obligation of their oaths."

Inconsistent with this limitation was the principle of State v. Alston, 113 N. C. 666 (1893), that a second degree verdict, on evidence which if believed could constitute only the first degree crime, should not be disturbed for the reason that it was favorable and not prejudicial to the defendant. The second degree verdict might be an abuse of discretion, but it could not be attacked.

Consistent with the *Fleming* limitation, though not apparently with C. S. 564, was the holding of *State v. Johnston*, 119 N. C. 883 (1896), that the judge was under no duty to charge the jury on the contents of C. S. 4641. In that case, there was no evidence that the house was unoccupied, and thus no evidence of second degree burglary, and the judge's failure to charge as to C. S. 4641 was held proper. State v. Morris, 215 N. C. 552, 555 (1939), sustained the judge's *refusal* to charge on request of counsel. Clearly enough, then, under these decisions, there was no *duty* to charge; and it was said to be error to give such a charge. State v. Alston, *supra*.

State v. Johnson, 218 N. C. 604 (1940) presented the issue in different form. The jury returned to the court room and asked if they might return a second degree verdict. There was no evidence of lack of occupancy. Judge Frizzelle affirmatively charged the jury that there was no evidence of second degree burglary, and that they could not return such a verdict—thus presenting squarely the conflict between State v. Fleming and State v. Alston, *supra*. Four to three, in six opinions, the Supreme Court upheld the charge and the conviction.

As a direct result of this decision*, C. S. 4641 was amended by Ch. 7 (SB. 19), which requires the judge to instruct that although the jury find facts warranting only a first degree verdict, they may find the prisoner guilty of the lesser offense "if they deem it proper." This clearly grants the untrammelled discretion inveighed against by Justice Clark in State v. Fleming, and puts the life of first degree burglars on the sympathies of the jury, independent of the facts found. The revision brings order out of anomaly, and is in line with apparently mounting sentiment against capital punishment for burglary.

Burglary and Arson Verdicts.—Ch. 215 (SB. 41) is a companion piece for Ch. 7 (SB. 19), although separately sponsored. It amends C. S. 4233 and 4238, which formerly made the death sentence mandatory for persons convicted of first degree burglary, and of arson. Under the revised sections, the punishment for these crimes is still, technically, death; but "if the jury shall recommend, the punishment shall be imprisonment for life . . ."

These two acts seem substantially to reduce the chances that any given burglary or arson defendant will in the future suffer death. Correspondingly, it is not inconceivable that the number of first degree convictions may mount. Where heretofore jurors may have hesitated to bring in first degree verdicts, either because of distaste for the death penalty or because of vestigial doubts as to guilt, it is highly possible that they will now resolve these doubts and allay their distaste by returning first degree verdicts with life sentence recommended. Commutation to life imprisonment would under the statutes now be automatic.

Ch. 178 (SB. 124). Larceny and Receiving Stolen Goods.—By C. S. 4251 the larceny of property or the receiving of stolen goods knowing them to be stolen, of the value of not more than *twenty dollars* was a misdemeanor, (see *State v. Richardson*, 216 N. C. 304, 4 S. E. (2d) 852, (1939)), unless the larceny was from the person, or from the dwelling by breaking and entering. By C. S. 4252 the Superior Court was given exclusive jurisdiction of the trial of cases of the larceny of property or the receiving of stolen goods knowing them to be stolen, of the value of more than *twenty dollars*.

Ch. 178 (SB. 124) increases the sum named in the above sections from *twenty dollars* to *fifty dollars*. Thus, the present state of the law is that the larceny of property of not more than *fifty dollars*, instead of *twenty dollars*, is a misdemeanor; and the receiving of stolen goods knowing them to be stolen, of the value of not more than *fifty dollars*, instead of *twenty dollars*, is a misdemeanor. The Superior Court is given exclusive jurisdiction of the trial of such cases if the value of the property is more than *fifty dollars*, instead of *twenty dollars*.

Embezzling Bailees.—Ch. 1, P. L. 1939, after the holding of State v. Whitehurst, 212 N. C. 300 (1937) that the receiver of an insolvent corporation could not be guilty of embezzlement, extended C. S. 4268, the general embezzlement statute, to cover embezzlement by "any receiver

* H. E. Stacy, appellate counsel for the defendant in State v. Johnson, 218 N. C. 604 (1940), introduced and sponsored the measure under discussion.

or any other fiduciary." Ch. 31 (HB. 173) adds "bailees" to the list, apparently on the likely theory that a bailee might not be a "fiduciary" within the meaning of this strictly construed statute.

So far as it goes, this particular hole-plugging device seems commendable. But as pointed out in 16 N. C. Law Review 174 (1938), many potential embezzlers are still not in terms covered by the statute. Among them are brokers, factors, common carriers, warehousemen, and wharfingers. It would seem that the most effective way to avoid a recurrence of the State v. Whitehurst situation would be to enact a "catch-all" phrase to cover all persons who rightfully get possession of money or property, without a trespass, and then wilfully misappropriate it. Many other states have enacted such catch-alls. See citations in 16 N. C. Law Review 174, 179 (1938). And as there pointed out, "The construction of criminal statutes by the North Carolina court appears to furnish sufficient guaranty that these broad provisions [would] be turned neither into dead-letters nor into drag-nets." See State v. Whitehurst, 212 N. C. 300, 303 (1937).

Subversive Activities.—Wars and rumors of wars breed restrictions, legislative and otherwise, on the right to criticize the government. Ch. 37 (HB. 5) is such a restriction. It makes it unlawful "willfully and deliberately to advocate, advise or teach a doctrine that the government . . . shall be overthrown or overturned by force or violence or by any unlawful means," or to use buildings of the state or any of its agencies or subdivisions, for such advocacy, teaching, or advice. First offense is a misdemeanor; second, a felony.

Since presumably the right of free speech does not embrace the right to use state property at will, no question would seem raised by prohibiting the use of state buildings for such discussions as are here outlawed. See Pierce v. Society of Sisters, 268 U. S. 510, 534 (1925). *Meyer v. Nebraska*, 262 U. S. 390, 402 (1923). But the constitutionality of prohibiting abstract discussion or "teaching" of the proscribed doctrines, and the constitutionality, in specific applications, of that part of the statute which forbids advice or advocacy of the same, are live issues of constitutional law.

It is today well-settled that although the first ten amendments to the Federal Constitution do not apply as such to state action, nevertheless most "fundamental rights" are guaranteed against state infringement by the due process clause of the Fourteenth Amendment. Cantwell v. Connecticut, 310 U. S. 296, 303 (1940); DeJonge v. Oregon, 299 U. S. 353, 364 (1936). Thus, the Fourteenth Amendment guarantees the right of free speech. DeJonge v. Oregon, supra.

This right, like most others, is tempered by the necessities of police regulation and protection of the government. Certain utterances may be constitutionally suppressed. But the nature of the utterances which may be suppressed has never been finally settled. In Schenck v. United States, 249 U. S. 47, 52 (1918), Mr. Justice Holmes said that

> "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a *clear and present danger* that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. . . ." (Italics added)

It was thought for a time that this "clear and present danger" test was *the test* of the constitutional power of a government to punish for utterances. But Gitlow v. New York, 268 U. S. 652 (1925), the chief authority for the constitutionality of the North Carolina statute under discussion, seems to repudiate the "clear and present danger" test as a criterion for constitutional punishment. In that case, a New York statute forbade advocacy of criminal anarchy, defined as advocating advising or teaching the duty, necessity or propriety of "overthrowing or overturning organized government by force or violence, . . . or by other unlawful means." Defendant's only act was publication of the Communist Manifesto. Conviction under the statute was sustained.

The theory of the case is not clear, although it did seem plain to the Court that publication of such inflammatory material could properly be suppressed. But whatever the ground for decision, two points were heavily stressed by the Court: (a) The "clear and present danger" test is not a test of the constitutional power of a government to punish for utterances. It is rather, they said, in distinguishing the Schenck case, a test of whether a man could be punished for utterances under a statute which did not in terms forbid utterances, but did forbid *acts*, which was the state of facts in the Schenck case. See 17 Va. Law Rev. 765, 767 (1930). Justices Holmes

THE OATH OF OFFICE
Representatives are sworn in by Supreme Court Justice A. A. F. Seawell.

and Brandeis dissented, desiring to re-affirm the present danger test. (b) Great weight, said the Court, must be given to a legislative declaration that certain utterances are inimical to public safety, so dangerous that they can be suppressed. Thus, the clear and present danger test was rejected as a constitutional criterion, and indication was given that the legislatures have very broad powers of defining just what utterances can be constitutionally suppressed.

The Gitlow case is, then, constitutional authority for the North Carolina statute. But despite its broad language, later developments have shown that the court will scrutinize particular applications of such statutes to see for themselves, independent of legislative determination, whether the actions in question are the type of abuse of free speech which can be suppressed under the constitution. In Fiske v. Kansas, 274 U. S. 380, a statute prohibited promulgation of any doctrine which advocates violence to effect industrial or political revolution. The evidence showed that the defendant had secured members for the Industrial Workers of the World. From the preamble of the charter of that organization, the jury were permitted to infer that the preamble had the "sinister meaning" attributed to it by the state, and the state court sustained the conviction, so that there was a legislative and a judicial determination that the defendant's actions were dangerous and should be suppressed. On appeal, the Supreme Court reversed the jury on the grounds that the undisputed evidence was not sufficient to show that the organization did advocate violence, and thus it was not sufficient to justify punishment of defendant. It was, said Mr. Justice Sanford, open to the court in every case to see whether these admittedly constitutional statutes had been constitutionally applied in the particular instance. DeJonge v. Oregon, 299 U. S. 353 (1936) held invalid the particular application of an Oregon statute. Freedom of speech and assembly, said the court,

> "may be abused by using speech or press or assembly in order to incite to violence or crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed . . ."

And in Herndon v. Lowry, 301 U. S. 242 (1936), the Gitlow case seems again to have been modified. A Georgia statute forbade the procuring of members to any organization whose doctrines embrace ultimate resort to violence to overthrow the government. The statute as applied was held unconstitutional, by a five to four vote. In a highly significant paragraph, the court said (at page 258):

> "The power of a state to abridge freedom of speech and of assembly is the exception rather than the rule, and the penalizing even of utterances of a defined character must find its justification in a reasonable apprehension of *danger to organized government. The judgment of the legislature is not unfettered. . . .*" (Italics added)

Conclusions. In so far as one may summarize conclusions in this "squashy" field of the law, they would seem to be as follows: The statute, generally speaking, is constitutional. But the court will scrutinize particular applications in order to see if in that particular application the constitutional requirements of freedom of speech and assembly have been complied with. Just what those requirements are is hard to tell. The Gitlow case, it would seem, can no longer be taken literally in its pronouncement that clear and present danger is not a constitutional criterion, since several of the later cases have inquired into the degree of danger threatened by the particular defendant's acts. Nor, actually, will so much weight be given to the legislative declaration of danger, as the Gitlow language might lead one to believe. The result in a given application of the statute will, then, depend largely on the particular facts of the case and on the degree to which the court's sense of justice is outraged by the proceeding. It is difficult to believe, in view of the later cases, that conviction for merely "teaching" or explaining revolutionary doctrines would be upheld.

Taking Out Merchandise on Approval.—C. S. 4285 was designed to protect merchants from persons obtaining "wearing apparel" on approval with intent to cheat and defraud, and then to fail or refuse to return the same in an unused and undamaged condition. The protection of this statute has been extended by Ch. 183 (SB. 210) to include all "merchandise." This Act also amends C. S. 4285 by excepting all persons who take our merchandise after having signed a written contract to pay for the same.

Ticket Scalpers. — This law (Ch. 180, SB. 181) makes it a misdemeanor to sell or offer for sale tickets to athletic contests of any kind at a price in excess of the sale price written or printed on the ticket. A question is immediately raised whether this price-fixing statute is constitutional; a categorical answer to this question is impossible.

The most direct authority on the point, applied literally, would indicate that the law is unconstitutional. Tyson v. Banton, 273 U. S. 418 (1927) involved a New York statute which forbade theatre ticket brokers to charge more than fifty cents in advance of the printed price. Admittedly, ticket-scalping in New York presented an evil; monopoly was present. But the law was held unconstitutional, on the ground that a state can fix prices only in businesses "affected with a public interest" (cf. Munn v. Illinois, 94 U. S. 113 (1876); theatres are not so affected; therefore, the prices charged by the adjunct brokers cannot be regulated, without violating the due process clause of the Fourteenth Amendment.

Condemnation of the North Carolina statute in question does not necessarily follow. Nebbia v. New York, 291 U. S. 502, 536 (1934) upheld the power of New York to fix the price of milk. Justice Roberts, utilizing the previous dissents of Justices Stone and Brandeis, announced a theory wholly inconsistent with that of Tyson v. Banton and Wolff Packing Co. v. Court of Industrial Relations, 262 U. S. 522, (1923). Said Mr. Justice Roberts (at page 536):

"It is clear that there is no

(*Continued on page twenty-eight*)

Public Health and Welfare

SOCIAL LEGISLATION EXPERIENCES GROWING PAINS

Public Health

Public health measures struck at several specific evils. Ch. 373 (HB. 73) (see also Agriculture) erects a "No Trespassing" sign for cholera-infected hogs, by making it a misdemeanor to import any hog into the state except upon a certificate issued within 10 days after inspection, by a duly licensed veterinarian of the locality where the shipment originated, that the hog and the locality from which it comes are free from cholera and other contagious diseases. The custodian of such hogs must retain the certificate for inspection until delivery of the hogs. Hogs brought into the state for immediate delivery to recognized slaughter houses intended for immediate slaughter, and hogs destined to public livestock markets operating under the supervision of the Department of Agriculture are excepted. Agents in charge must bury, within 12 hours and to a depth of at least 2 feet, hogs perishing in transit. County commissioners are required to furnish inspections and examine and pass on the veterinarian's certificates. This law strikes both at the infected hog brought into the state for breeding and show purposes, and at the problem of the transient trucker who throws dead hogs beside the road without burying them; it would seem constitutional as a reasonable exercise of the police power under Rasmussen v. Idaho, 181 U. S. 198.

Prevalence of barber's itch and related ills will be materially reduced if all the sanitary regulations of Ch. 375 (HB. 420) concerning barber shops and schools are adequately enforced. School children taken suddenly ill, or so injured that they require immediate medical attention, may under Ch. 315 (HB. 788) be taken to the nearest doctor or hospital in school busses, if other transportation is unavailable. The theory that tuberculosis patients thrive best in high, dry climates finds further legislative repudiation in Ch. 86 (SB. 37), which amends Ch. 325, P. L. 1939, and authorizes issuance of $600,000 in bonds to establish a sanatorium in Eastern North Carolina for the treatment of tuberculosis. Ch. 223 (SB. 111) makes guilty of a misdemeanor any domestic servant who fails or refuses to comply with Ch. 337, P. L. 1937, requiring annual physical examination. The marriage license examination law was amended by Ch. 218 (SB. 65) so that (a) the required medical examination and the Wassermann certificate may be obtained as early as 30 days before application for the marriage license, instead of the former 7 days for the examination and two weeks for the Wassermann certificate; (b) The law now applies to non-residents as well as to residents seeking marriage licenses in the state.

Ch. 309 (HB. 741), apparently aimed chiefly at summer hotels and tourist camps, empowers the Board of Health to make and enforce rules and regulations governing sanitation of such hostelries "and all other establishments where food is prepared, handled, and served to the public at wholesale or retail for pay, or where transient guests are served food or provided with lodging for pay." Ch. 185 (SB. 230) amends C. S. 7064 to empower counties to pay the members of their county boards of health $4 per day while on duty, unless they are full-time employees of the county or a municipality located therein.

Welfare

Perhaps the most important welfare measure was Ch. 270 (HB. 469), which largely amended C. S. 5004 et seq., governing the Board of Charities and Public Welfare and county welfare boards. The law authorizes the state board of charities and welfare to establish and operate a merit system of personnel standards with a uniform pay schedule for state board employees and county welfare departments, the state board schedule to be in conformity with state personnel act provisions. County welfare boards may select their county welfare superintendent under a merit system adopted by the state board without a joint session with the county commissioners. Additions are made to the duties and powers of county boards; the organization and meeting requirements are re-written. Other provisions relate to the qualifications, dismissal and term of the county welfare superintendent, and to the powers and duties of the county superintendent.

Adoptions. — The Supreme Court, because of its view that adoption statutes, being in derogation to the common law, must be strictly construed, and in spite of its professed admiration for adoption as a useful and valuable social device, has thrown the status of adoptions in North Carolina into considerable confusion and doubt, by several of its decisions in cases involving the validity of adoptions. (See Truelove v. Parker, 191 N. C. 430; Ward v. Howard, 217 N. C. 201; and In Re Holder, 218 N. C. 136.) As a result of these decisions, and in spite of the efforts of the legislature in past sessions, many adoptions in North Carolina were legally void, (See the excellent article by Professor Frank Hanft in 19 N. C. L. R. 127), prior to the enactment of

the 1941 law, Ch. 281 (HB. 557), because of the Supreme Court's attitude that the statutory requirement of consent by the natural parents is not complied with where the consent is general, as where the child is given to a licensed child-placing agency to be by the agency placed with selected adoptive parents; that even where the parent has consented to the adoption, it is invalid unless the parent was a party of record to the proceeding; that adoption decrees are not entitled to the standing of regular judgments; that adoption proceedings can be upset for procedural defects even by relatives of the adoptive parents by collateral attack; and that natural parents may for all practical purposes abandon their children, and still the children are not considered legally abandoned for adoption purposes unless the statutes are strictly complied with.

The 1941 act amends Ch. 243, P. L. 1935, in an effort to remedy this unsettled condition of the law. Section 1 adds to the 1935 law the provision that where the natural parent or guardian has consented to the adoption as provided by the earlier statute, it is immaterial that he is not made a party to the adoption proceeding. Section 2 validates consents generally given, so that now the natural parent may leave the child with the superintendent of public welfare of the county, or with a duly licensed child-placing agency, for adoption by persons selected by them, without specific consent by the natural parent. Such consent is made irrevocable, and may be made by parents under 21 years of age. Within two years of the interlocutory adoption decree, but not less than one year after such decree, the court may grant final letters of adoption, which are made retroactive to the date of application.

Under Section 3 collateral heirs of the adoptive parents are estopped from upsetting the adoption by the provision that no one who is a party to an adoption proceeding, *nor any one who claims under such* a party, may later attack the proceeding for any defect or irregularity, jurisdictional or otherwise. The legislature answers another objection of the Supreme Court by providing here that orders of adoption shall have the force, effect and standing of common law judgments. Parents without notice of the proceeding are protected by this section, which allows them to bring action to vacate the order within one year of *actual* notice of the adoption.

The relationship of parent and child is established between the adopted child and the adoptive parent by Section 4, where the adoption is for life rather than for minority. The Act provides that succession "by, through and from adopted children and their adoptive parents shall be the same as if the adopted children were the natural, legitimate children of the adoptive parents." The Act further provides that only where escheat to the state would otherwise result, because of failure of other heirs of the natural parents or of the adopted child, shall property pass by succession from the natural parents to the child, or vice versa. Inheritance by the child from the adoptive parents shall not be prevented by defects or irregularities, jurisdictional or otherwise, in the adoption proceedings.

The problem of abandonment is tackled by Section 5, which provides that where the court has made findings of unfitness or abandonment on the part of the parents, they are no longer necessary parties of record in any proceeding under the Chapter, nor is their consent to adoption required.

Section 6 deals with the rights of the foster parents, providing that they shall not be deprived of any rights in the child, at the instance of the natural parents or otherwise, except in the same fashion and for the same causes as are applicable in proceedings to deprive natural parents of their children. Section 7 acknowledges the Supreme Court's strict attitude toward consent by the natural parents by providing that invalidity of any section of the chapter shall not affect the remainder of the Act.

All provisions of the Act, except those establishing a full parent-child relationship and fixing the legal position of the adopted child, in Section 4, are made by Section 8 to apply to all adoptions heretofore or hereafter made. The section also provides that the Act shall not affect pending litigation, that no adoption proceedings heretofore had shall be invalidated for procedural defects, and that all adoption proceedings heretofore conducted *substantially* in accordance with the 1935 statute as amended are validated by the 1941 law, despite procedural defects.

World War Orphans—Free Tuition. Ch. 242, s. 1, P. L. 1937, as amended, extended free tuition in any state educational institution to any child who had been a two-year resident of North Carolina and whose father was killed in action or died from injuries or other causes while a member of the United States armed forces during United States participation in World War I (April 6, 1917, to July 2, 1921), or whose father died at any time prior to 1925 of injuries received or illness contracted during the period of service.

The 1941 General Assembly extended the benefits of this law in three distinct ways: (1) Death of the father at any time is now sufficient; he need not have died before 1925. Ch. 154 (SB. 196), (2) Though the father is living, the child is now entitled to free tuition if the father, "due to illness contracted since July 2, 1921, has been certified by the United States Veterans Administration as totally and permanently disabled but who [sic] draws no compensation from the United States Government other than his insurance and hospitalization benefits." Ch. 239 (SB. 252) (3) Ch. 302 (HB. 680) makes the benefits available to "any child whose father was a resident of the State of North Carolina at the time said father entered the armed forces of the United States *and* whose father was, prior to his death, or is at the time the benefits of this Act are sought to be availed of, suffering from a service-connected disability of thirty percent or more as rated by the United States Veterans Administration; . . ." Only five children may receive the benefits of Ch. 302; if more apply, the state superintendent of public instruction may choose the lucky five.

Ch. 232 (SB. 199) liberalizes the rules governing old age assistance and aid to dependent children, and increases the proportion to be contributed by state and federal governments into the benefit fund, as compared with county contributions.

(*Continued on page forty-two*)

Regulation of Trade and Industry

LEGISLATION FOR FARM, FACTORY AND MARKET

Regulation of Commerce

Three uniform laws, regulating partnerships, limited partnerships, and stock transfers, head the list of commercial regulations. Ch. 374 (HB. 320) makes North Carolina the 21st jurisdiction to adopt the Uniform Partnership Act. See 7 U. L. A. '40, p. 6. While in no great particulars does the Act change the existing common law, it has the advantage of affording a concise summary of the law of general partnerships, and of the rights, liabilities and duties of partners between themselves and with regard to third persons. It amounts, in short, to a codification of the common law of partnerships, and should be of great convenience to courts and practitioners, especially in those situations which may not yet have been litigated in North Carolina courts.

Ch. 353 (HB. 367) enacts the Uniform Stock Transfer Act, previously adopted in 29 states and Alaska. 6 U. L. S. '40, p. 6. The salient feature of this law is that under it stock is transferable only by delivery of the certificate with an assignment written thereon or by delivery of the certificate with a written assignment by a separate instrument, even though the by-laws of the corporation require a transfer to be made on the books. For its own protection, the corporation may treat the registered owner as the true owner for payment of dividends and collection of assessments. Title acquired by assignment written on the certificate and a delivery of the certificate is superior to title acquired by other methods. The Act supplies needed definitions and succinctly enumerates the rights, duties and liabilities of the vendor, the purchaser and the corporation, as well as of third parties. C. S. 1163, regulating the procedure for actions to require issuance of new certificates for certificates lost or destroyed, and C. S. 1164, which provided that shares were transferable on the corporate books under by-law regulations, are expressly repealed, being inconsistent with the new act. Section 17 permits the court, in a proceeding to compel a corporation to issue replacements for lost or destroyed certificates, to award counsel fees to the defendant corporation, in the court's discretion. This seems a departure from previous North Carolina policy. Turner v. Boger, 126 N. C. 300.

C. S. 817 authorized attachment of shares of stock owned by nonresidents in foreign corporations doing business in this state, regardless of where the certificates happened to be. If, after attachment, the holder of the certificate transferred it to a purchaser for value, either the corporation or the transferee, both being innocent parties, would have to suffer, as the attachment would not be affected by the sale. Parks v. Express Co., 185 N. C. 423 (1923). Section 13 of the Uniform Act, however, prohibits attachment or levy on shares unless the certificate is surrendered or its transfer enjoined, the purpose being to prevent fraudulent transfer of certificates after attachment or levy. See, generally, 3 N. C. L. Rev. 103, 106; 2 N. C. L. Rev. 119; Trust Co. v. Doughton, 187 N. C. 263 (1924). To reconcile these sections, C. S. 817 was amended to require that for valid attachment under C. S. 817 the certificate must be actually seized by the attaching officer, or surrendered to the issuing corporation, or its transfer enjoined.

Uniform Limited Partnership Act. —The Uniform Limited Partnership Act (Ch. 251, HB. 321) brings to North Carolina investors a practicable way to achieve certain corporate advantages without incorporation, by enabling them to avoid both corporation taxes and the unlimited liability of a general partnership. The Act has been ably discussed in detail elsewhere, e.g., see 22 Columbia Law Review 669 (1922); 65 University of Pennsyl-

SENATE CALENDAR COMMITTEE

To which all bills are referred toward the close of the session. Adjournment was three days later than the date marked on the calendar.

vania Law Review 715 (1917); only two of the major changes in existing North Carolina law will be dealt with here.

At common law, all partners were liable generally for firm debts. Desire for some method of investing money in partnership enterprise without incurring this unlimited liability led to the enactment of statutes permitting the formation of limited partnerships. C. S. 3258-3276. These partnerships contained two kinds of partners, general and special. C. S. 3259. Special partners could contribute only cash, or property at its fair value, and if they complied exactly with the requirements for forming a limited partnership, and if they refrained from any sort of activity in carrying on the business, they could be held liable only to the extent of the capital contributed. C. S. 3259.

However, if the articles of limited partnership and the affidavit of cash payment required by C. S. 3262 contained any false statement, (C. S. 3264), or if the formalities necessary to form such a partnership, such as proper newspaper publication, (C. S. 3265), were not *exactly* complied with, then all the partners were held liable as general partners. Davis v. Sanderlin, 119 N. C. 84 (1896). Since it was difficult to comply absolutely with these requirements, the advantages of limited partnership were somewhat straight-laced, and the former act does not seem to have been very much used.

The Limited Partnership Act makes two major changes in this practice. In the first place, although the liability for false statements in the partnership certificate is continued, it is severely restricted, so that now no one can recover from the limited partner on account of such statements unless he can show that he *relied on and was damaged by it;* recovery is limited to the extent of his reliance. Section 6. In the second place, if the would-be limited partner tries in good faith to comply with some requirement and fails, so that he actually becomes a general partner, he can escape general liability by renouncing all interest in the assets that he has contributed, provided he does it as soon as he discovers his mistake. Section 11.

The result of these two changes is that now limited partnership offers a practicable way of escaping corporation taxes and regulations without the corresponding unlimited liability which normally attaches to a general partner. The present statutes on limited partnership, C. S. 3258-3276, are expressly repealed.

Insurable Interest of Stockholders and Partners.—Ch. 201 (HB. 538) provides that where two or more persons own stock or interest in the same corporation, partnership or business association, and have heretofore contracted or hereafter contract with one another for the purchase, at the death of one, by the survivor or survivors, of the stock, share or interest of the deceased, the person or persons making the contract of purchase shall be deemed to have, and are declared to have, an insurable interest in the life or lives of the person or persons contracting to sell.

Where the beneficiary is not so situated that he stands to lose by the death of the insured, and where he is not of the requisite blood relation, the insurance contract is void as a wagering contract. Wharton v. Home Sec. Life Ins. Co., 206 N.C. 254 (1934). But where, through contractual or commercial relation, the beneficiary stands to suffer financial loss through death of the insured, he is said to have an insurable interest, and the policy will not for that reason be void. Thus, in many states the rule seems to be that a partner has an insurable interest in the life of his co-partner. Vance on Insurance (2d ed. 1930), p. 163. In North Carolina, however, it has been held that at least on the facts presented, a partner had no insurable interest in the life of his co-partner. Powell v. Mutual Ben. Life Ins. Co., 123 N.C. 103 (1898). As applied to partners, then, this statute seems to run counter to the Powell decision.

The same analysis would seem applicable in the stock-sale situation, although no cases have been found on this point in the time available. In Hinton v. Insurance Co., 135 N.C. 314, 321 (1904), it was said that

> "except in cases where there are ties of blood or marriage, the expectation of advantage from the continuance of the life of the insured, in order to be reasonable, as the law counts reasonableness, must be founded in the existence of some contract between the person whose life is insured and the beneficiary, the fulfillment of which the death will *prevent* . . ."

Since in the situations dealt with by the statute under discussion the death would not *prevent* the fulfillment of the contract but would, rather, call into being the situation under which the contract is to be *carried out,* it is doubtful if, without this statute, any such contract would have been sustained.

Ch. 235 (SB. 237) and Ch. 236 (HB. 238) amend the laws relating to credit unions, by requiring semi-annual instead of annual, reports, of cooperative credit unions; by fixing fees and strengthening the superintendent's power to enforce collection of fees; and by permitting associations formed entirely of corporations formed under Ch. 93, Subchapter III of the Consolidated Statutes to use the term "credit union" in their names. Ch. 290 (HB. 611) regulates sale of canned dog foods. Ch. 220 (SB. 93) is the remains of the attempt of the oil companies to nullify the state gasoline inspection law; Ch. 372 (SB. 291), of an attempt to place intrastate aeronautics under the regulation of the Utilities Commission.

Corporate Trustees.—Ch. 245 (SB. 334) validates and confirms the appointment of and conveyance to corporations as trustees in deeds of trust, and their actions under such deeds of trust, to the same extent as if the corporate trustees were individual trustees.

Dissolution of Corporation.—When all stockholders consent in writing to the voluntary dissolution of a corporation no meeting is necessary, under Ch. 195 (HB. 186). However, before issuance of dissolution papers, consent must be filed with the secretary of state, the certificate of dissolution must be published in newspapers and recorded with the clerk of court as in cases where consent is not unanimous, and the secretary of state must be notified by the commissioner of revenue that the corporation has complied with the revenue laws of the state.

Negotiable Instruments.—Ch. 268 (HB. 464) amends C. S. 220 (k) to remove from promissory notes and drafts or bills of exchange issued or drawn for agricultural, industrial or commercial purposes, the require-

(*Continued on page thirty-nine*)

State Departments and Functions

NEW AGENCIES FOR OLD FUNCTIONS; NEW FUNCTIONS FOR OLD AGENCIES

New and Reorganized State Departments and Commissions

The General Assembly made sweeping changes in the organization and set-up of numerous state departments and commissions, and set up fifteen completely new agencies, nine of which are commissions charged with the duty of studying and reporting on various problems of state-wide importance.

Reorganized were the Unemployment Compensation Commission, the Highway and Public Works Commission, the State Historical Commission and, dependent on electoral ratification of a constitutional amendment at the polls in November, the State Board of Education (See EDUCATION), and the Board of Conservation and Development.

The Unemployment Compensation Commission, which was formerly composed of three members appointed for six year terms, was changed to a seven-member commission, with four year terms. (Ch. 279, HB. 801). The first new appointments must be made before July 1, 1941, the effective date of the act.

Terms of the eleven members of the State Highway and Public Works Commission were changed from six to four years, and the present commission is terminated under Ch. 57 (HB. 306) on May 1 of this year. The members of the new commission are required to represent the state at large, rather than serving only the interests of particular districts.

The maximum number of members allowed on the State Historical Commission was changed by Ch. 306 (HB. 712) from five to seven members, for six year terms. The number of members of the board of trustees of Morrison Training School for delinquent negro boys was likewise increased, from eight to ten, to serve three years.

The new Department of Tax Research (Ch. 327, HB. 873) was created for the purpose of studying the methods and problems of taxation, and to make available for the General Assembly, the Governor and the public, tax data. The director of the department is to replace the commissioner of revenue as chairman of the state board of assessment, and is given authority to examine persons, papers and records and to require reports from state departments, counties, cities and towns.

The new Department of Motor Vehicles, created by Ch. 36 (SB. 102), will have two divisions: Registration, and Highway Safety and Patrol. Under these will be consolidated activities dealing with the regulation of motor vehicular traffic now handled by the commissioner of revenue, the motor vehicle bureau, the auto theft bureau, the division of highway safety, the head of the state highway patrol and officials under the Uniform Driver's Act. The Governor is empowered to appoint a full-time commissioner to head the department, and to fix his salary, with the approval of the advisory budget commission.

The care, operation and maintenance of all public buildings belonging to the state were put under the supervision of a board composed of the governor, secretary of state, state treasurer, attorney general, and assistant director of the budget, by Ch. 224 (SB. 117). The Act provides for a superintendent of public buildings and grounds, and sets forth the duties of the board under nineteen separate subheads, ranging all the way from custody, control and repair of the buildings, to providing suitable space for arsenals. By Ch. 216 (SB. 43), the board of public buildings is directed to install elevators or escalators in the state capitol building.

A Memorials Commission for the state, of which the Governor, secretary of the historical commission, and the heads of the art and history departments at the University of North Carolina at Chapel Hill and of the architecture department at State College, are to be members, was set up by Ch. 341 (SB. 116), and will exercise control over existing memorials and works of art belonging to the state, as well as control over acceptance of new ones. The governor may request this commission to act in an advisory capacity with reference to the artistic character of buildings to be erected or remodeled by the state.

Also set up by the legislature was a seven-man board of trustees to administer the retirement system for state employees, school teachers, and employees of those municipalities and counties which elect to come under the plan. (See Pension and Retirement System)

The prospect of job selection by merit rather than by political connection was encouraged by the creation of a Merit System Council (Ch. 378, HB. 770) for certain state agencies drawing on federal funds, and by the authorization of a Merit System Commission (HR. 596) to study the possibility of inaugurating such a system for all state employees.

The Merit System Council will supervise a merit system for the Unemployment Compensation Commission, the State Board of Health, the State Board of Charities and Public Welfare, and the State Commission for the Blind. Five "public-spirited citizens of the state" will compose the council, and are to be appointed by the Governor. It is to draw up

rules and regulations, and to supervise examinations of persons seeking jobs under the agencies under control of the council.

The Merit System Commission, supra, is also to be composed of five gubernatorial appointees, and is one of the nine "study" commissions created by the General Assembly. This body is to carefully consider various plans and systems of job selection on the basis of merit, and to report back to the Governor on or before July 1, 1942.

Other study commissions to be appointed by the Governor are the commissions on: (1) Education, (HR. 401) which is to be composed of two representatives from state supported institutions of higher learning, two from the public school system, one from the Department of Public Instruction, and six from the agricultural, business and professional life of the state, and which is to study all educational problems, but is to pay particular attention to the gap which makes difficult the transition of boys and girls from high school to college, closer cooperation between the public school system and institutions of higher learning, the vocational needs of high school students unable to attend college, and the shortage of facilities for training vocational teachers in our state institutions; (2) farm-trade schools, under Ch. 348 (SB. 306), which is to investigate the feasibility of establishing such schools in the state; (3) nautical schools, which commission was created in 1939, and is by Ch. 382 (HB. 949) extended for two more years.

The Highway and Public Works Commission is required under Ch. 47 (SB. 24) (See Highways) to survey and study the present wage schedules of its employees, to classify them, set maximum and minimum rates for each classification, and submit its report to the Governor and Advisory Budget Commission. The finally approved schedule is to supersede all existing wage and salary classifications in the highway department.

Provision is also made for prisoners working on the state highways who suffer accidental injury, Ch. 295 (HB. 650) (See Labor) to receive limited benefits under the Workmen's Compensation Act. The Highway and Public Works Commission is to pay such injured prisoners from funds provided for operation of the prison department.

Two measures affect the administration of World War Veterans Loan Funds. Ch. 247 (SB. 272) allows investment of funds held for the loan fund by the state treasurer, in securities approved for the investment of state sinking funds or loans or investments approved by the board of advisors, the Governor and Council of State. The income from such investments will aid in meeting debt service obligations. Ch. 349 (SB. 327) permits the board to fix the salary of the Veterans' Loan Fund Commissioner, but not to increase his present salary. The effect of this act is that the board may *reduce* the commissioner's salary, in its discretion.

The Sinking Fund Commission is authorized to invest state sinking funds in bonds or securities fully guaranteed, both as to principal and interest, by the United States government (Ch. 17, HB. 132), purchase of such bonds never to be made at more than market price, nor sale at less than market price. Non-U. S. guaranteed bonds or securities may be purchased by the commission only when the vendor delivers with them an opinion by an attorney who is a public utilities authority stating that they are valid and binding obligations of the issuing governmental agency or unit. The commission may appoint one or more of its members to buy and sell securities.

Ch. 39 (HB. 144) set up a state marketing authority to provide for more effective marketing of home, farm, sea and forest products in the state, in cooperation with local units to be set up under the act. Ch. 326 (HB. 826) authorizes the Governor to allocate from the contingency and emergency fund up to $50,000, on application from the Commissioner of Agriculture, to provide funds for this authority, which will operate within the Department of Agriculture. (See Agriculture).

Ch. 252 (HB. 514) transfers the records of the State Emergency Relief Administration from its liquidating agency to the North Carolina Historical Commission to be classified and preserved for public investigation. Funds granted to the ERA are to go to the Historical Commission to be used for this purpose, any balance remaining to revert to the board of charities and public welfare. These records are said to include important historical materials dealing with economic conditions of the state.

When its administrative expense fund is exhausted, the Rural Rehabilitation Corporation is authorized by Ch. 307 (HB. 731) to pay the expenses of administering the act, which provides for loans from state funds to county boards of education to equip buildings in which are to be taught vocational subjects, from the income derived from the vocational building loan fund and from the social work student loan fund.

The board of trustees of the Greater University of North Carolina was enlarged by Ch. 136 (HB. 579) to include as honorary members all living former governors of the state.

Usury Commission.—Resolution 23 (HR. 542) is part of the story of a crusade that failed. Under North Carolina law, it does not seem to be a crime to charge more than the legal rate of interest on loans, although certain civil consequences may ensue if the borrower decides to enforce his rights. C. S. 2306 et seq. As a result, "loan sharks" find the state a profitable feeding ground, it is reported.

To curb loan shark activities, HB 29 was introduced, to make it a crime to charge excessive interest. This bill was killed. HR. 542 was then passed, authorizing the Governor to appoint a commission to study the usury laws and report their recommendations to the next General Assembly. A third bill, HB. 698, which would have enabled the Banking Commissioner to examine into the activities of loan agencies not now under state supervision and to require reports from them, was killed, partly through the argument that the Legislature ought to stand on what it had done when it passed HR. 542!

The result of the furore is that two effective bills failed and HR 542 passed. Nominally, its purpose is

(*Continued on page thirty-three*)

Pensions and Retirement Funds

ADDED SECURITY FOR PUBLIC EMPLOYEES

Pension and Retirement Systems

Prior to 1937 there were a few local pension and retirement systems for policemen and firemen in operation. In 1937 the General Assembly provided for an old age assistance program and created the Law Enforcement Officers' Benefit and Retirement Fund. The 1939 General Assembly was greeted with plans for retirement systems for teachers, for State governmental empoyees, and for local governmental employees. The 1939 General Assembly cleared its calendar by providing for a commission to study a state retirement system, and enacting a law permitting counties and municipalities to operate such systems. Naturally, the 1941 General Assembly was called upon to finish the job, which it did by enacting three laws with respect to Pension and Retirement systems.

TEACHERS'-STATE EMPLOYEES RETIREMENT

Ch. 25 (HB. 52) creates a retirement system for school teachers and state employees jointly financed by employee contributions and state appropriations. The system is administered by a board of trustees consisting of the State Treasurer (chairman), the State Superintendent of Public Instruction, the Insurance Commissioner and three persons appointed by the Governor. The Act provides for the general structure of the system, and leaves many of the policies and regulations to the board of trustees. The main provisions of the Act relative to retirement are as follows:

1. Permissive retirement of employees and teachers at the age of 60; compulsory retirement at age 65 unless further service is requested by employer; and service after 70 only upon request of employer and approval of board of trustees.

2. Compulsory membership for all teachers and employees beginning service after July 1, 1941; present employees may elect not to become members by written notice to the trustees prior to January 1, 1942.

3. Monthly contributions by members equal to 4% of all compensation not in excess of $3,000.00 per year.

4. Upon death or severance from service prior to retirement all contributions with interest repaid.

5. Retirement benefits equal to twice the amount of an annuity which accumulated contributions with interest will provide at the age of 60 for the life expectancy of the member. Contributions made by a member who remains in service after the age of 60 will increase the amount of retirement benefits; however, the state will match only the annuity that accrues at age 60.

6. Disability benefits, to persons with at least 10 years service prior to disability, equal to the annuity member contributions will provide plus 75% of the amount the state would have provided had the member remained in service until age 60 without salary change.

7. Prior service credit benefits upon retirement equal to twice the annuity the member's contributions would have provided had the system been in effect at the time the member was employed in the service.

There has been no definite schedule of the amount of retirement benefits any member will receive. Each member's benefits will be calculated separately. However, the Retirement Commission which made a study of the problem included as a part of its report to the General Assembly tables showing approximately the percentage of salary which will be paid as benefits. The percentages in these tables apply to average compensation, not to exceed $3,000.00 per year, during the last five years preceding age 60, and are based on contributions at the rate of 5% instead of 4%. These tables are predicated on a 4% interest rate (compounded annually) for funds invested.

By reference to the table we find that a female teacher entering the service at the age of 25 can retire at 60, on approximately 49.26% of her average salary during the five years preceding retirement. Adjusting this percentage to a 4% contribution base we find it to be approximately 39.41%. Under present conditions, it is doubtful that the funds invested would earn as much as 2% compounded annually. However, assuming a 2% interest rate and adjusting the percentage to such a rate, the percentage becomes about 27%. Thus, assuming our teacher had an average earning over the entire period of $120.00 per month for eight months each year, and an average salary of $140.00 per month during the last five years, she would receive approximately $25.00 per month. Due to the variance in mortality tables for the various classes of service, the amount of benefit that would be received upon the same earnings would increase slightly in each instance of the following service classifications: female clerical worker, male teacher, male clerical worker, female laborer and male laborer. Also, the higher the earnings record over the entire service record of each member the more each such member would receive in monthly retirement payments.

The above case cannot be taken literally because interest rates may become higher in future years, or the state may increase its contribution, or increase the rate of employees' contribution. Unless there is a marked change in present economic conditions, or in the present policy adopted by the state, beneficiaries under the retirement system need not worry over higher income tax brackets during their retirement.

Law Enforcement Officers' Benefit and Retirement Fund

Ch. 56 (HB. 294) and Ch. 157 (HB. 109) amend Ch. 349, P. L. 1937, which created the Law Enforcement Officers' Benefit and Retirement Fund. This fund was created by assessing $1.00 as court cost in each criminal case in Superior and Recorders' Courts. Death benefits were started in May, 1937. The General Assembly of 1939, made the $1.00 cost applicable to cases tried by Justices of the Peace. The board of commissioners of the fund began the retirement feature of the fund as of July 1, 1940, and provided for contributions by the officer equal to 3% of compensation earned. The commissioners provided for retirement after 20 years of service but no retirement benefits are to be paid prior to July 1, 1945, and no calculations have been made to date as to the amount of such benefits.

Ch. 56 amends the 1937 act to provide for investing money of the fund in stock of Federal Savings and Loan and State Building and Loan Associations when approved by the Insurance Commissioner. Not more than $5,000.00 may be invested in any single association.

This chapter also provides that only those officers whose primary duties are enforcing the criminal laws of the state shall be eligible for membership. The original act provided for membership of any officer of the state with the power of arrest.

Ch. 157 amends the original act to insure the taxing of the $1.00 fee in criminal cases in which there are pleas of guilty and nolo contendere and in cases where costs are taxed against the prosecuting witness.

Under the original act, one-half of all fees collected were credited to the Bureau of Identification and Investigation. However, Ch. 157 amended this provision to allow all fees up to $100,000.00 to be used by the fund to pay death benefits and match officers' contributions. This was done because one-half of total collections would not match the amount that members would contribute. Collections in excess of $100,000.00, or in excess of benefits paid and contributions made by members revert to the state general fund.

As amended, the commissioners of the fund are the State Auditor (ex-officio chairman), the State Treasurer, the Insurance Commissioner and four members appointed by the Governor. Appointed members receive a per diem of $7.00 for not more than eight meetings each year. Employees of the fund are prohibited from holding public office and engaging in political activity.

State employees participating in the benefits of this fund are prohibited from participating in the State Teachers and Employees Retirement Fund.

Assignment of Claims Against the State.—C. S. 7675 (d) provides, in substance, that all transfers and assignments made of claims upon the state or any of its departments, institutions or commissions, shall be null and void unless such claim has been duly audited and allowed and the amount due thereon fixed and a warrant for the payment thereof has been issued; and no warrant shall be issued to any assignee of any claim or any part or share thereof or interest therein. The Act exempts assignments by state employees to the State Employees' Credit Union for periodical payments to the Credit Union to be deducted from their salaries or wages as such employee.

Ch. 128 (HB. 235) amends this section by adding the following:

"Provided, further, that this Act shall not apply to assignments made by members of the State Highway Patrol, agents of the State Bureau of Investigation, Motor Vehicle Inspectors of the Revenue Department, and State Prison Guards, to the commissioners of the Law Enforcement Officers' Benefit and Retirement Fund in payment of dues due by such persons to such fund."

The result of the 1941 amendment is that the persons named may assign all or a part of their salaries or wages before a warrant for the payment thereof has been issued, to the commissioners of the Law Enforcement Officers' Benefit and Retirement Fund in payment of dues due by such person to such fund.

Local Retirement System

Ch. 357 (HB. 695) amends Ch. 390, P. L. 1939, which enabled counties and cities to establish local retirement systems for local governmental employees. As amended this Act is applicable to counties with a population of 15,000 or more, and to municipalities, and the administration of any systems adopted is placed under the board of trustees of the State Retirement System, the cost of administration to be paid by local units.

The Act provides for contributions at the rate of 4% for members matched by funds of the local unit. There are provisions for past service credit and retirement. All funds are to be deposited with the State Treasurer.

The Act provides that no county or city may levy a tax or pledge its faith or incur any indebtedness to establish a retirement system until the question has been approved by the qualified voters in an election held for that purpose. The counties of Lee and Randolph are exempted from the election provisions. Also exempted from the election provisions are the following counties and the municipalities therein: Alexander, Bladen, Davidson, Durham, Mecklenburg, Pasquotank, Pitt, Rowan and Wake. The following cities and towns are also exempted from the election provisions: Aberdeen, Asheboro, Gibsonville, Greensboro, Jonesboro, Mount Airy and Sanford.

As to the expense of such systems to the various counties and cities, it may be assumed that their cost will certainly be less in proportion than the state's under its system, which is estimated at 3.16% of total payrolls for general employees. This percentage is probably low because municipal employment is more static than state employment. Assuming that in the average county or city payrolls average 33 1/3% of the total

(*Continued on page twenty-six*)

Enabling Acts for Local Units

HEALTH, SANITATION, PARKING AND PROTECTION

Health

Health. — Cities and counties are given special legislative authority by Ch. 296 (HB. 651) to appropriate funds and to levy special taxes for the maintenance and operation of existing joint city and county health departments, as well as for the purchase or construction and improvement of buildings necessary to house such departments.

Prior to 1931, C. S. 7064 had provided that members of the county board of health, whether otherwise full-time county employees or not, should receive four dollars per diem while on duty. By P. L. 1931, Ch. 149, the provision for compensation was struck out of the law altogether. In Ch. 185 (SB. 230) of the present session the section is amended to provide that four dollars per diem once again be paid to members of the county board of health, but is limited to affect only those members who are not full-time employees of county or municipality, the latter of whom receive no extra compensation.

Sanitary Districts.—Ch. 116 (HB. 111) confers upon sanitary districts which *adjoin and are contiguous* to cities having a population of fifty thousand or more (of which there are about seven in N. C.), the following powers, in addition to the powers they now have:

(a) to collect and dispose of garbage, waste and other refuse, by contract or otherwise;

(b) to establish fire departments or to contract with cities, counties, etc., to furnish apparatus and personnel for use in the district;

(c) the district, for the collection and disposal of garbage, waste and other refuse, or for fire protection, shall have all the rights and immunities granted to other governmental units in exercising the governmental functions of collecting garbage, waste and other refuse and in furnishing fire protection. If a contract is let to another governmental unit for the performance of such services, then both the district and the unit to which the contract is let shall have such privileges, immunities, etc.;

(d) to use the income of the district, and, if necessary, levy taxes to pay the costs of collecting and disposing of garbage, waste and other refuse, and to provide fire protection.

The additional powers granted by this Act are certainly needed ones, and it would seem that the Act should apply to all sanitary districts instead of only to those *adjoining and contiguous* to cities of a population of fifty thousand or more. However, as waste, refuse, etc., when not disposed of breed insects which spread disease, there is more need for the sanitation authorized by this Act where the district adjoins a large city.

Yet, as the Act only confers power to act and does not impose a duty on the district, the inhabitants of small rural sanitary districts would not be hurt if they were given these additional powers, but, rather, they would be in a position to better themselves when, and if, they become able.

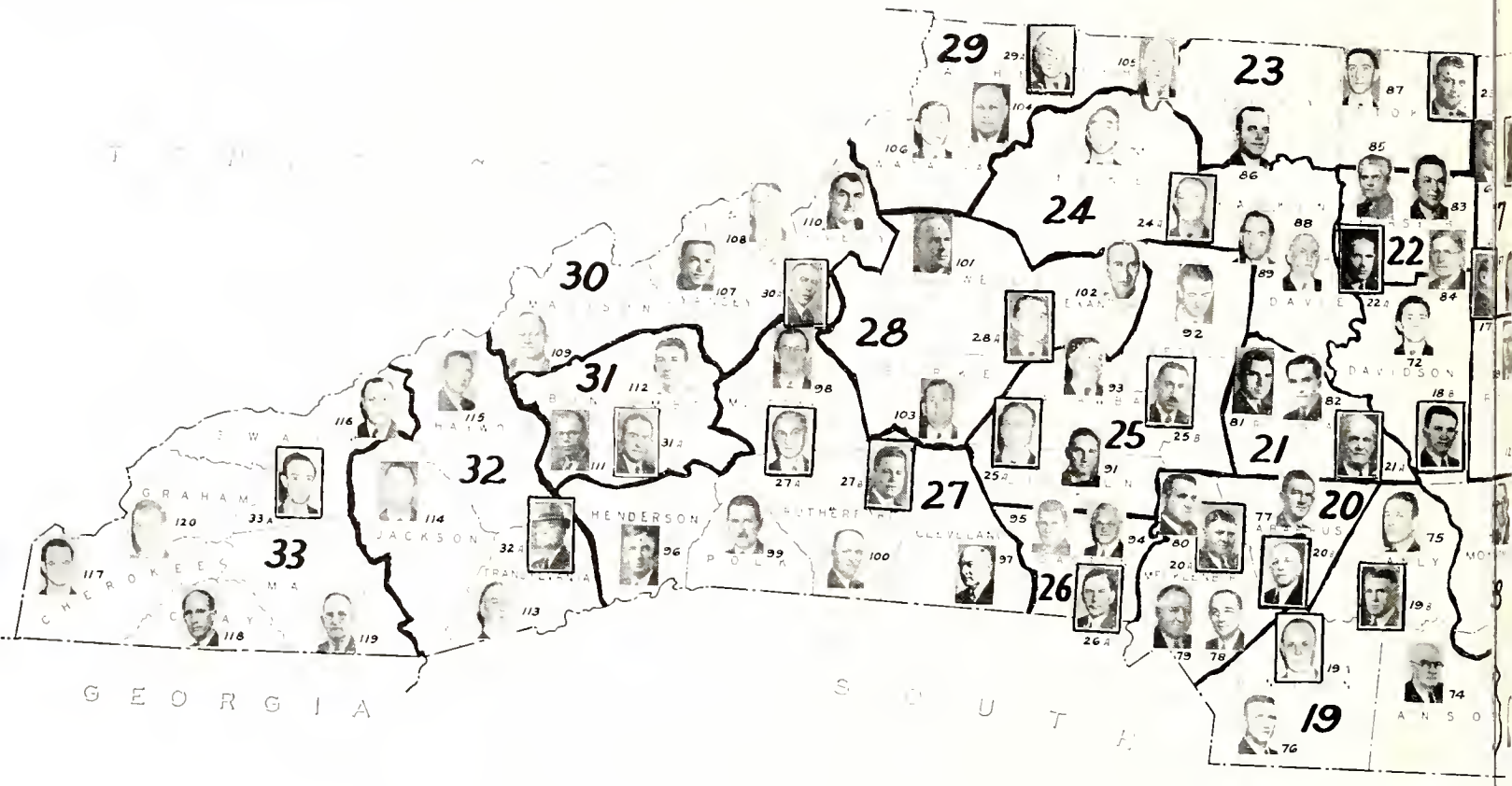
Since city fire departments will seldom answer calls outside the city limits, fire protection has long been a great need for rural districts. It is believed that this Act will so reduce property losses from fire in such districts that it will bring about the enactment of more far-reaching legislation on the subject.

Parking Meters.—The city of Raleigh contracted with the M. R. Rhodes Company for parking meters. The meters were installed, but the contract was not to come into effect until the validity of the city ordinances authorizing the installation of the meters was determined. An action was brought to secure a declaratory judgment construing the ordinances and passing upon their validity. The Court, however, did not decide the constitutionality of the ordinance authorizing the use of parking meters, but held that the city was without authority to use them as the General Assembly had not conferred such power upon it. The Court said: "A careful examination of the statutes . . . leads us to the conclusion that none of them confers upon the city the necessary authority to enact ordinances imposing a parking fee, or charge for a parking space, or an inspection fee in connection with the administration and enforcement of the law." Rhodes Inc. v. Raleigh, 217 N. C. 627, 9 S. E. (2d) 389 (1940).

Thus, the Court said that it was not deciding the constitutionality of the law authorizing the use of parking meters, and held that the General Assembly had not conferred upon municipalities the authority to pass ordinances adopting parking meters as a traffic regulation for the municipality.

Ch. 153 (SB. 148) was enacted to give municipalities this authority. The Act applies to ninety-eight counties, Guilford and Cumberland being excepted. The Act authorizes cities of more than 20,000 inhabitants, by the last Federal census, to enact ordinances to regulate traffic and parking in such cities by providing for a sytem of parking meters "designated to promote traffic regulation and requiring a reasonable deposit (not in excess of five cents per hour) from those who park vehicles for stipulated periods of time in certain areas in which the congestion of vehicular traffic is such that public convenience and safety demand such regulation." The proceeds derived from the use of the meters are to be used exclu-

(*Continued on page thirty-eight*)



STATE OF NORTH CAROLINA

Members of General Assembly 1941 Session

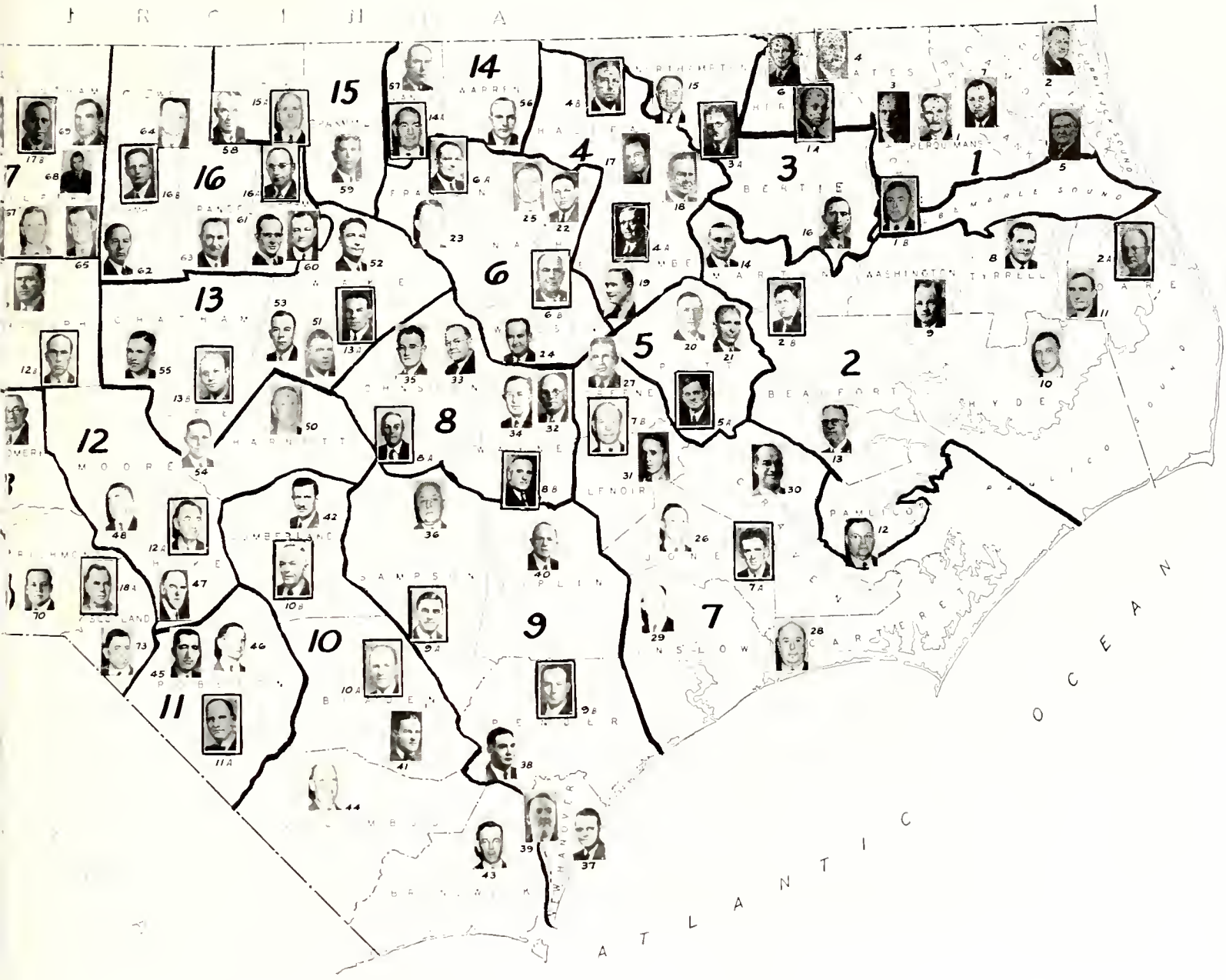
Reapportionment and Redistricting

The map shows the old apportionment of membership in the state Senate and House of Representatives, as it was before the 1941 legislature made changes in the districting. Ch. 112 (HB. 7) reapportions the representatives, adding one to Guilford and one to Mecklenburg to give them four members each, adding one to Buncombe to give it three members, adding one to Cabarrus and one to Cumberland to give them two members each, and subtracting one each from Halifax, Nash, New Hanover, Rockingham and Wayne, to leave them one member apiece. Other counties remain as they were.

Senatorial districts were changed by Ch. 225 (SB. 130) by transferring Bertie from the Third to the First district; Vance and Warren from Fourteenth to Third; Granville and Person from Fifteenth to Fourteenth; Durham from Sixteenth to Fourteenth; Caswell from Sixteenth to Fifteenth; Rockingham from Seventeenth to Fifteenth; Cabarrus from Twentieth to Twenty-first; and Henderson and Polk from Twenty-seventh to Thirty-second. Other counties remain in their old districts. The Fourteenth, Twenty-first, and Thirty-second districts will elect two senators apiece instead of one as formerly. The Sixteenth, Seventeenth and Twentieth districts will elect one senator apiece instead of two. All other district will elect the same number of senators as formerly.

REPRESENTATIVES

1. J. T. Benton
2. G. C. Boswood
3. J. G. Campen
4. E. S. A. Ellenor
5. W. I. Halstead
6. R. H. Underwood
7. F. Webb Williams
8. C. Earl Cohoon
9. W. M. Darden
10. George T. Davis
11. Roy L. Davis
12. R. Dawson Delamar
13. Dr. Zeno L. Edwards
14. Clarence W. Griffin
15. H. Russell Harris
16. J. A. Pritchett
17. Julian R. Allsbrook
18. B. B. Everett
19. Cameron S. Weeks
20. Dr. W. I. Wooten
21. S. O. Worthington
22. Claude C. Abernathy
23. H. C. Kearney
24. Larry I. Moore, Jr.
25. Thomas J. Pearsall
26. C. P. Banks
27. A. C. Edwards
28. H. S. Gibbs
29. I. J. Kellum
30. D. L. [illegible]
31. F. E. [illegible]
32. J. Les [illegible]
33. R. T. [illegible]
34. W. Fra[illegible]
35. Lawre[illegible]
36. Chas. [illegible]
37. J. Q. [illegible]
38. C. D. [illegible]
39. John [illegible]
40. C. E. [illegible]
41. J. A. [illegible]
42. John [illegible]
43. J. W. [illegible]
44. Joe D[illegible]
45. Dr. C. [illegible]
46. Roger [illegible]
47. Laurie[illegible]
48. J. Hay[illegible]
49. Joseph[illegible]
50. David [illegible]
51. Arch [illegible]
52. J. Le[illegible]
53. Wm. [illegible]
54. W. E. [illegible]
55. Wade [illegible]
56. John [illegible]
57. Irvine [illegible]
58. Robert [illegible]



59. James W. Horner
60. Victor S. Bryant
61. Forrest A. Pollard
62. W. R. Sellars
63. J. W. Umstead, Jr.
64. John A. Woods
65. Shelley B. Caviness
66. Joe W. Garrett
67. Beverly C. Moore
68. Rupert T. Pickens
69. T. Clarence Stone
70. Henry F. Brown
71. E. R. Burt
72. L. Roy Hughes
73. O. L. Moore
74. U. B. Blalock
75. J. Heath Kluttz
76. O. L. Richardson
77. E. T. Bost, Jr.
78. H. L. McDougle
79. E. T. Tonnissen
80. J. B. Vogler
81. Kerr Craige Ramsey
82. George R. Uzzell
83. Irving Carlyle
84. Rex Gass
85. F. L. Gobble
86. Henry C. Dobson
87. Ed M. Taylor
88. W. L. Moore
89. Hovey Norman
90. T. E. Story
91. James A. Abernethy, Jr
92. John R. McLaughlin
93. Eddy S. Merritt
94. C. A. Rudisill
95. Basil L. Whitener
96. L. L. Burgin
97. O. M. Mull
98. J. C. Rabb
99. Carroll P. Rogers
100. Grady Withrow
101. J. T. Pritchett
102. Dr. Asa Thurston
103. A. B. Stoney
104. W. B. Austin
105. W. Bert Edwards
106. Gordon Winkler
107. Dover R. Fouts
108. W. F. Hughes
109. Dr. J. H. Hutchins
110. W. C. Pittman
111. Hubert C. Jarvis
112. A. C. Reynolds, Jr.
113. M. W. Galloway
114. Dan K. Moore
115. Glenn C. Palmer
116. McKinley Edwards
117. James Mallonee, Jr.
118. A. Lee Penland
119. Dr. W. A. Rogers
120. Donald B. Sherrill

SENATORS

1A. Merrill Evans
1B. Herbert Leary
2A. D. B. Fearing
2B. Hugh G. Horton
3A. Archie C. Gay
4A. W. G. Clark
4B. Dr. T. W. M. Long*
5A. J. C. Lanier
6A. W. L. Lumpkin
6B. Van S. Watson
7A. John D. Larkins
7B. K. A. Pittman
8A. J. B. Benton
8B. Thomas O'Berry
9A. Jeff D. Johnson, Jr.
9B. Roy Rowe
10A. James H. Clark
10B. D. M. Stringfield
11A. H. E. Stacy
12A. Ryan McBryde
12B. J. V. Wilson
13A. L. Y. Ballentine
13B. J. C. Pittman
14A. W. W. White
15A. F. D. Long
16A. E. C. Brooks, Jr.
16B. E. T. Sanders
17A. Thomas J. Gold
17B. J. Hampton Price
18A. Edwin Pate
18B. J. Lee Wilson
19A. Coble Funderburk
19B. R. R. Ingram
20A. Joe L. Blythe
20B. A. B. Palmer
21A. Edwin C. Gregory
22A. Gordon Gray
23A. William F. Marshall
24A. Miles F. Shore
25A. J. Henry Hill
25B. John W. Wallace
26A. R. G. Cherry
27A. L. J. P. Cutlar
27B. Wade B. Matheny
28A. Harry Miller
29A. Eugene Transou
30A. Dr. C. A. Peterson
31A. James S. Howell
32A. Otto Alexander
33A. Edwin Whitaker

* Died during Session.

PENSIONS

(*Continued from page twenty-two*)

budget, then the cost would be 1.05% of budget requirement. In a word, the cost would add 1.05c to each dollar of the tax rate. This tax increase would be considerably more in municipalities with large receipts from sources other than taxes, particularly where such outside receipts had reached their maximum.

Congressional re-apportionment.—The 1940 census verified what chambers of commerce had long been claiming for North Carolina—that her population had grown considerably during the last decade. The increase entitled the state to a twelfth congressman, and one of the first acts passed by the General Assembly, Ch. 3 (HB. 10) is the re-districting bill to create an extra congressional district in the state. The Act changes the counties of Cleveland, Gaston, Madison, and Yancey from the Tenth into the Eleventh district, and adds the Twelfth district, composed of Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Swain, and Transylvania counties, all formerly in the Eleventh district. The remaining nine districts were left unchanged.

TAXATION AND FINANCE—1941 MODEL

(*Continued from page nine*)

able income. The act is retroactive for the past four calendar years.

The statutory definition of "residents" subject to state income taxation is broadened by amendment to s. 302 (13) to include all persons who reside in this state for any part of a year for other than a temporary purpose, regardless of where they consider their domicile to be. Such persons are liable for the tax on income earned here whether or not they are residents on the first day of the year, and even though they leave the state before the end of the tax year. Taxation of salaries earned in North Carolina by federal officers and employees is permitted by an amendment to s. 317 (1), even where they are not legal residents of the state. The 1939 act taxed salaries of only those federal employees who were legal residents of this state.

S. 325 of the 1939 act exempted non-residents earning income in North Carolina from income taxation to the extent that they paid income taxes on such income to their state of residence, provided the latter state offered similar treatment to North Carolina residents. Ch. 204, s. 1 (G) (HB. 633) repeals this provision entirely, replacing it with no similar substitute. This change represents a step away from the established North Carolina policy of avoiding double taxation, and might reasonably be expected to cause some withdrawal of capital from the state. The North Carolina resident who earns out-of-state income, however, is partially protected from double taxation by the new s. 325 and the amendment to s. 322 (10), which now allows a complete deduction from gross income for salaries, wages or other compensation received by him for *personal services* rendered in other states, when he is required to pay income tax in such other states.

Other deductions and exemptions are allowed by amendments to: (1) s. 324 (e), to allow $200 per dependent exemption to be taken only by the true head of the household entitled to the $2000 exemption, and not by the father when he is not in fact head of the household; (2) s. 324 (b), to make it clear that the $2000 personal exemption shall be allowed the head of the household who supports persons mentally or physically disabled, even though such dependents are more than 18 years old; and (3) s. 323, to provide that contributions or gifts may not be deducted by partnerships on the partnership return, but that the partners may deduct their proportionate share or such contributions on their individual returns.

Sale and Use Taxes.—S. 404 (8) of the 1939 Revenue Act is amended in Ch. 50, s. 6 (HB. 11) to include among sales receipts subject to sales taxes "any bailment, loan, lease, rental or license to use tangible personal property." Lease or rental of motion picture films upon which a 3% tax is already imposed is exempted here, however, to avoid double taxation. S. 406 (i) is amended to extend exemption from sales taxes to "all sales by retail merchants of food and food products for human consumption." This does not include beverages, candies, medicines or prepared meals. Sales to churches of equipment, furniture and furnishings for use in church buildings, and sales of cotton, tobacco, peanuts and other farm products sold to manufacturers for further processing are other new exemptions. It is estimated that state revenues from sales taxes will be reduced by these exemptions by more than $1,500,000 per year.

Although the 1939 Use Tax Act was completely rewritten by the 1941 General Assembly, most of the changes made were for the single purpose of extending the application of the tax to mail-order and other types of out-of-state sales made by companies not maintaining an established place of business in the state. Ch. 50, s. 9 (HB. 11). The 1939 act was predicated upon the principle that a vendor or retailer could not be held responsible for the collection of the tax from the purchaser unless it maintained an established place of business or office in the state. Recent U. S. Supreme Court decisions, however, have indicated that a state can require a vendor to collect the tax even though it is not "engaged in business" in the state within the usual definition of the term, so long as they solicit orders in any manner and deliver merchandise for consumption in the state.

Under the 1939 act, also, the retailer or vendor could, at his option, collect the tax as a part of the sales price of the product and hold it for the state; the new act makes it mandatory that the seller collect the tax at the time of making the sale and hold it in trust for the state. This provision applies even though the sale is made by mail order from outside the state, or though the contract itself is completed and approved outside the state before goods are shipped to the purchaser here. Payment by the retailer to the state is made monthly in the same manner as regular sales taxes.

Intangibles Taxes. — Under the 1939 act taxpayers often sought to evade the tax on intangibles arising

in the course of business in this state by transferring the evidences of such intangibles, as notes and mortgages, to parent or sudsidiary firms outside the state, but at the same time making collections of principal and interest, buying, selling and discounting as though they owned the intangibles in this state. The amendment to s. 708 in Ch. 50, s. 8 (c) (HB. 11) seeks to make it clear that intangibles handled in this manner are subject to North Carolina taxation, even though transferred outside the state. Some question might be raised as to the constitutionality of taxing intangibles owned and held by non-residents outside the state, even though their agents or subsidiaries make collections, etc., on them in the regular course of business in the state. The language used by the U. S. Supreme Court, however, and the implications apparently arising therefrom, in Wheeling Steel Corp. v. Tax Collector, 298 U. S. 1931, Newark Fire Insurance Co. v. State Board of Tax Appeals, 59 Sup. Ct. 918 and other recent decisions, seem to indicate that if the statute is contested the court will probably find that the activities of the agents in North Carolina with respect to the intangibles is sufficient to give the property a "business situs" in this state, thus making it taxable here.

Deductions and Exemptions.—Ch. 50, s. 8 (a), & (e) (HB. 11). Under the 1939 Act only *accounts payable* could be deducted from total *accounts receivable* for the purpose of determining the net accounts receivable subject to the intangibles tax. S. 703 is amended to allow the deduction of "current notes payable of the taxpayer incurred to secure funds which have actually been paid on his current accounts payable within 120 days prior to the date as of which the intangible tax return is made." As the sole purpose of the amendment is to prevent undue discrimination against persons who borrow on short-term notes to pay current accounts payable, all conditions of the statute must be met before the deduction will be allowed.

S. 707, levying the tax on funds on deposit with insurance companies, is amended to allow an exemption of the first $20,000 of the funds "on deposit or . . . held by a bank as trustee" where they are payable "wholly and exclusively to a widow and for children" of the deceased. This, of course, means a total exemption to a single taxpayer of only $20,000, regardless of the number of companies with which she has funds. In addition to the constitutional question of whether the power to classify property for taxation under the North Carolina Constitution, Art. V, s. 3 includes the power to exempt the property completely from taxation as here, this amendment also raises several administrative difficulties. For example, it is to be noted that the exemption is not limited to funds on deposit with insurance companies, but also extends to proceeds of insurance companies which have been transferred to banks as trustees; presumably, where such funds are transferred to a trustee, they will be taxable at varying rates depending upon the form of intangible which they take; i.e., if put in savings account, they will be taxed as bank deposits; if invested in stocks, they will be taxed as stocks; if invested in bonds and as notes, they will be taxed under s. 704, etc. If a taxpayer has part of her funds with an insurance company, and part with a bank as trustee, invested in several of the above types of intangibles, how must she take her $20,000 exemption? Must she pro rate it over all the various types? Or may she deduct it from the intangibles upon which she pays the highest rate of tax?

Changes in Rates.—Ch. 50, s. 8 (e) (HB. 11). S. 706 is amended to change the intangible tax rate levied on the beneficial interests of North Carolina residents in foreign trusts to a flat 30c on the $100 of value. This change was made, not to effect a substantial change in revenue, but rather to eliminate the very complicated formula necessary to determine the tax due under the 1939 statute.

Gasoline and Automobile Taxes.—Ch. 227 (SB. 145) amends P. L. 1937, Ch. 407, by reducing the annual state license fee on farm trucks to one-half the rate for trucks otherwise used, the minimum fee, however, being fixed at $10. In order to come under this provision the truck must be used exclusively in the transportation of the applicant's farm products and farm supplies, and may not be used for hire purposes.

In C. S. 2613 (i) (5), imposing the 6c per gallon state tax on gasoline, a tare equal to 1% of the gross purchases of gasoline was allowed fuel dealers to cover gasoline wasted in processing and distributing. Ch.

GOOD NEIGHBORS

The General Assembly moves to Chapel Hill for a day, for a session honoring the South Americans attending the "Winter School" at the University.

146 (HB. 388) extends this exemption, graduating the allowance as follows: 2% on gross monthly receipts of fuels not exceeding 150,000 gallons; 1½% of fuels in excess of 150,000 up to 250,000 gallons; 1% of fuels in excess of 250,000 gallons. Ch. 16 (HB. 108) further amends the same section by exempting the dealer or distributor from tax liability on fuels which are destroyed by fire, flood, lightning, windstorm, etc., to the extent that the loss exceeds the 1% tare noted above allowed when tax liability first accrued. Ch. 119 (HB. 119) exempts gasoline used in public school transportation from all state gasoline taxes.

Gasoline tax extended to apply to all unusual types of motor vehicles fuels.—Ch. 376 (HB. 445) amends P. L. 1931, Ch. 145, s. 24 to enlarge the definition of "motor fuels" subject to the state gasoline tax, and to require every person operating a motor vehicle using an unusual fuel to secure a permit to operate the vehicle on the state highways, to make monthly reports of the fuel used, and to pay a tax of 6c per gallon thereon. This act is designed to give the commissioner of revenue an effective method of checking on the quantities of unusual motor fuels, including diesel oils, used in this state, and of collecting the tax thereon.

State Debt Administration

Ch. 170 (HB. 706), Ch. 94 (SB. 101), Ch. 240 (SB. 259), Ch. 41 (HB. 181), Ch. 81 (HB. 285), and Ch. 169 (HB. 689). The total amounts of state bonds authorized to be issued during the coming biennium for state purposes is $775,000. $200,000 of this is to finance a loan to be made by the state to the Atlantic and North Carolina Railroad, 72% of whose stock is owned by the state, "for the protection of the state's interest" in the railroad; $275,000 is to reimburse emergency advancements made by the state for fireproofing buildings at the North Carolina School for the Deaf; $90,000 in revenue bonds is to be issued to refund North Carolina State College athletic stadium bonds, secured by pledge of athletic game receipts and student fees; and the remaining two issues of $90,000 and $150,000 are for purposes of constructing and improving agricultural and other buildings at State College. In Ch. 41 the legislature extends the power of the state treasurer to borrow money in anticipation of the collection of taxes and revenues, and to issue short-term notes therefor, for the purpose of paying appropriations made by the state for the coming biennium.

Destruction of Surrendered Bonds.—Ch. 28 (HB. 133) rewrites with very little change C. S. 7415, relating to procedure for destroying surrendered state bonds. Omitted is the old requirement that names of persons surrendering bonds be entered in the list books; added is a provision allowing destruction of coupons which have been paid, contrary to the old law.

ADMINISTRATION OF JUSTICE

(*Continued from page fourteen*)

closed class or category of businesses affected with a public interest, and the function of courts in the application of the Fifth and Fourteenth Amendments is to determine in each case whether circumstances vindicate the challenged regulation as a reasonable assertion of governmental authority or condemn it as arbitrary or discriminatory. The phrase 'affected with a public interest' can in the nature of things mean no more than that an industry, for adequate reason, is subject to control for the public good."

The question in any price-fixing case, then, is not whether the *business* comes in the magic category, but whether the *circumstances* present an evil which can reasonably be combatted. See 19 N. C. Law Review 212, 216 (1941).

This case, while inconsistent with Tyson v. Banton, *supra*, is not compelling authority that the North Carolina statute will be upheld if contested. It is merely authority that it will not be condemned solely on the ground that football and basketball are not businesses "affected with a public interest." There still remains, however, in any case presented, a question whether the facts present an evil and whether the means adopted to combat it are reasonable. The North Carolina statute is clearly more unreasonable than the New York statute in Tyson v. Banton, because it allows no advance at all over the printed price. And there is presumably some disagreement on the evil presented in North Carolina by athletic ticket-scalping.

It would seem, then, that the theory applied in deciding this case would be the *Nebbia* theory, rather than that of the Tyson case. See, e.g., Kelly-Sullivan v. Moss, 22 N. Y. Supp. (2d) 491 (Sup. Ct. 1940). But a prosecuting attorney interested in sustaining an appeal on the constitutionality of the law might do well to fill the record with ample evidence that ticket-scalping is a sufficient evil to justify regulation. The Nebbia case seems the answer to one, but not all, of the problems which this statute presents.

Indecent Exposure.—Under C. S. 4348(a) in order to be guilty of indecent exposure a person "must willfully expose his person, or private parts thereof, in the presence of one or more members of the opposite sex whose person or the private parts thereof, are similarly exposed." Ch. 273 (HB. 489) extends this statute so as to make it a misdemeanor for any person to "willfully make any indecent exposure of his or her private parts in any public place or highway."

False Reports to Police Radio Broadcasting Systems.—C. S. 3846 (rrr) authorized the establishment of a state-wide police radio system. Since that time the state and many local units have established such systems. Ch. 363 (HB. 913) moves to protect the efficient use of such systems by making it a misdemeanor punishable by one year in the county jail or a fine of $500, or both, to make "to a police radio broadcast-

ing station any false, misleading or unfounded report, for the purpose of interfering with the operation thereof, or to hinder or obstruct any peace officer in the performance of his duty . . ."

Ch. 181 (SB. 161). Putting Out Poison for Dogs.—The 1941 General Assembly took a step toward the protection of dogs when it passed Ch. 181 (SB. 161). This Act makes it a misdemeanor " . . . for any person, firm or corporation to put or place any strychnine, other poisonous compounds or ground-glass on any beef or other food stuff of any kinds in any public square, street, lane, alley or on any lot in any village, town or city or on any public road, open field or yard in the country." The penalty is left to the discretion of the court. The act does not apply to "the poisoning of insects or worms for the purpose of protecting crops or gardens by spraying plants, crops or trees, nor to poisons used in rat extermination."

Criminal Procedure

Disposition of Liquor Seized under Search Warrants.—Ch. 310 (HB. 768) amended C. S. 3411 (L), to read as follows:

"All liquor seized under this section shall be held and shall upon the acquittal of the person so charged be returned to the established owner, and shall within ten days from conviction or default of appearance of such person be destroyed: provided that any tax-paid liquor so seized shall within ten days be turned over to the board of county commissioners, which shall within ninety days from the receipt thereof turn it over to hospitals for medicinal purposes, or sell it to legalized alcoholic beverage control stores within the State of North Carolina, the proceeds of such sale being placed in the school fund of the county in which such seizure was made, or destroy it."

The result of the 1941 amendment is that the seized liquor is returned to the *established owner* upon the acquittal of the person charged, rather than to the *person acquitted;* upon conviction of the person charged or his or her failure to appear, the liquor is to be destroyed *within ten days*, while under the old law no time was set within which the liquor was to be destroyed; tax-paid liquor, under Ch. 310, is to be turned over to the board of county commissioners *within ten days*, who shall *within ninety days of the receipt thereof*, turn it over to hospitals for medicinal purposes, or sell it to legalized alcoholic beverage control stores within North Carolina, *or such liquor shall be destroyed.* Under the old law no time was set in which tax-paid liquor was to be turned over to the board of county commissioners nor was the board required to turn such liquor over to hospitals within any stated time, and there was no provision allowing the destruction of tax-paid liquor, except that the old law provided that tax-paid liquor "may" be turned over to the board of county commissioners for the use of hospitals, or may be sold.

Gambling and Lottery Search Warrants.—C. S. 4529 provides for the issuance and execution of search warrants whenever there is reasonable cause to suspect that any person has on his premises or in his possession any stolen property, any counterfeit coin, bills, notes, bonds, or any tool or machine designed to manufacture any such counterfeit coin, bills, notes or bonds. Ch. 53 (HB. 136) extends the scope of C. S. 4529 to include ". . . any and all personal property and all tickets, books, papers and documents used in connection with and operation of lotteries or any gaming or gambling."

Witnesses Held Incommunicado (Fees).—Ch. 171 (HB. 718) is an amendment tacked onto C. S. 3893 and applies to persons held incommunicado in jail as witnesses in cases "where the crime charged is of the grade of felony." This Act provides that persons so held "pending the trial of such case shall be paid witness fees for each such day . . . (they are) . . . so held in jail, in addition to witness fees provided by law in criminal actions."

Restoration of Citizenship—Manslaughter Convicts. — Ch. 184 (SB. 223) modifies C. S. 390 by providing a new procedure for the restoration of citizenship rights to persons convicted of involuntary manslaughter. Under this act a "person who has been convicted of, or confessed guilt to, the crime of involuntary manslaughter" and is not actually in the State Prison or on the roads may petition for the restoration of his citizenship.

Courts

Bible Kissing.—Since 1777, North Carolina oath-takers except Quakers, Moravians, Dunkers and Mennonites and other persons with conscientious scruples against taking a "Book oath" have been required to "kiss the Holy Gospel, as a seal of confirmation to the said engagements." C. S. 3189. Few other states retained this requirement, which was generally agreed to add little solemnity to the ceremony, and which as far as actual labial contact with the germ-laden volume was concerned, was a custom "more honored in the breach than in th'observance." Nor was the court always too zealous to enforce this and other formal requirements of the oath-taking ritual. State ex rel. De Berry v. Nicholson, 102 N. C. 465, 9 S. E. 545 (1889); State v. Whisenhurst, 9 N. C. 458 (1823). "The orthodox custom of kissing the Book has come to be generally recognized as both repulsive and unsanitary; celluloid covers are sometimes provided (20 Montreal Legal News 274). But it should be clearly understood that the ceremony of kissing is for most persons a wholly unessential feature. . . ." 3 Wigmore, Evidence (2d ed. 1923), Sec. 1818.

In recognition of these and other criticisms, Ch. 11 (HB. 43) deletes from C. S. 3189 the Bible-kissing re-

N.B.—Surprisingly, the bill met with considerable opposition from the floor. Even the House Committee on Propositions and Grievances gingerly reported the bill "favorably, but without prejudice."

quirement, so that now, although the oath-taker must lay his hand on the Bible, he need not kiss it.

Concurrent Court Jurisdiction.—Ch. 265 (HB. 435) rewrites Section 1437 of Volume 3 of the Consolidated Statutes, relating to concurrent jurisdiction of the superior and inferior courts, without change, except that the new act provides that it shall remain in force and effect unless expressly repealed by some subsequent act of the General Assembly, and shall not be repealed by implication or by general repealing clauses in any act of the General Assembly conferring exclusive jurisdiction on inferior courts in misdemeanor cases which may be hereafter enacted. The old act did not apply to the counties of Cabarrus, Forsyth, Gaston, Mecklenburg, Surry, and Union. The new act applies to the counties of Forsyth and Mecklenburg, but does not apply to the following counties: Alleghany, Caswell, Cherokee, Clay, Craven, Cumberland, Currituck, Dare, Davidson, Edgecombe, Gates, Graham, Granville, Guilford, Halifax, Harnett, Henderson, Hertford, Hyde, Iredell, Jones, Lenoir, New Hanover, Pamlico, Perquimans, Rockingham, Rutherford, Scotland and Warren.

Jurisdiction of Certain Courts.—Two bills affect jurisdiction of courts. Ch. 117 (HB. 114) provides that when an inferior court is abolished (except courts of justices of the peace), the causes pending therein shall be transferred to the superior court of the county, which shall have power to dispose of the cases "to the same extent as would said inferior court had its existence continued." Ch. 308 (HB. 736) amends Ch. 343, P. L. 1929, (which authorized establishment of domestic relations courts in counties or cities of 25,000 population or over), by deleting the section requiring proceedings for adoption of minors to be brought first before the Domestic Relations court. This amendment was made to reconcile the 1929 law with Ch. 243, P. L. 1935, governing adoption of minors.

Ch. 318 (HB. 954) is the omnibus bill appointing justices of the peace in the several counties of the state; Ch. 367 (HB. 786) regulates terms of court in 26 counties, rewriting the prior law.

Service on Non-Residents Doing Business in North Carolina.—Ch. 256 (HB. 252) provides, in brief, that non-resident individuals doing business in the state through agents and representatives, or who are members of partnerships, firms, or unincorporated organizations or associations, or shareholders of business trusts, doing business in the state, may be made subject to process with regard to actions growing out of the business so done in the state, by serving on the agent. Notice of such service must be properly sent to the non-resident defendant, by registered mail, with a copy of the complaint and summons and a statement calling attention to the law and to the expiration of time for answer or demurrer.

Although the question of the constitutionality of certain applications of such a law as applied to non-corporate defendants is highly moot (cf. Flexner v. Farson, 248 U. S. 289 (1918) with Dougherty v. Goodman, 294 U. S. 623 (1935)), it would seem to furnish a reasonable method of reaching defendants who have heretofore been immune from service of process in the state.

Venue of Proceeding for Custody of Children where Divorce Was Obtained Out of State.—Ch. 115, s. 1, P. L. 1939 allowed special proceedings, to determine custody of children of parents divorced outside North Carolina, to be brought in the county wherein the petitioner, at the time of filing, was a resident. Ch. 120 (HB. 130) amends this section so that now the action may be brought in the county of residence of the respondent or the child, as well as the county of residence of the petitioner.

Divorced Women's Names. — Ch. 53, P. L. 1937, empowered divorced women to adopt their maiden names by applying and registering with the clerk of court, and validated adoptions of names of prior deceased husbands which had taken place before that date. Ch. 9 (HB. 54) widens the divorced woman's scope of choice by amending the 1937 law to permit her to adopt the name of a prior deceased husband or a composite of her given name and the surname of a prior deceased husband, and validates all such adoptions hitherto made.

Itemized Accounts for Rent as Evidence.—Section 1789 of the Consolidated Statutes reads as follows: "In any actions instituted in any court of this state upon an account for goods sold and delivered, for services rendered, or labor performed, or upon any oral contract for money loaned, a verified itemized statement of such account shall be received in evidence, and shall be deemed prima facie evidence of its correctness." Prior to 1917, this section applied only to actions for goods sold and delivered. *Nall v. Kelly*, 169 N. C. 717; Rev. § 1625. However, in 1917, it was amended to read as it now appears.

The purpose of the section is to facilitate the collection of claims about which there is no *bona fide* dispute, and to relieve the plaintiff in cases of that character of the expense and delay of formally taking depositions. *Nall v. Kelly, supra.*

Ch. 104 (HB. 386) further amends this section by inserting the words "for rents," after the word "delivered" and before the word "for" (in line 2 above). The result of the amendment is that itemized and verified accounts are admissible in evidence and are prima facie correct, when introduced in an action upon an account for goods sold and delivered, *for rents*, (1941 amend.), for services rendered, for labor performed, or upon any oral contract for money loaned.

Recordation of Assignments of Judgments. — "Judgments whether they be granted by a Justice of the Peace, or a Court of record, are assignable either in writing or by merely verbal transfer, so as to pass the equitable title to them to the purchaser." *Moore v. Nowell*, 94 N. C. 265, (1886). The assignability of judgments is recognized in *Jones v. Franklin Estate*, 209 N. C. 585, (1936). However, at no place in the law is it required that assignments of judgments be recorded. Speaking to this point, Dillard, J. said for the court in *Winberry v. Koonce*, 83 N. C. 351, (1880): ". . . it might be most desirable that the assignment should have been entered of record, but it was not necessary."

Ch. 61 (HB. 175) provides that "no assignment of judgment shall be valid at law to pass any property as against creditors or purchasers

for a valuable consideration from the donor, bargainor, or assignor, but from the entry of such assignment on the margin of the judgment docket opposite the said judgment, signed by the owner . . . his attorney under power of attorney or his attorney of record, and witnessed by the Clerk or the Deputy Clerk of the Superior Court of the County in which said judgment is docketed." The act provides that it shall not affect pending litigation, and shall not become effective until from and after July 1, 1941.

The purpose of the act is to give assignees of judgments an opportunity to determine whether or not there have been prior assignments of the judgments, by requiring assignments to be recorded and charging assignees with notice after recordation.

The result is that assignments of judgments are valid as against creditors or purchasers for a valuable consideration only from the entry of such assignments on the judgment docket.

Practice of Law.—Ch. 177 (SB. 83) is noteworthy in that it attempts to set up a legislative definition of the term "practice of law." C. S. 198 disqualifies clerks of the supreme and superior courts, deputy and assistant clerks, registers of deeds, sheriffs, justices of the peace, and county commissioners from the practice of law. Ch. 177 defines the phrase "practice of law" to mean "performing any legal service for any other person, firm or corporation, with or without compensation," specifically including certain named types of legal service, such as drawing deeds, wills, trust instruments, reports of fiduciaries; abstracting titles; filing petitions; giving legal advice or counsel. The Act is careful to point out that the specific enumeration is not to be taken as a restriction on the possible scope of the general definition.

Ch. 344 (SB. 249) creates a new class of "inactive" members of the North Carolina State bar, the chief result being that they will not have to pay dues. Inactive members are those "not engaged in the practice of law and not holding themselves out as practicing attorneys and not occupying any public or private positions in which they may be called upon to give legal advice or counsel or to examine the law or to pass upon the legal effect of any act, document, or law." Ch. 344 also adds a second vice-president to the list of officers of the state bar. And finally, it directs the Board of Law Examiners to issue a license to persons to whom the Council orders licenses restored.

Special Judges.—Each recent legislature has empowered the governor to appoint special judges, under Article IV, Sec. 11 of the Constitution, to hold courts to which they are assigned by the governor. See C. S. 1435(d)-1435(k). Ch. 51 (H. B. 64) is the current version of this law.

It differs from its immediate predecessor, Ch. 31, P. L. 1939, in two respects: (1) The 1939 law authorized the governor to appoint four judges for two-year terms from July 1, 1939, and *two* additional judges, to be appointed if the governor found it necessary, to serve from appointment until June 30, 1941. Ch. 31, s. 1, s. 3, P. L. 1939. The 1941 Act raises the number in this latter group from two to *four*, so that Governor Broughton is left with eight instead of six choice appointive positions by this law alone. Their salaries are the same as those of regular judges. They must of course be chosen along traditional geographical lines — half from the eastern and half from the western judicial division.

STOPPING THE CLOCK

So that adjournment may come at an appointed time, 10:00 o'clock.

(2) Section 5 of the new law revises s. 5 of the 1939 law, which dealt with the jurisdiction of these special judges, so that now they are given, verbatim, the same powers which Ch. 52 (H. B. 97) (discussed below) gives to emergency judges, "in the courts which they are duly appointed to hold."

The result of Chs. 51 and 52 would seem that special and emergency judges duly assigned to and actually holding court in a county or district have all the powers of the regular resident judge in the same circumstances. The chief remaining question would seem to be whether, in any given case, the special or emergency judge has been properly assigned—that is, whether there has been an executive finding that the regular judge, "by reason of sickness, disability, or other cause," is unable to hold the court, and that "no other judge is available" to hold the term of court. Constitution, Article IV, § 11. See Reid v. Reid, 199 N. C. 740, 743.

Powers of Emergency Judges.—Ch. 52 (HB. 97) rewrites C. S. 1435 (b) and C. S. 766 (b) to give to emergency judges, "in the courts which they are duly appointed to hold," the "same power and authority in all matters whatsoever that regular judges holding the same courts would have." It further provides that "an emergency judge duly assigned to hold the court of a particular county shall have, during said term of court, in open court and in chambers, the power and authority of a regular judge in all matters whatsoever arising in that judicial district that could properly be heard or determined by a regular judge holding the same term of court." Ch. 51 (HB. 64) discussed above, gives this identical power to *special* judges; C. S. 1435 (a) is modified so as to apply to emergency judges only.

This statute settles several problems which arose under the prior law as to the powers of emergency judges, and seems to confer on them

all the powers which they constitutionally may exercise.

Solicitorial Districts.—Art. IV, s. 23, of the North Carolina constitution provides that there shall be a solicitor elected for each *judicial* district, who shall hold office for a term of four years. The solicitor is to be elected in the same manner as is prescribed for members of the General Assembly.

Ch. 261 (HB. 355) rewrites this section of the constitution, and provides that the state shall be divided into twenty-one *solicitorial* districts. For each district there shall be a solicitor elected for a term of four years, in the same manner that members of the General Assembly are elected. H.B. 355 also provides that the General Assembly may reduce or increase the number of solicitorial districts, and that solicitorial districts need not correspond to, or be the same as, the judicial districts of the state. The Act, being a constitutional amendment, provides that it shall be voted on at the next general election, and is to be effective, if approved, from and after certification by the governor.

The Act was introduced to remedy the present situation in which some solicitors are overworked and others have almost nothing to do. If adopted by the voters, the Act will allow the General Assembly to divide the state into twenty-one, or more or less, solicitorial districts, with a solicitor for each, and with each district requiring approximately the same amount of work, regardless of the size of the district. The two most notable changes wrought by the amendment are that solicitorial districts and judicial districts do not have to be the same, and the power given to the General Assembly to reduce or increase the number of solicitorial districts.

Acts of Minors as Notaries Public Validated.—Ch. 233 (SB. 204) provides that all acts of notaries public for the State of North Carolina "who were not yet twenty-one years of age at the time of the performance of such acts are hereby validated. . . ." The Act further provides all acknowledgements of deeds or other instruments taken before such notaries are "hereby declared sufficient and valid; provided, this Act shall not affect vested rights or pending litigation."

To Provide for the Leasing of Property on which there is a Contingent Remainder to Uncertain Persons.—C. S. 1744 allows real property in which there is a vested interest with a contingent remainder over to persons who are not yet in being, to be mortgaged or sold. The court may authorize the loaning of the money thus derived, or direct that such money be reinvested in stated securities. If the property is mortgaged the proceeds shall be used to add improvements to the property or, by a 1935 amendment (Ch. 299, P. L. 1935), shall be used to remove existing liens on the property as the court may direct, but for no other purpose.

Ch. 328 (HB. 875) amends this section so as to allow the *leasing* of such property, the proceeds of such lease to be used as the section now directs other proceeds to be used. It also amends the 1935 amendment, *supra*, to C. S. 1744, which allows the proceeds of mortgages on the property to be used to remove existing liens, by providing that "the mortgagees shall not be held responsible for determining the validity of the liens, debts and expenses where the court directs such liens, debts and expenses to be paid."

The result of the 1941 amendment is that real property on which there is a vested interest with a contingent remainder over to persons not yet in being may not only be sold or mortgaged but may be leased as well. The proceeds of mortgages of such property may be used to remove existing liens on the property and the mortgagee is not held responsible for determining the validity of such liens.

Miscellaneous Matters Affecting Courts. — Miscellaneous bills include: Ch. 13 (HB. 83), Ch. 187 (SB. 178) and Ch. 229 (SB. 179), validating certain official deeds without seals and certain deeds without order of registration; Ch. 42 (SB. 50), curing defective amendments to the Consolidated Statutes; Ch. 294 (HB. 628), relating to the manner of conveyances by corporations owned by the United States Government; Ch. 312 (HB. 773), establishing "Clark's Calendar" as a prima facie method of proving dates in legal proceedings; Ch. 269 (HB. 468), modifying the application of the Uniform Trusts Act; and Ch. 264 (HB. 428), relating to revocation of voluntary deeds conveying contingent future interests to persons not in being or not determinable until the happening of a future event.

Recodification of the Public Laws. —Ch. 315, s. 5, P. L. 1939 set up, within the new Department of Justice, a Division of Legislative Drafting and Codification of Statutes, and provided for preparation of a new code of the Public Laws of North Carolina. See A Survey of Statutory Changes in North Carolina in 1939, 17 N. C. L. Rev. 327, 376 (1939). The problems encountered and the present state of the project are discussed in 19 N. C. L. Rev. 27 (1940). Ch. 35 (SB. 95) is the answer to one of these problems, providing for the printing of a special legislative edition of the proposed code, so that members of the Recodification Commission, set up by Resolution 33 (SB. 159), and of the 1943 Legislature may have an opportunity to study the proposed code thoroughly before adopting it.

CLERKS OF COURT

(*Continued from page ten*)

of a lien upon real or personal property upon which there is a subsequent or prior lien, where the mortgagee or trustee named therein is dead or has become incompetent to act, the clerk shall, upon proper finding of facts, appoint a substitute trustee.

Ch. 24 (HB. 49) permits the county supporting an indigent person in the county home to bring special proceedings in its own name before the clerk of superior court to sell, mortgage or rent property of the indigent person, where there is no guardian or where the guardian neglects to act.

Ch. 286 (HB. 580) empowers county commissioners to provide for photographic or photostatic recording and filing of instruments in the office of register of deeds and clerk of superior court and such other county offices as they find feasible.

Ch. 61 (HB. 175), effective July 1, 1941, provides that no assignment of judgment is valid against creditors

or purchasers for value from the assignor, unless the assignment is entered on the margin of the judgment docket opposite the judgment, signed by the owner of the judgment or his authorized attorney, and witnessed by the Superior Court clerk or his deputy. (See Courts and Procedure.)

Registers of Deeds

The office and duties of the register of deeds were touched upon by at least ten of the public laws of 1941, which include an act to permit photostating of records, three having to do with birth certificates, four validating certain irregular deeds and one allowing recordation of maps and plats made by surveyors since deceased.

Ch. 286 (HB. 580) authorizes the commissioners of any county to provide for modern photostatic or photographic recording of instruments filed with the register of deeds, the clerk of court and any other county officer. Deeds and instruments defective for various reasons were validated under Ch. 30 (HB. 156), dealing with the situation where names of grantors were inadvertently omitted from the record of the certificates of acknowledgment of deeds registered prior to Jan. 1, 1924; under Ch. 20 (HB. 164), concerning deeds conveying or affecting real estate, executed prior to 1932, which were not properly sealed by a notary public; under Ch. 229 (SB. 179), affecting deeds or other instruments registered prior to Jan. 1, 1941, from which the order of registration was omitted through error; and under Ch. 187 (SB. 178), amending C. S. 3332, which provided for deeds registered prior to Jan. 1, 1915, from which the order of registration was omitted. The amending act changes "Jan. 1, 1915" to "Jan. 1, 1941."

Ch.219, P. L. 1935 provided for recordation of plats made and duly certified by surveyors; Ch. 249 (SB. 335) amends the old law, adding a provision allowing recordation of plats made by surveyors who have died before recordation is attempted.

Ch. 118 of the Consolidated Statutes, C. S. 7101, provides for filing, within five days after birth, of birth certificates. Ch. 126 (HB. 194) (s. 7101 a) amends the old law by allowing for filing between five days and four years after birth, providing, however, that criminal liability will still attach for failing to file within the five day period. C. S. 7101 (b) empowers the State Board of Health to make rules for registering certificates where more than four years have elapsed since birth. C. S. 7102 (a) validates irregular registrations of birth certificates copies of which were certified by the state registrar prior to the effective date of the new act.

Procedure for establishing the fact of birth of a person without a birth certificate is set up by Ch. 122 (HB. 141), which provides for hearing before and judgment by the clerk of court, with copies of the judgment to go to the register of deeds and the state Bureau of Vital Statistics.

Under Ch. 297 (HB. 659), upon the entry of a judgment determining the paternity of an illegitimate, the clerk is required to notify in writing the state registrar of vital statistics as to the name of the illegitimate's father, with other facts which may help identify the record of the child's birth. Upon satisfactory proof of the paternity of the child, the state registrar must notify the register of deeds as to the new certificate of birth issued in accordance with the proof. A new birth certificate must also be made whenever proof is submitted to the state registrar that previously unwed parents have married subsequent to the birth of a child.

Provision is made in new C. S. 7104½ for foundling children whose parentage cannot be established; for them certificates of identification shall be issued, in lieu of birth certificates.

STATE DEPARTMENTS AND FUNCTIONS

(*Continued from page twenty*)

good; lack of an appropriation practically guarantees that it will not turn out to be a great menace to the small loan trade.

Dry Cleaners' Commission Liquidation.—Ch. 127 (HB. 229).—Ch. 30, P. L. 1937, set up a State Dry Cleaners' Commission to license and regulate persons engaged in the dry cleaning trade. In State v. Harris, 216 N. C. 746 (1940), the law was held unconstitutional on grounds of discrimination, monopoly, improper delegation of powers, and undue exercise of the police power. Ch. 127 provides for liquidation of the commission. The Budget Bureau is made liquidation agent; funds remaining above liquidation expenses are directed to be paid to the State Treasurer to pay the commission's debts and to reimburse the Budget Bureau for certain past advances; the balance is to go into the general fund. Furniture and equipment are to be turned over to the Division of Purchase and Contract.

Legislation Affecting Education

The 1941 General Assembly paid great attention to education and its problems, ranging all the way from pensioning aged teachers to intensifying the state's vocational education program, and including in addition an appropriation to cut the pay differential between white and colored teachers, a fifth salary increment for principals, a twelfth grade for high school students, an election upon a constitutional amendment proposal designed to consolidate state school administration through a single state board of education, a limitation upon school bus loads and provision for allowing use of school bus prior to opening of terms, aid to public libraries, school study commissions, and greater appropriations for state educational institutions in general.

Board of Education Reorganization. — The proposed constitutional amendment, which will be presented to the voters in the November general elections, will make sweeping changes in the administrative set-up of the state educational system. Article IX, Sec. 8 of the state constitution says that the Board of Education shall be composed of a group of ex officio constitutional officers—the Governor, Lieutenant-Governor, Secretary of State, Treasurer, Audi-

tor, Superintendent of Public Instruction, and Attorney-General. It is given power to make rules and regulations concerning the free public schools and the educational fund of the state, but "all acts, rules and regulations of said board may be altered, amended, or repealed by the General Assembly. . . ."

How freely the General Assembly may transfer these powers to other agencies is a point not definitively settled. At any rate, the General Assembly has vested in the State School Commission most if not all of the powers and duties of operating the eight months' school term, including control over the school fund. See Michie's Code, §§5780 (124) et seq. The result is a two-headed administrative set-up which has not always functioned too smoothly.

Ch. 15 (SB. 107), spearhead of the drive of the educational forces in the 1941 General Assembly, was designed to remedy this situation by amending the Constitution to put the school administration in the hands of an independent board of education, thus consolidating the divided functions. As introduced, the bill would have submitted an amendment modeled after the recommendations of the Constitutional Revision Commission of 1931. Under this plan the board would have been composed of seven members, appointed by the Governor and subject to confirmation by the General Assembly. See 11 N. C. L. Rev. 5, 9 (1933). The State Superintendent of Public Instruction would have been chairman *and* chief executive officer. This board would have had, subject to legislative modification, full power to supervise the public schools and administer the school funds; to divide the state into convenient school districts; to regulate salary, qualification, and grade of teachers; to choose text books; and generally to administer the public school system.

The idea of centralized administration and control seems to have met with legislative favor, because few changes were made in the grant of powers which the board could exercise under the proposed amendment. But on the make-up of the board itself and the powers of the Superintendent of Public Instruction, choice political battlegrounds, the bill struck a snag.

Under the original proposal, the Superintendent of Public Instruction would have been the key man in the new set-up, and would naturally wield considerably more power than in his present position. To limit this power, an amendment was proposed to make the Lieutenant-Governor chairman of the board.

Political considerations finally brought about a compromise in the make-up of the board. Under the law as passed, the board would consist of the Lieutenant-Governor, the State Treasurer, the Superintendent of Public Instruction, and one member from each congressional district, to be appointed by the Governor. The size of the board is thus approximately doubled. The Superintendent of Public Instruction would "have general supervision of the public schools and shall be secretary of the board." A comptroller, to be chosen by the board, would be fiscal manager of its affairs. And a further amendment provides that "A majority of the members of said board shall be persons of training and experience in business and finance, who shall not be connected with the teaching profession or any educational administration of the state."

Several comments seem not out of order: (1) Comparison with Ch. 358, s. 2, P. L. 1939, reveals that this board is to be made up along lines closely parallel to the present make-up of the State School Commission. (2) It seems highly possible that under this new set-up the Superintendent of Public Instruction may in the end find himself in about the same relation to the comptroller of the board, who seems the key man in the new arrangement, that he now bears to the head of the State School Commission. Thus the evils of two-headed administration may still remain. (3) The requirement that the majority of the members be men not connected with the teaching profession or any educational administration of the state evidences less confidence in the capacity of educational leaders to engineer an educational program, than in the capacity of business men to handle the fiscal affairs of the schools.

Twelfth Grade. — The new law (Ch. 158, HB. 115) makes the twelfth grade optional, providing that the county board of education or city or district school trustees must ask the State School Commission for the extra grade. The Commission will then provide for expanding the present system of the requesting school and for operation of the twelfth grade under plans and rules to be promulgated by the Superintendent of Public Instruction. Teachers are to be allotted by the commission beginning with the 1942-43 school year, upon a "fair and equitable estimate" of the prospective increase in attendance, as submitted by the requesting unit, with relation to the average attendance of the preceding year. The twelfth grade is to be paid for from the appropriation provided in the School Machinery Act for operation of the eight-month school term. An appropriation of $40,000 is provided for the first year of the biennium, which will do no more than cover the expense of setting up machinery for administering the extended system. For 1942-43 $400,000 is appropriated, an amount sufficient to permit inauguration of the twelfth grade wherever requested. The local units must bear expenses for operating the twelfth grade more than eight months.

The Legislature chose the twelfth grade over the proposed ninth month provision, which would have been much more expensive.

School Machinery Act Amendments.—(Ch. 267, HB. 460.) The 1941 amendments to the 1939 continuing School Machinery Act are few in number. One of them provides for year to year continuation of teaching contracts until the teacher or principal is notified of rejection, with the provision that teachers must now give notice of acceptance for the following year within ten days after the close of school. Another requires the State School Commission to determine the rated capacity of all school busses, and provides that local authorities must now allow any bus to be loaded more than 25 per cent above its rated capacity.

Other amendments in Chapter 267 require: (1) consideration, in alloting teachers, of attendance increases caused by establishment of army camps or other national defense projects; (2) notification of rejection to teachers by registered letter; (3) general supervision by district principals of all schools in districts

where all are under control of the same district committee; (4) exclusion of the superintendent of a unit from the number of teachers and principals allotted on the basis of average daily attendance; (5) monthly apportionment of county-wide current expense school funds to county and city units; and (6) countersigning of warrants drawn under the Machinery Act when such warrants are within funds of, and budget amounts appropriated for, a particular unit. Sheared off in committee sessions were proposals to extend the terms of county and city superintendents to four years (from two) and to set two years as a minimum term for principals.

In addition to the load limitation in Ch. 267 above, other school bus legislation, mainly liberalizing use, was enacted. Ch. 214 (SB. 21) allows the State School Commission to permit use of busses for necessary field trips in vocational agriculture, home economics, and trade and industrial vocational subjects. The cost, including Workmen's Compensation liability and employment of drivers, is to be paid by the state. Busses may also be operated one day prior to school opening for purposes of bringing in the students to get the school organized for the year (Ch. 101, HB. 337).

Vocational Training. — The trend towards vocational training was given impetus in the $600,000 and $700,000 appropriations provided respectively for the first and second year of the biennium (Ch. 107, HB. 13), and almost doubling the appropriation for the last biennium. The governor is authorized by Ch. 360 (HB. 815) to appoint a seven-member commission to select a site in the Piedmont section of the state for a textile training school to be known as "North Carolina Textile Institute," or some other appropriate name chosen by the commission to "teach the general principles and practices of textile manufacturing and related subjects," and to allocate up to $50,000 from the Contingency and Emergency Fund for the construction of buildings.

Public Libraries. — The preamble to Ch. 93 (SB. 44), which appropriates $100,000 for promoting and equalizing public library service in the state, recognizes in glowing terms the part that public libraries must play in the state's educational program. The money will be administered and allocated by the North Carolina Library Commission among the counties of the state, on a basis of local needs and interest. The commission may use up to 5% of the annual appropriation for its operating expenses.

School Bus Drivers' Certificates.— Ch. 397, P. L. 1937, in an effort to reduce school bus accidents, forbade any person to drive a school bus occupied by children until he furnishes his county superintendent a certificate from the Highway Patrol that he has been examined and is a "fit and competent person to drive a school bus . . ." Ch. 21 (SB. 31) amends this 1937 law to require a similar certificate from the chief mechanic in charge of school busses in the county.

Assuming that the applicant has never before driven a bus in the county, it would seem that the mechanic's certificate adds no extra safeguard to the existing law. But during the course of the year, the mechanic does have occasional contact with drivers bringing busses to him for inspection and repair, and perhaps he may be able to judge better than the patrolman the character and dependability, over and above manual competency, of applicants with whom he is thus acquainted. This possibility, in the eyes of one familiar with school bus transportation conditions, should be enough to justify the law.

The amendment might have been more deftly drafted. The revised section omits a strategic "and," in the style of Time Magazine, so that now the certificate required is that the applicant "has been examined by a member of the said highway patrol, said chief mechanic in charge of school busses . . ." Of such stuff is codification made.

County Boards of Education.—Ch. 380 (HB. 835) is the omnibus bill appointing members of the county boards of education throughout the state, fixing their terms of office and limiting their compensation.

Textbook Rentals. — Wherever city and county administrative units have paid to the state textbook and rental commission, in rentals, a sum equal to the price fixed for sale of rental textbooks, the units are authorized by Ch. 301 (HB. 701) to withdraw from the textbook rental system, and from that time on will be full owners of such books.

Indian Schools.—The state board of education is authorized by Ch. 370

FINALE

President of the Senate Harris holding his gavel high. When it descended, the 1941 session ended.

(SB. 149) to establish vocational and normal schools for young Indians, with the governor being empowered to allocate $15000 during the biennium for that purpose, from the contingency and emergency fund.

School Superintendents.—Ch. 190 (SB. 246) provides for withholding the salary check of any superintendent failing to perform his duties as ex officio agent of the State School Commission under the free and rental textbook act. It is the duty of the secretary of the Textbook Commission to report such derelictions from duty.

Admission to School for Deaf.—Under the old law governing admission to the state school for the deaf at Morganton, applicants were required to be at least eight years of age. Ch. 123 (HB. 145) now permits the directors of the institution to admit students under that age when the facilities of the school permit and when it is believed to be in the best interest of the applicant.

Distribution of State Publications.—Ch. 379 (HB. 819) rewrites the present statute and sets out a detailed schedule for the distribution of State publications. The new schedule was made necessary by the establishment of the Law School of the North Carolina College for Negroes, which was created to answer the mandate of equal facilities for the races contained in the decision in Gaines v. Canada, 305 U. S. 337, 83 L. Ed. 208 (1938).

Highways and Roads

Home-to-School Roads. — Ch. 47 (SB. 24) requires the State Highway and Public Works Commission to maintain and repair "roads sufficient to accommodate school buses leading from the State-maintained public road to all schools and school buildings to which children are transported on school buses to and from their homes during the regular organized school year." The comfort and convenience, as well as safety, of the school children affected by this law would seem clearly to justify the slight extra expense which will be called for to meet this requirement.

Defense Highway Contracts. — C. S. 3846(v) requires highway construction contracts above $1000 to be let after public advertising, and under rules laid down by the Highway Commission. Ch. 400, P. L. 1933, as amended, requires that highway construction contracts, among others involving expenditures of public money in excess of $1,000, except in cases of "special emergency involving the health or safety of the people or their property," be let on competitive bidding, to the lowest responsible bidder, and after at least one week's notice in a North Carolina newspaper.

Ch. 4 (SB. 32), with the avowed purpose of expediting defense construction, modifies this practice drastically whenever "any authorized agency" of the Federal government requests any highway construction as "urgently needed" in the interests of national defense. In such cases, the Commission may dispense with the customary advertising and competitive bidding and let contracts by negotiation, when this will get the work done more quickly.

TVA and AAA Trucks License Exemptions.—Ch. 22 (SB. 70) exempts from the "for hire" license requirements of Ch. 407, s. 2 (r-1), P.L. 1937, as amended, motor vehicles whose sole "for hire" use is to haul TVA or AAA phosphate or farm limestone in bulk furnished as a grant in aid under the AAA. Thus, certain employees of certain governmental agencies are exempt from a non-discriminatory state license tax.

In so far as the purpose of this law is to exempt persons from non-discriminatory state taxation because they are employed by Federal agencies, it would seem to run counter to the policies back of the present trend of judicial decision. See 52 Harvard Law Review 1010 (1939). For example, although for many years state and Federal employees were reciprocally immune from income taxation by the other government, McCulloch v. Maryland, 4 Wheat. 316 (1819); Collector v. Day, 11 Wall. 113, 129 (1871), there is today no constitutional objection to such taxation, and the policy back of the earlier decisions has been disapproved. Graves v. New York ex rel O'Keefe, 306 U.S. 466 (1939); James v. Dravo Contracting Company, 302 U.S. 134 (1937). However, if in fact the savings to the truckers are reflected in lower hauling rates and eventual savings to the farmers, the law would seem to be a worth-while complement to the attempts of the AAA and TVA to make lime and phosphate more cheaply available to farmers. It may be added, however, that there is no guaranty that this will occur.

National Defense Trucks. — The Motor Vehicle Law of 1937, Ch. 407, s. 52, sets higher truck license fees for contract haulers than for private haulers. The defense building boom created a great demand for contract hauling on defense projects. Ch. 14 (HB. 91), to expedite this work and to implement the General Assembly's earlier resolution (S. R. 4) to cooperate in national defense, permits privately licensed haulers, under certain conditions, to do contract hauling without getting contract haulers' licenses, or paying extra fees. This license-exempt hauling must be within a radius of thirty miles of some national defense project in North Carolina, and in connection with construction work thereon. State load limits must be observed, and a windshield sticker or other device must indicate the service in which the truck is engaged. The act expires December 31, 1942.

Out of State Trucks. — Ch. 99 (HB. 314) amends Ch. 407, s. 47 (b), P. L. 1937, the Out-of-State Motor Vehicle Act, to permit out-of-state trucks to operate in this state for a period not exceeding thirty days upon securing the trip licenses prescribed in the act.

Speed Limit Increase for Pick-Up Trucks.—Ch. 347 (SB. 301) amends Ch. 407, s. 103 (b), P. L. 1937, to raise the speed limit for ¾ ton trucks from 35 to 40 miles per hour, and that for ½-ton or pick-up trucks from 35 to 45 miles per hour. No change is made in the 35-mile speed limit for heavier trucks.

Highway Stop Signs.—Ch. 83 (HB. 340) purports to "clarify" the law with reference to stop signs at intersecting highways. Ch. 407, s. 120 (a), P. L. 1937, empowers local and state highway authorities, with reference to highways under their re-

spective control, to designate main highways by erecting stop signs at entrances to these main highways from "intersecting *highways*"; failure to stop is unlawful but not contributory negligence *per se*. Subsection (b) made it unlawful to drive a motor vehicle across or into an improved highway from *"any path, private or public road"* where a proper stop sign had been erected, without coming to a full stop; subsection (d) provided that failure to stop should not be contributory negligence *per se*.

Ch. 83 repeals subsections (b) and (d). The result would seem that even if a proper stop sign is put up where a *path or private road* enters a main highway, it is not now unlawful to enter the highway without stopping; only where the stop sign is put up at the entrance of a way dignified enough to be an "intersecting highway" under subsection (a) would it seem unlawful to fail to stop. If this is the meaning intended, it would seem that what passed for "clarification" was really repeal of a worthwhile safety measure.

Elections

Few changes were made in the election laws. Ch. 304 (HB. 707) amended C. S. 5932 to provide that registrars and judges of elections receive $5 and $4, respectively, for attending any meeting called by the chairman of the county board of elections relating to their duties in any primary or election. Ch. 305 (HB. 708) raised from $3 to $5 the per diem compensation of the chairman of county boards of elections while actually engaged in discharge of his duties.

Ch. 222 (SB. 108), North Carolina's electoral declaration of independence from the sun, provides that in all primary and general, local and municipal elections, the polls shall open at 6:30 A.M. and close at 6:30 P.M., Eastern Standard time, regardless of sunrise and sunset.

Ch. 346 (SB. 295) and Ch. 248 (SB. 296) enable soldiers and sailors to vote by absentee ballot in primaries, and regulate the manner of such voting. This authority becomes void upon repeal of the Selective Service Act of 1940. Ch. 248 (SB. 296) provides that the signature of the Commanding or any commissioned officer as witness to such a ballot shall have the force and effect of the seal of an officer authorized to take oaths, otherwise required by the absentee procedure.

Conservation and Development

The Board of Conservation and Development is reorganized under Ch. 45 (SB. 120), which authorizes and directs the Governor to appoint a fifteen-member board which succeeds to the powers and duties of the former board. The Governor is directed to consider the functions and activities of the board and to select members who are qualified to represent the different functions of the department, giving as near as possible proportional representation to each of the functions and activities of the department. Members of the board shall take office upon May first, 1941, and serve four year terms.

The Department of Conservation and Development is authorized by Ch. 118 (HB. 117), which amends C. S. 6124, to acquire land for state forests, state parks and other public levelopments, as may in the opinion of the department be necessary for its purposes. Condemnation proceedings are to be instituted and prosecuted in the name of the state. Before any such condemnation proceedings shall be started it is necessary for the department to procure the approval of the Council of State, and the approval must be filed with the clerk of court of the county in which the land lies.

The North Carolina Hatteras Seashore Commission is given additional powers, Ch. 100 (HB. 334), to condemn land for national seashore purposes according to the procedure set forth in Ch. 470, P. L. 1935 (Public Works Eminent Domain Law), including condemnation of land to which the state has already acquired title.

Ch. 377 (HB. 755) provides that the Governor shall appoint a committee, from the sixteen counties through which the Blue Ridge Parkway runs, to formulate a workable plan with federal, state, and county agencies and departments to secure "full economic and social benefits from the operation of Federal Parks and Parkways . . . . ". The department of Conservation and Development with the approval of the executive committee and the Governor is permitted to make agreements with federal and state agencies to further the purposes of the Act.

Ch. 340 (HB. 265) authorizes the appropriation of $10,000 for the construction and repair of the spill-

REORGANIZED

New Members of an Administrative Agency are sworn in, as Governor looks on.

way at the mouth of the Waccamaw River, to preserve Waccamaw Lake because of its recreational advantages. Ch. 159 (HB. 212) appropriates $10,000 for the establishment of two more experimental and demonstration oyster farms in the sounds and other suitable bodies of water in eastern North Carolina. The Department of Conservation and Development is vested with control of the construction and operation of these farms.

"Whereas the dogwood is a radiantly beautiful flower," runs the preamble to Ch. 289 (HB. 609), "which grows abundantly in all parts of this state," it is thereby officially designated as the State Flower, in response to numerous demands that it be so honored. Another statute bearing on wild flowers is Ch. 253 (HB. 634), which makes it a misdemeanor to pull or pluck certain enumerated flowers and shrubs, without permission of the owner of the land involved.

Three penal statutes concerning violation of Acts for the preservation of fish and game were enacted into law. Ch. 288 (HB. 590) amends Ch. 269, P. L. 1939, to make the selling or offer for sale of grouse or wild turkeys, in violation of the State Game Act, a misdemeanor, punishable by a minimum fine of fifty dollars or a maximum imprisonment of sixty days, or both. Ch. 205 (HB. 646) makes the taking of aquatic plant food or other water fowl food a misdemeanor punishable by a fine of from one hundred to five hundred dollars, or by imprisonment of from ninety days to six months or both, in the discretion of the court.

Ch. 231 (SB. 185) removes the prohibition against transportation of lawfully taken game by parcel post, and makes a misdemeanor the taking or attempting to take deer between sunrise or sunset, with aid of artificial light, punishable by a minimum fine of one hundred dollars or a minimum imprisonment for sixty days, and the taking or possession of a doe, punishable by a fine of fifty dollars or imprisonment for thirty days.

Ch. 113 (HB. 15) makes it the duty of the fisheries commissioner or his deputy, upon receipt of complaint, to seize and remove all nets or other appliances that have been used in violation of the fish or fisheries law, as well as those set for present use.

Pay Increase for Constitutional Officers.—Ch. 1 (SB. 1) increased the salaries of the treasurer, auditor, secretary of state and superintendent of public instruction by $600 each, to $6,600 yearly. As applied to present incumbents, its constitutionality may be doubtful. N. C. Constitution, Article III, Section 15, says that the salaries of these officers "shall neither be increased nor diminished during *the time for which they shall have been elected.*" Section 1 of the same article says that their term of office "shall commence on the *first day of January* next after their election, and continue until their successors are elected and qualified." This law was finally ratified on January 9, a few minutes before inauguration ceremonies began.

For the law's constitutionality it can be argued that it is customary for incumbents to hold over until inauguration day; that the term *in fact* does not begin until inauguration day; that therefore the "term for which they are elected" does not begin until the new officers are "qualified" in formal inauguration ceremonies. However, it must be apparent that whatever the customary term in fact, the incoming officers might, under Article III, Section 1, assume office on January 1. The holding-over provision of Section 1 seems designed to insure continuity of tenure in fact, and should not, it seems, be interpreted to emasculate the limitation of Section 15.

Thus, although the morning of January 9 was not a part of the *present term in fact* of the present incumbents, it would seem to be part of the term "for which they [were] elected" within the meaning of Section 15.

Proponents did not debate the issue. Rather, they claimed inexpertness in constitutional problems, and read a letter from Governor Hoey terming the measure only "simple justice" to men to whom a raise was deemed long overdue.

ENABLING ACTS FOR LOCAL UNITS

(*Continued from page twenty-three*)

sively for the purpose of making such regulation effective and for the expenses incurred by the city in the regulation and limitation of vehicular parking, and traffic relating to such parking. This power is added to the end of subsection 31 of C. S. 2787, as amended, enumerating the powers of cities.

Since this Act expressly confers on municipalities the power to adopt ordinances providing for a system of parking meters, the only question that remains is the question of the constitutionality of such a law. The drafter of the Act was careful to provide that the parking fee should be used for the enforcement of the Act and to regulate traffic, and that the Act should not be a revenue raising one. The idea was to bring the Act, by its own terms, within the police power, for it would appear to be valid only as an exercise thereof. "Ordinances passed under authority of any or all of the statutes mentioned [2787 (11), 2787 (31), 2793, 2789, 2787 (29), 2787 (7), 2623 (5), 2623 (7), 2623 (9), 2673, 2787 (5) and 2787 (1) of the Consolidated Statutes] must be referred to the exercise of the police power." Rhodes v. Raleigh, *supra*. For discussion of the constitutionality of parking meters, see 19 N. C. L. Rev. 70.

Ch. 319 (HB. 955) amends Ch. 153 by providing that the limitations and restrictions contained in the latter, restricting the installation of parking meters to cities and towns with a population of 20,000 or over, shall not apply to cities and towns in the County of Orange, and that any city or town within the territorial boundaries of Orange County shall have the right to install parking meters under the provisions of Ch. 153.

As a further solution to the parking problem, the legislature in Ch. 272 (HB. 485) grants to all cities and towns the power to own, establish and operate municipal parking lots within the city, and in their discretion to make a charge for the privilege of parking thereon.

Fire Protection Outside City Limits.—Under C. S. 2804, enacted in

1919, cities were given power to provide water lines and fire equipment for fire protection of property within two miles of city limits. In Ch. 77 (HB. 214) cities are further authorized to furnish fire protection for property within an area of not more than twelve miles from the city limits, upon such terms as the governing body may determine.

Rabies Inspectors.—Ch. 259 (HB. 315) amends the Rabies Prevention Act, Ch. 122, P. L. 1935, to do away with the requirement that at least one rabies inspector be appointed for each township in the county. It authorizes the appointment of a "sufficient number" of inspectors who may act for the county as a whole. Among other changes, the Act also raises the fee for vaccination of dogs from fifty cents to seventy-five cents per dog.

County Electrical Inspectors.—In Ch. 105 (HB. 404) the Legislature amends C. S. 2744 (a) to allow counties to appoint more than one inspector, if necessary, to inspect electrical wiring of houses in the county.

Leaves of Absence for Drafted Public Officials.—Upon the passage of the Selective Service Act the question as to the status of state, municipal and county officials after a year in service, when drafted, arose. To allay any fears of such employees that after the expiration of their period of service they would be without jobs, Ch. 121 (HB. 137) was enacted.

Administrative.—In Ch. 103 (HB. 361) the legislature amends C. S. 2826, providing for the appointments, powers and duties of city clerks, to allow any city governing body to combine the duties of city clerk and city treasurer, bestowing them all upon one person to be known as the "city clerk and treasurer."

REGULATION OF TRADE AND INDUSTRY

(Continued from page eighteen)

ment that they have a maturity, at time of discount, of not more than nine days if for industrial or commercial purposes, or nine months, if for agricultural purposes; and the requirement that such paper be owned by the person negotiating it.

Insurance.—Ch. 74 (HB. 96) allows fraternal benefit societies authorized to do business in North Carolina and maintaining reserves as required by approved mortality tables, and with interest assumption at not more than 3½% per year, to accept members and issue to them certificates of insurance in amounts up to $5000 without medical examination, upon health and character information satisfactory to the society. The Act also applies to children of members of the society, who are under sixteen years of age.

The definition of "Mutual Carrier" is extended by Ch. 298 (HB. 662) to include "any reciprocal or inter-insurance exchange." The Act also provides that any such exchange writing workmen's compensation insurance on September 1, 1935, and continuing to underwrite this class of insurance, shall for a period of six years after other members of the mutual fund have discontinued payments, continue to pay into the fund in order to equalize the contribution of all members.

Ch. 239, P. L. 1939, is repealed by Ch. 130 (HB. 264). The 1939 law related to the organization, management and supervision of mutual burial associations; the new Act provides that associations now or hereafter organized in the state shall be under the supervision of a Burial Association Commissioner appointed by the Governor, and sets forth the rules and by-laws which must be adopted by such associations, as well as providing for their supervision and regulation by the new Commissioner.

Banks and Building Loan Associations.—Ch. 77 (HB. 214) empowers banks to deposit in their commercial departments uninvested fiduciary cash funds, and to secure the deposits by segregating and delivering to the trust department securities which would be eligible as investments by the state's sinking funds, (such securities to be equal in market value to the deposited funds), or securities which are readily marketable commercial bonds, having not less than a recognized "A" rating. The amount of security required for the deposits may be reduced to the extent that the deposits are insured by the Federal Deposit Insurance Corporation.

Whenever banks having fiduciary obligations are merged, reorganized or sold, all the fiduciary powers, duties and liabilities of such banks are, under Ch. 80 (HB. 246), transferred to the new or merged corporation. (See Clerk of Court.)

Three new laws alter the powers and duties of building and loan associations. Ch. 65 (HB. 226) provides that between meetings of the board of directors of an association, any three members of the board may act as an executive committee and may, by unanimous vote, make loans. Ch. 66 (HB. 227) permits the board of directors to borrow up to 35%, as compared with the former 30%, of the association's gross assets. Ch. 67 (HB. 228) requires that the association's investments or deposits on hand, which are required to equal at least 5% of the aggregate amount of paid-up stock outstanding, be unpledged.

Regulation of Businesses and Professions.—Several of the numerous acts creating boards for regulating and licensing businesses and professions were amended by the 1941 General Assembly.

Business and professions were affected by the following: General Contractors.—Ch. 257; Tile Contractors.—Ch. 219; Architecture.—Ch. 369; Cosmetic Arts.—Ch. 234; Barbers.—Ch. 375; Auction Sales.—Ch. 371, 230, 131; Second-Hand Watches.—Ch. 244; Building Code.—Ch. 280; Scale Mechanics.—Ch. 237.

Public Utilities

The chief item of interest in the utilities field seems to be the abolition of the office of Utilities Commissioner and the transfer of its functions to a three-man Utilities Commission, with Stanley Winborne, the present Commissioner, as its first chairman and Professor Harry Tucker and Fred Hunter, later appointed, as associates, with staggered terms.

Many bills were introduced to regulate bus stations and bus transportation and to add to the powers of the Utilities Commission in this respect; Ch. 228 (SB. 164), an innocuous enactment which talks about bus station sanitation, is the only

one which became law. It empowers the Utilities Commission, on the basis of reports and recommendations by the State Board of Health, to "take such action with reference thereto as the public interest may require," and to "make such order as in its discretion promotes the public interest." The value of this law of course depends entirely on the vigor with which the Utilities Commission undertakes to enforce it.

Eminent Domain for Bus Stations.—Ch. 254 (HB. 19) amends C. S. 1706 by giving the power of eminent domain to "franchised motor vehicle carriers or union bus station companies organized by authority of the Utilities Commissioner for the purpose of constructing and operating union bus stations." Union bus stations under this wording can clearly use their power to set up union bus stations only. But the act as worded seems to raise a question whether a single "franchised motor vehicle carrier" could use this power to set up an independent station. The Commissioner's practice of requiring union terminals would seem to answer this question.

As originally introduced, the bill was state-wide, and as such was tabled. House debate on reconsideration brought out that in fact there was need for immediate exercise of the power only in Charlotte and perhaps one or two of the other larger cities; as a result, the bill was eventually amended to apply only to towns of over 60,000 inhabitants.

Ch. 59 (HB. 22) amends Ch. 134, s. 3, P. L. 1933 as amended, to make plain that the Utilities Commission has authority to regulate "municipally owned electric light or power systems *which are leased to and operated by private individuals, firms, or corporations.*" (Italics added.) Under the 1933 law as it formerly read, the Commissioner was given power to regulate rates and operations of "electric light, power, water, and gas companies . . . other than such as are municipally *owned or conducted. . . .*" (Italics added.) Apparently time showed the unwisdom of exempting privately-operated power companies from supervision simply because the plant happened to be owned by a municipality. It was to remedy this situation, and to place such companies under the regulation of the utilities commission, that Chapter 59 was passed. The result is that only power plants owned *and* conducted by municipalities are now exempt under this section.

Electric Membership Corporations: Ch. 12, 335, and 161.—To a small degree, Chapters 12 and 335 tend to break down rather than build up interstate trade barriers. Ch. 12 (HB. 150) extends to foreign electric membership corporations the same tax exemptions which are enjoyed under P. L. 1935, Ch. 291, s. 14, by local membership corporations; Ch. 335 (HB. 961) empowers North Carolina cooperatives to extend their lines into adjoining states.

The joker in Ch. 12 (HB. 50), however, is its requirement that before being entitled to this tax exemption, the foreign cooperative must "domesticate" in North Carolina by paying the fees and filing with the Secretary of State the papers required by C. S. 1181. Since for most intents and purposes this seems to make of the foreign corporation a local corporation, it may be wondered whether, after all, this is a very great concession.

Ch. 335 was passed after a ruling of the Attorney-General that electric membership corporations organized under Ch. 288, 291, P. L. 1935 lacked the power to extend their lines into adjoining states and serve out of state patrons. See letter of March 12, 1941, to David S. Weaver, Chairman, North Carolina Rural Electrification Authority. The effect under the new law is that North Carolina cooperatives may extend, construct, operate and maintain power lines into adjacent states.

Impetus for both these laws seems to have come from far western counties; their immediate operation will not be very far-reaching; but it would seem that their purpose is commendable.

Further encouragement of electric cooperatives is found in Ch. 161 (HB. 258). Certain electric cooperatives have been organized, not under Ch. 288 and 291, P. L. 1935, but under C. S. 5242 et seq., which authorize formation of cooperatives generally. Accordingly, they have not enjoyed all the possible tax exemptions. These cooperatives, however, operate substantially like those formed under the 1935 laws; some of them have reorganized or are about to reorganize, it seems, under the 1935 law itself. To encourage this (so it is recited in the preamble of the law) Ch. 161 provides that electric membership corporations organized or reorganized under Ch. 291, P. L. 1935, and existing as corporations on September 13, 1941 (six months after ratification of the act), need pay no state or local taxes accrued since the passage of the 1935 act. Taxes paid by such cooperatives during their existence as cooperatives under C. S. 4242 et seq. since 1935 are to be refunded without interest.

Ch. 260 (HB. 333) amends Ch. 291, s. 9, P. L. 1935 to allow the certificate of incorporation of an electric membership corporation to reserve to its members the power to amend the by-laws.

Labor Legislation

Ch. 362 (HB. 861) establishes a conciliation service in the Department of Labor and provides that in an existent or imminent labor dispute, the Commissioner of Labor may, and upon direction of the Governor must, order a conciliator to take expedient steps to effect a voluntary, amicable settlement of the issues and to use his best efforts, by mediation, to bring employer and employees to agreement.

Ch. 255 (HB. 193) provides protection of labels, trade marks, terms and forms of advertisement of associations and unions of working men. It permits the adoption and registration of trademarks with the Secretary of State, sets forth the procedure for injunctive relief, and fixes penalties for infringement.

Both the Unemployment Compensation and Workmen's Compensation Acts underwent amendment. Ch. 108 (HB. 218) extensively changes the Unemployment Compensation Law, as follows: (1) Sets up schedule of benefits for persons whose benefit year begins after effective date of Act; (2) shortens

waiting period from two weeks to one week; (3) provides for non-payment of certain weekly benefits and reduction of maximum benefits accruing during benefit year when employee is disqualified for reason of voluntarily leaving work, discharged for misconduct or fails to apply for work after termination of employment; (4) sets up conditions under which a person may refuse new work without denial of benefits; (5) provides standard rate of contribution by employers and variations from such standard and maintenance of "Partially pooled" and "Reserve" accounts of employers; (6) clarifies and makes certain changes in administrative aspects of the Act. Ch. 198 (HB. 425) excludes from the benefits of the Act persons under the age of eighteen who deliver or distribute newspapers or shopping news where deliveries are made to points for subsequent distribution.

Ch. 358 (HB. 735) amends the Workmen's Compensation Act (Ch. 120, P. L. 1929) to make liable, under provisions of Act, any contractor or sub-contractor who sublets a contract to a person not furnishing certificate showing compliance with the Act, to the same extent as such person to whom the contract is sub-let, for injuries sustained by employees, irrespective of whether such person employs less than five workmen. The Act would also make the salary of the secretary to the Commission not more than $3,600 a year, the amount to be set by the Director of the Budget.

Ch. 352 (HB. 236) allows injured employees to institute a civil action against employers subject to the Workmen's Compensation Act, who fail to keep in effect compensation benefit insurance or who fail to qualify as self-insurers. Such action may be brought before award in order to prevent removal of property from the State for the purpose of defeating payment of compensation awards. Such action does not interfere with the jurisdiction of the Industrial Commission, and any judgment rendered by the Commission may be made a part of the action by proper amendment.

State prisoners and county convicts are normally exempted from the Workmen's Compensation Act. Ch. 295 (HB. 650) partially relaxes this rule to allow prisoners assigned to the State Highway Commission to receive workmen's compensation where the following limited conditions are present: The prisoner must suffer accidental injury arising out of the employment to which he is assigned; the injury must continue until after his lawful discharge, to such an extent as to amount to a "disability" under the Act. With the period of compensation beginning at the time of lawful discharge rather than the date of the accident, the prisoner may then, upon proper application to the Industrial Commission within 12 months from discharge, receive benefits (to be paid from Prison Department funds), just as any other employee. However, no award may be made (a) in excess of $15 per month; (b) for facial disfigurement, nor for death, other than burial expenses; (c) for injury where there is no apparent physical evidence of injury, unless clearly established by medical opinion that the injury resulted solely from the accident.

State Highway Employees' Salary Increase.—Ch. 355 (HB. 672) seems intended to eliminate discrepancies in the pay of employees of the State Highway and Public Works Commission. It authorizes the Commission to survey and classify its various employments, fixing a minimum and maximum wage for each class, and the salaries of each employee within the class, giving due regard to length of service and special qualifications. The salary schedule as revised is to increase the pay of all regular employees of the prison, maintenance and construction departments who now receive less than $125 per month, whether on a monthly or hourly basis, such increase in total cost to the department to amount to 10%.

Agriculture

For sheer volume of legislation and multiplicity of regulation, the laws on agriculture and related subjects take the prize. They cover a variety of topics, from hog cholera to burley tobacco commissions; from stock and poultry tonics to agricultural statistics—and the sum and substance of most of them is that the Department of Agriculture is given power to make "rules and regulations" concerning the subject in question.

Thus the Department of Agriculture is given power: By Ch. 39 (HB. 144), to establish and operate a state marketing authority, the chief aim being to make North Carolina farm products more readily available to new demand centers like Fort Bragg and Holly Ridge; by Ch. 155 (SB. 198), to establish and regulate the use of a state "Tar Heel" trade mark for standardized farm products, to be used under Departmental regulations; by Ch. 359 (HB. 793), to regulate truck and produce dealers and handlers with a view to preventing financial loss to farmers through credit transactions with "fly-by-night" produce handlers and commission merchants; by Ch. 337 (SB. 136), to make storage space in the state cotton warehouse system available for storage of other staple farm products, tobacco excepted; by Ch. 162 (HB. 539), to administer a law requiring reports and authorizing inspection of milk distributors and processors; by Ch. 275 (HB. 494), to regulate manufacture, sale and distribution of agricultural liming materials, and to enforce the laws relating thereto; by Ch. 368 (HB. 495), to administer the Fertilizer law of 1933 as amended by Chapter 368; by Ch. 199 (HB. 473), to enforce the laws relating to sale of stock and poultry tonics, and to confiscate products sold in violation thereof; by Ch. 263 (HB 397), to regulate public livestock markets with the purpose of preventing disease; by Ch. 343 (SB. 187), to collect and publish agricultural statistics in cooperation with the United States Department of Agriculture; and by Ch. 114 (HB. 39), to enforce the Pure Seed Law.

It is of course true that not all these laws mentioned depend entirely on the Department of Agriculture for their effect; and this outline is by no means comprehensive of their scope and purpose. But it is apparent, from a reading of the numerous

regulatory measures, that the real effect of many of them is simply to empower the Commissioner to regulate the subject-matter of the law within the bounds set by the standards disclosed.

In addition to the many regulatory measures are several short laws dealing with narrower subjects. Ch. 291 (HB. 618) raises from 2½ to 4% the commissions which may be charged by warehouses selling burley tobacco only. Ch. 354 (HB. 498), "for the Relief of Potato Farmers in This State," requires persons furnishing to share-croppers seed potatoes and other supplies for growing Irish potatoes to furnish with the seed and supplies a written guarantee that the grower will not receive less than $10 per bag of seed potatoes thus bought and planted. Ch. 317 (HB. 790) amends the weigh-master's law chiefly by permitting tobacco weighmasters to certify their weights with a signature, in lieu of the cumbersome seal hitherto required. Ch. 196 (HB. 195) re-defines "contract hauler vehicles" in the terms of the licensing act, so as to exclude vehicles used to haul wood products from farms and forests to the "first or primary market." Ch. 373 (HB. 73) regulates, with certain exceptions, the transportation and importation of hogs into the state by requiring veterinarian's certificates that such hogs are not diseased, the chief aim being prevention of hog cholera, while Ch. 348 (SB. 306) empowers the Governor to appoint a commission to study possibilities of establishing farm-trade schools in the state, and to report to him in 1942, for possible action by the next general assembly.

PUBLIC HEALTH AND WELFARE

(*Continued from page sixteen*)

Bills to establish a training school for delinquent negro girls having failed, House Resolution 683 empowered the Governor to appoint a commission to study proposals for such a school and report to the Governor and the Advisory Budget Commission by July 1, 1942.

Ch. 186 (SB. 231) amends Ch. 124, P. L. 1939, to prohibit unauthorized use of the records of the State Commission for the Blind regarding names of persons seeking aid to the blind; Ch. 322 (HB. 817) appropriates $9538 for each year of the coming biennium for the use of the State Commission for the Blind, in addition to existing appropriations.

Confederate Pensioners.—Ch. 152 (SB. 137) amends the Confederate pension laws so that now the appearance to apply for pension need not be made on the first Mondays in February and July of each year, nor need the indorsement of the payee on a pension check be attested by a notary, justice of the peace, or clerk of court. Relaxation of both these technical requirements seems commendable. The $100 funeral expenses for deceased pensioners is made applicable to pensioners receiving old age assistance.

Housing

Housing and slum clearance came in for considerable attention. Ch. 62 (HB. 220) is a blanket ratification of the creation of housing authorities under Ch. 456, P. L. 1935, as amended, and of all acts and proceedings, contracts and bond and note issues of such authorities, "notwithstanding any want of statutory authority or any defect or irregularity therein."

Ch. 63 (HB. 221) authorizes existing or later-formed housing authorities, in cooperation with the federal government and with local governmental units, to furnish housing and sanitary facilities for persons engaged in national defense work, whether in military service or in "national defense" industries and construction. Certain limitations on the powers of ordinary housing projects are made inapplicable to these projects if begun before Dec. 31, 1943.

Ch. 64 (HB. 223) authorizes building and loan associations to make loans to their members under the Federal Housing Administration Act, which ties in very well with the other housing development legislation, although it seems to be of different sponsorship.

Ch. 78 (HB. 219) materially enlarges the scope of the former housing authorities law by making the law applicable to farmers of low income, and by authorizing creation of county housing authorities and of regional housing authorities in contiguous counties with combined population of more than 60,000. Ch. 140 (SB. 132) reduces from 25,000 to 5,000 (according to the 1940 census) the population of municipalities to which Ch. 287, P. L. 1939, the slum clearance law, is applicable.

National Defense

Besides several resolutions, approving Senator Bailey and the North Carolina representatives in Congress for their support of the lend-lease bill; approving President Roosevelt for the preparedness and aid-to-Britain program; calling for the "Federation of the World"—several actual defense measures were passed. Ch. 43 (SB. 89) authorizes formation of a State Guard, to maintain order in the state in the absence of the National Guard, recently called to active duty. Ch. 54 (HB. 161) appropriates up to $30,000 to furnish uniforms for this organization, if that much is needed. Ch. 276 (HB. 501) amends the Unemployment Compensation Act so that persons entering the military service after July 1, 1940 and before July 1, 1943 will not lose their right to benefits because of the time spent in the service. The short effect seems to be that time so spent in the service, subject to certain modifications, will not be counted in computing unemployment compensation.

Homing Pigeons.—"Because of their value to national defense," homing pigeons are protected by Ch. 10 (SB. 34), which makes it a misdemeanor to take, harm or kill one of them when owned by another person.

Bulletin Service

Recent opinions and rulings of the Attorney General of special interest to local officials

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Prepared by the Staff of the Institute of Government

1. Ad valorem taxes.

A. Matters relating to tax listing and assessing.

1. Exemptions—religious and educational organizations.

To J. A. Orrell. Inquiry: Is a building, owned by the YWCA, used as a boarding house and not as a YWCA, subject to ad valorem taxation.?

(A.G.) In my opinion the building would not be exempt. See Odd Fellows v. Swain, 217 N. C. 632; Harrison v. Guilford County, 218 N. C. 718.

To S. H. Grimes. Inquiry: Where property belonging to religious and charitable institutions is used for commercial purposes and is therefore subject to regular ad valorem taxes, is it *mandatory* that the county commissioners place this property on the tax books?

(A.G.) The county commissioners have no discretion in the matter of placing property on the tax books which should rightfully be listed for taxes.

5. Exemptions—county and city property.

To G. W. Tomlinson. (A.G.) In my opinion, bank deposits of a county ABC Board are not subject to an intangible tax, but are exempted by the provision of the last paragraph of s. 70 of the 1939 Revenue Act.

To Hon. William I. Godwin. Inquiry: Should property held by a town and used strictly for municipal purposes, as an airport, be exempt from county taxes?

(A.G.) If the property were acquired for use as a municipal airport, and is used strictly for municipal purposes and as an airport, I am of the opinion that it would be exempt from taxation. Warrenton v. Warren County, 215 N. C. 342, at 344; Odd Fellows v. Swain, 217 N. C. 632.

13. Exemptions—private business enterprises.

To Hon. John D. Warlick. (A.G.) The legislature may not validly pass a law permitting a municipality to exempt from taxation an industry which may be considered as profitable to the community. Under the Constitution as it now stands, the General Assembly may classify property for taxation, but exemptions are controlled by constitutional provision.

25. Revaluations.

To R. H. McComb. Inquiry: Where a mistake is made in arriving at the tax value of real property for 1937, can the Board of Equalization and Review raise the assessment to the proper figure for the back years of 1937, 1938, 1939 and 1940?

(A.G.) After the Board of Equalization and Review has once adjourned finally, without specifying its intention to reconvene, it cannot reconvene and raise the valuation.

31. Cotton in bonded warehouse.

To J. L. George. (A.G.) Cotton, stored in a bonded warehouse and on which a government loan has been obtained, must be listed for taxation if by the contract with the U. S. Government the title remains in the farmer; but if the title to the cotton is in the U. S. Government, it need not be listed for taxation.

50. Listing and assessment of property.

To Hon. Louis C. Allen. Inquiry: Please advise whether or not the county board of commissioners is required to list for past five years' taxes rental property belonging to a religious or educational institution.

(A.G.) Under the Mach. Act, Ch. 310, P. L. 1939, s. 1109 (4) the board is authorized to settle or adjust all claims for taxation arising under this section, or under any other section authorizing it to place on the tax list any property omitted therefrom.

Under this subsection, in my opinion the board would have power to omit listing for preceding years property owned by such institutions, as under the statute it was not required to be listed prior to the decision in Swain v. Odd Fellows, 217 N. C. 632. My information is that the commissioners generally are not requiring such institutions to list the property other than for the current year.

51. Nature of property.

To Fred P. Parker, Jr. Inquiry: Is a county permitted to list all railroad owned property outside of the railroad right-of-way as provided in s. 1613 of the 1939 Mach. Act?

(A.G.) Under s. 1613, Ch. 310, P. L. 1939, all machines, repair shops, general office buildings, storehouses and contents thereof located outside the right-of-way shall be listed for the purposes of taxation by the principal officers or agents of (sic) such companies with the list takers of the county of situs, in the manner provided by law for the listing and valuation of real and personal property. It is then the duty of the company to file a list of such property with the State Board of Assessment.

66. Trademarks as property.

To F. E. Wallace. Inquiry: Is a property tax on trademarks, as provided by H.B. 648, Trade-Mark Act, constitutional?

(A.G.) U. S. v. Steffens, 25 L. Ed. 551, held that a right to a trade-mark is a property right, and that would, I believe, mean that trade-marks might be taxed as other property in the State, provided the tax does not conflict with the power of Congress to regulate interstate and foreign commerce. No constitutional reason occurs to me now against the validity of the plan proposed by the Act with respect to the collection and distribution of the tax as an equalizing fund among the several counties of the State by the State Treasurer, under the authorization of the Local Government Commission.

71. Solvent credits—Postal Savings and U. S. Bonds.

To H. B. Dellinger. (A.G.) Under the laws of this state U. S. bonds are exempt from taxation but U. S. postal savings certificates are taxable.

B. Matters affecting tax collection.

8. Commissioners' fees.

To H. D. Browning, Jr. (A.G.) In the absence of a special statute, no board of county commissioners is authorized to charge a fee for collecting school taxes; and there seems to be no such statutory authority of general application, although special public-local laws may be found to give the authority in some cases.

10. Penalties, interest and costs.

To E. P. Norvell. Inquiry: When a taxpayer fails to pay his taxes and suit is brought under C. S. 7990 on the original tax lien, when does interest begin to run—as of Oct. 1 or Feb. 1?

(A.G.) Under P. L. 1939, c. 310, s. 1403, the penalty would begin to run from Feb. 1, and would run until the taxes are paid, or until a judgment is obtained against the taxpayer by foreclosure. Thereafter interest would accrue on the judgment as in other cases.

To G. F. Holmes. Inquiry: What penalties does the law require to be collected on delinquent taxes for the years 1932 through 1940?

(A.G.) In the absence of local acts enacted subsequently, P. L. 1933, Ch. 59, would control with respect to discounts and penalties for the years 1932, 1933 and 1934; P. L. 1935, Ch. 417, s. 805, would control for the years 1935 and 1936; and the Machinery Acts of 1937 and 1939 would control for the years, 1937 through 1940.

54. Tax collection—expenses of collection.

To Ira T. Johnston. Inquiry: Where notice is sent to taxpayers, with reference to current taxes, who should pay the postage, the board of county commissioners, or the sheriff and tax collector personally?

(A.G.) In the absence of any statute requiring the sheriff or tax collector to pay postage on such notices, I am of the opinion that this is a proper charge against the county.

65. Tax collection—Garnishment.

To E. H. Smith. Inquiry: (1) Is it permissible to garnishee persons for taxes on real estate?

(2) Are the counties allowed to charge privilege taxes on cigarette vending machines?

(A.G.) (1) Under Ch. 310, s. 1713, P. L. 1939, a garnishment proceeding may be instituted against a delinquent taxpayer for collection of delinquent taxes on either real or personal property.

(2) Ch. 158, s. 130, P. L. 1939, allows counties, cities and towns to levy and collect a tax on cigarette vending machines not in excess of fifty per cent of that levied by the state.

73. Tax collection—levy on personal property.

To R. T. Wilson. Inquiry: May a tax collector levy on mules of a taxpayer, acquired in 1935, and mortgaged in 1937, for taxes from 1932 to date, without first levying on all other personal property of the taxpayer?

(A.G.) I know of no provision in the Machinery Act which would require the tax collector to levy on other personal property of the taxpayer before he levies on property covered by a chattel mortgage. S. 1713 (c) of the Act provides that any personal property of the taxpayer, regardless of the time at which it was acquired, or the existence or date of other liens thereon, may be levied on for taxes, subject to the limitations of s. 1704 (c).

78. Tax collection—date of sale of lien.

To Hon. J. A. Bridger. Inquiry: On what days do the county commissioners have the authority to hold sales for tax liens on real property?

(A.G.) The commissioners have authority to hold such sales, in their discretion, either on the first Monday in May, the first Monday in June, the first Monday in July, the first Monday in August, or the first

Monday in September. S. 1715 (b), Ch. 310, P. L. 1939.

81. Tax foreclosure—procedure under C. S. 7791.

To Hon. L. T. Hammond. Inquiry: May a city which has in certain past years neglected to hold tax sales as required by the statute, and which consequently holds no tax sales certificates for those years, proceed under its 1939 tax sales certificates and include in the suit all taxes for prior years, and at the same time charge costs, including attorney's fees, as set out in the new tax foreclosure law?

(A.G.) Such a procedure is authorized by C. S. 7990. Under the 1939 Machinery Act C. S. 7990 is preserved in full force, with the provision that subsections (f) to (v) of S. 1719 of the Act are made applicable to any foreclosure action brought under C. S. 7990. Subsection (k) of S. 1719 provides that costs in a foreclosure proceeding may include one reasonable fee for plaintiff's attorney, which shall not exceed five dollars.

85. Disposal of property purchased by taxing unit at foreclosure sale.

To Fred P. Parker, Jr. Inquiry: May a county sell by private sale property acquired by it through tax foreclosure?

(A.G.) In my opinion, yes. See C. S. 1297 (15) and s. 1719 (v), Ch. 310, P. L. 1939.

98. Tax collection — release on particular parcels.

To Hon. S. B. Rogers. Inquiry: May a taxpayer demand a release of his real estate from tax liens, without payment of his poll and personal property taxes?

(A.G.) There is no provision in the Machinery Act for the release of all the real estate of a taxpayer without payment of the personal property tax and poll tax due from the taxpayer.

101. Adjustment—compromise by town and county commissioners.

To J. H. Blackwelder. Inquiry: May the town officials make an adjustment on back taxes in order to secure payment, either by lowering the valuation for the back years or remitting a certain per cent?

(A.G.) C. S. 7976 would prohibit such adjustment. Furthermore, if any such adjustment were made, the statute provides that the amount so remitted could be collected from the officials.

C. Levy of special taxes.

10. For repair of public buildings.

To W. T. Crawford. (A.G.) A tax levied as for "building fund" and used for the upkeep and operation of existing county buildings is for general expense, not for a "special purpose," and is unconstitutional and void. See Power Co. v. Clay County, 213 N. C. 698, 706.

11. Poll and dog taxes.

A. Levy

8. Soldiers living on Government reservation.

To W. Lewis Ellis, Jr. (A.G.) Soldiers living off the reservation should be required to list their property and polls for taxation, under the N. C. Constitution, Art. V, Sec. 1, and s. 402, Ch. 310, P. L. 1939, but this would not apply to officers and soldiers living on the reservation.

B. Poll and dog taxes.

2. Collection—fees.

To Rob. T. Wilson. Inquiry: May a county tax collector receive a commission for collection of poll and dog taxes, as provided for in a public-local act ratified March 28, 1939, when the School Machinery Act, ratified April 3, 1939, prohibits such commission?

(A.G.) The legislature, in adopting the School Machinery Act, clearly intended to adopt a state-wide policy regarding collection of poll and dog taxes, and it was clearly the intention of the legislature to repeal all laws in existence conflicting with the School Machinery Act. Therefore the public-local act, having been ratified earlier, is repealed and the tax collector may not receive commissions on collections of poll and dog taxes.

111. County and city license or privilege taxes.

A. Levy of such taxes.

1. Exemptions — churches and charitable organizations.

To J. Ed Butler. (A.G.) It is my opinion that soft drink vending machines are liable for State and local taxes notwithstanding that they may be located in charitable institutions.

58. License tax on filling stations.

To Hon. H. C. Wilson. Inquiry: Is an automobile dealer who also operates a filling station business at retail, in conjunction with his automobile business, liable for license tax on the latter business, when he has paid license taxes on the former?

(A.G.) Under Ch. 158, s. 153, P. L. 1939, a person who operates both a garage and in connection therewith a service station, wherein motor fuels and lubricants are sold, would be subject to the taxes levied in subsection (1) of said section, as well as subsection (4) thereof.

I call your attention to s. 183 of the Revenue Act, which provides that any person engaged in more than one business which is taxable under the Revenue Act, is required to pay a separate tax on each separate business, trade or employment.

IV. Public schools.

A. Mechanics of handling school funds.

10. Special school tax funds.

To Hon. Clyde A. Erwin. Inquiry: Where taxes are levied specifically for school purposes, and are collected in part by sale of lands at tax sales, have the county commissioners the right to use the entire proceeds of the land sale certificates for the general fund?

(A.G.) Taxes levied for school purposes cannot legally be paid into the county's general fund. The schools are entitled to that part of the taxes included in the land sale certificate which was levied for school purposes. The fact that the sale has been made does not alter the proportion of the proceeds which must be paid into the school fund.

B. Powers and duties of counties.

8. Disposal of school property where use is discontinued.

To Clyde A. Erwin. Inquiry: May the county board of education convey to the board of trustees of the city administrative unit school property owned by the former within the territory of the latter?

(A.G.) The only statutory authority for conveyance of school property of which I am informed is C. S. 5470 (a), which authorizes public sale of school property not required for school purposes. I find nothing in the School Machinery Act authorizing the conveyance referred to.

F. School officials.

14. Members of county and city boards—vacancies.

To Hon. J. Ed Butler. Inquiry: Where a member of the county board of education removes his residence to another county, does such removal create a vacancy in the office.

(A.G.) In my opinion, to be a member of the county board of education, which is an office, a person must be a duly qualified elector in the county. After a person has removed from the county and established residence in another county, he has lost his qualification as an elector and the right to hold office in the county from which he has removed.

49. Principals and teachers — election and control.

To Hon. Clyde A. Erwin. Inquiry: The salaries of vocational subject teachers are paid in part from State and Federal funds, and in part from local funds; furthermore, all of these teachers are elected subject to the final approval of the State Department of Vocational Education. Does the general law concerning teacher election apply to the election of vocational subject teachers?

(A.G.) Sec. 12, School Mach. Act of 1939 as amended in 1941, provides that it shall be the duty of county superintendents and city administrative unit heads to notify *all* teachers and principals, by registered letter, of rejection prior to the close of the school term, subject to the allotment of teachers made by the State School Commission. It is my opinion that this statute is applicable to vocational teachers, subject to the approval of the Vocational Education Department, as well as to the allotment of teachers made by the State School Commission.

50. Principals and teachers—election and contracts

To Dover R. Fouts. Inquiry: What is the earliest date at which teachers may be elected, and may the county superintendent elect them?

(A.G.) Under Ch. 358, s. 7, P. L. 1939, the school district committees are appointed by the county boards of education at the first regular meeting in April in 1939, and biennially thereafter. The district committees elect the principals, who nominate the teachers, who are elected by the committees, subject to the approval of the county superintendent and the county school board. Hence, the county superintendent does not select the teachers.

To Hon. C. C. Bailey. Inquiry: If a teacher is not notified by letter of her rejection prior to the close of the school term, can she sue and collect a penalty?

(A.G.) The 1939 School Machinery Act placed on county superintendents or city unit heads the duty of notifying rejected teachers by letter, prior to the end of the school term. However, this Act provided no specific penalty for failure to do so.

The 1941 General Assembly added a proviso to s. 7 of the 1939 act, which provides that the teacher's contract shall continue from year to year until notice of rejection is given as required by s. 12 of the act. This amendment further provides that the teacher shall notify the superintendent, within ten days after school closes, of acceptance of employment for the following year.

62. Teachers' retirement pension.

To A. C. Moses. Inquiry: Must teachers now sixty years of age or older be reemployed for the coming year in order to receive benefits of the retirement act? If re-employed could they resign effective at the beginning of the school year and still receive such benefits?

(A.G.) All persons who are teachers on date of ratification of act or who become teachers on or before July 1, 1941, except those who notify board of trustees in writing on or before January 1, 1942, become members of the retirement system.

G. Poll taxes, dog taxes, fines and forfeitures accruing to the schools.

40. Fines and forfeitures—percentage accruing to the schools.

To N. J. Sigmon. (A.G.) The proceeds from confiscated whiskey should not be paid into the general fund, but should be applied to the school fund and expended and distributed in the same way and manner as are fines and forfeitures.

L. Laws governing.

2. Passing school busses on highway.

To W. B. Flanner. (A.G.) You are correct in your interpretation of C. S. 2621 (b) that any driver of a motor vehicle who comes to a full and complete stop within fifty feet of a school bus may then proceed to pass such school bus; however, I think that in so doing, the operator of such vehicle should then be required to use due care in proceeding to pass the bus.

V. Matters affecting county and city finance.

D. Sinking funds.

6. Use of N. C. bonds as security for municipal borrowing.

To W. E. Easterling. Inquiry: Where a town owns N. C. and other government bonds, and has no bonds of its own outstanding, may it borrow money to construct a sewer system and secure the loan with these bonds, in lieu of issuing its own bonds for the purpose?

(A.G.) Art. VII, Sec. 7, and Art. V, Sec. 4, of the N. C. Constitution are limitations on the power to contract debt as well as to issue bonds, and a city borrowing money on bonds which it owned would be contracting a debt. Water works and sewerage systems have been held to be necessary expenses, making an election unnecessary for a bond issue, but only if the constitutional debt limit is not exceeded.

It is questionable whether a municipality can mortgage property. In this state, municipalities are neither expressly granted nor denied the power. It has been held, Vaughn vs. Commissioners, 118 N. C. 636, that a grant of power to a county to mortgage real property could not be implied from a grant of power to sell such property. The fact that the property is personal, such as stocks and bonds, may make a difference, but Vaughn vs. Commissioners makes this doubtful. Also, restrictions on sale of real or personal property as set forth in C. S. 2688 might be an obstacle to implying a power to mortgage from the power to sell.

The only provisions in the statutes for borrowings other than by bond issues pertain to temporary loans. In the absence of statutory authority, and in view of the decision in Vaughn vs. Commissioners, I entertain the view that a municipality could not borrow money in the manner outlined.

VI. Miscellaneous matters affecting counties.

G. Support of the poor.

9. Sharing cost with contiguous counties.

To Bruce Pierce. Inquiry: May one county contract to care for the poor of another, when it has facilities to do so, the county of residence of such poor paying a stipulated fee for such care which is above the cost of the care to the first county, and the first county assuming no liability other than that of giving such non-resident poor the same care as is given to its own poor persons?

(A.G.) There is no specific statutory authority for such action; however it is done, and C. S. 1297 (8) makes provision whereby one county may collect from another, in court, costs incident to care of the poor of such other county. C. S. 1335 provides for removal to county of last legal settlement of any poor coming into a county and likely to become a charge upon it. C. S. 1337 recognizes that some counties provide for their poor otherwise than by maintaining a home. In Copple v. Commissioners, 138 N. C. 127, it was held that it is a general duty of the board of commissioners to provide for the poor; the place, method and extent of such care is within the discretion of the board. Therefore, there should be no reason why one county may not contract to care for the poor of another, under the terms outlined in the inquiry.

H. Public welfare and safety.

9. Sale of beer.

To Mr. W. W. Cochran. Inquiry: Is it possible to hold an election on the question of the sale of beer in a particular township in a county in North Carolina?

(A.G.) The general law covering the sale of beer is state-wide in its application, and there is no provision allowing calling an election to decide whether a particular township or county may forbid its sale. However, P. L. 1939, C. 405, gives the governing bodies of certain counties and the municipalities therein the power to decline to issue "on premises" licenses as provided by the Alcoholic Beverage Control Act, within their discretion, and to prohibit sale of wine and beer between the hours of 12:01 A.M. and midnight on Sundays.

P. Costs payable by the counties.

6. Transportation of prisoners to state prison.

To J. M. Boley. Inquiry: When is a county liable for the cost of delivering prisoners to Central Prison at Raleigh?

(A.G.) Only when under C. S. 7748 (g) a judge of the superior court sentences a person convicted of a felony to the Central Prison at Raleigh, whereupon the sheriff or other appropriate officer of the county must deliver the prisoner, with proper committment papers, to the Warden of Central Prison, transportation being at the county's expense.

X. Grants and contributions by counties.

13. Hospitals.

To Leake S. Covington. Inquiry: Are the board of commissioners of a county authorized or empowered to submit to a vote of the people of the county a proposal to issue bonds for building a county hospital?

(A.G.) Under the County Finance Act, C. S. 1334 (8), counties are authorized to issue bonds for several purposes, including the following: "erection and purchase of hospitals." As our court has held that a hospital is not a necessary expense, it would have to be submitted to a vote of the people. Palmer v. Haywood County, 212 N. C. 284.

17. Agricultural training.

To Hon. John A. Guion. Inquiry: May a county jointly sponsor with a city an N.Y.A. project for agricultural training of Negro youths, under a plan whereby the county and city are to furnish a tract of land suitable for farming, electric current and water and sewerage facilities, and whereby the N.Y.A. is to construct dwelling houses, barns and other necessary buildings for operation of the farm training unit?

(A.G.) C. S. 5701 provides that the county board of education, board of county commissioners, or the board of trustees of any school district may cooperate with the state vocational education department in the establishment of vocational schools or classes giving instruction in agricultural, trade or industrial, or home economics subjects, and may use moneys raised by taxation in the same manner as funds used for other public school purposes. I entertain the view that C. S. 5695 and the sections following, including C. S. 5701, provide sufficient authorization for the county board of education to cooperate in this vocational training. It is my advice that title to the land be taken in the name of the county board of education if it is in the county administrative unit; in the name of the board of trustees if it is in the city administrative unit.

19. Flood control.

To Julian Allsbrook. Inquiry: (1) In the absence of special legislative authority, may a county spend surplus funds to reconstruct dikes on the Roanoke River, when the dikes were originally built by private funds? Until they are reconstructed about 2800 tenants and landowners will be unable to use their lands for agricultural purposes.

(2) Can the General Assembly validly pass an act authorizing a county to do this?

(A.G.) (1) In my opinion, yes. The expenditure of money on hand is not contracting a debt, incurring a liability, or levying a tax within the meaning of Art. VII, S. 7 of the N. C. Constitution. Under C. S. 1325 the commissioners are invested with power to spend county funds for the purposes specified therein, and any other good and necessary purpose for use within the county. The right of city authorities to expend surplus funds for public purposes was upheld in Adams v. Durham, 189 N. C. 232; see also Goswick v. Durham, 211 N. C. 687, 689. These cases seem equally applicable to county powers.

In view of the emergency and the extent of the situation, and the fact that if the dikes are not rebuilt the county will lose much taxable land values, this expenditure would be considered a public purpose for which county funds could be expended lawfully.

(2) While a special act of the General Assembly is not essential, I believe it would be most advisable in view of C. S. 1334 (66), of the County Fiscal Control Act, and the decision in Sing v. Charlotte, 213 N. C. 60.

VII. Miscellaneous matters affecting cities.

B. Matters affecting municipal utilities.

7. Services outside corporate limits.

To T. K. Carlton. Inquiry: May a town extend its sewer lines to persons outside the corporate limits?

(A.G.) Under C. S. 2807 you will find that municipalities have the right to extend sewer lines outside their corporate limits.

G. Principal liability for tort.

6. Liability insurance.

To W. W. Rogers. Inquiry: Is it mandatory for a town to carry public liability insurance on fire engines, street cleaning vehicles and trucks?

(A.G.) The matter is purely within the discretion of the governing body of the town.

J. What constitutes necessary expense.

23. Water supply.

To William M. Allen. Inquiry: Where a town contemplates building an additional infiltration plant and an additional separate pipe line, all of which would become a part of the municipal water supply, is it necessary that a special bond election be held on the question?

(A.G.) It is my opinion that the purpose for which the expenditure is to be made is a necessary expense within the meaning of the Constitution, Art. VII, Sec. 7, and that no election would be necessary. Bonds might be issued under the Municipal Finance Act as authorized by Art. 26 of

Ch. 56 of the Consolidated Statutes. It is not clear from your letter whether you wish to issue the bonds as revenue bonds under the authority of the Municipal Revenue Bond Act, Ch. 2, P. L. Extra Session 1938, as amended, or as general fund bonds. If you plan to issue the bonds under the Municipal Finance Act, whether or not you would have to have an election would depend upon the amount of your debt retirement in the preceding fiscal year, as required by the Constitution, Art. V, Sec. 4.

M. Sunday closing laws.

11. Sale of beer and wines.

To Hon. W. B. Allsbrook. Inquiry: Would the city of Roanoke Rapids, under its general police powers, have the right to pass an ordinance regulating sale of wines within its corporate limits? The purpose of the proposed ordinance would be to require wine stores to observe the same opening and closing hours as the county ABC stores.

(A.G.) I am aware of no statute specifically authorizing municipalities in general or Roanoke Rapids in particular to regulate by ordinance the hours in which wine may be sold. The ordinance, then, could be upheld only if it were a proper exercise of the city's general police power. C. S. 2787 grants power to municipal corporations to pass such ordinances "as are expedient for maintaining and promoting the peace, good government and welfare of the city, and the morals and happiness of its citizens, and for the performance of all municipal functions." It is clearly arguable that an ordinance regulating the hours during which wine might be sold would be a proper exercise of municipal police power. However, I hesitate to advise categorically that it would be valid.

The precise question here has not been met squarely by our Supreme Court. However, Paul v. Washington, 134 N. C. 363, where it was suggested, but only in reliance on express charter provision, that an ordinance restricting hours for sale of wine was valid; State v. Thomas, 118 N. C. 1221, where an ordinance forbidding barkeepers to keep open or remain in their barrooms during certain hours was held invalid (although it was the portion forbidding the barkeeper to be present in his barroom which the court found particularly objectionable); and State v. Ray, 131 N. C. 814, where an ordinance forbidding barrooms, dry goods stores, groceries and others to remain open later than 7:30 P.M. on week days was held invalid for want of statutory authorization (although the court threw out the ordinance only in deciding its constitutionality with respect to groceries and dry goods stores, and did not treat with its validity if made applicable only to barrooms), cast sufficient doubt on the validity of the proposed ordinance to make it impossible to predict with certainty the treatment the Supreme Court would give it.

N. Police powers.

20. Regulation of trades and businesses.

To S. M. Robinson. Inquiry: Do recent decisions by the Supreme Court prohibiting cities from levying more than $1.00 tax on motor vehicles affect the right of cities to require taxi operators to carry insurance or provide bond, as provided in C. S. 2787 (36)?

(A.G.) As the court, in Watkins v. Iseley, 209 N. C. 256, upheld the validity of an ordinance requiring taxi operators to carry insurance or give a surety bond, I do not believe it was the Court's intention to hold otherwise in later decisions affecting the power of cities to levy more than $1.00 tax on motor vehicles.

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

16. Group insurance for employees.

To J. M. Scarborough. Inquiry: Do municipalities of North Carolina have power and authority to carry group health and accident insurance for the benefit of municipal employees?

(A.G.) In my opinion, in absence of express legislative authority, a city would have no right to expend money for this purpose. I know of no statute granting this authority.

VIII. Matters affecting chiefly particular local officials.

A. County commissioners.

31. Appointive powers.

To Hon. W. B. Austin. Inquiry: Where the office of register of deeds becomes vacant on death of the incumbent who was elected in 1940 for a four year term, should the board of county commissioners fill the vacancy for the unexpired term or until the next general election?

(A.G.) C. S. 3546 provides: "When a vacancy occurs from any cause in the office of register of deeds the board of county commissioners shall fill such vacancy by appointment of a successor for the unexpired term, who shall qualify and give bond by law."

I am therefore of the opinion that the board should fill the vacancy for the unexpired term instead of until the next general election.

To F. B. Garrett. Inquiry: May a board of county commissioners appoint a prepayment tax collector, and pay him for his services?

(A.G.) Ch. 310, s. 1706, P. L. 1939 provides that payment of taxes made before the tax books have been turned over to the collector shall be made to such official as the governing body of the taxing unit may designate, and such official shall give bond satisfactory to the governing body. There is no provision here for the payment of fees for this service.

33. Power over county attorney.

To A. C. Barnes. (A.G.) The board of county commissioners has legal authority to appoint an attorney other than the county attorney, if it choose, to handle tax foreclosure suits.

34. Jury list.

To Geo. W. Tomlinson. Inquiry: Is an act constitutional authorizing county commissioners to draw members of grand jury?

(A.G.) There is no constitutional limitation upon the legislature in regulation of selection of grand jury. See 143 N. C. 668, 107 N. C. 914, 106 N. C. 576.

61. Payment of premiums on officials' bonds.

To S. B. Rogers. Inquiry: Does the board of county commissioners have the right to pay from county funds the bond premiums of constitutionally elected officers whose salaries are fixed by the Legislature?

(A.G.) In the absence of any public-local law to the contrary, it would be discretionary with the county commissioners whether or not premiums on official bonds should be paid from county funds, since, legally, they can pay them.

B. Clerks of the superior court.

1. Salary and fees.

To J. P. Shore. Inquiry: Is the clerk of superior court entitled to commission on funds deposited in his office in the course of eminent domain proceedings under C. S. 1733 (16)?

(A.G.) It is my view that deposits of this character should be considered deposits "on judgments" within the meaning of P. L. 1919, Ch. 576, sec. 1. Under this construction the clerk would not be entitled to a commission on such funds.

6. Witness fees.

To Hon. A. B. Clegg. Inquiry: Do the laws of the state require a witness in a Superior court to prove his attendance immediately following adjournment in order to collect his witness fee? Or, if appeal be taken in the case, may he wait until the Supreme Court's decision to file his claim?

(A.G.) C. S. 1274 provides for proving attendance of witnesses before the clerk of court; and, on failure of the party at whose instance the witness was called (witnesses for the state or for municipal corporations excepted) to pay the fee before the witness leaves court, such witness may bring suit and recover at any time from the party calling him. This section would seem to contemplate the proving of attendance during the term in which the case was tried. C. S. 1287 provides that no county, prosecutor or defendant shall be liable to pay any witness unless his name is certified to the clerk by the solicitor, or is included in an order of the court. The judge has discretion to cut down or completely disallow the claim of any witness; on the other hand, within one year from judgment the court may order paid any witness who for good reason failed to include his fee within the original bill of costs.

The only safe thing for a witness to do is to prove his attendance prior to adjournment of the term in which the case is tried.

8. Acknowledgment and probate of instruments.

To Miss Arietta Ramsey. Inquiry: May the assistant clerk of superior court take an acknowledgment of a deed, where the clerk himself is a party to the deed and cannot therefore take his own acknowledgment?

(A.G.) Clearly, under C. S. 939, the clerk himself is disqualified. It is arguable, however, that since C. S. 934 (a) makes the assistant clerk an independent office, with power to act in all respects as the clerk himself could, it would be perfectly proper for the assistant to take the clerk's acknowledgment. On the other hand, it may be contended that, as the clerk is responsible for the acts of his assistant under 934 (a), the assistant may be regarded as acting in behalf of or as agent of the clerk, being therefore subject to the same disabilities and disqualifications as the clerk. Although I do not advise that acknowledgment of the clerk's deed before the assistant clerk would be void, I think that such acknowledgments are of questionable validity, and should be avoided in absence of any judicial decisions sanctioning them.

The safest course to follow is to have it acknowledged according to procedure set out in C. S. 939 or 3299, under which acknowledgment can be made before the clerk of another county, before a judge of superior court, or before a justice of the peace.

27. Appointment of guardians.

To W. E. Church. Inquiry: Please give me your opinion as to whether or not under C. S. 2160 a guardian may resign to the clerk or judge of superior court, and then turn over the funds to the clerk under C. S. 962.

(A.G.) I do not think the Supreme Court has passed upon this question, and, until it does so, I think it ought to be approached in the light of the literal provisions of the two sections.

There are two conditions to the operation of C. S. 2160: first, that a competent person can be procured to succeed in the guardianship, or, second, that the clerk himself be appointed receiver. If no competent person is available to meet the first condition, the resignation should not be accepted unless the clerk is appointed receiver. The clerk's duties as receiver of a ward are set forth in C. S. 2200, and the annotations show that he takes the funds by virtue of his office. As receiver he is required to report and account to the judge, and act under his orders and directions. He is not so limited by C. S. 962, under which he acts "on his own motion or order." Further, the latter applies only when no one will become guardian. If C. S. 2160 is complied with, the occasion for the operation of C. S. 962 can never arise, for a new guardian or the clerk as receiver will have been appointed already.

For these reasons, it is my opinion that the correct view would be that a guardian resigning under C. S. 2160 could not lawfully make his settlement under C. S. 962.

50. Costs and fines.

To M. T. Smith. Inquiry: A man was tried in superior court for violation of the prohibition law, was fined $50 and the cost and was allowed to make payments at the rate of $10 per month. He paid regularly for five months, then missed a payment, was taken into custody and made to serve the entire term of his suspended sentence, six months. He now requests that the clerk refund the $50 he has paid in. What is your opinion on this problem?

(2) A man was found guilty of abandonment and was ordered to pay $12 per month. In passing sentence the judge failed to make any reference to the cost of the case, and the defendant now refuses to pay same. Is he liable?

(A.G.) (1) It is impossible for me to place the proper interpretation on the judgment in this case without having a copy of the same before me. However, I cannot see how, under any circumstances, the defendant would be entitled to recover the $50 paid into court. The statute governing the possession and transportation of intoxicating liquors provides that upon conviction a defendant shall be fined or imprisoned, or both, in the discretion of the court. As the court said in State v. Wilson, 216 N. C. 130, "The court had plenary power to impose both the sentence of imprisonment and a fine. No question could be raised as to the power to execute the one and suspend the other." I assume this is what the judge did in the case to which you refer, and, if this is true, it does not seem to me that there is any connection between the service of the prison term and the payment of fine and costs which would entitle the defendant to any relief.

(2) C. S. 1267 provides that every person convicted of an offense, or confessing guilt, or submitting to the court shall pay the costs of the prosecution. I am of the opinion that under this statute the defendant here would be liable for the costs of prosecution unless the court in the judgment in the case clearly expressed an intention to the contrary.

70. Entries on judgment docket.

To Joseph P. Shore. Inquiry: Does the provision for filing of judgments by the clerk of the superior court on Monday apply also to the filing of judgments in special proceedings, particularly those for appointing commissioners and confirming sales under C. S. 66, et seq.; C. S. 74, et seq.; C. S. 3213, et seq.; and to orders made under C. S. 2579?

(A.G.) C. S. 597 (b) which provides for entry of judgments on Monday only, except as otherwise provided, is in the chapter on civil procedure, and it might be argued that it refers only to judgments in civil actions and not to judgments and orders entered in special proceedings.

However, C. S. 752, the beginning of the "Special Proceedings" section, provides that the provisions of the chapter on civil procedure shall apply unless otherwise provided. The clerk of the superior court in N. C. is a court of very limited jurisdiction and has only that jurisdiction given by statute. Judgments or orders which could in effect be considered consent judgments might properly be entered at any time, but where doubt exists as to the right of the clerk to enter judgments except on Monday, the clerk should wait until Monday.

76. Guardian's fees.

To W. E. Church. Inquiry: On guardianships running over a period of more than one year, may the clerk allow the guardian a pro-rata part of his commissions each year when he files his annual report, and would the clerk having done so in the past be liable?

(A.G.) The clerk may allow a guardian or other fiduciary each year the commissions actually earned up to the date of the filing of the annual report.

78. Dower and widow's year's allowance.

To W. E. Church. Inquiry: What is the meaning of the term "net income" as used in C. S. 4125, concerning the Widow's Year's Allowance, the provision being that the value allowed by the commissioners shall not exceed one-half of the annual net income of the deceased for the three years preceding his death?

(A.G.) Since the definition is not given in the statute, it is suggested that the commissioners use the definition utilized in the Revenue Act, and resort to deceased's income tax returns for the three years preceding his death.

83. Decedent's estate—removal of administrator.

To J. D. Stansberry. Inquiry: Where an administrator has removed from the state and his present whereabouts are unknown, how can service be obtained so that he may be removed and a new one appointed to distribute the assets of the estate?

(A.G.) In my opinion, an administrator who becomes a non-resident of the state pending administration of the estate forfeits his administration, and a new one may be appointed without the necessity of notifying such non-resident.

D. Register of deeds.

4. Books and records.

To William D. Kizziah. Inquiry: In applying for a marriage license in 1905, a man gave his age to the register of deeds as 27 years. He now seeks to have the record corrected so that he may qualify for a pension, saying that he was actually 29 years old at the time. May the register of deeds legally make this alteration?

(A.G.) No machinery is provided by law whereby the register of deeds might change the record of 1905. However, as the record is not conclusive evidence on the question of age, a party in any proceeding could show his correct age, notwithstanding the record.

9. Marriage—licenses and certificates.

To Carl V. Reynolds. (A.G.) Where nonresidents of N. C. wish a marriage license, they must comply strictly with the provisions of the N. C. law, unless they can show, by certificate of the secretary of state or affidavit of some attorney-at-law in the state of residence, that the state of residence has no similar provisions in its laws. The duty of seeing that the N. C. law is complied with is on the register of deeds issuing the license, rather than on the minister or justice of the peace performing the ceremony.

20. Cancellation of mortgages.

To M. L. Phillips. Inquiry: Should a register of deeds cancel paper sent to him with the signature of the maker, the date of the paper and the signature of the guarantor detached?

(A.G.) In my opinion the register of deeds would be justified in declining to cancel an instrument from which the maker's signature has been torn. The law provides for cancellation when an instrument is presented with satisfaction properly entered upon it. C. S. 2594. Although proper identification might be made from the signature of the register of deeds showing filing and recording, yet I am of the opinion that the whole instrument should be presented and not merely a part of it. It is possible, however, that such cancellation would be sustained.

G. Registrar of vital statistics.

To D. S. Abell. Inquiry: A man wants to disinter his parents' bodies from their graves and place them in concrete vaults above the ground. What are the legal and formal prerequisites to this action.

(A.G.) The body of any person whose death occurs in this state shall not be interred, deposited in vault or tomb, cremated or otherwise disposed of or removed to or from any registration district, or be temporarily held pending any further disposition more than 72 hours after death, unless a permit for a burial, removal or other disposition shall have been properly issued by the local registrar.

L. Local law enforcement officers.

13. Prohibition law—illegal possession.

To W. E. Salmon: (A.G.) Under C. S. 3411 (j) it is legal to possess liquor in one's home while same is occupied as a dwelling only, if the liquor is for personal or family use, or for use by bona fide guests. The burden of establishing the defense of possession of this character is on the person claiming the defense, as held in State v. Foster, 185 N. C. 674. Possession of unstamped or bootleg whiskey places on a defendant the burden of bringing himself within the provision of C. S. 3411 (t). The general law on the subject is fully set forth in State v. Davis, 214 N. C. 787; State v. Epps, 213 N. C. 709; State v. Lockey, 214 N. C. 525; State v. Langley, 209 N. C. 178.

38. Automobile drivers' license act.

To Hon. A. J. Maxwell. (A.G.) You state in your letter that recorders and city and county judges in parts of the state are holding that the only method of proving a revocation or suspension of drivers' licenses under Ch. 52, P. L. 1935, is to have some properly authorized official of your division appear in person and testify to the fact. This would occasion a considerable hardship on the highway division if it were correct; I am of opinion that it is clearly not the law.

C. S. 1779 expressly provides for admission in evidence of certified copies of official records; and this procedure is so much in accord with the practice in this state and the law in support thereof is so well settled that it is not necessary to cite cases or do more than refer to the statute.

Furthermore, where a person is indicted for not having a license, the possession of a license is a matter of defense, the burden of proving it being on the defendant. Whether this rule would apply where the indictment is for driving after suspension

or revocation of license is a question which has not yet reached our Supreme Court. The safe thing to do is always to present a certified copy of the record.

To A. C. Bunn. Inquiry: Where a person is convicted of drunken driving, C. S. 4506 says that the judge shall deny him the right to drive, for not longer than 12 months nor less than 90 days. If the judge thus revokes a license for 90 days, has the Motor Vehicle Department any right to deny to the driver his license for 12 months?

(A.G.) Section 33 of the Uniform Driver's License Act, Ch. 52, P. L. of 1935, repeals all conflicting laws and Section 18 (e) provides that "no license shall be suspended or revoked except in accord with the provisions of this act." Sections 11 and 12 of the Act provide for suspension or revocation by the Department of Revenue. It is the opinion of this office that the Act lodges sole power to suspend or revoke licenses in the department of revenue, and that its necessary effect is to repeal C. S. 4506, a prior inconsistent act.

90. Warrants.

To Coy Etheridge. (A.G.) There is no legal reason why a warrant in a bastardy case could not be sworn out prior to the birth of the illegitimate child.

99. Fees.

To Major J. T. Armstrong. Inquiry: Certain magistrates in Iredell county, believing that some officer must take the arrest fees charged in court costs, have caused state highway patrolmen making arrests to get other officers to sign the warrants to collect the fees. Is there any legal basis for this view?

(A.G.) C. S. 3893 forbids any sheriff, deputy, chief of police, officer, patrolman, State Highway Patrolman and/or any other law enforcement officer, who receives a salary, to prove attendance or collect fees as a witness. C. S. 3846 (fff) provides that all such fees for arrests or services shall be remitted to the county's general fund.

It is doubtful that there is any local law for Iredell county providing otherwise than the general law, and it is the opinion of this office that the procedure obtaining there is illegal.

P. Officials of county and recorder's courts.

20. Jurisdiction of subject matter.

To J. T. Gresham. Inquiry: Is the general county court of Duplin a court of record within the meaning of paragraph 358, vol. 3 of the Selective Service regulation?

(A.G.) General county courts established under C. S. 1608 (f), et seq., are by the very terms of the statute declared to be courts of record.

35. Right to practice law.

To Emmett C. Willis. Inquiry: May a solicitor or judge of the municipal and county court practice criminal law in the county?

(A.G.) One of the canons of ethics of the N. C. State Bar (see 216 N. C., at page 809) prohibits the practice of criminal law by a solicitor or judge of any criminal court inferior to the superior court, in other courts of the county having criminal jurisdiction, either inferior to, superior to, or concurrent with that of his own court.

T. Justices of the Peace.

3. Service of process and warrants.

To Coy Etheridge. (A.G.) Under C. S. 4525, a criminal warrant issued by a justice of the peace may be served on a ship anchored in a stream and not tied up to the dock, so long as the ship is within the county limits.

10. Jurisdiction.

To Charles G. Rose, Jr. Inquiry: Does a justice of the peace have jurisdiction over cases of speeding on the highways?

(A.G.) Speed restrictions are set out in C. S. 2621 (288). Punishment under C. S. 2621 (326) is possible imprisonment in the county or municipal jail for not more than six months or by fine of not more than $500, or by both. This takes cases on speeding out of the jurisdiction of the justice of the peace.

13. Territorial jurisdiction.

To D. C. Holt. Inquiry: Does a justice of the peace living within the corporate limits of a town have jurisdiction to try cases involving the violation of special ordinances enacted by the town board?

(A.G.) C. S. 4174 declares that violation of a city ordinance is a misdemeanor, carrying a fine of not more than $50 or imprisonment for not more than 30 days. This of course brings such cases within the jurisdiction of the justice, and in absence of special legislation giving the mayor exclusive jurisdiction, the jurisdiction of the two officers would be concurrent.

U. Notary public.

3. Powers and duties.

To W. F. Morrison. Inquiry: Is the power of a notary public limited to the county for which he has been appointed?

(A.G.) A notary public must file certificate of appointment with the clerk of superior court of the county for which he has been appointed, as set out in his commission, but after being qualified, he has full power to perform duties anywhere in the state.

Z. Constables.

10. Jurisdiction and power.

To Rufus Keener. Inquiry: Is the office of constable township or county wide?

(A.G.) In State vs. Corpening, 207 N. C. 805, it was held that the powers and duties of constables are co-extensive with the limits of the county in which they are appointed, and it is the intent of Sec. 24, Art. IV, N. C. Constitution, not to restrict the powers and duties to the townships in which elected.

IX. Double office-holding.

(A.G.) The following offices come within the meaning of the prohibition in Art. XIV, s. 7, N. C. Constitution, against double office-holding, and one person cannot legally hold any two of them at the same time: Deputy collector of internal revenue, notary public, member county board of education, deputy game and fish protector, county surveyor, list taker and assessor, and town clerk and treasurer. The office of county attorney is not a public office within the meaning of this provision.

19. Delinquent tax collector.

To R. Clarence Dozier. Inquiry: Where the duty of collecting delinquent taxes has been on the register of deeds, but has been removed from him and another person has been appointed delinquent tax collector, and such person is later elected register of deeds, and is bonded separately as delinquent tax collector and as register of deeds, is this dual office holding?

(A.G.) Under s. 1718 (4), Ch. 310, P. L. 1939, assuming that the sheriff is the county tax collector, the county commissioners may charge any county officer or employee to perform the duties of delinquent tax collector.

XI. General and special elections.

B. Ballots.

10. Absentee ballots.

To Thorp and Thorp. Inquiry: Can absentee ballots be used in municipal elections?

(A.G.) No. Ch. 159, s. 17, P. L. of 1939, provides: "All existing laws relating to voting by absentee ballot in the state of North Carolina are hereby repealed, and all laws and clauses of laws in conflict herewith are hereby repealed." The use of absentee ballots is in the same chapter restricted to general elections.

C. Registration.

6. Persons temporarily away from state.

To John H. Kerr. Inquiry: Is it possible for residents of North Carolina, temporarily residing elsewhere, to register whenever they are in the State, even though the registration books are not regularly open to those who continuously reside at home?

(A.G.) Under the provision of C. S. 5961 a person qualified to register as an elector, who expects to be absent during the period of registration, may be registered as follows: The chairman of the county board of elections will register such person, who presents himself, in a separate book provided for that purpose, and immediately after the appointment of the regular election officials will certify the name so registered by him. There was some question raised as to whether C. S. 5961 was repealed by the Public Laws of 1939 but this office has previously held that this section was still in effect and not repealed.

H. Municipal elections.

26. Registration and books.

To Lawrence Wallace. Inquiry: Should a special registration for an election on a municipal bond issue be used as the registration for the next regular municipal election?

(A.G.) This office has previously ruled that the special registration for an election on a bond issue is to be used for that purpose only, and that in the next municipal election, the old registration books should be used.

To J. Frank Huskins. Inquiry: Please advise me on the following questions:

(1) Where there is no new registration of voters but simply a registration of the qualified voters not previously registered, is the time for registration, and the period during which the books must be kept open, governed by C. S. 2657, or by C. S. 5947 taken in connection with C. S. 2654?

(2) Under the law are markers now allowed, prohibited, discretionary or mandatory in municipal elections? What statute governs? May registrar and judges act as markers?

(3) What is the legal hour for opening and closing the polls in municipal elections?

(A.G.) In municipal elections coming under the provisions of Art. 3, C. S. 2649 and following, the registration books shall be kept open during the times prescribed by C. S. 2657. The provisions of C. S. 5947 do not apply to municipal elections.

Markers are not allowed in municipal elections. The judges and registrars may assist voters at their request.

Under the 1941 law, the polls shall open at 6:30 in the morning and close at 6:30 in the evening.

To R. C. Mills. (A.G.) The legislature, in adopting Ch. 263, P. L. 1939, did not require the revision of municipal registration books and this is not mandatory as to a municipality whose charter provides for the registration of voters under the provisions of Ch. 56 of the Consolidated Statutes. But the municipality could, if it desired, avail itself of the provisions of Sec. 5935 in order to get its registration books in better shape.

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COMPARATIVE STUDIES of the structure and workings of government in the cities, counties and State of North Carolina	SET FORTH IN	Guidebooks	Study and Discussion Programs	Supplementary Texts
	TAUGHT IN	Schools and Conferences	Institutes for Public Affairs Committees	Training Courses for Civics Teachers
	DEMONSTRATED IN	Governmental Laboratory and Demonstration Offices	Governmental Laboratory and Demonstration Offices	Governmental Laboratories and Demonstration Offices
LEGISLATIVE SERVICE to inform officials, citizens and schools of new laws in the making	THROUGH	Daily Bulletins	Periodic Summaries of Daily Bulletins	Periodic Summaries of Daily Bulletins
		Summary of New Public Laws	Summary of New Public Laws	Summary of New Public Laws
		Summaries of New Local Laws affecting each County and City	Summaries of New Trends in Local Legislation	Summaries of New Trends in Local Legislation
		State and District Conferences for Interpretation of New Laws	State and District Conferences for Interpretation of New Laws	State and District Conferences for Interpretation of New Laws
CLEARING HOUSE OF INFORMATION between city halls, county court houses and state and national capitols to keep officials, citizens and schools informed of new developments in government	THROUGH	Digests of Supreme Court Decisions and Rulings of Atty.-Gen. and State Depts.	Digests of Supreme Court Decisions and Rulings of Atty.-Gen. and State Depts.	Digests of Supreme Court Decisions and Rulings of Atty.-Gen. and State Depts.
		Bulletins on New Federal Laws, Programs and Rulings	Bulletins on New Federal Laws, Programs and Rulings	Bulletins on New Federal Laws Programs and Rulings
		Monthly Magazine and Special Studies	Monthly Magazine and Special Studies	Monthly Magazine and Special Studies
		Federal and State Services to Local Units	Federal and State Services to Local Units	Federal and State Services to Local Units
		General Informational and Consulting Service	General Informational Service	General Informational Service

Attention!! - - -

City and County Officials

If you found it important to keep in touch with bills introduced in the 1941 General Assembly through summaries sent you by the Institute of Government;

If you find it worthwhile to have: (1) the index to the Institute digests of 1941 local laws affecting your city and county already sent to you, and (2) this summary and interpretation of public laws affecting all cities and counties throughout the state;

You will find it important and worthwhile throughout the coming year:

1. To keep in touch with Attorney General's rulings and Supreme Court decisions interpreting these statewide and local laws,
2. To have in your hands guidebooks bringing together in one place the substance of laws outlining the powers and duties of local governmental units and officials, now scattered to the point of practical inaccessibility,
3. To have at your beck and call a staff of men ready for investigation, research and consultation on your own unit's particular governmental problems, whenever you need their help,
4. To keep in touch with new developments in government and its administration through special studies, reports, and the monthly magazine of POPULAR GOVERNMENT,
5. To join with other officials in building a governmental demonstration laboratory and clearing house of information to which you may go to see demonstrated in one place the methods, practices and techniques in government you would otherwise have to go to many sections of the state and nation to find,
6. To participate in training schools and institutes with other officials in similar work in this and other states and thus join with others in building a great university of public officials in North Carolina.

Put the Institute Membership Fee in your local budget for 1941-42 . . . and bring all Institute services to all your officials all the time.

For further information write to

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Institute of Government

Chapel Hill, North Carolina