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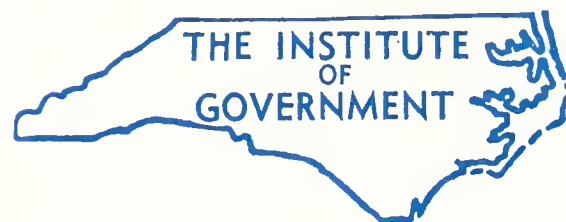
SOLDIERS' AND SAILORS' CIVIL
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POPULAR GOVERNMENT

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JANUARY
1942

Civilian Defense Courses for Police

Conducted by

Federal Bureau of Investigation

In Chapel Hill

Institute of Government Building

February 2-7, 1942

CLASS HOURS—The instruction period will last from 9:00 A.M. to 6:00 P.M. Monday through Friday and from 9:00 A.M. to 4:00 P.M. on Saturday, with one hour for lunch.

WHO IS ELIGIBLE TO ATTEND

The heads of all regular city, county, or state law enforcement agencies are eligible to attend the six-day FBI Civilian Defense Course for Police. This will include all Chiefs of Police, all Sheriffs, the heads of County Police Departments, and the heads of State Law Enforcement Organizations such as the Highway Patrol and State Bureau of Investigation. Also eligible to attend are such subordinate officers as the heads of Law Enforcement Agencies may designate.

SCOPE OF COURSE

During the six-day course the following subjects will be covered:

Internal Security Section Duties, Coordinated by FBI

a. Trends of Various "Isms"; b. Espionage Investigations; c. Sabotage Investigations; d. Subversive Investigations; e. Report Writing.

War Duty Officers' Duties

a. Spot Map Maintenance; b. Air Raid Reports; c. Summary Reports on Conditions; d. Coordination of War Emergency Work; e. Maintenance of Files; f. Follow-up System; g. Assignment Records; h. Duties in Small Towns and Rural Areas.

Police Communications

a. Codes, Priorities, Radio; b. Telegraph, Telephone, Emergency; c. Reserves, Air Raid Signals.



Ed Scheidt, Special Agent in charge of the Charlotte office of the Carolinas branch of the FBI, shown standing on the steps of the Institute of Government building extending a characteristic greeting of welcome to the law enforcement officers of central North Carolina, who are expected to attend the six-day FBI Civilian Defense Course to be held in Chapel Hill at the Institute of Government February 2-7. The FBI's Civilian Defense program in North Carolina was launched at a two-day preliminary statewide session at Charlotte Nov. 3-4, which was followed by a six-day course at Charlotte Nov. 24-29 for law enforcement officers from the western part of the state. The Chapel Hill school is the second in the series, and will be followed by a six-day school at Kinston Feb. 2-7, for eastern Carolina.

Mr. Scheidt, who was loaned by the FBI to the Institute of Government for nine months in 1936 to inaugurate the Institute's police training program, is a familiar figure to law enforcement officers throughout the state.

Traffic Control in Wartime and in Blackouts Convoy Work

Protection of Property and Public Utility Surveys

Protection of Police Personnel and Property

Blackout Enforcement

Reorganization of Police Department

Duties as to Grounded Aircraft and Barrage Balloons

Gas Protection and Decontamination

Internment Work

Prevention of Malicious Acts

Evacuation Work

Prevention of Looting

Police Personnel Problems

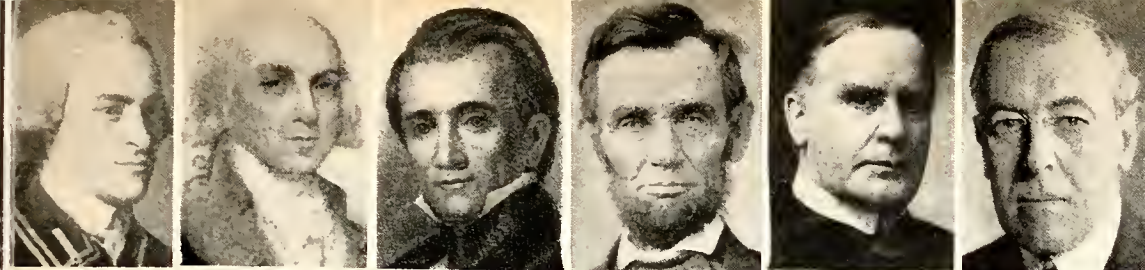
Training of Personnel

Equipment Needs

Manuals of Instructions

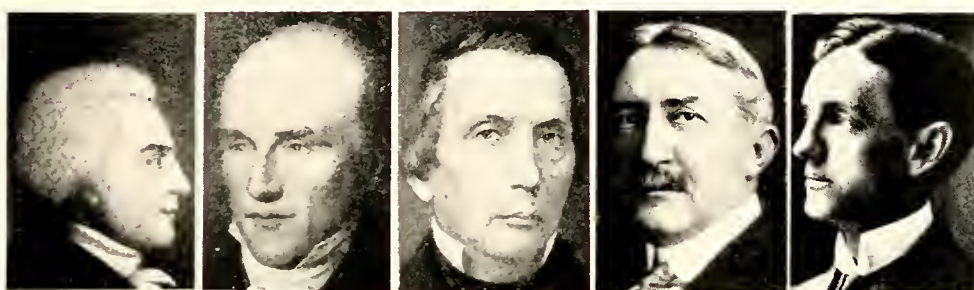
Air Raid Precaution Duties

W A R L E A D E R S



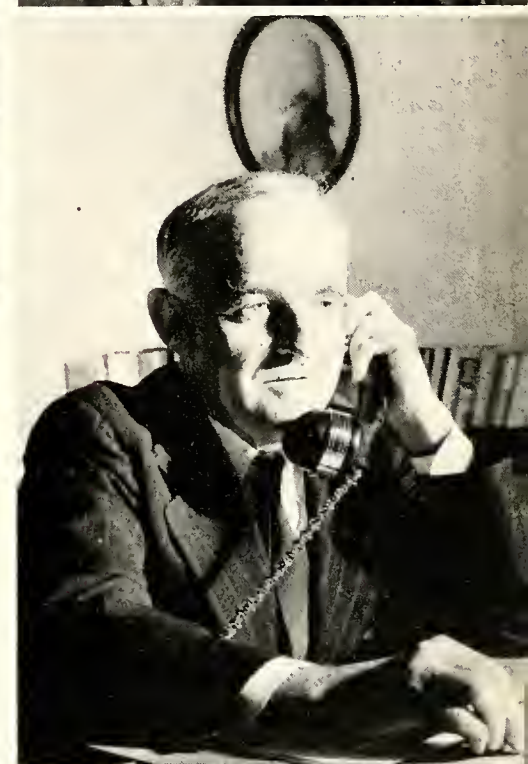
War time leaders of the United States (above) include: John Hancock, President of the Continental Congress in 1776; James Madison, President of the United States in the War of 1812; James K. Polk, in 1846; Abraham Lincoln, in 1861; William McKinley, in 1898; Woodrow Wilson, in 1917; Franklin D. Roosevelt, in 1941.

President Roosevelt declared a limited national emergency on September 8, 1940, and an unlimited national emergency on May 27, 1941. He established the National Defense Advisory Commission on May 28, 1940, created the Division of State and Local Cooperation on August 1, 1940, co-ordinated it with the Office of Emergency Management on January 7, 1941, reorganized it as the Office of Civilian Defense on May 20, 1941, and charged it with the co-ordination of federal, state and local agencies and activities in the National Defense.



War time leaders of the University of North Carolina (above) include: William R. Davie who carried the University in his brain and heart from the time it was authorized in the Constitution of 1776 till it was chartered in 1789; Joseph Caldwell, President in 1812; David L. Swain, in 1846 and 1861; Edwin A. Alderman in 1898; Edward Kidder Graham in 1917; Frank Porter Graham, in 1941.

President Graham in January, 1940, appointed a University Committee on National Defense, in May provided for airport and pilot training programs in co-operation with the C.A.A., in August procured a unit of the Naval Reserve Officers Training Corps, in September took inventory of available defense equipment and personnel, in January 1941 set up Engineering Science Management Defense Courses in co-operation with the War Department, in November 1941 set up a Naval Research Project in the Chemistry Department in co-operation with the U. S. Navy.



War time leaders of North Carolina (below) include: Abner Nash, Governor of North Carolina while the battles of Guilford Courthouse and Kings Mountain were being fought; William Hawkins, Governor in 1812; W. A. Graham, in 1846; Zeb Vance, in 1861; D. L. Russell in 1898; T. W. Bickett in 1917; J. Melville Broughton, in 1941.

Governor Hoey appointed a State Defense Council on November 22, 1940, Governor Broughton reappointed it on June 12, 1941, organized it on June 18, 1941, set up Local Defense Councils in one hundred counties and supplementary councils in several cities and towns, organized the setting for army maneuvers, and moved without stint or limit on all fronts in support of the President's foreign policy and the co-ordination of federal, state and local efforts in the program of civilian defense.



Coming Events Cast Shadows Before

Selective Service

The first test of the machinery of civilian defense co-ordination was foreshadowed in the nation in the passage of the Selective Service Act in August, 1940; it began in North Carolina with the appointment of the Adjutant General as State Director and the summoning of the officers of the State Director's Staff, continued with the Governor's designation of the state and county elections boards to conduct the registration of men from 21 to 35, the division of the state into 155 selective service areas, the selection of local board members and the organization of local boards, the induction of the registrants into military service beginning with Dallas McQueen Campbell in Local Board No. 1, Elizabethtown, Bladen County, North Carolina, who reported with the first group of North Carolinians to begin training at Fort Bragg on December 4, 1940.

From the appointment of the Adjutant General as State Director in the late summer of 1940 through the intervening months to the closing days of 1941, federal, state and local officials have worked together, and around two thousand citizens representing practically every occupation and profession have worked with them on advisory boards on an undertaking which has reached into every locality and laid its hand on nearly every fireside without a serious hitch in any section of the state.



National Selective Service Director Hershey with the State Director, Adjutant General J. Van E. Metts, in the office of the latter in Raleigh.

Army Maneuvers

The second test of this civilian co-ordination machinery in North Carolina began with the forerunners of army maneuvers in the late spring of 1941, continued through the summer and fall, and is now ending with the repair of damages to field and fence and farm.

On the 12th of May War department representatives went into the eight Piedmont counties of the maneuver area to procure permission from 18,188 landowners to use 2½ million acres of land for maneuvering troops. City, county, and state officials, civic organizations and newspapers joined with federal officials in completing a four months' job in six weeks.

On July 30, Governor Broughton called representatives of all counties, cities and towns in the maneuver area to the State Capital to plan for the coming of 300,000 soldiers. Local communities took time by the forelock, organized around their leaders and mobilized civilian resources in readiness for maneuvers to come.

The army came with the same expectant and co-operative spirit: from the opening days when army trucks arrived to camp on an open cotton field and hundreds of New Englanders who had never seen cotton growing in the fields turned from soldiers to cotton pickers and then back to soldiers again, through the days when military police and traffic men worked shoulder to shoulder with local police and sheriff and patrol, to the time for settlement of damage claims, they responded with a spirit that moved the civilian defense co-ordinator to say the people would vote overwhelmingly to be the army's hosts again.

War Comes to North Carolina

The third test began before the rumble of departing troop trains died out in the distance. Five thousand miles away a private citizen flying his private plane in the skies over Honolulu, on Sunday, December 7, saw a cloud the size of a man's hand on the horizon, saw the cloud take form in airplanes, saw the air-

planes take on the form of bombers, saw the bombers flash the emblem of the Rising Sun, felt the slug of machine gun bullets as they riddled his peaceful plane, heard the explosions of bombs on the hangars of airfields, the decks of battleships, the docks of Pearl Harbor, mingled with the crash of water borne torpedoes, and knew that war had come to the United States in the Pacific.

"Fight back," flashed the President of the United States to our armed forces on land, sea and air. In a matter of hours the President asked the Congress to recognize the existence of a state of war, the request was granted, the declaration was signed, armed forces were fighting back, recruiting stations were crowded, peacetime maneuvers in North Carolina gave way to war time thrusts on the Pacific battle line, and throughout America the home front followed the war front into action.

Before the echo of the President's voice died away, Governor Broughton pledged the resources of North Carolina to the nation, spurred the state and local defense councils to renewed activity, stepped up the whole machinery of civilian defense to back and buttress the military forces of the state and nation. By mail, telegraph, telephone, and personal visit North Carolinians of all races from all sections responded to the Governor's call with an instant, upsurging inquiry: "What can we do?"



Departing soldier mailing letter ahead with the cooperation of a policeman turned mailman for the moment.

Institute of Government in National Defense

In answer to peacetime preparations, the President's 1940 call for the co-ordination of federal, state and local governmental units in the national defense, and the Governor's call which followed on its heels, the Institute of Government offered to the Governor of North Carolina through his state and local Councils of Defense all the resources of the Institute of Government, including: (1) the use of its building, (2) the services of its staff, (3) its library, demonstration laboratory and clearing house of information, (4) its training school facilities, (5) the results of its years of research in the interrelationships of federal, state and local governmental units and activities, (6) the benefits of its ten years of experience in co-ordination of the efforts of city, county, state and federal officials in North Carolina.

The Institute of Government has suited action to the word in every test. *In the first test*, it (1) co-operated with state and local officials in setting up the machinery of the Selective Service Act, (2) studied the impact of the call to colors through the draft and the National Guard on the personnel of state departments, counties, cities and towns and methods of replacement, (3) analyzed the Soldiers and Sailors Relief Act with related legislation and its effect on debts, law suits, judgments, taxes, etc. of the military personnel, (4) advised with state, county and city law enforcing officers on their powers and duties in co-operating with the federal authorities and military police in and around army camps and throughout the state.

In the second test, the Institute of Government (1) co-operated with Defense Council authorities in preparation for the army maneuvers, (2) outlined for county, city and town officials specific types of problems to be expected in the maneuver areas and advised with them on solutions of their problems as they arose, (3) held conferences with state and local health authorities, army officials, state patrolmen, county sheriffs and city police on legal methods of con-

By
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COATES**

Director,
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Government



trolling prostitution and venereal disease during maneuvers, (4) turned over its building on week ends with its recreation facilities and rooming accommodations for thirty-six visiting soldiers.

In the third test, beginning Sunday, December 7, with the President's "fight back" order flashed to

the armed forces on the islands in the Pacific, following with the official recognition of a state of war, and gathering momentum with civilian defense forces coming to their feet throughout the land, the Institute of Government followed the war front and the home front into action: one of its staff members volunteered for service in the Naval Reserve, another volunteered for service in the army, another was called to service in the F.B.I., another took the leadership in co-ordinating the activities of auxiliary groups in the Chapel Hill unit for civilian defense, another was appointed to serve on the Executive Committee of the State Defense Council, and the remaining members together with replacements began putting into practice its already formulated plan for shifting Institute resources from peacetime preparations to war time mobilization.

Counties, Cities and Towns Hit by War Effort

When the population of a city and county would double in fifty years at the usual rate of peace time growth, and it doubles in twelve months under the spur of national defense preparations, city and county governmental machinery must expand in twelve months to the size and capacity it would normally reach in fifty years—or bust!

Law enforcing problems increase—Criminal arrests in one city jumped from 2200 in the first eight months of 1940 to the first eight months of 1941, putting an added strain on sheriffs and police and jailors, clerks of courts and juries and judges, on probation prison and pardon officials, and calling for added personnel, equipment and supplies.

Fire hazards increase as new buildings go up, abandoned houses come back into use, one family houses become two family houses—adding to the strain on full and part-time firemen, calling for more hydrants, more water, more men, more trucks,

more hose, more ladders and other fire fighting equipment.

Water demands increase with new people, new fire hazards, new street cleaning problems, new sewage disposal problems, new industrial demands—adding to the strain on existing water works and calling for the replacement of old machinery, additions to existing machinery, extensions of water mains, and acquisition of new sources of supply.

Health, sanitation and disease problems increase, adding to the strain on existing facilities for housing, food and eating house inspection, garbage collection, street cleaning, disease prevention, hospitalization and the like, and calling for constantly expanding services all along a people's life line.

Traffic problems increase with multiplying travel and transportation, adding to the wear and tear on existing streets and highways, calling for the opening of new ones and the widening and extension of old

ones, creating new traffic problems, enlarging the demand for workmen, materials and machinery for building and repairs.

Schooling problems increase with growing school attendance, calling for more school buildings, grounds and supplies, school teachers, more school busses, repairs and replacements.

Relief, recreation, resettlement and welfare problems generally increase with the evacuation of lands and houses for defense sites, the tenting of vacant lands with trailer camps, the sands of subsistence in so many occupations and professions shifting into double time to meet the whirling demands of war, and call for answer at the peril of diminished efficiency and lowered morale.

Taxation, finance and accounting problems increase as the foregoing problems and a multiplicity of others call for expanding budgets, expanding tax levies, expanding tax collections, expanding safeguards of public funds on hand, closer scrutiny of public expenditures.

Priorities, allocations and rationings of basic raw materials and supplies meet growing demands with shrinking supplies, whet appetites by denying satisfactions, and create situations where a city's or county's reach already far exceeds its grasp and officials wonder what a heaven's for.

Recruiting stations and Selective Service procedures, feeding the armed services on land, sea and air, drawing officials and employees from all governmental unit ranks, together with added duties imposed by the imperious demands of national defense, call for recruiting stations and training programs in city, county, state, and federal governmental

units to fill the places of departing governmental personnel and to keep the basic governmental services unimpaired.

The staff of the Institute of Government is already at work, study-



New England soldiers on the steps of the Institute of Government building during one of the week-end recreation periods of the Fall maneuvers.

ing and analyzing these problems as they arise, comparing the solutions as they come out of the initiative, energy and resourcefulness of officials in city halls, county courthouses, state departments and federal agencies throughout North Carolina. In the coming weeks the Institute staff expects to set forth the results of these studies as they develop in guidebooks, teach them in training schools, illustrate them in laboratories, and transmit them through its magazine, bulletins and clearing house of governmental information.

The result is that Uncle Sam is collecting extra dollars for defense from sources which he never intended to tap, because: (1) invoices are submitted, or prices quoted and accepted, which include the tax cost but do not show it as a separate item; (2) the purchasing official is not aware of the inadvertently concealed tax and pays the invoice as submitted without question.

The Institute of Government suggests that purchasing officials attach to or include in all purchase orders a statement that political subdivisions are not liable for excise and other federal taxes, and a request that any such item, if included, be shown separately on the invoice.

Wide Variety of Items

The more than 500 items included in the new schedule of excise and miscellaneous taxes range all the way from passenger cars and trucks to electric fans; from bookkeeping machines to pencil sharpeners; from firearms to musical instruments.

They are too many and varied for the purchasing official to remember or to rely on the vendor to call them to his attention. The only safe thing is to have a copy of the list at hand for reference. The Institute of Government will supply a copy to any public official on request.

The amount of money involved is no small sum, particularly for the larger governmental units with extensive needs and large purchases. Tax rates on the various items range from 5% to 11%. Most of them are 10% of the sale price. That adds up quickly over an extended period for a city of considerable size.

Method of Securing Exemptions

Regulations of the Department of Internal Revenue (Regulation 46—1940 Edition—Section 316.24) provide, before the right of exemption is established by a manufacturer, that (1) the manufacturer have definite knowledge prior to or at the time of sale that the article is purchased for the exclusive use of such a government or political subdivision, and (2) he obtain from an authorized officer of the United States, the state, Territory of the United States, political subdivision, or District of Columbia, as the case may be, and retain in his possession, a properly executed exemption cer-

(Continued on page 12)

Cities and Counties Entitled to Excise Tax Exemptions

Purchasing officials in the 100 counties and the more than 300 cities and towns in North Carolina are entitled to exemptions from taxes, ranging from 5 to 11 per cent on articles (purchased for the exclusive use of cities and counties) which are included in more than 500 items listed as taxable by the 1941 Federal Revenue Act.

All the purchasing official has to do to secure such exemption is to ask for it, but it has come to the attention of the Institute of Government that many manufacturers, dealers and purchasing officials are not aware of this exemption or may not be familiar with the extensive list of items to which the new levies apply.

Priorities and Public Purchasing

Counties, Cities and Towns Face Task of Making More Brick with Less Straw

When Japanese bombs and torpedoes destroyed the U. S. Battleship Arizona in the treacherous Sunday morning attack on Pearl Harbor, the total value of all the factories, all the industry, stores and other business, all the farms, banks and homes of any one of our average North Carolina counties was sent crashing to the bottom.

When the Prince of Wales, the pride of the British Fleet, and the Repulse, their tremendous battle cruiser, went down under the impact of flaming torpedoes in the South China Sea the Allies lost, in less than 20 minutes, more than the assessed value of all the property in either Mecklenburg, Guilford or Forsyth, our three richest counties.

These ships must be replaced but the cost is a small fraction of the total that will be required as the United States and our allies gird themselves for total war. As this is being written Congress has appropriated more than \$74,440,000,000.00 for War and Defense needs—count the zeros and grasp it, if you can!

That is approximately \$500.00 for every man, woman and child in this entire nation; more than the State of North Carolina will spend, at the present rate for all governmental purposes during the next eight hundred years. Plans now call for reaching at an early date a spending rate of 2 billion dollars a month. The total value of all property in the State of North Carolina, public and private, real and personal, individual and corporate is only a little more than that. In 1939 it was \$2,337,000,000.00.

It is estimated that before we are through we will spend at least one hundred and fifty billion dollars. If this war lasts for several years it could easily be twice that amount. This is the most colossal single effort by a single nation in the course of history.

Shortage of Materials

Shortages of materials resulting

By
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from this effort have developed with such speed and increasing impetus that we have only begun to feel the impact and realize a little of what it may mean in our everyday lives.

Only a few short months ago, the best business men and economists in the nation were calling for "business as usual," with supreme confidence that we could have all of the good things of life and at the same time serve as an arsenal for all the democracies.

Now we are learning that there is a limit to our supposedly inexhaustible resources, both in materials and in capacity for production—that, at least, we cannot furnish overnight billions in planes, tanks, ships, guns and all the countless things needed to defeat Hitler and Japan and at the same time have new automobiles, new homes or even all of the things we have come to regard as necessities.

It has taken years of uninterrupted, single purpose effort to develop our gigantic automobile industry. Our plans for heavy bombers alone now call for the development of facilities greater in size than the entire automobile industry; and this must be completed and in full operation within a period of less than two years.

Mind you, this is not the entire aircraft industry; it is just the part required for producing bombers. Approximately equal facilities will be required for other types: fighters, interceptors, transports, observation ships and communication.

Add to this the job of building a two-ocean navy, thousands of tanks for Britain, Russia and ourselves, a

Local Units Get Preference Rating, But Special Procedure Must Be Followed

bridge of ships across two oceans to carry all of these supplies, and we begin to realize something of the stupendous task to which we are committed.

There simply is not enough of many materials, and this applies to almost all metals, to supply the defense effort and also meet all our civilian needs. No one will question the fact that defense needs must come first. This means that we shall be compelled to rearrange the entire pattern of our way of life—temporarily, we hope—and the sooner we look this stern reality in the eye, the easier it will be and the more we shall be able to accomplish.

Effect Already Felt—More Severe In Future

These developments have already had a definite, and in some cases, a drastic effect on every citizen and on all forms of business. Recent statements of Donald M. Nelson, Executive Director of the Supply Priorities and Allocations Board, warn that the next few months will see these hardships increased to a degree which cannot now be realized.

Every morning now brings new announcements from Washington of further curtailment in production for civilian needs to allow for the expanding needs of total war. Automobiles, refrigerators, radios, home cooking utensils and scores of other items have already had cuts in production ranging from 30 per cent to more than 50 per cent.

The Japanese Navy now lies between us and the main source of raw rubber for all our many needs. No new tires for civilian needs will be manufactured until this shortage is relieved and present stocks will be reserved for critical needs and denied for ordinary civilian use.

Your wife may have already had difficulty in buying hairpins or similar products at your local stores. These merchants will tell you that, even if they have goods on hand, they have been told not to expect re-

placements when present stocks are exhausted.

If your mechanical refrigerator breaks down today and needs a new part or a charge of refrigerant, you will be unable to get it unless your local dealer is fortunate enough to have stocks on hand from months past. Kitchen utensils, tools, and electrical supplies may not be available when you need them in the future.

Dealers and wholesalers in copper, iron and steel products such as plumbing and heating supplies, hardware and hundreds of other products can secure replacements of their present stocks only when it is sold for defense needs on priority ratings.

Just as Congress was recently amazed to find taxpayers criticizing the new tax program because it was not heavy enough, our Government finds the American people united, willing and even eager to face these and further sacrifices if they will contribute the one goal—Victory!

It is obvious, however, that some civilian needs cannot be ignored and that complete chaos and failure would result without broad planning and definite control of materials and production on a national basis.

Public Officials Face Problems

City, county and state officials face the same problems as private business and have the added responsibility of seeing that essential public services do not fail. Donald M. Nelson recently said to a man who complained that he had to go on a diet, "My friend the years that are coming will reduce your waistline, all right!" City and county governments will also have to reduce their waistlines along with the rest; and plans for a reduced diet, for conservation of what we now have and long range planning for what we must have in the future, should be started now.

It has been said bluntly that local governments must adapt their own operations to the emergency; to postpone until after the emergency every operation which can be postponed, if it would use any of the critical materials.

Money will be more plentiful; the temptation to embark on an ambitious program will be strong; if it arises it should be resisted firmly. No new building should be planned unless it is absolutely essential; critical materials will not be available in any

event unless the project is essential for National Defense or for the public health or safety.

To illustrate, the Institute of Government recently secured approval of a grant of Federal funds to build a sorely needed addition to its present quarters, but the extension must be postponed until after the war for lack of critical materials.

Priorities—Allocations—Rationing

To meet this situation and to demonstrate to the totalitarian powers that democracies when aroused can be terrible in their wrath and ruthless in their efficiency and single-mindedness of purpose, the British people have already voluntarily imposed on themselves so rigid an economy devoted to the one purpose of production for war, as even Stalin would never have dreamed possible.

Now the American people and their Government are following with rapid strides along the same road. Fortunately we are not yet in as desperate a condition as Great Britain either for materials or productive capacity and certainly not for foods, but we have already shown that when they are required, the necessary steps will be taken.

The first step taken by the Office of Production Management, the agency charged with overall responsibility, was to set up what is now considered a mild form of control—the Priorities system—whereby preference was given and manufacturers required to produce orders for defense needs ahead of those for civilian needs. This was quickly followed by allocation, meaning complete industry wide control, in the case of more critical materials; and this is now being supplemented by rationing where the supply of a particular item is so scarce that individual consideration must be given to the needs of each individual or firm.

Nearly everyone who reads a daily newspaper knows in general what these terms indicate. Few people understand how they work, or perhaps we should say, how they are supposed to work, because the whole problem is so complex that a certain amount of confusion is bound to occur. Since all three are now in use depending on the commodity and the degree of control required, let's consider briefly the machinery used in each instance.

What Are Priorities and Preference Ratings? Under the Priorities Plan, all orders for defense or war needs are classified and assigned Preference Ratings (more commonly called Priority ratings) in the order of their importance as determined by the Office of Production Management.

Defense orders are classified, starting at the top as follows: AA, A-1-a, A-1-b, A-1-c, A-1-d, A-1-e, A-1-f, A-1-g, A-1-h, A-1-i, A-1-j; A-2, A-3, A-4, A-5, A-6, A-7, A-8, A-9, and A-10. When civilian needs are classified the ratings run from B-1 to B-8.

Now let's suppose by way of illustration, that a rating of A-1 is assigned for electric turbo-generators needed by the Navy to drive new warships; a rating of A-3 for the generators needed by a plant producing aluminum; a rating of A-10 for the replacement of a burned out unit in your local power plant; and that all these orders go to the same firm or group of factories at the same time.

The factory has no choice in the matter; it must produce the orders with the highest rating first, and your power plant has to wait for its new generator until the Navy and the plant producing aluminum have received what they ordered. Even then you can't be sure of it. If, in the meantime, the firm receives further orders with a higher rating than yours, these also have to be placed ahead, regardless of how long your order may have been on hand.

The plan sounds simple when applied to a few items and one factory. When applied to our entire national economy it becomes so complex and so far reaching that it has already started to bog down, and full government control (allocations is the word you will hear) is being established as rapidly as possible.

What Are Allocations and Rationing? Allocation or complete government control of entire industries becomes necessary when shortages grow so acute that the Priorities system described above is not sufficient. Under this plan no material can be bought, sold or processed without specific permission from the Office of Production Management.

It is obvious that this makes it necessary for each concern affected to present for approval its entire plan of purchases, production, sales

(Continued on page 8)

Civil Relief for Soldiers and Sailors

For some two million U. S. citizens who are males and old enough to fight, and for millions more who are their dependents, a national transition from a state of peace to a state of war naturally creates more or less acute personal problems in connection with debts and taxes due, installments on the family car, matters of food and shelter for the homefolks, and the like.

Profiting from experience gained in the last war, when moratory legislation for relief of soldiers and sailors was not enacted until after the nation was already fighting, Congress took steps over a year ago to set up in advance machinery in anticipation of these personal problems. The aims of the Soldiers' and Sailors' Civil Relief Act of 1940, approved October 17 of that year, are perhaps best expressed in the preamble to the Act, which sets forth that it is intended:

"To promote and strengthen the national defense by suspending enforcement of certain civil liabilities of certain persons serving in the Military and Naval Establishments, including the Coast Guard."

The Act applies alike to selectee and volunteer, to National Guardsman and Reservist, to all members of the Army, Navy, Marine Corps and Coast Guard, and to officers of the Public Health Service on duty in the military branches. It affects the secondary obligations of sureties, guarantors and endorsers as well as the primary obligations of military persons. It applies to defaults in court appearance on the part of defendants in military service, to stays of action for or against such persons, to payments of rents and on installment contracts, to mortgages, real property and income taxes and insurance premiums, and to homestead entries and other public land procedures.

The underlying purpose of the Act, however, is not to provide an easy escape for debtors from obligations which they are actually able to pay. Condition precedent to its operation to protect a soldier-defendant is a showing that the fact of

Congress Protects the Man on the War Front from Personal Loss on the Home Front



By
W. M.
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Government

his military service has impaired his ability to satisfy the obligation.

Instead, the primary purposes of the Act are (1) to suspend civil proceedings by or against military persons *in cases where there is danger that they will be prejudiced* because of military service, and (2) to grant moratory relief from specified civil obligations *in proper cases*. "Proper cases" are those where the military person has in fact been rendered unable to pay because of service.

Article II of the Act deals with general relief, providing for tolling statutes of limitations on actions brought by or against military persons; requiring an affidavit as to whether or not a defaulting defendant is in military service before any judgment may be entered in any case in any court; providing for appointment of an attorney to represent such defaulting defendant; setting forth that such defendant is not bound by any acts of the court-appointed attorney if he acts to re-open the case within 90 days after termination of military service; and requiring the courts, in cases where they think the ability of the military plaintiff or defendant to prosecute or defend is impaired by reason of military service, to stay the proceedings until 90 days after termination of military service. Where the ends of justice can best be served by requir-

ing a soldier-defendant to pay in part, or to pay in installments, and where it appears that he is able to perform on his obligation to that extent, the court may so stipulate.

It is further provided here that a person in military service may stay proceedings in which he is involved until sixty days after termination of his service, on application to the court, unless in the court's opinion his ability to prosecute or defend is not materially affected by reason of his being in service.

Rents, installments and mortgages are covered by Article III. A soldier's dependents, for instance, may not be evicted for nonpayment of rent in any case where the rent does not exceed \$80 per month, except upon leave of court, and eviction proceedings may thus be stayed for a period of not exceeding three months in such cases.

Where a soldier or sailor has purchased real or personal property, under an installment contract, prior to passage of the Act, repossession or termination for non-payment requires either an agreement between the parties or an order of court. In its discretion, during any such proceeding, the court may order repayment of prior installments or deposits, or grant a stay.

Essentially similar protection is afforded mortgagors who request a stay of proceedings to enforce an obligation made prior to the Act and secured by mortgage on real or personal property.

Life Insurance Policies not exceeding \$5000 are protected by Article IV, which sets forth that policies for that amount or less shall not lapse by reason of non-payment of premiums during military service and a period of one year thereafter.

Taxes on Real Property. Article V of the Act forbids sale for non-payment of taxes or assessments on real property owned by a person in military service and occupied by him or his dependents or employees (at the time of beginning of service) for dwelling, agricultural or business purposes. Foreclosure proceedings for collection of such taxes or assess-

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Priorities and Public Purchasing

(Continued from page 6)

and shipments in complete detail. Dozens of our largest industries have already gone under this control without one voice being raised in dissent.

Here we have a picture to fire the imagination and furnish inspiration to every citizen as hard boiled business men, raised in the tradition of free enterprise, voluntarily and gladly undergo restrictions imposed for the common good that even Hitler and his henchmen might envy in their far reaching extent.

But even industry-wide control is still not sufficient when the amount of goods available for civilian use after caring for war needs becomes so scarce as is now the case with rubber.

The only solution in such cases is rationing whereby each citizen is required to secure individual approval for every purchase and only the most critical needs can be recognized. As you already know from your newspaper, such measures will be handled under the direction of your Local Defense Council.

Blanket Ratings for Local Governments. All of the machinery described above applies to state and local governments as well as private citizens and firms. It has been recognized, however, that the maintenance of essential governmental functions is imperative in the National Program, regardless of whether the city or county is in a designated defense area.

A blanket Preference Rating of A-10, Preference Rating Order P-22, was issued some time ago for the use of all local governmental units along with other civilian needs. It has recently been revoked and replaced by Preference Rating Order P-100. A copy of the complete text of this order was included in a recent bulletin issued by the Institute of Government and mailed to officials of all cities and counties in the State. Additional copies are available on request.

The following points should be carefully noted:

(1) The rating covers materials and equipment necessary for operation, maintenance or repair of property or equipment as defined in the order.

(2) The rating can be applied without making application for its use by simply writing on the order to the supplier the following statement: "Material for Maintenance, Repair or Operating Supplies—Rating A-10 under Preference Rating Order P-100, *with the terms of which I am familiar.*"

(3) Read the order carefully before applying the rating. Penalties are provided for misuse and a recent ruling states that ignorance will not be accepted as an excuse.

(4) The rating is not to be used unless the material to be delivered cannot be secured without such rating.

(5) The rating cannot be used for improvements, additions or extensions or for material of a type not used heretofore.

(6) The order places restrictions not only on the purchase of materials but also on the use of supplies already on hand. You are not allowed to purchase or use, without special approval, more than 110% of the amount used for the corresponding period last year.

General Rating for Utilities

The above order, P-100, is not to be used for the operation of utilities, such as electric plants, water plants, and sewage and disposal plants. Preference Rating A-10, Preference Rating Order P-46 has been issued to cover such services. It is generally similar in most provisions to Order P-100. You can use the rating without application, but must notify the Priorities Division of your intention to do so.

Most utilities should have received copies of this order direct from Washington. The Institute of Government will be glad to furnish a copy on request to any official who has not received one.

Special Needs Not Covered By General Ratings

When you use the general ratings described above there is still no guarantee that you will receive the material you have ordered. In many instances higher ratings have been issued for urgent defense needs which must be filled before your order is shipped. In special and urgent cases a request for a special rating must be filed for consideration. Forms for this purpose (PD-1) may be secured by request to the Division of Civilian Supply, Office of Produc-

tion Management, Washington, D. C., or from the Institute of Government at Chapel Hill.

Organization In Washington

The Office of Production Management under its Division of Civilian Supply has recently set up a State and Local Governments Requirements Branch. The Honorable Maury Maverick, former Congressman from Texas and former Mayor of San Antonio, Texas, has been appointed as Chief to direct this operation.

The Institute of Government is undertaking to act in a liaison capacity between this division and local governmental units in North Carolina. As rapidly as new or additional information is available it will be digested and mailed to city and county officials. Officials are invited to use the services of the Institute to any degree necessary to help solve any special problems.

From time to time the State and Local Governments Branch of the Division of Civilian Supply will send out information on specifications; substitutes for strategic materials and other subjects. The Institute of Government has furnished them with a copy of its directory of local government officials and asked that each local governmental unit in North Carolina be included on this mailing list.

State Division of Purchase and Contract

Mr. W. Z. Betts, Director of the State Division of Purchase and Contract, has offered the services of his organization in helping keep all counties, cities and towns in touch with all developments of significance to them.

Mr. Betts is constantly in contact with many sources of information on all phases of public purchasing. He has agreed to make available for distribution by the Institute of Government such of this data as may be of concern to local governments.

Substitutions for Strategic Materials Recommended

The Office of Production Management asks that all users consider the possibility of substituting other materials for those most critical on their application to defense needs. It has been suggested for instance that concrete pipe be substituted for cast iron or corrugated steel pipe in all

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Sabotage and Shortage Endanger Power Supply

Immediately after the attack on Pearl Harbor, as the state, counties, cities and towns went into action to prevent disasters on the home front from lack of alertness, vital public works and utilities were the first services to be guarded.

Troops dispatched from Fort Bragg and Camp Davis stood guard throughout the state, from the steam power plants and substations of the Tide Water Power Company on the coast, through the networks of the Carolina Power and Light Company, the Virginia Electric and Power Company and the Duke Power Company in the Piedmont, to the dams and power lines of the TVA on the North Carolina - Tennessee-Georgia line. The army announced that two thousand soldiers would guard the TVA dams, watersheds and power lines alone, and guards were ordered to fire without warning upon anyone who trespassed within one mile of the Lake James dams and powerhouse.

The danger of sabotage is only the latest of a series of emergencies the power system of North Carolina has faced in a single year. Other southeastern states have striven with an acute shortage this year, typified by the blackout in Atlanta when store windows were lighted by kerosene lamps and a good third of the street lamps were turned off.

The two causes of the power shortage in northern Georgia last spring, a three-year drought and the enormously increased demands of defense industry, are operating in North Carolina today. The shortage is not localized but regional, and the increase in consumption is national, being at present about 35% higher than at this time last year. The aluminum industry especially is draining vast quantities of power in this area. During the week of November 10-16, the Carolina Aluminum plant at Badin, which in normal times supplies its own power, used eleven million kilowatt hours of Duke electricity, enough for a million pounds of aluminum. In 1940, Duke delivered thirty million kilowatt hours to Badin; in the first ten months of 1941 it has delivered a quarter of a billion.

North Carolina Power Systems Contribute More Than Their Share to Relieve Southeast from Effects of Three-Year Drought

By
**SAMRAY
SMITH**

Staff Member

Institute of
Government



During this same week of November 10, besides carrying its own defense load, the Duke Power Company delivered eleven million kilowatt hours to the Georgia Power Company and the TVA, 12% of its total production, and more than three times this much was diverted from the state as a whole.

Obviously, North Carolina has contributed more than its share to the Southeastern power pool.

This has been possible because in addition to the development of its water power resources, in which it ranks high in the entire country, the state as a whole has maintained a balance between hydroelectric and steam capacity. The Duke Power Company, to use it again as an example, has added 75% to its steam capacity since 1937, and will add 14% more next year.

For its part, the Federal Power Commission has embarked on a program of new hydroelectric and steam projects that will cost a billion dollars in five years. Its speed will be limited only by the production capacity of the equipment manufacturers. One project has just been finished in Western North Carolina, the Nantahala Power and Light Company dam at Glenville, which went into operation on November 13.

Three other projects have been begun, one of which, at Fontana on the Little Tennessee River, will be the third largest dam in the United States. The town of Murphy, with 1,873 people in 1940, is the headquarters for the other two and for two others in Georgia and Tennessee, all in the Hiwassee River basin.

When these dams are finished, further expansion of power facilities as well as of all other public utilities will be few and far between until after the war. The Office of Production Management has forbidden expansion of property or equipment of public utilities without express authorization. This is a new emergency, the fourth in the space of a single year, and may well be taken to symbolize the difficulties which are surrounding the management of public works and utilities and the narrowing avenues of escape.

Civil Relief Act

(Continued from page 7)

ments may not be begun where an affidavit has been filed on behalf of a soldier-owner of property showing that his ability to pay has been impaired by his military service. The court may stay such proceedings for a period extending not longer than six months after termination of military service, and property owned by a military person which is sold under foreclosure proceedings may be redeemed by him by an action commenced not later than six months after such termination.

Article V also provides that collection of income taxes may be deferred for a period ending not later than six months after termination of service, and protects rights of persons in service acquired by them by entry upon public lands. Citizens of this country who are serving in the military arms of any nation allied with the United States in its prosecution of the war are accorded by Article V the benefits of the Act with respect to rights in public lands, income taxes and real property taxes.

The Act is to be in force until May 15, 1945 or, if the United States is then at war, until six months after peace has been declared.

Federal, State and Local Law Enforcement Officers Join Efforts in Facing War-time Crime Upswing

Old as military history itself are many of the "new" problems facing law enforcement officials of an increasing number of North Carolina cities, towns and counties. The "camp followers" behind Caesar's legions and Napoleon's armies have their modern counterparts in the profiteers, racketeers and prostitutes presently preying on eastern North Carolina army concentrations. Crimes of violence and against property, always on the increase in times of stress and crisis, marched with Lee and Grant in the Sixties even as they do with our war rehearsals today.

New as the twentieth century, however, is any serious hope of controlling the age-old problems. Modern governing agencies, by carrying out the nation's peacetime mobilization program with an intelligence that recognizes the need for closer cooperation between federal, state, local and military authorities, have attacked on a grand and comprehensive scale the manifold evils always accompanying military activity, where formerly the tentative and piecemeal efforts of military and civil authorities to stamp them out have always ended in resigned acceptance of vice and disease as inevitable handmaidens of war.

Police Personnel Shortage

The presence of sixty-seven thousand healthy men at Fort Bragg means that the police officers of Fayetteville and Cumberland county are

going to be shorthanded and busy forces for the brunt of the burden of law enforcement still rests with local officers. The presence of over 100,000 men regularly stationed at the army and marine bases in the state means that law enforcement officials of most of North Carolina's communities, even those far removed from the actual centers of military operation, will be more or less directly affected, as recreational facilities of remote towns begin to be used by soldiers trucked in for weekends on leave.

This pressing shortage of personnel in city and county police departments is having its worst effects, during these initial stages of our war-time mobilization, in areas closest to army and marine bases. At Wilmington, for instance, before the defense era arrived, New Hanover's sheriff and his deputies were already considered an understaffed force. During the last few months newspapers there have recognized the need for a redoubled set of county police officers to cope with the situation created by the ever-expanding population and the abnormal influx of criminal elements. The city of Wilmington saw its criminal arrests climb from 2,252 for the first eight months of 1940 to 4,762 for the comparable 1941 period, an increase of over 100 per cent. This enormous added work load was carried without adding to the 45-member police

department, and since August the addition of ten men to the force has eased the difficulty to some extent.

Prostitution

Prostitution has become a major problem for civil and military authorities in the state, as the defense area has become host to between three and four hundred thousand soldiers on a more or less permanent basis. Chief obstacles in the path of solution of this problem are public apathy to the menace to health as well as to morals; the characteristic elusiveness of the practice, which makes for difficulty in getting evidence admissible in the courts; unwillingness of persons infected with venereal disease to report the source; tendency in the courts to let offenders off with fines or short prison sentences, without proper probation supervision; practice of banishing prostitutes from the county or town wherein the offense was committed, which serves only to create the problem anew in another area; and lack of sufficient space in houses of detention for proper rehabilitation of all the women convicted of prostitution.

On the other side of the picture, however, new weapons have come into the hands of law enforcement and health officers seeking to solve the prostitution problem. The police officer or sheriff may call on both military and civil health authorities for leads picked up by them as they examine and treat soldiers and civilians for venereal diseases. Surveys have been made in our defense area by the Federal Security Administration, and vital information including names of known and practicing prostitutes, together with facts concerning persons who operate houses of prostitution and those in other ways connected with the racket, may be obtained by police officials on request from the federal agency. The State Board of Health sponsored in Rockingham this fall a meeting of law enforcement officials from the eight counties in the maneuver area, at which Albert Coates, Director of the Institute of Government, outlined North Carolina statutes and Supreme Court cases in-



Chiefs of police from cities in countries all over the world gathered in Buffalo, N. Y., this fall for the annual meeting of the International Association of Chiefs of Police. Shown above are Hugh Clegg, Assistant Director of the FBI and Director of the FBI National Police Academy; Albert Coates, Director of the Institute of Government, who was the principal speaker at the closing ceremonies and banquet the evening of August 20; and the Police Commissioner of the city of Buffalo, who was host to the gathering.

volving prostitution and public health.

Vice Squads Are Being Formed

This sort of cooperative spirit has manifested itself in other ways. In many cities of the state secret vice squads have been detailed to work on vice eradication problems alone. In Wilmington, for instance, county, city and military authorities set up a three-man vice squad, commissioned to work independently of all three police agencies and making its reports to the sheriff, the police chief and the provost marshal of Camp Davis. One sheriff's deputy, one city policeman and one plainclothes military policeman, identities secret, make up the force.

Information picked up by any one of the three law enforcement branches is immediately relayed to the vice squad and to the other two. By this sort of specialization, needless duplication of police work is eliminated, the information gotten by all three agencies is coordinated, and the effectiveness of the drive is thereby greatly enhanced.

Spies and Saboteurs

As the upswing in the practice of prostitution is merely an intensification of a familiar problem for law enforcement officers, so the increasing instances of war-time sabotage represent an extension of the work of peace-time train-wreckers, firebugs, malicious destroyers of property. Within the framework of our old laws on malicious mischief and arson are competent legal weapons with which to apprehend and punish the saboteur who seeks to disrupt our defense effort. Here again the call is for a greater vigilance to cope with old and familiar enemies, the arsonist and the "pineapple thrower," who are advancing on society today in new forms and in greater numbers. Their motives have become political ones, but their methods are unchanged.

Priorities and Public Purchasing

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places where this is possible. Mr. A. T. Crutchfield, Purchasing Agent for

the City of Durham points out that lead alloy pipe or tubing can be used as substitute for copper for service connections, extensions and small lines. It is available for both flanged connections and sweated joints.

The Office of Production Management also suggests that building codes, which in many cities require the use of excessive amounts of critical materials, be modified or suspended during the emergency to permit the substitution of less critical materials. Detailed suggestions will be forthcoming at an early date.

Rapid Changes In Future

New developments will come thick and fast.

Adjustments will be difficult at best, and require long range planning now if essential services are not to be interrupted.

It is a challenge to the ingenuity and resourcefulness of all public officials. No one will doubt that we can meet it or that we will meet it, just as we have always met the great emergencies in our nation's past history.

Supreme Court Taxes Uncle Sam with Sales Tax Cost

"Millions for defense, but not one cent for tribute," said Charles Cotesworth Pinckney in 1796. In effect the U. S. Supreme Court decreed last month that Uncle Sam must pay not only millions for defense, but millions in tribute as well, to the states collecting gross receipts and sales taxes from cost-plus contractors on defense projects.

A lumber company in Alabama had sold some material to a contractor working on a government project at Fort McClellan. The state taxing authorities sought to collect sales taxes on the transaction, and the trial court upheld the validity of the levy. The case was appealed to the Alabama Supreme Court, which reversed the lower court, holding that the sales were immune from local taxation because the contractors were agents of the federal government.

The significance of the U. S. Supreme Court's reversal of the state court's holding is that the 22 states having gross receipts and sales taxes can reap an annual harvest estimated at \$100,000,000.00 on sales made within their boundaries

to defense contractors holding cost-plus contracts already let.

The consensus of opinion in Washington, however, is that despite the holding the government will escape such taxes on future contracts by changing the form of the clause quoted above. Four possibilities of evading the taxes suggest themselves: (1) Redraft the form for future contracts by making contractors agents of the government; (2) designate federal contracting officers as the actual buyers; (3) provide that the contractor shall formally sell the materials to the government, thus changing the locus of the ultimate sale and thereby making the tax illegal in most states; (4) the President's succinct suggestion that projects might be routed toward those states playing ball with Uncle Sam on the matter of sales taxes.

Section 427, Ch. 158, P. L. 1939 (N. C. Revenue Act), after levying a sales tax of three per cent on building materials used in this state, provides in part as follows: "The provisions of this section shall not apply . . . (b) In respect to such tangible

personal property as shall enter into any building or structure erected or constructed under any contract with the Federal Government or any of its agencies, or with the state of North Carolina or any of its agencies, or with any county or municipality in North Carolina or any of their agencies."

This statute certainly constitutes "playing ball" with the Federal Government with sufficient enthusiasm to insure North Carolina against the threat contained in Mr. Roosevelt's suggestion. However, to a minor extent, at least, under a ruling by the Attorney General earlier this year, we are committed to a policy of slightly adding to federal costs on such contracts. The Attorney General held that repair parts and supplies for machinery, and dynamite, drills and other such materials are not "Building materials" within the meaning of Section 427, supra, and are therefore "not entitled to the exemption granted building materials used in construction work where the contract is with the United States or the state of North Carolina."

Recent Supreme Court Cases

Are public officials liable in damages for failure to do their duty? The Supreme Court of North Carolina has answered this question three times under three different sets of circumstances in recent weeks:

Libaility of Public Officials

In 219 N. C. 241 (1941) the Town of Old Fort charged its former Mayor and Aldermen with failure to perform the following statutory duties: (1) require bond of tax collectors, (2) keep a separate statement and account of the money received from the waterworks system, (3) keep a proper accounting of assets and liabilities, the value of its properties and the state of its several funds, (4) publish receipts and disbursements of the public funds, (5) have a proper audit of funds received, especially by the tax collector and waterworks superintendent, (6) require the mayor to furnish the aldermen a quarterly report of the condition of the town, (7) have monthly meetings as aldermen; the town asked for damages of \$2,954.25—the difference between the amount collected by the tax collector and waterworks superintendent and the amounts accounted for, together with the interest thereon. In 219 N. C. 249 (1941) the Town of Old Fort asked for damages of \$1625 from the former Mayor and Aldermen who had elected an Alderman to the office of Chief of Police and illegally paid him this amount as salary.

In the first case the court denied recovery, saying: (1) "In some of these statutes members of the boards of aldermen are made individually liable, and in some they are made indictable, and yet in others they are otherwise penalized, for the non-performance of the duties imposed upon them, and the holding with us has been that the maxim of *"expressio unius est exclusio alterius"* is applicable to such a situation, and unless personal liability is provided by the statute imposing the duty, no personal liability attached for the non-performance thereof"; (2) "furthermore it is not perceived how the loss alleged to have been sustained by the plaintiff could have been the direct or immediate result of the alleged acts of the demurring defendants. . . . The tax collector and

waterworks superintendent could have failed and refused to account for the moneys collected by him with or without strict compliance with the statutes alleged to have been breached. . . ." In the second case the court denied recovery, saying "that the strongest allegation against the defendants is that they authorized an 'illegal expenditure', without any allegation of wrongful and willful action, much less of corruption or malice, without any allegation of violation of any statute imposing personal liability, without any allegation of failure of adequate consideration moving to the municipality for the funds expended, and without any allegation of intent to evade the law."

The court quoted the doctrine of the foregoing cases with approval in *Wilkins & Ward v. Burton*, 220 N. C. 13 (1941), when the defendant was sued for damages for failure to remove a limb which had fallen across the highway, resulting in injuries to the plaintiffs: "It is the established law in this jurisdiction that public officers, in the performance of their official and governmental duties involving the exercise of judgment and discretion, may not be held liable as individuals for breach of such duty unless they act corruptly and of malice," and, further, "It is also a recognized principle with us that in case of duties plainly ministerial in character, the individual liability of public officers for negligent breach thereof does not attach where the duties are of a public nature, imposed entirely for public benefit, unless the statute creating the office or imposing the duties makes provision for such liability."

City Water Supply

R. H. Pernell owned and operated a grist mill on the banks of the stream known as Sandy Creek. The City of Henderson constructed dams and reservoirs on the tributaries of this stream above the mill site and draws water therefrom through mains to the city for distribution to its inhabitants. In *Pernell v. City of Henderson*, 220 N. C. 79 (1941) plaintiff sued the city for damages resulting from the diversion of water from the stream. The city replied that it was a riparian owner and as

such had the right to divert water for the reasonable domestic uses of its inhabitants even to the full extent of the flow. The court conceded that a "riparian owner" had the right to divert water for reasonable uses but held that the inhabitants of the city were not riparian owners, and could not invest the city with rights which they themselves did not have,—quoting with approval *Farnham, Water and Water Rights*: "The rule giving an individual the right to consume water for his domestic needs is founded upon the needs of the single individual and the possible effect which his use will have on the rights of others, and cannot be expanded so as to render a collection of persons numbering thousands, and perhaps hundreds of thousands, organized into a political unit, a riparian owner, and give this unit the right of the natural unit. The rule, therefore, is firmly established that a municipal corporation cannot, as riparian owner, claim the right to supply the needs of its inhabitants from the stream."

Excise Tax Exemptions

(Continued from page 4)

tificate in the form prescribed by this section.

Forms for this purpose may be furnished by the vendor in some cases. In others the purchasing officer may have to supply the form and insist on its use.

Sample forms may be secured from the Institute of Government on request if not already available.

The procedure will be fairly simple when goods are purchased direct from the manufacturer. When the purchase is made from a dealer who has already paid the tax passed on by the manufacturer it may be more difficult. The dealer may not even be aware of the amount of tax included in the price he paid the manufacturer.

A thorough knowledge of the items to which all these taxes apply and a practice of close and careful analysis of prices submitted will pay dividends to the conscientious public purchasing official in months to come. A recent bulletin issued by the Institute of Government furnishes more detailed information. Additional copies are available if it has not already been received.

Bulletin Service

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



Prepared by

W. M. COCHRANE of the Staff of the Institute of Government

I. Ad valorem taxes.

A. Matters relating to tax listing and assessing.

5. Exemptions city and county property.

To Hon. Wilford L. Whitley. Inquiry: Is the liquor stock of a county ABC store subject to ad valorem taxation by the town?

(A.G.) Prior to the case of Weaverville vs. Hobbs, 212 N. C. 684, this office had uniformly held that liquor stores were subject to ad valorem taxation; however, when the opinion in the Weaverville case was handed down, we rendered opinions in conformity with the rule laid down in that case, to the effect that such stores were exempt from taxation.

However, from the majority opinion in the case of Warrenton vs. Warren County, 215 N. C. 342, reaffirming the doctrine laid down in Benson vs. Johnston County, 209 N. C. 751, it appears that such liquor stores are now taxable for ad valorem purposes.

Due to the division of the court in the Warrenton case, there exists a great deal of uncertainty as to what the court may decide in any particular situation involving this question. However, I am of the opinion that the reasoning advanced in the Warrenton case would permit taxation of the liquor stock in county ABC stores.

10. Exemptions — Municipal Bonds and Notes.

To Hon. A. J. Maxwell. (A.G.) In a ruling of May 8 I took the view that under s. 26 of the Housing Authority Act, Ch. 456, P. L. 1935, bonds issued by housing authorities and the interest thereon were not exempt from taxation.

s. 26 provides that:

"Bonds, notes, debentures and other evidences of indebtedness of an authority are declared to be issued for a public purpose and to be public instrumentalities and, together with interest thereon, shall be exempt from taxes when same are held by the Federal Government or by any purchaser from the Federal Government or anyone acquiring title from or through such purchaser."

In the ruling referred to I took the view that this provision governed and that housing authority bonds and interest were exempt from taxation only when held by the federal government or its vendees or sub-vendees. It appeared to me that unless that was the effect of the provision it was meaningless. But reconsideration has convinced me that even if that point be granted, it does not follow that the conclusion reached by me is necessary.

For nearly a century it has been the settled policy of the state that state and municipal bonds and interest shall be exempt from taxation. Pullen vs. Comm., 152 N. C. 548.

In accordance with that policy, s. 704 of the Revenue Act expressly exempts from the intangibles tax bonds of the "State of North Carolina, political subdivisions of the state or agencies of such governmental units," and s. 317 (2) (d)

in terms exempts from the income tax "interest upon the obligations . . . of the state of North Carolina, or of a political subdivision thereof."

In Wells vs. Housing Authority, 213 N. C. 744, the court held that such authorities are "municipal corporations" and instrumentalities of the state through which it is attempting to achieve fundamental purposes of government. With reference to the exemption from taxation of property owned by such agencies, the court said:

"It was intended that the government in its public service should not be embarrassed or impeded by any duty levied upon the instruments used to carry out its purposes, and to give that intention effect the exemption must be extended to all municipal corporations without legalistic distinction."

In interpreting a statute courts will avoid a construction which will place it in conflict with another statute on the same subject, Rogers, McCabe and Co. vs. Bell, 156 N. C. 378, and will indulge a presumption against an implied repeal when express terms are not used, State vs. Perkins, 141 N. C. 797, particularly if such repeal would work a "radical change" in settled policy. Carolina Discount Corp. vs. Landis, 190 N. C. 157. Therefore, if possible, s. 26 of the Housing Act is to be interpreted as not being in conflict with ss. 317 (2) (d) and 704 of the Revenue Act, and as not impliedly repealing them. This result can be achieved by construing s. 26 as providing an express and special exemption of the housing authority bonds and interest in the hands of the Federal government, its vendees and sub-vendees, and as not implying, what it does not expressly provide, that the same shall be taxable in the hands of all others. Careful reanalysis has convinced me that our courts would so construe section 26, and the contrary opinion in my letter of May 8 is recalled and overruled.

25. Revaluation and Review.

To J. J. Cole. Inquiry: Where property contiguous to air-craft and marine bases has greatly improved in value due to construction of the bases, may the board of county commissioners add the improvements made since January 1st to the tax scroll for the year 1941-42?

(A.G.) s. 302 of the 1939 Machinery Act provides that all property shall be listed or listed and assessed, as the case may be, as of April 1, 1939, and thereafter as of Jan. 1 of each year. Thus, for 1941, all real property was required to be assessed at its value on Jan. 1, 1941.

The powers of the commissioners with respect to changing the records after adjournment of the Board of Equalization and Review are contained in s. 1108 of the Machinery Act. s. 6 therein authorized the commissioners to reassess on the supervisor's report that since completion of the work of the board of Equalization and Review facts have come to his attention which render it advisable to raise or lower



ATTORNEY GENERAL
HARRY McMULLAN

the assessment on a particular property of a given taxpayer. This subsection contains a proviso that it shall not authorize reassessment because of events or circumstances not arising until after the tax listing date.

I am unable to find any section of the Machinery Act which would authorize the commissioners to change the valuation of real property on account of an increase in value after Jan. 1, 1941.

B. Matters affecting tax collection.

6. Who may collect.

To Clarence Hinshaw. Inquiry: Is a municipal tax collector required to personally collect delinquent personal property taxes, make levies and garnishee, or can he send a member of the police department to do this for him, the latter not being under bond and not designated as assistant tax collector?

(A.G.) I do not think that the municipal tax collector has authority to delegate his duties to a member of the police department who is not under bond for this purpose.

32. Foreclosure—liability of former owner.

To Hamilton and McNeill. Inquiry: May a levy now be made for 1940 taxes on personal property which has been sold by city and county tax collecting officials at a tax foreclosure sale for 1938 and 1939 taxes? At the time the levy and sale for 1938 and 1939 taxes occurred, no levy had been made for the 1940 taxes not then due.

(A.G.) My opinion is that this property could not now be reached for taxes owed by the original owner. A lien on personal property for nonpayment of taxes arises to a municipality or county only upon a levy thereon. Carstarphen vs. Plymouth, 186 N. C. 90; Chemical Co. vs. Williamson, 191 N. C. 484; S. 1401, Ch. 310, P. L. 1939.

85. Disposal of property purchased by unit at foreclosure.

To Garland S. Garriss. Inquiry: Where a town has title to property under tax foreclosure which it holds for the benefit of the town and county, on which property street assessments are also owing the town,

and where the property is worth no more than the amount of the town and county taxes, may the town resell the property in the light of s. 1719 (v) of the Machinery Act, which provides that in such cases the town may resell "for an amount not less than the total interest of all taxing units (other than assessments due the city holding title)?"

(A.G.) In my opinion, that is the effect of the provision. I have talked with Mr. Henry Brandis, Jr., author of the act, and he tells me that was its purpose.

I think it should be stated, though, that the municipal authorities are under a duty to obtain on such resales all that the property is reasonably worth, and should exclude the amount of assessments, in whole or in part, from the resale price only when the property is not worth more.

101. Adjustment.

To Bonner R. Lee. Inquiry: Does a board of county commissioners have the right under C. S. 7976 (b) to make an adjustment with a taxpayer, part of whose property was destroyed by fire shortly after being listed?

(A.G.) The powers contained in C. S. 7976 (b) seem to be limited to destruction or damage caused by tornado, cyclone, hurricane, or other wind or wind-storms. I do not believe that under the law the commissioners would be justified in making an adjustment for destruction of property by fire.

102. Refunds.

To J. A. M. McDowell. Inquiry: Where a municipality has been levying and collecting taxes on property thought to be within the city limits, but which is later discovered to be without the city limits, is there any statutory authority empowering the town commissioners to refund taxes on such property?

(A.G.) C. S. 7976 provides in effect that no board of city or county commissioners shall have power to release, discharge, remit or commute any portion of taxes assessed and levied on any person or property within their jurisdiction for any reason whatever. However, this section also provides: "Nothing in this section shall be construed to prevent the proper authorities from refunding taxes as provided in this chapter." The reference to "as provided in this chapter" apparently refers to the procedure of payment under protest and demand for refund provided by C. S. 7976. A similar provision is found in the Revenue Act.

The statutes do not set forth the reasons for which governing authorities are justified in making refunds, assuming that the tax is paid under protest and proper demand for refund is made within a proper time. Apparently, under such circumstances, they could make refunds for any reason for which they could legally cancel or reduce the tax prior to payment.

There is nowhere in our statutes any express authority given to local governing bodies to make refunds, for any reason whatsoever, in any case in which the taxes have been paid without protest. Even where made under protest, if not followed by demand within the prescribed time, there is no express statutory to make a refund. Because of this, any such refund would seem to involve possible liability on the part of the members of the governing body under the terms of C. S. 7976.

IV. Public schools.

B. Powers and duties of counties.

17. Apportionment of funds.

To A. B. Gibson. Inquiry: When a bond issue is voted by the people of a given county for school improvements, can

money obtained under that authority be used to pay debts for past improvements not mentioned in the notice of election?

(A.G.) The County Finance Act, C. S. 1334 (38), provides that the proceeds of the sale of bonds issued under that Act shall be used only for the purposes specified in the order authorizing the bonds; provided, that if for any reason any part of the proceeds are not applied to or are not necessary for such purposes, such unexpended portion shall be applied to the payment of the principle and interest of such bonds.

This section makes it a felony for any member of the governing body or any county officer to vote to apply or participate in applying the proceeds of such bonds in violation of the terms of this section.

C. Powers and duties of city administrative units.

12. Levy of special tax.

To Hon. H. C. Wilson. Inquiry: Where the voters in a school district in 1935 approved a 15c school supplement, which full amount has been levied since, should the amount necessary to be raised to cover employer's contributions under the Teachers' and State Employees' Retirement Act be included in the 15c supplement or should it be levied in addition to the supplement?

(A.G.) Of course, the Supreme Court has not passed on this and other questions which may be raised in connection with the Act. Courts elsewhere have held that contribution from the governing body of an employing agency to a retirement system is considered as part of the compensation of the employee, and if this is true, I cannot see why part of the funds raised from a levy made for the purpose of paying teachers' salaries, etc., could not be used for paying employer's contributions to the system.

If the 15c levy mentioned will produce sufficient funds to cover the contributions, my opinion is that this item should be included within that levy. If, however, this levy will not produce enough revenue to take care of the various other necessary items as well as the contributions to the system, it will be necessary that funds for the latter be raised by a separate and additional levy.

When you come to consider the question of the right of a municipality to levy a tax to cover contributions to the Retirement System to cover salaries paid teachers beyond the constitutional school term, the question would be raised as to whether the levy would be for a necessary expense. If it would, a vote of the people is not necessary. If it is not for a necessary expense, a vote of the people is requisite. This question is one for the court to decide.

F. School officials.

62. Teachers' and State Employees' Retirement System.

To Hon. Baxter Durham. Inquiry: Please advise whether members of the Teachers' and State Employees' Retirement system on temporary leave of absence occasioned by military service or educational leave should be allowed to make contributions to the Retirement System on the basis of the salary received by the member at the beginning of such temporary leave of absence.

(A.G.) There appears to be no provision in the Act which would specifically authorize the Board of Trustees of the system to receive contributions from the members themselves. However, as a matter of justice it seems to me that a mem-

ber who is on such temporary leave should be allowed to keep up his or her contributions to the Fund in the same manner as if actually on the job. However, the Board of Trustees can only receive such contributions from members as the statute creating the system authorizes, and likewise, the employers can only match employees' contributions authorized by the statute. There being extreme doubt as to the right to receive these contributions and the right of the various employers to provide funds to match same, I would advise that if the Board receive these contributions, it do so with the understanding that if the next General Assembly does not validate such action, and authorize such contributions to be matched by the employers, same are to be returned to the employees making the contributions.

V. Matters affecting city and county finance.

I. Issue of bonds.

8. Proceeds insufficient for purpose issued.

To W. E. Easterling. Inquiry: A municipality has issued bonds for a necessary expense and the cost of the project is several thousand dollars more than the proceeds of the bonds. This excess is represented by accounts payable to certain creditors for materials, which claims have been reduced to judgment. The governing body proceeded to completion of the project without making provision for this excess, the amount of which is greater than two-thirds the debt reduction in any fiscal year in the past, and will be greater than any for several years to come. The town desires to issue bonds for liquidation of the judgments without approval of the voters at an election.

(A.G.) In the case of Hallyburton vs. Board of Education, 213 N. C. 9, it was held that the limitation prescribed by Art. V, s. 4, as amended, is in addition to other constitutional limitations relating to taxation and that a county may not borrow money even for a necessary expense without submitting the question to a vote, Art. VII, s. 7, when its outstanding indebtedness has not been reduced during the prior fiscal year in accordance with that provision of the constitution. I do not think that because the claim has been reduced to judgment, the constitutional prohibition against issuing the bonds would be changed. It is my opinion that the bonds could not be constitutionally issued, except when authorized by a vote of the people in accordance with the constitutional provision.

K-1. Unanticipated revenue and surplus.

To Hon. Jerome Flora. Inquiry: Can the County ABC Board legally turn over to the city and county a sum of money held by the board as surplus derived from profits and not needed as operating capital, said sum to be used for purchase of a site for a proposed municipal airport?

(A.G.) There could be no question, in my opinion, that the board has a legal right and, indeed, it is its duty, to turn over to the county and city the profits thus held by the board after having paid all the expenses as required by the Act, including the deduction for law enforcement.

Further, where, as in your case, in making up the city and county budgets the receipt of this sum of money as a distribution of surplus from the ABC board's working capital was not anticipated, such unbudgeted and unexpected payment would constitute surplus revenue received by the county and city which could lawfully be expended by them in the acquisition of a site for the proposed county and city air-

port. The county-municipal airport is a public purpose for which a county and city may lawfully expend surplus funds, not involving the levy of any taxes or the incurring of any obligations by the respective units of government. See C. S. 191 (e). Therefore, it is my opinion that if these surplus funds are turned over to the county and city, the county and city may lawfully expend them for the purpose discussed.

VII. Miscellaneous matters affecting cities. F. Contractual powers.

3. Contract—general.

To Hon. P. H. Busbee. Inquiry: What is the right of a city governing board to contract with a railroad company, for instance, to expend public funds in paving a designated street and sidewalks on condition that the company build a passenger station at a point on the street?

(A.G.) I am of the opinion that under these circumstances where powers are granted the city commissioners under the charter to pave and repair the sidewalks and streets, the city governing body would have a right to enter into a contract with the railway company to widen and pave the street in question, and that such a contract would not be *ultra vires*.

My opinion is largely based on a decision by our court in *Lambeth vs. Thomasville*, 179 N. C. 452. In that case the court held it was not *ultra vires* for the town of Thomasville to make a contract with the plaintiff to lay out and construct water mains and sewer lines extending into a new development. The case further held that the city was liable for damage for its failure to comply with this contract. I find no conflicting authority in this jurisdiction.

G. Principal liability for tort.

6. Liability insurance.

To M. O. Wyrick. Inquiry: What is your opinion of the necessity of carrying liability and property damage insurance on a police car, fire truck, and garbage truck owned by a municipality?

(A.G.) The Supreme Court has held uniformly that a municipal corporation is not responsible for the tortious acts of its officers or agents while discharging the duties of their office. See 173 N. C. 356; 194 N. C. 134; 212 N. C. 504; 214 N. C. 737. It is well settled that the work of the police and fire departments are governmental functions. Our opinion that a town while engaged in the removal of garbage by trucks is performing a governmental function has been upheld by *Snyder vs. High Point*, 168 N. C. 608; *Mack vs. Charlotte*, 181 N. C. 383; and *Broome vs. Charlotte*, 208 N. C. 729. My opinion is that it will therefore not be necessary for you to carry liability insurance on such equipment.

10. Negligence of employees.

To Hon. Sherwood Brockwell. Inquiry: Is a municipality liable for damages caused by the negligence of its fire chief or his driver in the operation of the fire chief's car, which is owned by the city and is used for official business?

(A.G.) The following cases hold that a municipality is not liable for damages arising out of the negligence of city employees or officers engaged in performing governmental functions: 130 N. C. 76; 159 N. C. 622; 190 N. C. 486; and 197 N. C. 309.

However, the immunity from liability granted a municipality when exercising a governmental function does not extend to its employees or officers, unless a governmental discretion or judgment is being exercised by the officer. Both the fire chief and the driver, therefore, may be held

liable for their own negligence. See *Betts vs. Jones*, 203 N. C. 590; and also 127 N. C. 146; 168 N. C. 293.

K. Grants by cities and towns.

4. Sites for recreation centers.

M. Sunday closing laws.

To Hon. George McNeill. Inquiry: May a municipality convey as a gift to the Federal Government a tract of land owned by the city within its corporate limits, the property to be used by the government to establish thereon a recreational center, which would be maintained for the use and benefit of all the inhabitants of the city?

(A.G.) I am of the opinion that under C. S. 2623 (5), the city would have a right to convey the property on the condition that it will be used to establish a recreation center for the use and enjoyment of the citizens of the town. Such conveyance ought to provide for a reverter in the event the character of the use for which it was conveyed terminated. Under C. S. 8053 and 8059 the consent of the state is given to the acquisition by the United States of lands which might be used for this purpose.

N. Police powers.

20. Regulation of trades and businesses.

To Hon. Forrest Shuford. Inquiry: May a municipality enact a valid ordinance setting the closing hour of business establishments on Saturdays?



LEE OVERMAN GREGORY

Lee Overman Gregory, Assistant Attorney General of North Carolina since 1938, leading Salisbury attorney prior to that time, graduate of the University of North Carolina, graduate cum laude from Harvard Law School, grandson of the late U. S. Senator Lee S. Overman and great-grandson of the late August S. Merrimon, Chief Justice of the state Supreme Court and U. S. Senator, who died October 18 following a brain operation.

(A.G.) The Supreme court in the case of *State vs. Ray*, 131 N. C. 814, held that a town ordinance requiring stores to be closed at 7:30 P. M. was invalid, on the ground that permitting a city or town to pass such an ordinance would be giving it equal power with the legislature to restrict personal and property rights.

To Hon. William Dunn. Inquiry: Where a town has enacted an ordinance requiring taxi operators to post \$5000 bond or liability insurance to that amount, (1) is the ordinance applicable to cabs from nearby towns which habitually bring passengers into town and return for them, and (2) do the requirement for bond or insurance constitute unlawful discrimination in favor of owners of private vehicles?

(A.G.) C. S. 278 (36) furnishes statutory authority for such an ordinance. Thereunder the ordinance may be made applicable to any taxicabs whose operators are "engaged in the business of transporting passengers for hire over the public streets of such city or town." Vehicles under the utilities commission jurisdiction are expected, of course, but taxicabs plying between the towns mentioned would not come within this exception, for they have no fixed termini nor regular schedules. *State vs. Andrews*, 191 N. C. 545.

It seems to me that the taxicabs coming in from other towns and using the streets of the city are engaged in business within the city in such a way as to subject them to the application of the ordinance. The second question you raise is answered by the case of *Watkins vs. Isley*, 209 N. C. 256, where it was held that an ordinance adopted pursuant to C. S. 278 (36), was valid and did not amount to an unconstitutional discrimination against vehicles operated for hire.

0-1. Municipal charters and powers.

To L. E. Squires. (A.G.) The fact that a town has not been an active municipal corporation for a period of twenty years would not, in my opinion, have the effect of vacating its charter. If there are any of the original officers of the town still living there, they would, under the charter, have authority to meet and function as the government of the town.

P. Town boundaries.

2. Right to change boundaries.

To Patrick Healey. Inquiry: C. S. 2902—12 (Municipal "Home rule" statutes) provide machinery for locally initiated amending of town charters by vote of the people. Under these statutes, and since many town charters define corporate limits, may not the people of a town employ this machinery to enlarge their corporate limits by amending the charter?

(A.G.) I do not think the legislature intended that the "home rule" provisions allowing charter amendments should extend to revision of corporate limits. Although this office has expressed the opinion that a statute expressly delegating power of corporate limit revision to a city board would probably be valid, such power is not expressly granted by the sections referred to. I think our courts would be reluctant to so interpret these sections as to subject the rights of persons outside corporate limits to the will of those inside, without an express legislative mandate to that effect. There are no cases in this state, and few elsewhere, dealing with your question. I call attention, however, to *State vs. Warner*, 4 Wash. 773, 31 Pac. 25. A provision in the State Constitution set out a method by which city charters might be framed or amended by local action. It was held that an extension of

the city limits did not constitute an amendment of the charter within the contemplation of this provision.

X-1. Ordinances.

To Hon. Wm. B. Campbell. Inquiry: Please advise as to the constitutionality of the following proposed city ordinance: "It shall be unlawful for any person to cause, allow, permit or suffer any vehicle registered in his name or under his control to be parked overtime or beyond the lawful periods of time as above set forth. Ownership of a vehicle parked in violation of this ordinance shall be *prima facie* evidence that it was so parked by the owner thereof."

(A.G.) In my opinion, the validity of the first part of the proposed ordinance is hardly open to question. By its terms it does not attempt to hold the owner of a vehicle responsible for a violation unless he had some control or personal connection with the overtime parking.

With respect to the latter portion, however, I am inclined to doubt its legality. It might be considered an unwarranted invasion of the power of the courts and of the legislature to create and change rules of evidence in criminal cases. A search has not disclosed any decision by our Supreme Court passing on the question of the power of a municipality to create a *prima facie* presumption of guilt or innocence of a defendant in a criminal action. I seriously doubt that a municipality has such power.

Y. Streets and sidewalks.

10. Interest on past due assessments.

To R. L. Brinkly. Inquiry: Does the board of commissioners of a town have authority to accept the principal amount due on a street paving assessment and remit the amount of interest which may have accumulated?

(A.G.) Under C. S. 2715, you will find that the governing board may correct, cancel or remit any assessment for a local improvement, and remit, cancel or adjust the interest or penalties on any such assessment.

VIII. Matters affecting chiefly particular local officials.

B. Clerks of the superior court.

58. Instruments filed with clerk.

To W. E. Church. (A.G.) Although the statute s. 2 (6), Ch. 251, P. L. 1941, simply provides that the certificate of limited partnership required by the act shall be filed "in the office of the clerk of Superior Court," it does not designate in which county such certificate shall be filed.

In my opinion, the better practice would be to require the certificate to be filed in the office of the clerk of court of the county of the location of the principal place of business, as well as in those counties where the limited partnership has a branch office. This is advisable because the purpose of the filing is to put creditors and others on notice as to the character and other details of the organization with which they are doing business.

H. Tax collector.

To Hon. J. B. Crisp. Inquiry: Is the county tax collector, who is paid a salary for his services in that office, entitled to fees for such services as preparing land certificates?

(A.G.) In the case of Patterson vs. Swain County, 208 N. C. 453, our court held that the sheriff of Swain county, who was paid a fixed salary for his services as tax collector, was not entitled to receive fees for his services in advertising and selling land for delinquent taxes, preparing land sales certificates and other similar transactions, as these duties were performed pursuant to his duties as tax collector. Un-

der the authority of that case, it is my opinion that the court would be justified in denying a tax collector the right to receive extra compensation.

L. Local law enforcement officers.

2. Prohibition law—transportation in Interstate Commerce.

To Hon. Wm. C. York. Inquiry: Where a trucker is hauling whiskey from a point outside the state to a point in the state, with proper bill of lading and itemized bill of goods hauled, can such whiskey be held and confiscated en route?

(A.G.) I refer you to State vs. Davis, 214 N. C. 787. The burden of establishing the *corpus delicti* is of course on the state; however, when the defendant relies on some independent, distinct and substantive matter of exemption, immunity or defense, beyond the essentials of the legal definition of the offense itself, the onus of proof as to such matter is on the defendant. Here, for instance, the defendant must show that the whiskey hauled came within an exception in the ABC act permitting such act.

7. Prohibition law—confiscated automobiles.

To Bruce F. Heafner. Inquiry: Where a man is a notorious and often-convicted bootlegger, and where the car he was using at the time of his present offense is listed in his wife's name, is the wife entitled to intervene for the return of the car, which has been confiscated under C. S. 3411 (f)?

(A.G.) The facts as given would seem to militate very strongly against the good faith and want of knowledge required before she could secure return of the car. The burden of proof in such a case is upon the wife, and not the state, and she must overcome the natural inferences arising against her from such a situation. However, if she overcomes such inferences, it would seem that she is entitled to return of the car under C. S. 3411 (f). The legislature might constitutionally require the forfeiture of such a vehicle even though the owner was entirely innocent (C. I. T. Corp. vs. Burgess, 199 N. C. 23), but it has not done so. Under the section, the car is to be returned to the owner if the transportation was without his knowledge or consent, and is to be sold where there is no such innocent owner.

41½. Permitting intoxicated person to drive.

To Hon. P. G. Stoner. Inquiry: Please advise whether a person in charge of an automobile, who requests and permits another person under the influence of liquor or other intoxicant to operate the automobile, such party at the time riding with the driver in an intoxicated condition and knowing that the driver was intoxicated, but not doing acts sufficient to consider him an aider and abettor, could be convicted of drunken driving.

(A.G.) The nearest answer I find to your problem is the case of State vs. Trott, 190 N. C. 678. Under the doctrine laid down in this case, if the facts as indicated come within the scope of that decision, I believe that an owner could be convicted under the circumstances. I call your attention to the case of State vs. Spruill, 214 N. C. 123, and to the cases therein cited, giving the converse of the doctrine as applied to that case and those cited.

I would not attempt to express an opinion on any particular case without knowing all the facts, and can only deal with the general principle involved.

54. Fingerprint records.

To Hon. Claude V. Jones. Inquiry: May a police department under C. S. 7766 (g) take the fingerprints of persons booked for public drunkenness and similar of-

fenses, who are not suspected of having committed any other crime?

(A.G.) I think that portion of C. S. 7766 (g), which provides in effect that chiefs of police and sheriffs of the state "are hereby required to take the fingerprints of any other person when arrested for a crime when the same is deemed advisable by any chief of police or sheriff . . ." has the effect of authorizing such officers to take the fingerprints of any person charged with any crime, however small, should they deem it advisable, even though such person is not suspected of having committed any other crime.

65. State Highway Patrol.

To T. Boddie Ward. Inquiry: Do members of the state highway patrol have authority to arrest deserters from the military or naval forces of the United States? If so, is a warrant required?

(A.G.) The Supreme Court of the U. S., in Kurtz vs. Moffitt, 115 U. S. 485, held that if a police officer or private citizen has that authority, it must be derived from some rule of the law of England which has become part of our law, or from the legislation of Congress. The court found that no such authority came from the English law, and that at that time there existed no law of Congress granting it. This was a direct holding by the court that Congress could validly legislate to this effect, and in 1898 Congress enacted a law which is now S. 1578, Title 10, Army, USCA, Article of War 106, and another which is T. 34, Navy, Sec. 1011, U. S. Code, providing that it shall be lawful for any civil officer having authority under state or federal laws to arrest "offenders", "summarily to arrest deserters" from the military, naval or marine forces.

The term "civil officers" means all state officers other than military officers.

In my opinion, members of the state highway patrol have authority to arrest without warrant deserters from the Army, Navy or Marine Corps.

120. Peace officers' fund.

To John R. Morris. Inquiry: For violation of city ordinances, a city court allows defendant to plead guilty and pay a nominal sum, less than the cost usually assessed in this court. The city treasurer has been advised that it will not be necessary to pay one dollar to the state for the Law Enforcement Officers' Benefit Fund in these cases. Should the additional dollar not be charged?

(A.G.) S. 9, Ch. 349, P. L. 1937, as amended, provides that in every criminal case, where the defendant is found guilty and charged with the costs, "there shall be assessed against said convicted person one dollar additional cost, to be collected and paid over to the Treasurer of the State of North Carolina." I do not believe that the reduction of the court costs to a nominal sum can affect this statute, which in my opinion is mandatory and not in the discretion of the court.

XII. State taxes.

C. Income taxes.

5. Exemptions.

To Hon. A. J. Maxwell. (A.G.) North Carolina Athletic Stadium bonds are in my opinion exempt from income taxation, under section 317 (2) (d) of Ch. 158, P. L. 1939.

The statute does not confine the exemption to "general obligations" of the state of North Carolina, but to the contrary, refers only to "obligations" of the state of North Carolina. It is a well settled policy of the state to exempt the income from bonds issued by the state or any of its agencies, as a reference to other such bond authorizations will disclose.

Defense Rulings of the Attorney General

To Governor J. Melville Broughton. (A.G.) You inquire whether power is vested in the governor to declare the existence of an emergency to the extent that he has authority to extend by proclamation general police power throughout the state to State Highway Patrol members.

C.S. 3846(ooo) provides, inter alia, "the State Highway Patrol or any member or members thereof shall have full power and authority to perform such additional duties as peace officers as may from time to time be directed by the Governor"

This gives the governor the power, I think, to require the State Highway Patrol to perform such duties as peace officers as in his judgment the emergency now existing would necessitate.

You further inquire whether the governor can extend the jurisdiction of local peace officers, such as sheriffs and chiefs of police, beyond the boundaries of their local governing units.

I know of no statute which would authorize this action. As a general rule, in the absence of any public-local law to the contrary, the jurisdiction of such officers is confined within the boundaries of the local unit.

To Hon. B. D. McCubbins. Inquiry: A number of young men between the ages of

17 and 21, anxious to enlist in the armed services, having both parents dead and being without guardians or friends who are willing to undergo the expense of becoming guardians, have applied to the clerk of court asking that he appoint a regular guardian or next friend in each case to sign the permit to enlist required of minors. May he do this legally and effectively?

(A.G.) It is clear that since guardians ad litem and next friends may be appointed only where actions are to be instituted on behalf of minor children, those devices will not serve the purpose here.

There is nothing in the law to cover the exact situation. However, it seems to me you could appoint a personal guardian, without authority to receive or administer any estate, which would eliminate necessity of bond, for C. S. 2161 apparently contemplates bond only where property is involved.

It was held in Howardton vs. Sexton, 104 N. C. 75, that omission of the clerk to take the bond required does not destroy the efficacy of the appointment as guardian.

If the army or navy would accept a permit signed by a personal guardian appointed by the clerk, I can see no legal objection to making the appointment.

To Dr. J. C. Knox. Inquiry: May regis-

ters of deeds legally issue marriage licenses to soldiers whose health certificates are issued by army doctors?

(A.G.) Under C. S. 6622 physicians and surgeons in the U. S. Army or Navy are not required to be licensed in this state, and may practice medicine in the discharge of their official duties. I see no reason why registers of deeds should not accept certificates of such doctors. Nor do I see any reason why the State Board of Health should not approve laboratories of the U. S. Army and Navy and Public Health Service, so that certificates from such laboratories would be acceptable in such cases.

To General J. Van B. Metts. Inquiry: If any unit or organization of the State Guard is called into active service of the state, as in case of some emergency, are the individual officers and men thereof entitled to pay for such service?

(A.G.) Chapter 43, P. L. 1941, providing for the organization of the State Guard, sets forth that the Guard shall be subject to the military laws of the state, with certain exceptions; however, C. S. 6864, which provides for pay for the militia when called into active service, is not among these certain exceptions. It is my opinion, therefore, that when the State Guard is called into active service by the governor in an emergency, the individual members and officers are entitled to compensation in accordance with C. S. 6864.

Machinery Act Changes, Supreme Court Decisions, and Rulings of the Attorney General as brought out in questions raised at the Annual Meeting of the N. C. Tax Supervisors' Association, Institute of Government Building, Dec. 11 and 12, 1941.

1. Rural Electrification Authorities. The REA law of 1935, Ch. 291, P. L. 1935, made electric membership mutual corporations (when organized under this chapter) the equivalent of municipal corporations for tax purposes. Since that time some such corporations, not having taken advantage of the 1935 law, have paid taxes. Under the 1941 REA law, Ch. 161, P. L. 1941, such mutuals have six months to reorganize under the 1935 law, if they desire, and upon reorganization they are to be exempt from taxation in the future, and are entitled to refund without interest of taxes paid since 1935.

The Attorney General has ruled that the law is constitutional, despite its retroactive features, and that consequently requests for refunds should be honored.

2. Hospital service corporations (hospital care insurance associations) have been declared by the General Assembly (Ch. 338, P. L. 1941) to be charitable and benevolent institutions, and are therefore exempt from taxation under N. C. Constitution Article V, s. 5. This interpretation might be upset by the Supreme Court, which has not passed upon the point. There are three such associations operating within the state.

3. Question: Under Supreme Court decisions of the last few years holding that property owned by charitable, religious or educational institutions is subject to ad valorem taxation if held by such institutions for business or other than charitable,

religious or educational purposes, would vacant lots, owned by such institutions, but which produce no income, be taxable if the lots were not used for directly charitable, religious or educational purposes?

Answer: The Attorney General has ruled that such vacant lots are taxable, especially where they are not adjacent to the institution or situated in such a way as to be part of the institution, as where they are held merely for investment purposes.

4. Question: What are "other farm products" as exempted from taxation by s. 601 (12) of the 1941 Machinery Act? Would a hog, for instance, be the sort of "farm product" intended to be exempted by this section?

Answer: There has been no decision on this point by the Supreme Court as yet. The Tax Supervisors, however, adopted the following position on this question: That in view of the fact that Ch. 221 of P. L. 1941 (appearing as s. 601 (12) of the 1941 Machinery Act) undertakes to exempt from taxation "cotton, tobacco or other farm products," owned by the original producer, etc., for the year following the year in which "grown," Be It Resolved, that the tax supervisors uniformly construe "farm products" as intended to mean only crops annually harvested from the soil, thus excluding livestock and poultry of all kinds meat, livestock and poultry products, timber, and all other property not constituting ordinary crops grown during the

year immediately preceding the tax listing day.

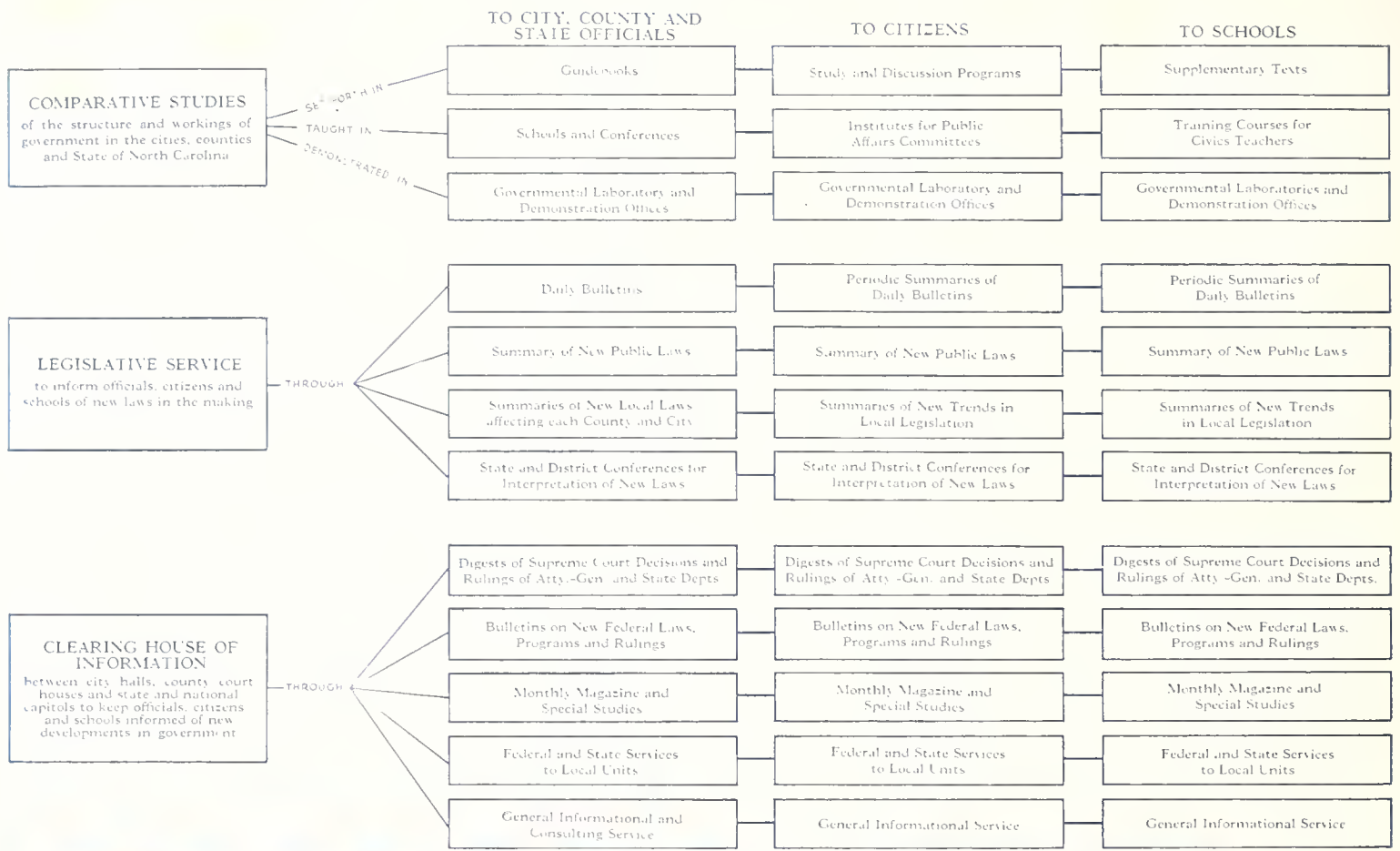
5. Question: May property and funds of the Teachers and State Employees' Retirement System be subjected to ad valorem taxation?

Answer: No, by virtue of Art. V, s. 5 of the North Carolina Constitution, which exempts property belonging to the state from taxation by other governmental units. Further, as the law is framed, these funds cannot be taxed even when paid out as income to persons receiving the benefits of the Act. On this latter point, serious question has been raised as to the constitutionality of the Act.

6. Question: When the Federal Government takes title to property by condemnation or purchase, after January 1 but before July 1, does the tax lien, for the taxes for which the property is listed as of January, (i. e., the taxes due the following October), attach to the land in such a way that the taxes must be paid in order to give the government clear title to the land?

Answer: Yes. See United States vs. State of Alabama, 61 Sup. Ct. 1011, decided by the U. S. Supreme Court on May 26, 1941; Bemis Lumber Co. vs. Graham County, 214 N. C. 167 (1938). This, however, doesn't mean that the county has power to foreclose the tax lien as against the United States. (See U. S. vs. Alabama, supra.).

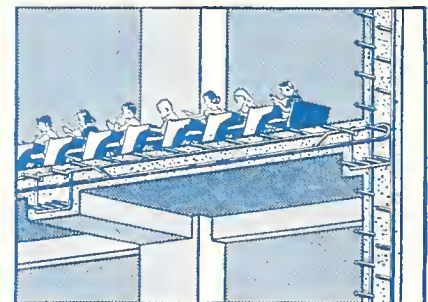
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