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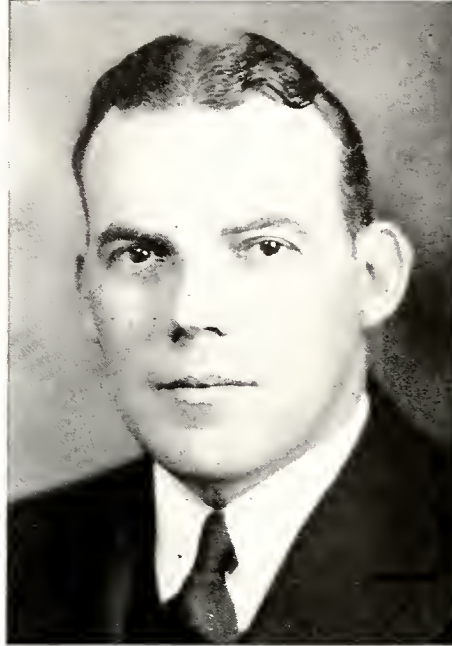
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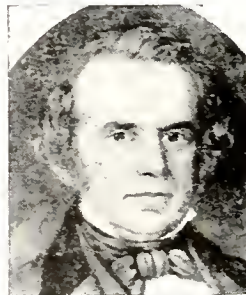
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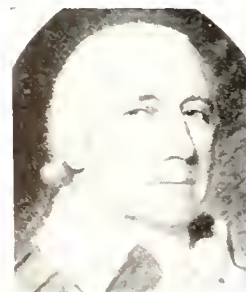
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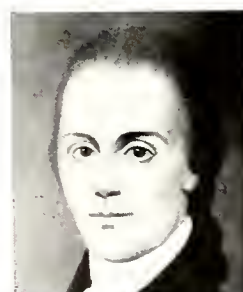
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NOTES ON WAR GOVERNORS, LIEUTENANT GOVERNORS AND SPEAKERS

The following officers have served during World War II: Governors J. Melville Broughton of Wake and R. Gregg Cherry of Gaston; Lieutenant Governors R. L. Harris of Person and L. Y. Ballentine of Wake; Speakers John Kerr, Jr. of Warren and Oscar L. Richardson of Union.

The following officers served during World War I: Governor Thomas W. Bickett of Franklin; Lieutenant Governor O. Max Gardner of Cleveland; Speaker Walter Murphy of Rowan.

The following officers served during the Civil War: Governors John W. Ellis of Rowan, Henry T. Clark of Edgecombe and Zebulon B. Vance of Buncombe; Speakers of the Senate Henry T. Clark of Edgecombe and Giles Mebane of Alamance; Speakers William P. Dortch of Wayne, Robert D. Gillam of Granville, Richard S. Donnell of Beaufort and Nathan Fleming of Rowan.

The following officers served during the Revolutionary War: Governors Richard Caswell of Lenoir County, Abner Nash of Craven and Thomas Burke of Orange; Speakers of the Senate Samuel Ashe of New Hanover, Whitmel Hill of Martin, Allan Jones of Northampton, Abner Nash of Craven and Alexander Barton of Guilford; Speakers of the House of Commons Abner Nash of Craven, John Williams of Granville and Thomas Benbury of Chowan.

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The 1945 General Assembly

Background, Problems and Achievements

The members of the 1945 General Assembly gathered in Raleigh in January with the apparent determination to tackle their biennial task with all of the seriousness and earnestness at their command, in keeping with the mood and demands of the times. This appearance of a seriousness of purpose was translated into reality as the legislature went about its job of law-making, and it was in evidence from the time the party caucuses were called to order until the final gavels announced adjournment sixty-seven legislative days later. Many and varied have been the criticisms directed at the 1945 session (and most of them have been laudatory), but there was virtual agreement by all observers that little more could have been asked of it in the way of hard work and honest efforts to find satisfactory solutions to its many problems.

Of serious and perplexing problems the legislature had its full share. And while the members were united in a common desire to solve those problems in a manner which would serve the best interests of their State, and of their particular counties and districts, many and divergent were the views and ideas which the legislators brought to Raleigh. It was probably fortunate that greater unanimity of opinion as to the best solution to many of the problems did not prevail; for the background in which the legislature met, the problems with which it was confronted, and the uncertainties as to what the next biennium would bring forth were such that unanimous views upon many of the problems, untempered by that compromise and adjustment which comes from a fusion of many ideas

and opinions, might easily have done serious damage to the State and its economy, might have granted special concessions to some and placed undue hardships upon others.

The remainder of this issue of *Popular Government* is given over to a discussion and analysis of the more than 1,450 bills and resolutions which are the tangible results of the legislators' work. But before getting into that discussion, we present here a review of the background and setting in which the legislature met, and a summary of its problems and principal achievements.

BACKGROUND AND PROBLEMS

I. The War and the Legislature

In normal times, the job of legislating for 2½ years ahead, of making estimates and forecasts, of making reasonably adequate appropriations which will cover expected future costs, of paring down requests of many competing agencies for increased support, and of providing a tax structure which will bring in sufficient revenues to keep the budget in balance is difficult enough. The difficulty is compounded many times by the fact of a major war, even if that war is going smoothly and in accordance with general expectation. Business and finance are very sensitive to the fluctuating tides of battle, and costs of government and tax revenues are very sensitive to fluctuations in business. Since the State's economy is geared to the national economy, and the national economy is dominated by the requirements of war, the probable duration of the war and the probable effects of reconversion had to be seriously considered. The legislators had good reason to believe that both the European and Asiatic phases of the war would be ended sometime during the next biennium. The question was, when?



The General Assembly took time out to join in the celebration of the University's Sesquicentennial. Above, standing, are Dr. L. R. Wilson, Chairman of the University's Sesquicentennial Committee; R. B. House, Vice-President of the University and Chancellor of the University at Chapel Hill; Lieutenant Governor L. Y. Ballentine; seated, Dr. Frank P. Graham, President of the University of North Carolina; Dr. Clarence P. Dykstra, President of the University of Wisconsin; Victor S. Bryant, Chairman of the University Trustees' Sesquicentennial Committee; and Governor R. Gregg Cherry.



Governor Cherry addresses a joint session of the General Assembly celebrating the University's Sesquicentennial.

How soon after the fall of Germany would the partial reconversion to a peace-time economy begin? How much of the war effort which Germany had been absorbing must be shifted to Japan? How long would it be before full reconversion could take place? When would revenues start declining and how sharp would the decline be? When could the State undertake a program of public works and to what extent should a program be developed and ready for execution? What would the State most need in the post-war period? What demands would be made on its services and what facilities should it have to meet those demands?

Estimates upon these and many other unanswerable questions had to be made before the legislature could proceed intelligently, and even then only the future could tell how nearly correct its course of action would be. To further complicate the business of making estimates, two weeks before the legislature met, the war had taken a sudden turn for the worse. Von Rundstedt had scored his spectacular break-through in the Ardennes sector, and as the General Assembly convened "experts," "authoritative sources" and "military circles" were still at odds as to its over-all effect.

II. General Fund Surplus

The 1945 legislature, like that of 1933, was faced with "money troubles," but there was a very happy difference between them. The 1933 body was faced with an already serious and still growing deficit. Not only were revenues declining, but it seemed absolutely necessary for the State to assume even heavier burdens by taking over the school system to save it from breakdown. Its task was hard but its course was clear, based upon two simple points: (1) reduce all appropriations to the absolute minimum, and (2) search out all possible sources of new revenue and levy taxes wherever it was thought they could be borne.

The "money trouble" the 1945 body had to face was of a very different nature. It was based upon the happy but problem-raising circumstance of a large surplus in the general fund—some fifty-eight millions of dollars (including the twenty million dollar reserve fund) as of December 31, with estimates of the surplus as of June 30, 1945, ranging upward from seventy million dollars. Around this surplus revolved problems decidedly different from those of the 1933 session, but no less perplexing, especially in view of the uncertain future. And the 1945 Assembly did not have before it the simple choice, the one possible course which lay before the 1933 session. The fact of the surplus offered a great variety of choices, all with some merit, but none wholly satisfactory. It encouraged many suggestions, programs and pressures:

1. Increased Appropriations

Many and ardent were the champions of increased appropriations for the expansion of the State's services to its citizens. With such a handsome surplus on hand and with the money still coming in above estimates, why not seize the opportunity for doing some of those things which have so long been so badly needed? What sense is there in piling up riches in Raleigh while the State's institutions and essential services wither away because of a serious lack of nourishment?

Mental Institutions. Especially insistent on greatly increased appropriations, both for expansion of plants and personnel, were the champions of the mental institutions, and there were many of them. Descriptions of conditions at these institutions for the State's unfortunates, due to over-crowding (in addition to long waiting lists), lack of equipment, and the lack of a sufficient number of adequately trained specialists and attendants, ranged from "unsatisfactory" to "shameful" to "horrible." A separate group of champions of Caswell Training School at Kinston came to Raleigh determined to see that the unfortunate children there, and many others who couldn't even gain admittance, received justice in the tangible form of

a greatly increased allotment. Surely, the State could spare a few of its surplus millions to make decent provisions for its afflicted people. It wasn't as if the State were "broke."

But how could the State enter into a building program when it was hard put to it to lay hands on enough men and material to keep its existing facilities in a passable state of repair? Even if it could secure the necessary labor and material to enlarge and modernize its mental institutions, would it want to voluntarily assume the position of retarding the war effort by diverting strength which might better go into ships and munitions?

Educational Institutions. The State's institutions of higher learning, looking forward to greatly increased enrollments after the war, to the obligation of having old positions open to former faculty members who have been serving with the armed forces or in civilian positions in connection with the war program, and to making long-due improvements and expansions of their facilities, were on hand with requests for substantial increases. In view of the surplus on hand, the probable increase in enrollments, and the greatly increased service the institutions could render the State with the suggested improvements in facilities, the requests were not unreasonable.

But how could one tell how much expansion would be necessary? How many servicemen would come to our schools under the G. I. bill? Wouldn't it be better to wait and see, especially since new construction is out of the question now? It might be necessary to call an extra session when the war is over, or when it is near enough over to start on the process of large scale reconversion, anyway, and wouldn't it be better to hold up plans for improvements until we know more about what to expect?

Health. Those interested in public health came forward with a program which would have considerably reduced the swelling in the coffers of the State treasury. Aimed at providing or increasing hospital facilities in the State, particularly in the counties unable to provide such facilities without State aid, at trying to get an increasing number of doctors to locate in the State and to get a better distribution of them particularly in the rural areas, at setting up a four-year medical school within the University, together with clinical facilities, nurses' quarters, etc., and in general at improving the public health and furnishing more adequate and widespread medical care for the people of the State, the program was ambitious and meritorious. Its sponsors could point to the low number of hospital beds per capita in comparison with other states; to many counties and communities with no hospital facilities; to the necessity of sometimes hauling emergency patients, when minutes may mean lives, 50 miles or even further; to the low number of doctors per capita in comparison with other states; and, as proof of an admittedly bad situation, to the alarming percentage of draft rejections on the ground of physical unfitness. They could also point to the wherewithal for putting the program into effect—the still growing surplus.

But, conceding the desirability of expanding the public health services and making more generally available hospital and medical care, shouldn't such an important program receive more study? Shouldn't we wait and see what the Federal government intends doing along that line? Is it wise to appropriate funds now for buildings which cannot now be built, when we do not know what our postwar needs will be and do not know how well our postwar revenues will be able to support and maintain the hospitals even if we could build them now?

Salary increases. It seemed to be a foregone conclusion that a great deal of pressure would be brought to bear upon the legislators for salary increases, particularly in behalf of teachers. Many undisputed points could be brought forward in

favor of salary increases: teachers, as well as many other large groups of State employees, had long been over worked and underpaid. The rise in the costs of living, aside from taxes, had far outstripped regular salary increments plus the bonus provided by the 1943 legislature. Taxes had taken a substantial slice out of salaries which had once been nearly if not entirely tax free. Not only were the real wages, measured in terms of purchasing power, much less than before the war, but in thousands of cases, the "take-home" pay, dollar for dollar had been substantially reduced. While teachers and State employees had been losing ground, economically, industrial workers, both ordinary laborers and white collar workers, even outside the high-wage war industries, had seen their pay checks keep pace with and often outstrip the advance in living costs. Waitresses, salesgirls, stenographers, bookkeepers—it was hard for the teachers, who have to spend years of time and several thousands of dollars in preparation, to discover an occupation which wasn't relatively if not actually better paid, and it was easy to find many unskilled or semi-skilled jobs with much more money attached. The teachers had stuck by their jobs in those lean years when the State was unable to do more for them, and they had carried excessive loads with a minimum of complaint. Now that the State was financially able to do so, would it be any more than common justice for the State to recognize their services in a tangible way?

Moreover, the school system was in danger of breaking down. Standards—never too high in North Carolina—were being dragged down. Because of salary scales too far out of line with other vocations open to trained personnel, the profession was not even attracting to its ranks enough adequately trained teachers for normal replacements necessitated through deaths and retirements, let alone the replacements necessitated by resignations of those going into more lucrative fields. The State, by its penny-wise policy with respect to teachers' salaries, was jeopardizing its huge investment in the public school system, and it was "selling short" its greatest and potentially most valuable asset—its children.

But hadn't the State steadily increased its support of the public schools ever since it took them over in 1933? Hadn't it, in fact, gone a little too fast in the direction of increases—from \$16,000,000 per year in 1933 to nearly \$35,000,000 per year in 1943, plus an additional \$3,500,000 per year for operation of the ninth State-supported month added by the 1943 legislature—an increase of over 240% in 10 years? Conceding that teachers are still underpaid, isn't it better to keep within the State's means while moving steadily upward instead of attempting too wide a jump which might result in a serious setback later? As for that tempting surplus, it must be remembered that it is the product of abnormal war spending and that the action which piled it up may well be equaled by the reaction which will tear it down. It was produced by substantially the same tax laws which produced some 25 million dollars less per year before the war. Would it be good business to rely on this surplus, which represents in part inflated revenues and in part deferred capital maintenance and construction, in making appropriations for recurring expenditures? Wouldn't it be the wiser course to do as much as possible for the teachers and other State employees as *current* revenues will permit, and leave the surplus out of the picture?

2. Tax Relief

The fact of the surplus lent hope and encouragement to those who could be expected to make a fight for tax relief. They could argue with considerable force that the people and industries of the State were burdened by extraordinarily heavy Federal taxes, made necessary by huge war spending, and that the State was the gratuitous beneficiary of that spending. The State did not need all of its war-born revenue; could not even spend all of it wisely without either hindering the war effort

or embarking upon some new enterprise or expansion of services which normal, postwar revenues would not be able to support. Wouldn't it be the wise course, the honest course, to reduce taxes as much as possible by granting reductions which would bring revenues down to the level of prudent current expenditures? Is it fair or sensible or businesslike for the State to maintain tax schedules which for the past four years have produced and which for the next two years will probably produce more revenue than the State currently needs or can use judiciously? Isn't the twenty million dollar reserve fund which was "frozen" by the 1943 legislature a sufficient back-log against a sudden decline in revenues?

Corporate taxes. The advocates of reducing taxes of various kinds on corporations had been carrying on for over a year a campaign which apparently was pointed toward the 1945 legislature. They produced figures and schedules tending to show (to the limited extent figures and schedules can show) that our corporate tax burden was higher than those of our neighbors, or of any of the seven Southeastern states; that our industries were in an unfavorable competitive position; and that old industries were being driven from the State and new ones were being discouraged from locating here. Why not seize upon this golden opportunity to reduce corporation taxes, thus getting in a favorable position to take advantage of the expected postwar industrial shifts? Why not use this opportunity to lower taxes, thus encouraging industrial development which will eventually produce more revenue under lowered schedules than our present industries are producing under present schedules? While the State is financially able to do so, why not make an investment which promises such handsome returns?

But is it likely that businesses of a permanent nature will make any changes with respect to their location until after the war? Could a tax reduction now attract industries now? And isn't it a fact that the present schedules failed to produce surplus revenues before the war and that they are not likely to produce surpluses after the war? Would it be wise to reduce taxes now, when there are no new permanent industries to attract, in the face of the probability that we would have to start increasing tax rates again just at the time businesses are expected to start shopping around for locations? And is there any proof that any corporation has ever moved away from North Carolina or decided against coming here solely or even largely because of our tax structure? Wouldn't business prefer to face even relatively high but stable tax schedules which could be relied upon in long range planning rather than schedules which are being forever tampered with and which are fraught with uncertainties? Haven't substantial new enterprises in fact located in North Carolina in recent years, in



Representative T. J. Pearsall of Nash County, Chairman of the House Appropriations Committee, explains a bill.

preference to other states which claim to have more "favorable" corporate taxes? And didn't those enterprises decide upon North Carolina because they saw here an intelligent, dependable and contented citizenry from which to draw their workers—a condition due in large measure to the State's services which must be supported largely by taxes on corporations?

Sales tax. Hasn't the time now come, at long last, when that abomination, that nuisance, that wicked, regressive tax—the sales tax—should be eliminated? With estimates of the surplus in the general fund by the end of the 1944-45 fiscal year running to seventy million dollars and over, is there any excuse or vestige of reason in continuing a tax which was enacted in 1933 as an "emergency" measure, which was adopted after a hard fight only because there was, in fact, a dire emergency, upon the promise of repeal as soon as the emergency was over, and which successive State Democratic platforms had pledged to remove? In all fairness, shouldn't the sales tax at least be removed from the necessities of life and reduced to a luxury tax? Or reduced to 1% or 2%? Or taken off of meals in hotels, cafes and restaurants? While the people of the State had generally grown less resentful of the tax, there were still plenty of folks who were strongly against it, and now was the time to do something about it.

But is now the time to make *any* major tax changes? It must be remembered that the surplus is mostly the result of inflated business volume. It must also be remembered that the sales tax was originally enacted to enable the State to take over the support of the eight-months school term, that since 1933 a ninth month and a twelfth grade have been added; and that the schools are now costing about two and a half times more than they were in 1933. Isn't it a fact that the schools need more support from the sales tax than ever before?

3. Post-War Reserve Fund

Since the future is so uncertain, why not put the bulk of the general fund surplus in a postwar reserve fund, as a cushion against declining revenues and as a fund with which to carry out a program of public works after the war? It is true that we already have a twenty million dollar fund set up, but the same tax schedules which produced that much surplus in a year's time under inflated conditions can just as quickly produce a deficit under deflated conditions. A large postwar reserve fund would serve many purposes: (1) Provide a cushion against declining revenues and guarantee the continuance of the State's essential services during the period of readjustment after the war. (2) Provide a fund for constructing and equipping many needed facilities. (3) Enable the State to take a major role in furnishing its returning veterans with employment during that period when many industries will be retooling and preparing to return to the production of civilian goods.

4. Debt Retirement

Why not set aside enough of the surplus to take care of the general fund bonded debt, principal and interest? We have been appropriating about ten million dollars each biennium for general fund debt service. If we could get rid of that item in the budget we should be able to give better support to some of our undernourished institutions in normal times with our present tax structure. Moreover the best time to pay a debt is while you have the money. With extra money on hand, it is too easy to make a down payment on something not really needed, and to wind up with real needs unsatisfied, with something new but not really needed, and with a debt as big or bigger than ever.

III. Other Problems

In addition to the numerous problems created or greatly aggravated by the war, the legislature also had to contend with the usual recurring problems of every session.

Liquor. What should be done about liquor? There was a

considerable pressure being developed for a State-wide referendum on the question of abolishing the ABC system and returning to State-wide prohibition. It seemed probable that if a referendum were held it might carry. The "wet" counties, many of which would be placed in a serious financial position if the ABC profits were taken away, could be expected to fight strenuously against a referendum. They could argue that under the present laws each county could and had made its own decision in the matter, and that ABC stores in Halifax or New Hanover counties affected the Piedmont and Western counties less than did the liquor situation in South Carolina, Georgia or Virginia. They could also argue that it was unfair and inadvisable to hold an election upon such a major matter of policy while so many of our citizens are beyond the reach of the ballot box, and they could point to the sad results of the national prohibition amendment which was adopted under similar circumstances.

Beer and wine. What should be done about beer and wine? It seemed certain that something would have to be done, and many legislators, in response to demands from the home folks, came to Raleigh determined to see that something was done. The problem of handling week-end beer and wine drunks had become acute in a number of communities. If local option was the proper answer to the liquor problem, why was it not just as logical to grant local option with respect to beer and wine? While enforcement problems were left largely with local officers, the State had a substantial stake in the matter: some \$2,000,000 annually in revenues.

Roads. What should be done about roads? Normal construction was far behind schedule and many roads were in need of repair and improvement. It was obvious that sooner or later the biggest highway program in the history of the State would have to be instituted. But when could it be started? How much of it should be concerned with secondary, or "county" roads? What about the claim of the cities for greater assistance in improving and maintaining the highway links within their corporate limits?

Laws. There was the problem of what to do about modifying, adjusting and improving the great body of statutory law which regulates the personal and business conduct of the people of the State. These problems confront each successive legislature, but in time of war, when so many of our people who will be affected by changes in the "rules and regulations" under which we live in North Carolina, to what extent should even meritorious changes be made? To what extent should progress be arrested in the interest of maintaining the *status quo* for the benefit of those who have a right to expect to find the State as nearly as possible as they left it, so they can the more easily take up again where they left off, without the added handicap of having to acquaint themselves with new conditions?

IV. The Governor's Program

With so many problems and perplexities confronting the legislature, and with a patent need for a definite program which would promote coherence and purpose in the work of the legislature, it was even more fitting than usual that the Governor should exercise his constitutional duty to "give the General Assembly information of the affairs of the State, and recommend to their consideration such measures as he shall deem expedient." This Governor Cherry did, in a record-breaking inaugural address which was in the form of a message to the Senate and House, sitting in joint session. While this address, which required an hour and twenty-five minutes to deliver in a relatively rapid and vigorous style, did not cover the entire field of possible legislation, it did contain a large number of specific recommendations and, as shown by subsequent legislation, it definitely established the "tone" and policy on matters of major importance. The principal recommendations

are summarized below. A preview of the essence and guiding principle of the recommendations were given in the first few minutes of the address when he stated:

"Any program of progress for the peace-time period, which I had hoped to help you formulate, due to the demands of this unfinished war, must be held in abeyance."

State and Federal Relations. Having in mind, perhaps, what many people have felt to be an undue encroachment upon the powers and provinces of the states by the federal government and usurpations of traditional as well as constitutional State functions, the Governor recommended that "each House of the General Assembly appoint strong Committees on Federal Relations to consider all matters in which federal policy in North Carolina may be involved and further to make studies of current policies, with the view of framing a declaration of North Carolina policy in respect to all federal matters, foreign and domestic."

Fiscal policy. The Governor's recommendations relative to fiscal policy boiled down to three points: (1) Appropriations should be kept within current revenues. (2) The general fund surplus should be used to provide for the retirement of the general fund bonded indebtedness, rather than being used for current expenditures. (3) There should be no major changes in tax policy.

Tax policy. The burden of the Governor's recommendations relative to tax policy was that the tax structure should remain unchanged, except for the removal of some duplicating taxes, the enactment of clarifying amendments and minor changes in various schedules. For example, he suggested that drugs used by doctors and patients might be exempted from the sales tax, that the income tax structure should permit certain exemptions for medical and funeral expenses and for expenses of children over 18 years of age who are in school, and that allowances should be made where double taxation exists in the franchise tax structure.

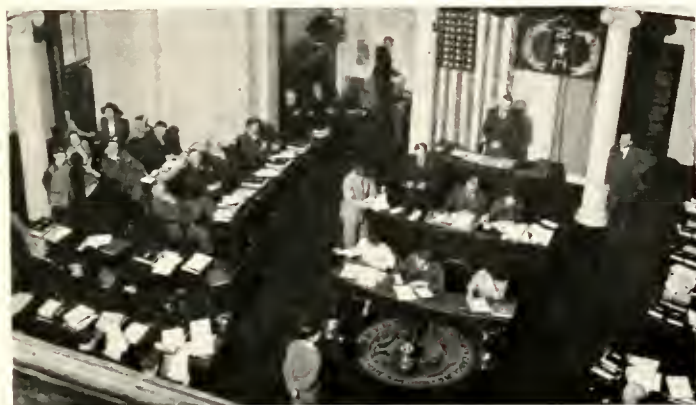
The war bonus. enacted by the 1943 General Assembly for teachers and other State employees, and which expired by limitations on December 31, 1944, should be reenacted for the remainder of the fiscal year ending June 30, 1945.

Public schools. After pointing to the growth of the State's school system and the increasing cost to the State, to the fact that about nine hundred thousand children are enrolled in the public schools and that schools are currently accounting for approximately two-thirds of the total general fund expenditures, the Governor made the following specific recommendations:

(1) A *beginning salary* of at least \$125 per month should be provided for a teacher with an A certificate, with increments for experience.

(2) *Vocational training* should be further promoted.

(3) *Rent-free textbooks* should be furnished to eighth grade



Lieutenant Governor L. Y. Ballentine presides over a session of the Senate.

students, and rentals on high school books should be no higher than necessary to meet maintenance costs.

(4) *Classified principals* should be put on a ten-month basis, in order to provide compensation for their work in preparing for and closing out school terms.

(5) *The compulsory attendance age* should be raised from fourteen to sixteen.

(6) *Incentive pay* for superior teaching should be the subject of a study and report by a special commission which should be authorized by the legislature.

(7) *Capital outlay* in substantial amounts will be needed in the postwar period for new school buildings and improvements to existing ones, and the advisability of making available out of postwar funds money to be loaned to counties at low interest rates to finance these capital improvements should be considered.

(8) *Fiscal control* of school funds should be provided by the enactment of adequate machinery which will promote economical management, equitable distribution, definite accounting for and a proper safeguarding of the funds.

Higher educational institutions. The Governor did not recommend any appropriations for permanent improvements of the State's institutions for higher learning, but he suggested that "adequate provision be made for the maintenance of the ordinary and necessary requirements needed to maintain the usual standards of the institutions" in the face of declining tuition fees and other normal revenues of such institutions.

Roads. The Governor called attention to the fact that because of labor and material shortages the State had been unable to build the normal amount of new construction which available funds would have permitted, but that when conditions would again permit, the accumulated surplus in the Highway Fund, together with available federal funds, would enable the State to launch a highway program which would more than make up for the loss in new construction during the war period. Looking forward to that time, he laid down the following general principles:

(1) *All-weather roads* should be made available to every section and community, and especially should all school bus routes, mail routes and roads leading to churches and markets be usable the entire year. (2) *County, community and farm-to-market roads* should receive increased attention. (3) *Boards of County Commissioners* should continue to serve as the bodies to which petitions relating to lateral roads in the respective counties should be addressed, and a closer cooperation with the State Highway and Public Works Commission should be encouraged. (4) *Highway hazards* should be eliminated so far as possible in old roads and avoided in new ones. (5) *A limited system of heavy duty roads* is essential in order to meet the needs of expanding industry.

Agriculture. Pledging the encouragement and promotion of agriculture in general, the Governor specifically called for the expansion of scientific services by Federal and State agencies, the development of new by-products of agriculture through the employment of chemists by the State to work in cooperation with those employed by other states and by federal agencies, improved standards of living for farm workers, and the establishment of an agricultural school for boys who do not plan to attend college.

Rural electrification and telephone extension should be encouraged. With regard to the latter, the Governor asked for authority to appoint a committee to study the feasibility of the State's promotion of a rural telephone program.

Veterans. Since, in the opinion of the Governor, we do not know when to expect the largest number of veterans to be returned to civilian life, and can only guess at how many will need what kind of services and facilities for training, he suggested that the needs of the veterans should be met from the post-war reserve fund, "which can be used as and when the

needs of the veterans can be determined." He also specifically recommended: (1) that a *State Veterans' Administration* to advise and assist veterans in securing the benefits available to them under federal and State legislation be set up; (2) that *free tuition* in the State's educational institutions should be offered to children of deceased veterans; and (3) that *employment preference* should be given to veterans by the State's departments, institutions and agencies.

Health and hospitalization. Under former Governor Broughton a commission had been appointed to study the public health situation in North Carolina and to formulate a program looking toward more widespread hospital and medical care for the people of the State, and particularly for those in rural areas and in the lower income groups, and the commission had delivered its report to Governor Broughton. Governor Cherry took cognizance of the report but declined to make any specific recommendation in his inaugural address. Said he:

"I have examined the report with some degree of care, and I agree in principle with its main thesis. As yet, I have not had an opportunity to study its full implications or arrive at a definite conclusion as to its initial capital outlay or recurring costs of support." (Later in the session he lent his support to a modified medical care program as embodied in H.B. 594). He did, however, state that "an adequate medical examination, and care, should be provided for all of the children of the State whose parents are not able to provide for same," and he called for the necessary appropriation to enable the Department of Health to carry out the program.

Conservation and Development. The Governor advocated a strong Department of Conservation and Development "to bring about a full realization of the potential wealth and value of our resources," and requested authority to appoint a commission to study the best method of promoting the State's game and inland fisheries.

Public Welfare. In this field, the Governor recommended an increase in the average monthly public assistance payments, State supplementation of county funds for public welfare administration, and a strengthening of the State Department of Public Welfare to enable it to carry on a continued study of social problems and their alleviation.

Labor should be "adequately represented" on all State commissions and boards dealing with problems which affect labor in any degree, to the end that differences between labor and management may be solved at the council table rather than through either active or passive strikes, which he termed "undesirable and undemocratic."

Unemployment Compensation is properly a State function, the Governor declared, and he requested the legislature to make this position known to the State's Congressional delegation by proper resolution.

Constitutional amendments. The Governor definitely recommended the submission of a Constitutional amendment to the people which, if adopted, would render women eligible for jury service. He also suggested that the legislature consider the advisability of submitting a new amendment relative to the State Board of Education which would provide that terms of office of members should not exceed four years, that members be appointed from the State at large rather than from districts, and for the definite and adequate fiscal control of school funds.

A Department of State Police and Public Safety, to include existing agencies such as the State Highway Patrol, Bureau of Investigation, Drivers' License Bureau, Safety Division, Finger-Print Bureau of State Prison and possibly other agencies should be established.

Liquor. In accordance with his campaign pledge, the Governor recommended that provision be made for a State-wide liquor referendum, and that provision also be made for controlling the shipment of liquor through the State in order to

guarantee that none of it will be dropped off illegally within the State.

Mental, charitable and correctional institutions should have adequate support, "to the end that North Carolina shall do most for those less fortunate."

Other Recommendations

Governor Cherry called for "adequate funds" for the continuance of the State Guard or for the reestablishment of the National Guard after the war; for increased assistance to public libraries, especially those serving the rural areas; and that, as to other departments, agencies and bureaus not specifically mentioned, "ample and adequate provision" be made for the needs of those deemed essential, "within budgetary limitations."

The Governor Sets the Style

Thus the Governor, in outlining his suggestions and recommendations in his first official statement, set the style, tone and character of legislation for a General Assembly which had problems a plenty with which to cope but which, since there had been no clear-cut major campaign issues, had received no clear mandate from the people as to how those problems should be met. The burden of the message as to fiscal affairs was: caution, hold the line, and wait and see. It meant no major changes in the tax structure, no major increases for operating expenses, no major appropriations for plant expansions. It revolved largely around the general fund surplus, and by advocating the use of almost exactly all of it, beyond the twenty million dollar post-war reserve fund, to retire the general fund bonded debt, he sought to accomplish a four-fold purpose: (1) to enable the State to face the post-war world with a clean slate; (2) to cut the ground from under those who were clamoring for tax reductions; (3) to reduce the pressure for increased appropriations for current expenditures; and (4) to remove the temptation to appropriate large sums for the establishment or expansion of pet projects which, though individually meritorious, might prove in the post-war period to be less urgent than other worthy projects and which might entail maintenance charges and other recurring expenditures beyond the limits of reasonable post-war revenues.

Every school child learns that the Governor of North Carolina, of all of the forty-eight governors, does not have the power to veto legislation. His signature to laws is not required. From this fact, many people in this and other states have the impression that his power in legislative matters is practically nil. This impression is very far from the truth, indeed. The vast appointive power of the Governor, his capacity as Director of the Budget, and the respect accorded his office combine to give him ample power in legislative matters. Some measure of the extent to which that power and influence was felt may be obtained by comparing his recommendations with the accomplishments of the legislature, set forth in the succeeding pages.

ACCOMPLISHMENTS—GENERAL VIEW

In its 67 legislative days, the 1945 General Assembly saw the introduction of 1458 bills and joint resolutions—an average of over 21 bills per day. Of the 1458 bills introduced, 1150, or approximately 79% were finally enacted into law, although many of them had been so far altered as to bear little resemblance to their original form. Of the 1150 new laws, 689, or approximately 60% are local acts, while 452, or approximately 40%, are State-wide measures. A number of the public laws, of course, are actually of limited or local application, such as an act which applies only to cities having 100,000 or more population, or laws, which although general in terms, can only apply to specific, individual situations. But after making all allowances for laws of limited or local application, there still remains a substantial body of new State-wide measures which will touch upon and affect the lives of all the citizens of the State.

How well did the legislature anticipate and provide for the

Chart Showing Total Average Yearly Requests, Recommendations and Appropriations for All State Functions for Biennium 1945-1947

Departmental Requests	\$121,691,980
Budget Commission's Recommendations	\$109,899,945
Appropriation Committee's Recommendations	\$116,262,891
Legislative Appropriation	\$116,262,891

(Scale: 1 in. = \$25,000,000)

Actual Total State Expenditures for 1929-1944, Compared with Average Yearly State Appropriations for the Biennium 1945-1947

YEAR	AMOUNT
1929	\$ 33,371,000
1933	\$ 42,945,000
1938	\$ 69,443,000
1940	\$ 77,112,000
1942	\$ 85,476,000
1944	\$ 86,503,891
Appropriations 1945-47	\$116,262,891

(Scale: 1 in. = \$25,000,000)

Average Yearly State Appropriations for the Biennium 1945-47—By Functions Compared with Actual Expenditures for Fiscal Year Ending June 30, 1944

	Actual Appropriations 1943-44	Actual Expenditures 1943-44	Departmental Requests	Budget Commission Recommendations	Appropriation Committee Recommendations	Legislative Appropriations
Legislative	\$ 100,000	\$ 99,841	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000
Judicial	487,823	442,705	477,258	458,593	458,593	458,593
General Administration	3,463,196	2,929,485	5,292,627	3,844,165	3,913,006	3,913,006
Agricultural Fund	621,831	616,111	781,531	731,135	751,135	751,135
Highways	17,135,930	18,810,971	37,745,947	37,596,655	42,596,655	42,596,655
Higher Education Institutions	3,771,646	3,277,338	6,604,997	4,493,671	4,769,595	4,769,595
Charitable & Correctional	3,393,602	3,132,389	5,627,923	4,675,416	5,053,576	5,053,576
Public Welfare	4,623,825	4,740,214	6,879,932	5,444,359	5,499,359	5,499,359
Pensions	200,350	267,774	294,200	266,200	266,200	266,200
Contingency & Emergency	750,000	445,101	750,000	750,000	750,000	750,000
Public Education	38,920,591*	38,569,351*	44,355,819	43,918,641	44,483,662	44,483,662
Debt Service:						
General	5,233,337	5,233,590	5,252,772	112,136†	112,136	112,136
Highway & Public Works Fund	7,940,022	7,939,021	7,508,974	7,508,974	7,508,974	7,508,974
Total	\$86,633,153	\$86,503,891	\$121,691,980	\$109,899,945‡	\$116,262,891	\$116,262,891‡

* This figure includes \$3,454,845, the amount for a ninth month of school term, which was not included in the regular Appropriation Bill of 1943.

† This amount does not include the \$51,585,079 which the Budget Commission recommended be placed in the Sinking fund, as it was later provided for by special act.

‡ These figures do not include the average yearly amount of the estimated receipts of the various State departments, agencies and institutions (\$22,616,663.)

needs of the State during the coming biennium? How did it meet the varying and conflicting demands made upon it during the session? Was the composite complexion of the legislature "liberal," "conservative" or "middle-of-the-road?"

Fiscal Matters

By and large the legislature adhered closely to the Governor's recommendations relative to fiscal affairs. It literally made debt retirement a "first order of business" by appropriating from the surplus on hand and expected by June 30, 1945, the sum of \$51,585,079 which, when added to general fund sinking funds now on hand of approximately \$6,750,000 is expected to take care of the general fund bonded indebtedness of \$47,501,500 (as of June 30, 1945) together with interest in the amount of \$27,774,353 which will accrue during the terms of the bonds. By this move, the State will save nearly seven million dollars—the difference between the total of \$65,275,853 which will have to be paid to discharge the bond principal and interest and the total of \$58,335,079 which is set aside and invested to meet the bond maturities. This act also removes the necessity of carrying approximately five million dollars per year on the budget for general fund debt service and, with that large fixed charge eliminated, will permit greater flexibility in future budget making. Finally the act, which was introduced on the fifth legislative day and rushed through to ratification three days later, before it was printed and before most of the legislators had had an opportunity even to read it, removed a great temptation and considerably reduced the pressure for increased spending, lower tax schedules, or both.

The debt retirement act serves to point up the high cost and expense involved in the traditional method of handling public finances. In order to discharge a debt of the present principal amount of \$47,501,500 it was necessary to set aside a sum in the present principal amount of \$58,335,079, which is \$10,833,579 or nearly 23% more than the present principal of the debt. The bonds making up the debt were issued as recently as 1941 and as far back as 1909. The State Hospital bond issue authorized by Chapter 510 of the Public Laws of 1909 further illustrates the point. The authorized issue was for \$500,000 of 4% bonds, payable in 40 years. Assuming the bonds were sold at par and the State received the full \$500,000, that amount of money will have cost the State \$800,000 in interest. In other words, a \$500,000 facility cost the State \$1,300,000. The State and its political subdivisions, by following the policy of financing improvements by the issuance of bonds instead of paying for them out of a capital reserve fund maintained by annual or biennial appropriations in anticipation of future needs, have been paying an average of around two and one-half times the cash price of their buildings and other improvements, even when the bonds are paid at maturity instead of merely being refunded by a new bond issue, as is so often the case.

The point is further illustrated by the debt retirement act. Among other bonds taken care of by the act are \$3,427,000 of 4% 40-year bonds issued under authority of Chapter 399 of the Public Laws of 1909. These bonds were issued in 1910 for the purpose of paying off a 30-year, 4% bond issue authorized by Chapter 98 of the Public Laws of 1879 ("an act to compromise, commute and settle the State debt") and those bonds in turn were issued for the purpose of taking up bonds some of which were issued before the Civil War. It is not apparent from the bond act of 1879 as to how much interest had been paid or had accumulated on the bonds which were being refunded, but it is clear that the act of 1879 provided for the payment of 4% interest for 30 years and the refunding act of 1909 provided for the payment of 4% interest for 40 years. Seventy years interest on \$3,427,000 at 4% equals \$7,128,160. Thus it will have cost us \$10,555,160 to discharge our seventy-

year-old consolidated debt of \$3,427,000. Thus we have been paying many times over for our purchases.

Taxes

In line with the Governor's recommendation that no major changes be made in the State's tax structure, the legislature left the Revenue Act pretty well alone. There were, of course, a large number of minor changes and adjustments of which space will not permit a discussion here. None of those changes represents a change in tax policy, although some of them will affect to a limited extent the total revenue. Major changes came in the sales tax, franchise tax, and wine tax schedules.

The sales tax was removed from drugs used by doctors and their patients, and from seed, feed and insecticides used in poultry and stock raising and in agriculture. It is estimated by the Department of Agriculture that this exemption will save the farmers of the state approximately \$100,000 annually.

For a number of years the principal tax assessed against insurance companies, other than workmen's compensation, has been a 2½% gross premium tax. However, if a company had as much as 15% of its entire assets in certain specified investments in North Carolina, such company paid at the rate of only ¼ of 1%. This was clearly discriminatory in favor of North Carolina companies and against the larger foreign companies. When the U. S. Supreme Court recently held that the insurance business is commerce and that when conducted across State lines it becomes interstate commerce, it raised a grave question as to the validity of the gross premiums tax with its discriminatory provision. To meet this danger, the legislature took three separate steps (1) rewrote the premium tax law and fixed it at a flat 2% for all companies, except the tax on unemployment compensation insurance premiums which was left at 4%; (2) passed an act to authorized insurance companies to comply with taxing statutes regardless of questions of validity, and to relieve officers of such companies from liability for making tax payments in conformity with existing law rather than contesting payment; and (3) substantially rewrote, in eleven companion bills, the insurance laws of the State which, among other things, greatly increased State control over rates and over methods of operation.

Wine Tax

Wine received considerable attention, not only in efforts to abolish or more strictly control it (see page 13) but also in efforts to greatly increase the tax on it. After the revenue bill had been reported favorably in the House and had passed its second reading, an amendment was sent up from the floor which would have increased the present 20c per gallon tax on unfortified wines to \$1.20 and taxed substandard, synthetic and "dessert" wines (over 14% and not more than 20% alcohol) at \$1.20 per gallon. This was finally compromised to make the tax on naturally fermented, unfortified wines 30c per gallon (a 50% increase) and the tax on substandard and synthetic wines \$1.20 per gallon. A subsequent bill, however, (the Wine Control Act) bids fair to do away with the sale of substandard and synthetic wines in the State. At any rate, the State Alcoholic Board of Control now has the power to bring about this result.

Theater Taxes

One proposed change in the Revenue bill which did not get through would have put the theaters back on the 3% gross receipts tax. The change from the gross receipts tax to a flat sliding scale of license fees was made in 1943, and had resulted in a loss of some three-quarters of a million dollars in revenue for the biennium. It was contended that the 1943 change was made under the impression that it was merely a matter of adjustment as between the large and small operators and that it was erroneously estimated that the total revenue under the new

(Continued on page fifty-two)

Changes at the City Hall and County Courthouse



In addition to numerous statewide laws affecting local governmental units, many changes were made in various courthouses and city halls by some 750 local acts.

Local Taxation

The 1945 legislature considered a number of bills in the field of local taxation—from listing, assessing and collection to foreclosures and the final disposition of the foreclosed property. Part of this legislation was enacted substantially as introduced, part of it was amended to apply only to certain counties, and part of it was rejected entirely.

Farm census reports. A serious effort was made to relieve tax listing officials of the duty of taking the farm census—a duty which is now superimposed upon the tax supervisors and list takers. The effort was embodied in H.B. 146, which would have accomplished the purpose simply by repealing G.S. 106-25 and 106-26. The bill did not attempt to set up any other machinery for handling the farm census. The effort bogged down. Although the bill was reported favorably by the House Committee on Agriculture, it was in the form of a committee substitute which, instead of repealing G.S. 106-25 and 106-26, would have required the Department of Agriculture to furnish instructions

for taking the farm census and would have authorized county commissioners to designate someone other than the tax supervisor to have charge of the census. The substitute also would have appropriated from the general fund a sufficient amount to pay to the counties 10c per farm acceptably reported, to help cover the cost of the job. The committee substitute was adopted by the House, but the appropriation provided therein made it necessary to refer the bill to the Appropriation Committee which reported the bill unfavorably, and that was that. For the 1946 and 1947 tax listing, at least, supervisors and list takers will continue to be burdened and irked by the farm census.

Taxpayers' oaths. The present law requires the listing taxpayer to take and subscribe an oath to his tax list, and it requires list takers "to read and actually to administer" the oath, and failure to accept a list without administering the oath is a misdemeanor. The method prescribed by law for administering oaths involves the use of the Bible, but the presence of a Bible at a list taker's table is such a rarity as to be virtually unknown. In accepting lists without administering the oath, list takers have been violating the law, unconsciously, perhaps, but

nevertheless violating it. Since the oath is seldom read to or by the taxpayer, and since the value of the oath to the tax list, even if administered according to the present law (*after* instead of *before* all questions have been asked by the tax lister and answered by the taxpayer) is probably negligible, H.B. 97 would have removed the requirement of the oath and would have substituted a simple certification with notice that a false return would be punishable as in the case of perjury. The bill passed the House, but was reported unfavorably by the Senate Judiciary Committee No. 1. So, for the next two years at least, list takers must either provide themselves with Bibles and learn to administer the oath, or continue to violate the law and lay themselves liable to fines and removal from office.

Interest on tax sales certificates. From a high rate of interest on tax sales certificates of 20%, the legislature over a period of years reduced the interest to 12%, to 10% and finally to 8%, where it has been for the past several years. But interest on delinquent taxes which do not involve real estate—that is, upon personal property and poll taxes which are not liens upon real estate—has been at the rate of 6% per year, or ½% per month (after the addition of the 2% penalty on March 2 following the due date). The patent discrimination and inequality led a few local units to seek and obtain special acts to reduce the interest on tax sales certificates to 6%. Many other units, however, made the reduction through “main strength and awkwardness,” although there was no authority for it and the action of governing boards in permitting this reduction may have resulted in personal liability.

H.B. 161, “An Act to revise section 105-388 (a) (b) and section 105-345(5) of the General Statutes of North Carolina,” recognizes the discrepancy heretofore existing and provides that tax sales certificates issued after the ratification of the Act (February 23, 1945) shall bear interest at the rate of 6% per year. One discrepancy apparently still remains: whereas the interest, or “penalty” on delinquent personal property and poll taxes which are not liens upon real estate accrues at the rate of ½% per month straight, after the addition of the 2% penalty on March 2, the new law as to tax sales certificates still calls for interest upon interest, although at the lower rate. That is, interest which has accrued up to the time of the certificate sale, together with the costs of sale, is included in a new principal which bears 6% interest from the date of sale.

Penalties on servicemen's taxes. The Soldiers' and Sailors' Civil Relief Act prohibits interest or penalties in excess of 6% on servicemen's taxes. The question as to when interest starts running—from the due date of the tax on the first Monday in October, or from the date penalties begin to accrue, on February 2—has been asked and left unanswered. Now comes H.B. 712 which should enable governing boards to clarify the question to their own satisfaction. It permits, but does not require, governing boards to relieve “any member of the armed forces” of payment of any charges in the form of interest or penalty on delinquent ad valorem taxes assessed against the property of such member for any taxable year during service in the armed forces. As written, the Act apparently permits governing boards to relieve some servicemen of interest and penalties and hold others to payment. This was probably not intended, as such a construction would permit arbitrary discrimination. It was probably intended to allow governing bodies to adopt a policy with respect to interest and penalties, to be applied alike to all servicemen. The Act applies to interest and penalties on taxes “assessed . . . for any taxable year during service.” It therefore does not apply to taxes assessed for taxable years prior to entry into service.

There are two provisos: (1) The Act shall not extend beyond the duration of World War II. (2) The member of the armed services must present to the tax collecting authorities “a certificate of discharge from the armed services in proof of membership therein.” This second proviso takes no account of

the soldier who wants to pay his taxes while still a member of the armed forces. Being still a member, he has no certificate of discharge to present, and therefore cannot qualify for relief under the Act as drawn.

Veterans' organizations' tax exemption. Sections 600(6) and 601(6) of the Machinery Act exempt from ad valorem taxation the real estate and personal property belonging to the American Legion, when used exclusively for lodge purposes. This exemption is probably extended to other veterans' organizations under the general language of the sections (“any benevolent, patriotic, historical, or charitable association”), but H.B. 924 clarifies the point and extends to other veterans' organizations the same tax exemptions now enjoyed by the American Legion. The bill also exempts such other veterans' organizations from the payment of pool and billiard table licenses, to the same extent that American Legion posts are exempt.

Tax release due to property damage. The 1937 legislature, meeting at a time when the law required the listing of ad valorem taxes as of April 1, rather than as of January 1 as at present, provided (Ch. 15, P.L. 1937) that the governing body of any city or county could release, discharge, commute or remit any portion of the taxes levied and assessed against property which, between April 1 and June 30, was wholly or partially destroyed or damaged by tornado, cyclone, hurricane or other wind or windstorm, to the extent the damage was not covered by insurance or replaced by the Red Cross or some other welfare agency. This provision is codified as G.S. 105-405.

Among the changes made by H.B. 65 (the general bill making numerous amendments in the General Statutes), section 43 of the bill makes the period when allowance may be made begin on midnight of December 31 and end on midnight of March 31. Moving this period back three months was apparently intended to make the bill conform to the new tax listing period of January 1. Probably overlooked was the fact that the original act allowed these adjustments to be made for damages sustained between the beginning of the tax listing period (April 1) and the beginning of the fiscal year for which the tax was assessed (then as now, July 1).

Tax foreclosures—limitations. A bill which has excited considerable interest is H.B. 289 which provides a ten-year statute of limitations upon all “tax liens” upon which suit has not been instituted. The bill was amended from the floor to require the filing of a notice of lis pendens in order to toll the statute. It was further amended to restrict its application to the counties of Durham, Guilford, Jones, Mecklenburg and Onslow. It becomes effective in Durham County on October 1, 1947, in Mecklenburg County on October 1, 1946 (by virtue of a separate Act, S.B. 446), and in the other counties on October 1, 1945. In counties other than those named above, the situation remains unchanged: suits may be instituted upon tax liens for taxes as far back as 1927. An Act of 1933 (Ch. 181, Sec. 7) barred all tax liens for 1926 and prior years, except in Pamlico and Richmond Counties.

Property acquired from tax exempt owner—interim listing. An impressive total area of land has been taken over in North Carolina by the federal government for army, navy and marine corps bases, for airports, war plants and other purposes connected with the war. With two of the principal foes polished off and the third visibly weakened, much of this property will soon be on the market and will begin to get back into taxable hands. Under the law prior to the passage of H.B. 731, if this property should be returned to a private owner on January 2, the county would lose a year and a half of taxes—the balance of the fiscal year ending June 30 plus taxes for the fiscal year beginning July 1.

H.B. 731 attempts to take care of this situation by providing that where property is acquired from a tax exempt owner between January 1 and July 1, it shall be listed and taxed

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Alcoholic Beverages

Beer, Wine and Liquor Problems in 1945

In 1945, as in 1943, the members of the General Assembly came to Raleigh in January fully aware of at least one of the questions which would confront them: what to do about beer, wine and liquor in North Carolina?

In 1943 the chief agitation from communities all over the State was for regulation of the hours of sale of beer and wine. The thought apparently was that if the sale could be prohibited during the later hours of the night and on week-ends many of the law enforcement and morals problems which were plaguing the communities could be eliminated. More than 30 local bills relating to the hours of sale were introduced during the session. This agitation resulted in the enactment of Chapter 339, Session Laws of 1943, a composite of the local bills which prohibited the sale of beer and wine anywhere in the State between the hours of 11:30 P.M. and 7:30 A.M. on week days and authorized the governing bodies of counties and towns to prohibit the sale from Saturday night to Monday morning if they desired.

Minor changes were made in the fees chargeable for wine and beer licenses in 1943. A bill which would have created a Wine Control Commission under the direction of a \$6000-a-year Commissioner was killed in the Senate. The 1943 proposal for a State-wide liquor referendum was reported unfavorably by the House Committee on Propositions and Grievances on the fourteenth day after its introduction. And that was the extent of the 1943 legislative action with respect to beer, wine and liquor.

1945 saw a much stronger anti-alcohol sentiment, however. Many legislators came instructed by their constituents to outlaw beer and wine completely in their communities; the regulation of hours of sale apparently had not satisfied the hue and cry. Long before the General Assembly convened, the drys had been charging their big guns for an all-out attack; both candidates in the gubernatorial race in the May primary had pledged themselves to a referendum. The 1945 legislative action affected all alcoholic beverages to varying extents.

Beer and wine. Harking back to the principal action of 1943, the General Assembly amended the hours-of-sale law with respect to beer and wine so as to clarify the definition of "beer" as used in that act. Experience since the ratification of the act showed that some retailers were seeking to avoid compliance with the law by asserting that they were selling "ale" and not "beer." S.B. 298 provides that wherever the word "beer" is used in Chapter 339, Session Laws of 1943, it shall include "beer, lager beer, ale, porter, and other brewed or fermented beverages containing $\frac{1}{2}$ of 1% of alcohol by volume but not more than 5% of alcohol by weight as authorized by the laws of the United States."

As to new law concerning beer and wine, the legislators turned primarily to the control and prohibition of wine. Judged from newspaper comment, the explanation of the emphasis on wine control seems to be two-fold: first, more problems, iniquities and dissatisfaction result from the sale of wine than do



Speaker of the House Oscar Richardson presides over a session of the House as Reading Clerk Ralph Monger reads the title of a bill. Directly beneath the Speaker is Mrs. Annie E. Cooper, Principal Clerk, and to her right is Mrs. Edith Crane, Journal Clerk. At the press table is Clifford Pace of the Institute, Frances Newsom Miller of the News and Observer, and Bloys Britt of the Associated Press.

from the sale of beer; second, the beer interests maintain one of the most successful lobbies in Raleigh.

Public bills. The first State-wide bill aimed at controlling the sale of wine, S.B. 31, was introduced early in the session and reported unfavorably by the Senate Finance Committee late in the session. It would have prohibited the sale and transportation of wine containing more than 1% alcohol by volume in those counties which have not had a referendum on the liquor question. The bill apparently did not apply to those counties which have had a referendum or which may hereafter have a referendum.

H.B. 732 directly prohibits any retail wine licensee to possess, sell or offer for sale any "imitation, substandard or synthetic wine." A violation of the act constitutes a misdemeanor punishable by a fine or imprisonment in the discretion of the court. Lacking in the bill is any definition of the wines to which the prohibition is directed. As originally introduced, the bill referred to "any wine not now specifically defined by existing law in North Carolina"; it was later amended to refer instead to such wines "as defined by the Federal Government." Both definitions were eliminated before final passage, leaving open the question for law enforcement officers (and apparently for retailers themselves), as to what wines are prohibited. But the purpose of this bill apparently is obviated by the later passage of the Statewide wine control measure discussed below. The effective date of the act is July 1, 1945.

Wine Control Act. Most important of the wine bills enacted is H.B. 877, aimed at controlling the places at which wine for consumption on the premises may be sold and regu-

lating the kinds of wine that may be sold within the State. After reciting in the preamble that it is the public opinion throughout the State that most of the problems arising out of the sale of wine are attributable primarily to those two factors—the conduct of the place where wine is sold for consumption on the premises and the types of wines that are sold—the act then changes the law as to issuing “on premises” licenses and delegates to the State Board of Alcoholic Control general powers to regulate the manufacture and sale of wines.

The Alcoholic Control Board is authorized by the new article (G.S. 18-109 through 116): (1) To adopt rules and regulations establishing standards of identity, quality and purity for both fortified (more than 14% alcohol by volume) and unfortified wines (not less than 5% nor more than 14% alcohol by volume), but not to increase the permissible alcoholic content of either type of wine. (2) To issue permits to resident or non-resident manufacturers, wineries, bottlers and wholesalers (all persons selling wine for resale) and to revoke the permits after proper notice and hearing upon violation of the article or any of the rules and regulations promulgated by the Board. (3) To test and analyze wines to determine whether they conform to the standards established, to confiscate and destroy those which do not conform, and to inspect premises where wines are sold, including all books, records, etc. (4) To enforce and administer the article, including the employment of the necessary personnel, and to prosecute violations. Funds necessary for the administration of the article are to come from the Contingency and Emergency Fund. The Board is authorized to exercise any of its previously-granted powers in connection with the enforcement and administration of this wine act.

Retailers of wine, either fortified or unfortified, are required by the article to keep complete and accurate records of sources and dates of acquisition of all wines sold and will be guilty of a misdemeanor punishable in the discretion of the court if they sell wines not on the approved list prepared by the State Board unless they have specific authority to do so. *Manufacturers, wholesalers, etc.* (all persons selling for resale), are required to furnish the Board with verified statements of laboratory analyses of all wines sold, upon request of the Board, and must secure from the Board a permit for the sale of such wines, whether the seller is resident or non-resident.

This new article became effective upon the ratification of the act on March 19. However, no wine standards are to become effective until 30 days after their adoption by the Board and persons affected by the adoption of the standards are to have 60 days after the adoption to dispose of stocks not conforming to the standard. Numerous changes were made in the Revenue Act to make it conform to the inspection and permit-granting powers vested in the State Board of Alcoholic Control by this article.

“On Premises” licenses. H.B. 877 limits the places in which wine may be sold for consumption on the premises as follows: unfortified wines may be sold only in Grade A (formerly Grade B also) hotels, cafeterias, cafes and restaurants which are licensed under Section 127 of the Revenue Act (not those places licensed only under Section 127(a), such as filling stations, soda shops, etc., selling prepared sandwiches); fortified wines may be sold for consumption on the premises in hotels and restaurants which have a Grade A rating from the State Board of Health (the law formerly did not specifically provide that fortified wines could be sold for consumption on the premises).

Wine taxes. The 1945 Revenue Bill, H.B. 12, made numerous changes in the Beverage Control Act, Article VI, Schedule F of the Revenue Act. Many were mere clarifying amendments or corrections in section numbers. Others were regulations of the manufacture and bottling of beer and wine. The

principal ones of general Statewide interest are as follows: requiring wholesale wine and beer dealers (as well as retailers, as at present) to secure license to do business from the municipality in which they operate, subject to the same conditions as the retail license; requiring an applicant for municipal or county wine or beer license to be a citizen of the United States as well as of North Carolina; granting authority to county and city governing boards to conduct hearings on the question of renewal of wine and beer licenses for violations of the conditions upon which the licenses were previously granted; extending jurisdiction to hear cases in which a licensee contests the revocation of his license pursuant to Section 514¹/₂ to municipal and county courts; exempting sacramental wines from the taxes imposed by the Revenue Act; making persons operating without the licenses required by the Beverage Control Act subject to the same liability for criminal prosecution and the same penalties as are prescribed for operating without Schedule B license (Section 187, Revenue Act); and fixing the tax on unfortified wines at 30c per gallon for naturally fermented wines and \$1.20 per gallon for imitation, sub-standard or synthetic wines (as defined in the United States Treasury Regulations).

The final public bill relating to beer and wine, H.B. 911, failed of passage; it was reported unfavorably by the House Finance Committee. The bill would have required the commissioners of any county in the State to call an election on the question of whether wine and beer should be sold in the county upon receipt of a petition signed by 25% of the qualified voters. As the number indicates, the bill was introduced late in the session, possibly with the thought that it might be a suitable compromise to answer all the local bills, which are discussed below. But the treatment of those bills had already been worked out by the time this bill went into the hoppers.

Local bills. All in all, 51 local bills pertaining to beer and wine were introduced. Some applied to several counties, some to only one county, others to one town or a township, and some only to particular areas, such as churches or schools. Some would have prohibited all alcoholic beverages in the locality affected, and others would merely have regulated the hours of sale of beer and wine in the specified area. The majority would have granted authority to county and municipal governing bodies to refuse, in their discretion, to issue beer and wine licenses.

Few of the total number passed in the form in which they were introduced. In the hands of the Finance committee, they assumed forms which in many instances could not have been related to the ancestor by more than the half-blood. In some instances, probably attributable to the rush and confusion of the last few days of the legislative session (when most of the wine and beer bills were reported out of committee and passed), two bills having the same or only slightly different

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Representative John Kerr, Jr. of Warren County, Chairman of the House Finance Committee, to which were consigned the numerous beer and wine bills.



Education and the Public School System

Public Schools

The State Board of Education. Under the amendment to Article IX, Section 8 of the Constitution adopted at the last general election a new State Board of Education was created to be composed of the Lieutenant Governor, the State Treasurer, the Superintendent of Public Instruction and ten members to be appointed by the Governor, subject to confirmation by the General Assembly in joint session. The General Assembly was directed to divide the State into eight educational districts, from each of which the Governor was to appoint one member. The other two members were to be appointed from the State at large. Pursuant to this mandate the General Assembly passed S. B. 333 (later amended by H.B. 973), which created the eight districts. Subsequently it approved the appointees of the Governor, one from each of those districts and two from the State at large. With one of those strange reversals of intention sometimes occurring in legislatures, corporate existence was "restored" to the State Board of Education by S.B. 383, only to be taken away again by S.B. 453.

County Boards of Education. H.B. 160, the Omnibus Boards of Education Bill, in addition to making elections to those county boards of education which had members whose terms were expiring during the current year, also provides that the per diem and mileage for not more than five members of each board shall be paid out of the State School Fund; for any members in excess of five the cost comes out of the county school fund.

Fiscal Control of School Funds. In his inaugural message, the Governor recommended "adequate and effective machinery for fiscal control of public school funds, having in mind economical management, equitable distribution, definite accounting for, and a proper safe-guarding of, those funds." (See article on the Governor's Program). Pursuant to that recommendation H.B. 415 made the appointment of a Controller mandatory and provided that he should be selected by the State Board of Education, subject to the approval of the Governor, and his salary fixed by the Board, subject to the approval of the Director of the Budget. The terms of that Bill divide the duties of the Board into (1) supervision and administration of the public school system, of which the Superintendent is the administrative head; and (2) supervision and administration of fiscal affairs, of which the Controller is to have supervision and management. The specific duties of each officer are outlined in detail. Procedure is prescribed for carrying out the various duties of the Board, including dividing the State into school districts, regulating the salaries of teachers, selecting and adopting textbooks, apportioning and equalizing public school funds over the State and generally supervising and administering the free public school system.

The School Machinery Act. Limitations of space preclude a detailed summary of the numerous though minor changes made by S.B. 270 in the School Machinery Act of 1939, which govern the mechanics of operation of the public school system. H.B. 963 authorizes the publication of 2500 copies of this Act, with amendments through 1945, to be distributed to school officials.

Textbooks. The State Board of Education has heretofore had the final power of adopting textbooks for the public schools. H.B. 899 makes very little change in this power with respect either to the elementary grades or to the high schools. On the other hand, the power of the Board in selecting the books from among which adoptions are to be made is very greatly broadened, since the appointment of a Textbook Commission



Representative T. Clarence Stone of Rockingham County presides over a session of the Committee on Education.

is now made discretionary instead of mandatory. The Board is also authorized, on recommendation of the Superintendent, to "adopt a standard course of study for each grade in the elementary school and in the high school."

In the event a Textbook Commission is to be appointed, the method of its appointment and the manner of its operation are outlined in detail. One board, sitting in sections, instead of the former two separate boards, will now evaluate all textbooks, both for the grammar grades and for the high schools.

In accordance with another recommendation of the Governor, H.B. 523 extends the operation of the free textbook system through the eighth grade in the public schools.

Other Matters Affecting the Administration of the Schools. The 1945 General Assembly, to enable the State Board of Education to do its job of supervising the operation of North Carolina's schools in the light of changing conditions, gave it the following specific authority:

(1) To use warehouse facilities for the distribution of supplies, materials and equipment, and to purchase such non-instructional material, supplies and equipment as the Board finds necessary (H.B. 414).

(2) To appoint five of its members as a special committee to investigate the situation with respect to school buildings in the State and make recommendations to the next General Assembly as to loans, grants-in-aid or other methods of equalizing educational opportunities throughout the State (H.B. 861).

(3) To convey or lease, subject to a reservation of mineral rights, to the State Department of Conservation and Development for game refuges certain swamplands to which it has title, the lands to revert if they cease to be used for such purposes (S.B. 311); and to relinquish, in its discretion, to the United States any claim for compensation it may have for its interest in lands within the boundaries of the Inland Waterway which have now been taken into Camp Lejeune (S.B. 384).

Under the provisions of H.B. 113, the compulsory school attendance age was raised to fifteen for the year 1945-46 and to sixteen thereafter, with the following exceptions: until six months after the war, the requirements do not apply to farm children, to children working in commercial fishing or fisheries, or to boys between fourteen and sixteen excused by their superintendent or principal to engage in gainful work permitted by the labor laws of the State.

S.B. 264 provides a revolving fund to be used in anticipa-

tion of federal payments in connection with the school lunch program.

H.B. 633 authorizes the appointment, in the discretion of local authorities, of monitors to keep order in school buses.

Teachers' Salaries. It would serve no useful purpose at this time to recount the details of the fight involving teachers' salaries, or to discuss the numerous bills and amendments which were offered and fell by the way-side in the process. It is sufficient to state here that the teachers succeeded in having stricken from the appropriation bill the salary schedule first incorporated therein, and the matter of the actual salary schedule is still left as an administrative matter to be decided upon by the State Board of Education, within the limits of the funds made available. As to appropriations, the teachers got less than they asked, but more than was first set up in the bill. The appropriation is sufficient to provide a schedule which will pay \$125 per month to the beginning teacher with an A certificate, with increments for those teachers with experience up to a maximum increment for nine years experience. Also provided is a contingent "emergency salary" of \$10 per month, or so much of it in multiples of \$2.50 as there will be money enough to pay after all "firm" appropriations have been met.

Principals were put on a ten months basis to compensate them for the work incident to preparing for and closing the nine month school term.

Vocational Schools. The General Assembly of 1941 had authorized the creation of the North Carolina Vocational Textile School. S.B. 385 created a new board for this school. The Governor had also made recommendations with respect to increased provisions for vocational education. S.B. 386 authorized him to appoint a commission to study the need for establishing one or more area vocational schools, to ascertain the probable cost and the funds available and to recommend courses of study. If from the reports the Governor finds that there is a need for schools of that type he may authorize the State Board of Education, acting as a State Board for Vocational Education, to establish one or more such schools. The Board is authorized to use such funds as the Governor and Council of State may make available from vocational education funds, from federal grants and from private gifts. The Board may promulgate rules and regulations and may utilize already established administrative units or establish new units. For each school created the Governor is to appoint a board of trustees. H.B. 614 authorizes the principal of any vocational agricultural high school, with the approval of the State Board for Vocational Education and the county superintendent of public instruction, to acquire by gift, purchase or lease for not less than twenty years a tract of not over twenty acres for the establishment of a practice forest.

Local Legislation. Space cannot be given to all the local school bills (as many as seven came from one county), which have to do mainly with such matters as the constitution and pay of county boards of education and with local bond issues and tax rates. A bill was passed, State-wide in form, authorizing the dissolution of city school administrative units composed of two municipalities. In Columbus County a new Whiteville Administrative Unit was created. The Board of Education of Lenoir County received authority to increase the salaries of its teachers retroactively for the last four months of 1944 and to increase them in its discretion for the remainder of the school year, the increase in neither case to be more than 10%. Currituck County may now close its schools, on petition, during the cotton picking season. And finally, something new was apparently added when New Hanover County received authorization to establish a junior college.

Libraries

Libraries. Ever since the Supreme Court held, in the cases of *Twining v. Wilmington*, 214 N. C. 655, 200 S. E. 416 (1939) and *Westbrook v. Southern Pines*, 215 N. C. 20, 1 S. E. (2nd) 95 (1939) that "a public library is not a necessary expense" municipalities have been hard put to support their public libraries and to observe, at the same time, constitutional requirements. In one city the library was closed for a time. In others elections on a library tax or bond issue were carried by a majority of the votes cast, which would have been sufficient to elect a President or a Governor or to carry a bond issue otherwise prohibited by Article V, Section 4 of the Constitution, but was not sufficient to carry a library bond issue because the election was not carried "by a vote of the majority of the qualified voters therein." It seems it is difficult for us to be literate, even if we would.

Three statewide bills were introduced to ameliorate the situation in so far as it is possible to do so by legislative action.

S.B. 53 authorizes two or more municipal corporations, whether cities or counties, to join for the purpose of establishing and maintaining free public libraries. The privilege was formerly restricted to "two or more adjacent counties."

S.B. 54 authorizes the governing body of a city or county, on petition of 15% of the registered voters who voted in the last election for governor, to call a special election on the question of whether a tax shall be levied for the establishment and support of a free public library. An election may not be held under this section within sixty days of any biennial election for county officers, and a new registration is required. Thus is eliminated some of the disadvantage of voting against the registration used in a previous election.

S.B. 55 failed to pass, probably because of doubts as to its constitutionality. It would have declared that libraries were a necessary expense and would have authorized for their support a tax of not over five cents on the one hundred dollar valuation, for which a vote of the people would not have been required. The Court has, of course, held that it is not bound by such legislative declarations.

Local Legislation and Other Matters. S.B. 431 gave to the Board of County Commissioners of Gaston County authority to levy, in their discretion, a special tax of not over five cents on the one hundred dollar valuation for the support and maintenance of the public library of that county. The expenditure is declared to be for a necessary expense and special purpose, so that under the terms of the bill a vote of the people is not required.

Mecklenburg County and the City of Charlotte received authority by S.B. 322 to hold a special election on the question of issuing not over \$300,000 in bonds each for building and equipping a joint county-city library and of levying a tax of not over five cents on the one hundred dollar valuation each for its maintenance. All present library properties are vested in a new board, but present levies are not superceded unless the election carries successfully. S.B. 323 provides for the constitution of the new board.

Sampson County got, by the passage of H.B. 819, and High Point failed to get, by the defeat of H.B. 854, a law library supported in whole or in part by additional costs to be charged in civil and criminal cases.

Health, Welfare and Hospitals

When the legislature convened everyone knew that the State's program for health and hospitals would come in for a major share of consideration. Nearly everyone had experienced, as a result of war-time conditions, or had a relative or friend who had experienced the inability to get a doctor or dentist when needed, and many had been unable to get into hospitals even when illness of a serious nature demanded it. The high percentage of rejections of North Carolina youths at the Army Camps, the report of the Commission on hospital and medical care appointed by Governor Broughton, and the publicity given to health conditions in North Carolina by Dr. Clarence Poe, Chairman of that Commission, and by the newspapers of the State made it apparent that health and hospital legislation was one of the matters of paramount importance which would confront the 1945 General Assembly. If much of the resulting legislation was tentative, if much was left to be perfected by another regular or special session of the legislature, at least a foundation was laid for extensive future development.

State Mental Institutions

That the pressing needs of existing institutions had not been overlooked by the Advisory Budget Commission became apparent when, on the 7th day of the session, the Appropriations Bill was introduced, carrying appropriations sufficient to cover increased allotments for a number of these institutions. The items from the budget shown in the table below will demonstrate both the extent to which the proposed appropriations were increased over the amounts received in the current biennium and the extent to which they fell short of the amounts requested. Final appropriations are also set out. They are given as illustrations only and do not purport to cover all the services of the State having a bearing, direct or indirect, on health.

Management. Comprehensive bills were introduced in both

the House and Senate to reorganize the management of all the State institutions for the care of the insane. S.B. 170, which was the one finally passed, was amended to make the reorganization less drastic than at first contemplated. However, it does reorganize the unified board of directors for the State hospitals at Raleigh, Morganton and Goldsboro, and the Caswell Training School at Kinston. The board is now to be composed of fifteen members all appointed by the Governor, one from each of the twelve congressional districts and three at large. The terms of office of the General Superintendent of Mental Hygiene and of the General Business Manager are increased from two to six years and the executive committee of the board of directors is increased from three to five members.

Commitment. S.B. 179 makes rather far-reaching changes in the method of commitment and discharge of persons suffering from mental disorders and creates several innovations in the law. It permits committing for mental disorder persons already committed as inebriates, directs the superintendents of the hospitals for the mentally disordered to notify local authorities in case of revocation of probation as well as escape of a patient, assures residents of the State immediate admission if space is available, provides for the admission of mental defectives to the State Hospitals if they are also suffering with epilepsy or mental disorder, permits commitment for observation only and authorizes withdrawal of a petition to determine mental health. If a woman is to be sent to one of the State hospitals, she must be accompanied by some member of her family or by a woman designated by the County Superintendent of Public Welfare. The provisions as to commitment in case of sudden and violent mental disorders are rewritten, as are those concerning commitment on a patient's own application. New arrangements are worked out for the exchange of mentally disordered persons between states. Provisions with respect to commitment to and release from private hospitals are somewhat altered, and commitment on a patient's own application permitted, as in the case of State institutions. A defendant under indictment for a felony may be committed for observation on the recommendation of the presiding judge. Finally, a mental health council is created to consider ways and means to promote mental health in

PURPOSES AND OR OBJECTS	EXPENDITURES 1943-45 (for comparison)		REQUESTED FOR 1945-47		BUDGET APPROPRIATION BILL 1945-47		FINAL APPROPRIATION 1945-47	
	Actual 1943-44	Estimated 1944-45	Estimated 1945-46	Estimated 1946-47	Estimated 1945-46	Estimated 1946-47	Estimated 1945-46	Estimated 1946-47
State Board of Health	\$ 373,973	\$ 400,014	\$ 960,144	\$ 968,404	\$ 453,291	\$ 452,991	\$ 463,291	\$ 462,991
Laboratory of Hygiene	65,240	70,180	111,990	113,290	80,743	80,243	80,743	80,243
N. C. Hospitals Board of Control	10,824	11,625	13,530	13,650	11,900	11,900	11,900	11,900
State Hospital at Raleigh	728,275	774,866	1,445,010	1,424,010	1,150,560	1,160,060	1,473,100	1,165,100
State Hospital at Morganton	767,783	785,373	1,550,720	1,502,920	1,270,679	1,232,879	1,434,679	1,232,879
State Hospital at Goldsboro	365,707	424,866	680,707	690,305	578,627	560,110	693,627	560,110
Caswell Training School	206,427	218,806	370,290	303,573	341,690	275,153	396,810	278,273
N. C. Orthopedic Hospital	170,763	140,642	155,361	157,127	153,074	154,840	153,074	154,840
N. C. Sanatorium	247,765	262,282	383,831	387,086	323,627	323,882	343,627	343,882
Extension Bureau	12,589	23,282	53,114	38,714	47,430	33,030	47,430	33,030
Western N. C. Sanitarium	139,328	150,556	165,787	165,787	158,923	157,730	161,423	160,230
Eastern N. C. Sanitarium	99,387	105,103	143,098	146,098	121,248	123,748	135,748	130,748
TOTALS	\$ 3,138,061	\$ 3,367,595	\$ 6,033,582	\$ 5,910,964	\$ 4,691,792	\$ 4,566,566	\$ 5,395,452	\$ 4,614,226

North Carolina and to study needs for new legislation pertaining to the mental health of the citizens of the State.

New Institutions. Pursuant to the recommendations of commissions appointed by Governor Broughton during his incumbency to study the needs of certain groups in the State for whom there are not now adequate hospital facilities, S.B. 148 and S.B. 178 established two institutions, one for the care of feeble-minded Negro children, and the other for the care of spastic children, of whom there are said to be over 1,000 in this State. These institutions are authorized to operate in temporary quarters or to acquire lands and build buildings out of donated funds, but not to spend State funds for the purchase of land or construction of buildings until further authorized by the General Assembly.

Other Bills. A joint resolution, H.B. 297, was also passed, which recognizes the primary needs of the Caswell Training School for a building program as soon as conditions will permit. S.B. 200, which would have authorized the clerk of the court to commit persons suffering from senile dementia to county hospitals or city-county hospitals when the State hospitals are unable to receive them and the local hospitals agree to provide for their care was reduced by amendment to apply to Forsyth County only.

Commission For the Blind

Legislation with respect to the blind included S.B. 46, which authorizes the Commission for the Blind to draw up rules and regulations to cooperate with the Federal Government under the Barden Rehabilitation Act and to carry on activities and enterprises for the rehabilitation and employment of the blind; requires physicians, optometrists and other person examining eyes to report to the State Commission cases of blindness and of vision with glasses which is so defective as to prevent the performance of ordinary activities for which eyesight is essential; authorizes the clerk of the Superior Court to appoint a guardian for an indigent blind person who is incapable of managing his own affairs and is receiving moneys available to the needy blind; authorizes the Commission for the Blind to establish a pre-conditioning center for the adult blind where they will be assisted in their mental, emotional, physical and economic readjustments and be given manual and other training in vocational skills; and authorizes the Commission to accept grants from the Federal Government for this purpose.

Hospitals and Medical Care

The medical care bill, H.B. 594 (introduced simultaneously in the Senate as S.B. 293), provides a program considerably reduced from that envisioned by the report of the Hospital and Medical Care Commission appointed by former Governor Broughton. It creates a Medical Care Commission which is empowered to make surveys as to the need for hospitals in various counties and localities, the economic resources of such areas and the need for State assistance, these findings to be reported to the Governor. It appropriates \$50,000 for each year of the biennium for the expenses of the Commission, and makes a contingent appropriation of \$500,000 for each year of the biennium (the contingency being the availability of funds after the payment of the contingent "emergency salaries" of teachers and other State employees) to provide State aid at the rate of \$1 per day per patient for the care of indigent persons by public or charitable non-profit, non-stock hospitals. A further appropriation of \$50,000 per year provides a loan fund for students who will agree to practice for not less than four years in rural areas. Loans are to be available to negro as well as to white students, and the Commission is to investigate methods of providing medical training for negroes. The Board of Trustees of the University, with the approval of the Governor and the Commission, is authorized to expand the medical school of the University from a two year to a four

year school. The original authorization in the bill for the construction of a hospital of not less than 400 beds in connection with the medical school was amended by the House to merely authorize the Commission to make a study as to where the medical school should be located. A Senate amendment requires a survey by the Rockefeller Foundation or some similar institution before any building program is undertaken. The Commission may accept gifts and grants, cooperate with the Federal Government, and encourage the development of group hospitalization insurance plans.

A Senate amendment which was defeated only after a hard and exciting fight would have set aside one-half of the contingent appropriation of \$1,000,000 for the biennium for State assistance in the construction and enlargement of local hospitals. Also killed was a separate bill, introduced earlier in the session, which would have appropriated \$1,000,000 for State aid up to one-half of the cost of constructing or enlarging public and non-profit hospitals and health centers. It was recognized by friend and foe alike that if the State is going to launch into a serious program of aid to local hospitals, the proposed appropriations would have barely scratched the surface of the real need, but the interest manifested in such a program was such that it is very likely to be heard of again in future campaigns and legislatures.

Local Hospitals. There was also a considerable amount of legislation with respect to purely local hospitals. S.B. 9 gives *Winston-Salem* and *Forsyth County* authority to provide joint hospital facilities for their sick and afflicted poor. Expenditures for this hospital were declared to be a necessary expense and for a special purpose, and each unit was authorized to levy a tax of not over ten cents on the one hundred dollar valuation in support of it. A hospital commission is to be created to administer the facilities. Somewhat similar provisions were later included in S.B. 292, which is in the form of a public bill but which applies only to counties of 100,000 population or over, containing cities of 75,000 population or over. S.B. 222 authorizes counties to buy hospitals and assume their indebtedness. The bill was probably drawn to cover a local situation, but its rather broad and somewhat intricate provisions may be of assistance to other counties in providing hospital facilities. H. B. 202 adds *Chowan County* to those which may, under G.S. 153-152, contract with hospitals for the care of their sick and afflicted poor. *Graham County* is authorized by H.B. 743 to condemn land for hospitals.

H.B. 192 changes the manner in which the chairman of the Board of the *Guilford County* tuberculosis hospital is elected. And *Onslow County* is authorized by H.B. 53 to appropriate for the maintenance and operation of its hospital not more than 10% of the net proceeds from its A.B.C. stores.

State and Local Boards of Health

Changes in the organization of State and local Boards of Health are of minor importance in comparison with some of the legislation already discussed. Under the prior law the State Board of Health consisted of nine members, four of whom were elected by the North Carolina Medical Society and five of whom were appointed by the Governor. There was no requirement as to the qualifications of the members appointed by the Governor. H.B. 130 (as amended by H.B. 454) amends the law so that among the five members whom he appoints the Governor must now include one pharmacist and one reputable dairyman. The House refused to concur in a Senate amendment requiring that the Governor appoint also one food processor or server.

Local Boards. A somewhat similar change was effected in the constitution of the County Boards of Health. The *ex officio* members are still the Chairman of the Board of County Commissioners, the mayor of the town which constitutes the county

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Women, Domestic Relations and Related Matters

Women as Jurors. When the Supreme Court handed down the opinion last November, in *State v. Emory*, 224 N. C. 581, that Article I, Section 13 of the State Constitution precluded women from serving on juries because they were not "good and lawful men," it stirred up something of a tempest, and it aroused a determination in some quarters to remove the last of the ancient discriminations against women—discriminations probably springing more from the protective male's desire to shield his lady from the rudeness of a man's world than from a purpose to deprive her of any actual right or benefit. Historically and traditionally the Supreme Court was correct in holding that "men" meant "men" and not "men and women"; for when the Constitution first had to put into it the guarantee of trials by juries of "good and lawful men," there was no thought that "men" meant other than "males." That this meaning has been almost universally accepted is indicated by the fact that there is probably not a jury room in any of the one hundred counties of North Carolina which has facilities for the accommodation of both sexes, let alone for both sexes of both the white and colored races.

Opponents of this discrimination followed the proper course when they sought an Act of the legislature to submit to the people at the next general election a Constitutional amendment to change "men" to "persons." The Act they got through, H.B. 3, goes the whole hog. Although other sections of the "Bill of Rights" have been construed as applying equally to men and women, the language of such sections will also be changed if the amendment is adopted, so that there will not thereafter be any doubt as to the inclusion of women as well as men. For example, "no person or set of persons" rather than "no man or set of men" will be entitled to exclusive emoluments, and it will be clear that all "persons," rather than merely all "men" are created equal. And although the matter of the right to vote has been taken care of by the Nineteenth Amendment to the Constitution of the United States, "male person" in Article VI, section 1, relative to the voting privilege, will become "person."

With this new Constitutional amendment well on its way toward a popular vote, H.B. 817 would have permitted women to avoid jury duty, in the event the amendment is adopted, merely by making a written request that they be excused. This bill was killed on its second reading in the House, and partly by the hand of the only lady member, Mrs. G. W. Cover, Sr., of Cherokee County, who argued that women should not seek a privilege and at the same time try to avoid the responsibility which goes with it.

Private examination of married women. Last November, the voters of the State repealed the Constitutional requirement of Article X, section 8 of taking the private examination of married women in conveyances of the homestead. There remained, however, the statutory requirement of privately examining married women relative to their voluntary assent to such conveyances as well as to all other conveyances of real estate and to mortgages of household and kitchen furniture. H.B. 55 removes all such requirements. Married women may now simply acknowledge their execution of instruments as their husbands and single persons have done in the past. Contracts and conveyances between husband and wife, however, must still bear the special certificate of the officer before whom the acknowledgment is taken to the effect that "the same is not unreasonable or injurious to her."

Since a great many people had conducted their affairs under the mistaken belief that the Constitutional amendment had of itself done away with the requirement of private examinations, section 22½ of H.B. 55 ratifies instruments executed

since November 7, 1944 (election day) without the private examination of married women having been taken. No part of the Act applies to pending litigation.

Married women as "free traders." Since H.B. 55, noted above, together with the Martin Act passed in 1911 makes married women free traders in every respect, except as to contracts between husband and wife under G.S. 52-12 and the remaining necessity of the joinder of the husband in the wife's deed, section 1 (29) of H.B. 65 repeals Article III of Chapter 52 of the General Statutes relative to free traders.

Testimony of spouse in actions for criminal conversation. Section 1 (10) of H.B. 65 amends G.S. 8-56 to make the husband or wife compellable and competent to testify as to the fact of marriage in actions or proceedings against the other for criminal conversation, as well as in actions for adultery.

Wife's right in husband's estate. G.S. 28-149, paragraph 1 formerly gave the widow with not more than two children a one-third part of her intestate husband's personal estate, while paragraph 2 gave her a child's part if there were more than two children. Thus, if there were one child, the widow took one-third of the personal estate and the child took two-thirds, but if there were more than one child, the widow and children all shared equally. H.B. 27, which became effective on February 3, 1945, gives the widow a child's part whether there be only one child or many, by giving her a one-half instead of a one-third interest where there is only one child. The Act also makes it clear that a child or children of a predeceased child will stand in the place of and take the share of such predeceased child.

"Hasty" marriages—Obviously aimed at one or more marriage mills in the eastern part of the State, H.B. 762, "An Act to prevent hasty marriages," as amended during the legislative process and as further amended by H.B. 999, requires a forty-eight hour waiting period between the filing of an application and the issuance of a marriage license, where both parties are non-residents of the State. The register of deeds will receive a fee of 50c for receiving and filing such applications. The Act applies only to the eastern counties of Bertie,



At the refreshment stand just off the rotunda. In the foreground are Senator George Penny of Guilford County, Mrs. G. W. Cover, Representative from Cherokee County, and Representative T. S. Meekins of Dare County. Partly hidden by Mrs. Cover is Representative E. T. Bost, Jr. of Cabarrus County, and behind Mr. Meekins is Representative H. R. Harris of Northampton County.

Camden, Chowan, Currituck, Dare, Gates, Hertford, Martin, Pamlico, Pasquotank, Perquimans, Tyrrell and Washington.

Divorce. Although several bills relative to divorce were thrown into the hopper, the net change was minor. Some of the bills would have made the process faster and easier, such as the bill which would have given members of the armed forces residence for divorce purposes by virtue of being stationed in the State for six months, and H.B. 144 which would have reduced the required length of separation as a ground of divorce to one year instead of two years. One bill, H.B. 453 would have slowed the process by providing for an interlocutory decree in divorces on grounds of two years separation, with the final decree and the freedom of the parties held in abeyance for an additional year. All of such bills were killed.

S.B. 130, however, authorizes divorce on the ground of the incurable insanity of a spouse. The bill seems to be amply safeguarded against abuse. The parties must have lived separate and apart for at least ten years, without cohabitation, and the alleged insane spouse must have been confined in a mental institution for ten years. Evidence that the insanity is incurable must be supported by the testimony of a physician staff member or the superintendent of the institution and of a practicing physician of the community wherein the parties reside, and by a psychiatrist. If the husband is the plaintiff, the divorce will not relieve him of the obligation of supporting the defendant, and conversely, if the wife is plaintiff and her husband doesn't have sufficient income and property to provide for his maintenance and she is financially able, the court may require her to contribute to his support.

Change of venue in divorce. H.B. 79 adds a paragraph to G.S. 1-83 to permit the court to grant a change of venue upon motion of the plaintiff in divorce cases when the defendant has not been personally served with summons.

Annulment. Section 1(28) of H.B. 65 makes a slight clarifying amendment to G.S. 50-4 relative to annulments of marriages. The amendment merely specifies that it is the "second" proviso in G.S. 51-3 to which G.S. 50-4 is subject. The sense of the law is not changed.

Revocation of wills by divorce.—G.S. 31-6 provides for the revocation of wills by subsequent marriage, except as to certain wills executed pursuant to powers of appointment. H.B. 28 amends G.S. 31-5 to provide for the revocation of wills by a subsequent absolute divorce, as to that portion of the will which would have devised or bequeathed property to the divorced spouse. Such property will now pass under the residuary clause if there is one, otherwise it will go to the heirs or next of kin as in the case of intestacy.

Guardians. The changes in the law with respect to guardian and ward are mostly of minor importance. H.B. 876 broadens G.S. 33-1 slightly to allow the appointment of a guardian of the person of an infant in the county in which the guardian of the infants' estate is domiciled. H.B. 78 authorizes the clerk of the Superior court, in his discretion, to appoint a guardian or trustee for anyone who is found by a jury to be insane or incompetent to manage his own affairs without an additional adjudication of the issue of insanity before the clerk. H.B. 283 allows guardians of insane persons and incompetents to invest in certain registered securities in which guardians of minors are now permitted to invest and to receive credit in their accounts for such investments upon turning the securities over to the clerk. H.B. 135, as amended by H.B. 986, rewrites G.S. 33-31, 33-33, 35-10, 35-11, 35-14 and 35-15 with respect to the sale or mortgage of real or personal property by guardians of infants or of insane persons and incompetents. It provides, generally, that if the petition is for the sale or mortgage of real and personal property the petition shall be filed in the office of the clerk of the Superior Court of the county where any or all of the real property is situated; if it is for the sale or mortgage of personal property

only the petition shall be filed in the office of the clerk of the Superior Court of the county where any or all of the personal property is situated. However, if the property is situated in a county other than that in which the guardian qualified, he must first apply to the clerk of the Superior Court of the county in which he qualified for an order showing that the sale or mortgage of the ward's estate is necessary and this order must then be certified to the clerk of the county in which the petition is to be filed. Prior sales not in accordance with this procedure are validated, but the act does not affect pending litigation. H.B. 251 authorizes the guardian or trustee of an insane person or incompetent, on petition, to transfer the guardianship or trusteeship to the county in which the ward resides.

Adoption. The combined effect of several bills failed to produce any major change in this field. S.B. 318 authorizes the court to appoint the County Superintendent of Public Welfare "or some suitable person" to act as next friend of the child to give or withhold consent for the adoption provided in G.S. 48-5 if the court finds as a fact that there is no person qualified to give legal consent.

S.B. 320 provides for descent and distribution as in cases of completed adoption where there has been an interlocutory decree of adoption or tentative approval by the court but the adopting parent dies before the adoption is completed.

H.B. 248 authorizes the issuance of a substitute birth certificate in the new name of the adopted child. Such new certificate is to make no reference to the adoption proceedings or refer to the adopting parents as foster parents. The State registrar must place the original birth certificate and all papers in his hands pertaining to the adoption under seal which may not be broken except by court order.

S.B. 319, which would have permitted the adoption of persons over twenty-one years of age, was killed.

Bastards. H.B. 857 amends G.S. 49-4 relative to the statute of limitations in bastardy proceedings to permit prosecutions to be brought at any time within three years after the child's birth, or at any time before the child becomes fourteen years of age if its paternity has been judicially determined within three years after its birth, or within three years from the last payment by a putative father who has acknowledged paternity by making payments towards the child's support within three years after its birth if the action is instituted before the child reaches the age of fourteen. The Act further provides that prosecution against the mother of the illegitimate may be instituted at any time before the child becomes fourteen.

H.B. 66 amends G.S. 29-1, rule 10 to set out the order of descent of estates of inheritance belonging to illegitimates where there is no issue capable of inheriting, as follows: (1) to the children of his mother, whether legitimate or illegitimate, or their issue; (2) if there are no such children or their issue, then to the mother; (3) upon failure of (1) and (2), then to the brothers and sisters of the mother, or their issue; (4) if none can take under (1), (2) or (3), then to the surviving spouse. The Act is not to be construed as changing the rules with respect to curtesy and dower, or other rights of inheritance by virtue of marriage, nor to allow illegitimate children to inherit from legitimate children of the same mother.

H.B. 17, as amended by H.B. 826, requires the State Registrar of Vital Statistics to forward a certified copy of the birth certificate of a child to the mother, father, or person in loco parentis within three months of birth, except where the child is illegitimate.

H.B. 630 amends G.S. 14-320, relative to separating a child under six months old from its mother, by providing that the written consent of the county superintendent of public welfare of either the county in which the mother resides or in which the child was born, or of a private child-placing agency licensed by the State Board of Public Welfare shall be sufficient.

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Practice and Procedure

Civil Procedure

Many of the articles contained in this magazine which discuss changes in the substantive law discuss changes in the adjective law as well. Reference should be had to the articles on Veterans' Legislation, Women's Rights and Taxation, among others, for procedural changes in those particular fields. It is not the purpose of this article to assemble all those changes here, but rather to point out in the next few paragraphs the effect of a few acts whose primary purpose or principal result may have been to affect procedure.

Limitations. S.B. 316 establishes three years as the time within which actions to recover under the Fair Labor Standards Act must be instituted. S.B. 242, which would have made a one-year statute of limitation apply to such actions, was reported unfavorably. H.B. 769 provides that where public records reveal that there has been a separation or severance of subsurface and surface rights in real estate no claimant may prove the use of subsurface rights in litigation involving adverse possession of surface rights, or vice versa, unless, at the beginning of the alleged adverse use and in each year of it, the one claiming to hold adversely shall have recorded in the office of the register of deeds a "Notice of Intended Use," showing the date of the beginning of the use, a short description of the property, the name, and if known, the address of the claimant under whom the use is to be carried on, and the deed or other instrument, if any, under which the right is claimed.

Service of Process. In 1941 there was added to G.S. 1-97, which gives the methods of serving process on nonresidents, a provision for personal service on the agent of a nonresident individual who is doing business in this State, coupled with the mailing to the nonresident within five days of a copy of the summons, a copy of the complaint or petition and a statement calling attention to the provisions of the statute and to the date of the expiration of the time to answer or demur. H.B. 80 adds the provision that "no final decree shall be entered unless the presiding judge at the trial shall find as a fact that the plaintiff mailed by registered mail with the return receipt request to the last known address of the defendant a copy of the summons and complaint in the action," and provides further that the return postal receipt shall be evidence of the mailing of the summons and complaint.

S.B. 83, which amends G.S. 1-104 relating to personal service of summons on a nonresident whose address is known, permits the fact that the address is known to appear by verified complaint as well as by affidavit, while H.B. 591 extends from ten to thirty days the time within which such a summons must be served.

Section 1(3) of H.B. 65, a bill making many changes in the General Statutes, most of them minor, does not alter the charges provided in G.S. 1-99 for legal advertising in connection with the service of process by publication, but does make it clear that that section takes precedence over G.S. 1-596 which deals with charges for legal advertising generally.

H.B. 60 makes specific the date as of which a defendant is in court after service by publication. It says that the service is complete at the expiration of seven days from the date of the last publication, and that the party so served is thereupon in court. Thereafter, he has, as at present, twenty days in civil actions and ten days in special proceedings in which to answer or demur to the complaint or petition.

Lis Pendens. There have always been two anomalies in

connection with the law concerning the filing of a notice of lis pendens. One is that even the later statutes have been construed as not requiring the filing and cross-indexing of the notice in the county in which the suit is pending. The other is that the requirement has not been applied to actions pending in the federal courts. Bills to change both these situations were introduced in the 1945 session of the General Assembly. S.B. 257, which would have applied to the courts of the State, and would have required the filing and cross-indexing of the notice even in the county in which the suit was pending before a purchaser of property in that county would take subject to notice, was never reported out of committee. H.B. 729, which applies to actions pending in the Federal Courts, and which may give rise to some theoretical and practical difficulties in its application, was passed.

Trial. The practice of judges has been diverse as to when they hold a case to be ripe for trial where no answer has been filed but where there is an issue or issues of fact to be submitted to the jury. Some have held that the plaintiff in such a case is entitled to a trial at any time after the time for filing answer has expired. Some have held that under G.S. 1-173 the case may not be tried unless the time for filing answer expired more than ten days before the beginning of the term. H.B. 891 sets the matter at rest by saying that such a case may be tried as soon as the time for filing answer has expired.

H.B. 134 gives resident judges of the Superior Court concurrent jurisdiction with the judge holding the courts of the district to hear and pass upon all matters not requiring the intervention of a jury, in vacation, out of term, or in term time.

Damages and Costs. S.B. 360 allows double recovery in ejectment suits where the detention of the property was wrongful. H.B. 371 permits double recovery where a person enters upon the land of another knowingly and without the owner's consent and cuts or removes valuable timber therefrom.

Ancillary, Supplemental and Special Proceedings. Under S.B. 269, G.S. 48-8 is amended so that the sheriff and his deputies, in addition to justices of the peace and other officers now authorized to do so, may administer oaths to commissioners appointed to partition land. Going further afield, H.B. 65, Section 1(4) authorizes commissioners of affidavits and deeds to take their oaths before the clerk of a court of record as well as before justices of the peace. S.B. 274 authorizes the court to confirm on motion the reports of commissioners and jurors in special proceedings after ten instead of twenty days from the filing of their reports if no exceptions have been filed. H.B. 917 provides that the return of appraisers in homestead proceedings shall be void as to the rights of third persons or persons not parties to the proceedings unless the return is filed with the judgment roll, minutes of it entered on the judgment docket and a certified copy recorded in the office of the register of deeds.

Judgments. H.B. 233 amends G.S. 1-246 to provide that the assignment of a judgment, duly executed by the owner and recorded by the clerk of the Superior court in whose office the judgment is docketed, together with a specific reference to the assignment made on the margin of the judgment docket, shall operate as a valid transfer and assignment of the judgment.

G.S. 1-307 provides that "executions and other process for the enforcement of judgments can issue only from the court in which the judgment for the enforcement of the execution or other final process was rendered." Nevertheless, it has sometimes occurred that executions and other process have been

issued in the county in which a transcript has been recorded, rather than in the one in which the judgment was originally entered. S.B. 256 validates all executions as well as homestead proceedings, execution sales, judicial sales and assignments based on such transcribed judgments rendered and docketed prior to March 1, 1945. The act does not affect pending litigation.

Receivers. H.B. 65, section 1(38), relieves receivers of corporations of the arduous duty, seldom if ever performed, but imposed by G.S. 55-149, of reporting at every term of civil court, and permits them instead to report at "such times as the court may direct." H.B. 120 imposes, however, an almost equally arduous duty and one which may prove unduly expensive in certain cases. It provides that "no court shall issue any order of distribution or order of discharge of a receiver until said receiver has proved to the satisfaction of the court that written notice has been mailed to the last known address of every claimant who has properly filed claim with the receiver." The notice is to inform creditors that an order of distribution or discharge will be applied for and to notify them of the time and place of such application. The act also requires the receiver to produce "a receipt issued by the United States Post Office, showing that such notice has been mailed to each of such claimant's last known address at least twenty days prior to the time set for hearing . . ." The act nowhere requires that the notice be registered, but it is only for a registered, insured or permit letter that the postoffice is authorized to give a receipt. The receipt for a registered letter does not contain the name and address of the addressee. Presumably, therefore, the court would accept the receiver's own memorandum on the back of each receipt as to the person and place to which the letter was sent and would hardly require recourse to the original books of the postoffice.

Appeals. With respect to appeals in ordinary civil actions no changes were made. Professing a purpose of lessening "the work and responsibility of the judge in settling a case on appeal," S.B. 252 would have made the stenographic record of a trial, certified to under oath, conclusive as to the correctness of testimony, instructions and admissions, but this bill was reported unfavorably by the Senate Committee on Courts and Judicial Districts.

Administrative Agencies. Although extensive changes were made in the law concerning unemployment compensation, some of them procedural (See the Article on Unemployment Compensation and Workmen's Compensation, P—), all the other bills affecting procedure before administrative agencies failed to pass. They represented, by and large, a series of attempts to limit or at least to control the power of administrative boards to promulgate regulations, to make findings and to remove, at least to a certain extent, immunity from the ordinary type of judicial review. S.B. 390 would have permitted appeals in hearings before the Industrial Commission "from findings of facts" as well as "for errors of law." S.B. 370 would have given any person affected by an order of the Utilities Commission the right of appeal which parties to the proceedings now have. H.B. 658 would have required the heads of all departments which promulgate any rules and regulations imposing criminal or civil liability to certify copies of such rules and regulations to the solicitor of each district and to the clerk of the Superior court of each county, who would file them among the public records. S.B. 137, the most comprehensive of all, would have prescribed uniform rules of practice and procedure for the Utilities Commission, the Unemployment Compensation Commission, the Industrial Commission when acting under the law with respect to the regulation of automobile liability insurance rates, the Eugenics Board and the Secretary of State when acting under the law with respect to the sale of securities.

CRIMINAL LAW AND PROCEDURE

Few legislatures go by without some attempt being made to regulate the behavior of men as members of society, to define their obligation to conduct themselves as the majority sees fit. The 1945 General Assembly was no exception, although the changes which it made in the criminal law and procedure were not very extensive.

New Offenses. Three bills were introduced which would apparently have created new offenses had they passed, but all three failed to become law. S.B. 120 would have made it a misdemeanor to solicit, advise, procure, or aid or abet the issuance of a worthless check. S.B. 283, introduced as a public bill but generally accepted as being aimed at a local situation, would have made a judicial officer or prosecuting officer of an inferior court who is habitually drunk or the habitual user of narcotics guilty of misfeasance and subject to fine or imprisonment in the State's Prison. The bill further would have disqualified such an officer and made it mandatory on the judge presiding over the court in which the officer was convicted to remove him from office. The present law (G.S. 128-16) already provides for the removal of "city prosecuting attorneys" (but not judges) "for intoxication, or upon conviction of being intoxicated."

The third bill, H.B. 895, was aimed at regulating the behavior of men as members of society—mid-twentieth century society at that, when advances in technology come so rapidly that the criminal law frequently has a hard time keeping pace with the times. It would have prohibited the use of lewd or profane words or any words of vulgarity or indecent language on the telephone. But because of the obvious difficulty of enforcing such a measure, of apprehending the offender, and because there is, somewhat unaccountably, a good deal of humor in the idea itself, the bill met much the same spirit and treatment as the much-publicized "Cat Bill" of the early days of the session.

Identifying the Offender. Curtailing, rather than expanding the power of local law enforcement officers in connection with the taking of fingerprints and photographs of arrested persons was the theme of H.B. 452. As originally introduced, the bill would have provided that no officer could take the fingerprints, photograph or other identification record of a person arrested and charged with or convicted of a misdemeanor unless such person was a fugitive from justice, in possession of goods or property reasonably believed to have been stolen, or unless the officer had reasonable grounds to believe that the person was wanted by the FBI, the SBI, or some other law enforcing officer or agency.

Considerable opposition to the bill was expressed by law enforcement executives and identification officers all over the State. The bill was not killed, but primarily as a result of this opposition it was modified so as to prohibit only the taking of photographs under the circumstances outlined above.

Treatment of the Offense. Several bills were offered relating to the trial of certain criminal cases, the punishment of offenders, and the disposition of illicit property. Some fell by the wayside, but the majority passed.

H.B. 81 amends G.S. 8-41 to make bills of lading competent as evidence in criminal actions to the same extent they are now competent in actions by or against common carriers, as provided in that section.

S.B. 189 amends G.S. 15-179 to make the section applicable to appeals to the Superior Court as well as to the Supreme Court and to allow the State, in addition to the present instances provided in that section in which it may appeal, to appeal "upon a motion for a new trial on the ground of newly-

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Veterans and Servicemen

With nearly one out of every ten North Carolinians in the armed forces of the United States, with casualty lists in all categories—killed, missing, wounded and prisoner of war—mounting and with the prospect of partial or even general demobilization before the meeting of the next General Assembly, it is not surprising that the 1945 legislature considered and enacted a substantial quantity of legislation affecting veterans and their dependents. While wars and warriors are primarily the concern of the federal government, there are many things which a state can do to lighten the load of its citizen-soldiers both while they are away on active duty and when they return and seek to find their places in civilian life—many things which it must do in order to make accessible to the veteran and his dependents the full benefits of federal legislation. The General Assembly, through legislation in a number of fields, sought to lighten the load and to make all federal benefits fully accessible.

The legislature was handicapped in its efforts to aid the veteran by a lack of certainty as to what to expect, what the needs would be and when they would have to be met. If it could have foreseen the future clearly it could have and probably would have extended much more positive and direct aid. In view of all the uncertainties it did a good job for the veteran within budgetary and constitutional limitations, and while some of the legislation might have been a little more clearly expressed or a little better thought out, it certainly left the State and its various agencies in a better position to serve the needs of its service men and women.

The North Carolina Veterans Commission

The principal Act extending direct aid to veterans is H.B. 436 which creates a five-member North Carolina Veterans Commission, all members of which must themselves be veterans, "veteran" under the Act meaning a person who has served in any of the armed services during any war in which the United States was a belligerent or who is entitled to any benefits or rights under the laws of the United States by reason of such service in the armed forces. The Commission, which is appointed by the Governor, is concerned exclusively with veterans' affairs and it takes over all State functions with respect to veterans except those of the World War Veterans' Loan Administration (created in 1925) which is in process of liquidation, and those of the Unemployment Compensation Commission. The Commission, with the approval of the Governor, may elect a Director who may employ other personnel with the approval of the Commission.

It is the principal duty of the Commission to acquaint itself with all rights, privileges and benefits to which veterans are entitled under any federal or State legislation, and to assist veterans, their families and dependents in securing those benefits. In order to make this service truly State-wide, the Commission may, with approval of the Director of the Budget, establish branch offices in various sections of the State. Incidental powers, such as the power to contract, to receive gifts, and to co-operate with federal and local agencies and with the agencies of other states are given to the Commission.

Local units may participate under the terms of the Act, which authorizes counties, cities and towns to appropriate



A scene of the House in session. Representative John O. Gunn of Caswell County has the floor at the moment.

funds for the salaries and office expenses of one or more persons to serve under the supervision of the Commission. While salaries and expenses of such persons may be paid, the Act does not expressly authorize the levy of a tax therefor. Although such expenditures reasonably fall within the category of a public purpose, there is some doubt whether they may be classified as a "necessary expense" under Article VII, section 7 of the Constitution. Local units which can do so will probably play safe by making such appropriations from non-tax revenues.

Local Acts. Even before the legislature met, some counties had made provision for service officers to assist veterans and their dependents in securing benefits available to them. Several bills ratified such acts and others authorized a number of counties to provide service officers. Although some of the bills gave the service officers authorized therein more extensive power than others, such as the power to administer oaths and take acknowledgments in connection with their duties, and some provided for special tax levies to defray expenses, they all followed pretty much the same pattern. Counties affected by such local legislation are Catawba (S.B. 371), Cleveland (S.B. 153), Duplin (H.B. 770), Gaston (S.B. 80), Harnett (H.B. 413), Henderson (H.B. 700), Iredell (S.B. 202), Johnston (S.B. 131), Lee (H.B. 676), Lincoln (S.B. 372), Moore (H.B. 272), Pitt (S.B. 423), Rockingham (S.B. 204), Rutherford (S.B. 433) and Washington (S.B. 423).

Other local acts relative to veterans authorize the CITY OF STATESVILLE to convey to a sponsoring non-profit organization any real property owned by the city not being used for a public purpose, for the creation of a memorial park or civic center in honor of the veterans of the world wars (S.B. 177); authorize STANLY COUNTY to hold a special election on the question of issuing \$100,000 in bonds for the creation of a "living war memorial" in the form of a public building (H.B. 582); validate the creation of the GREENSBORO War Memorial Commission, authorize it to accept gifts and proceed with plans for the erection of a memorial auditorium, recreation centers and playgrounds (H.B. 536); authorize the CITY OF STATESVILLE and IREDELL COUNTY to acquire and donate, and the TOWN OF MOUNT AIRY to donate to the federal government sites for veterans' hospitals (S.B. 210 and H.B. 654, respectively); authorize CASWELL COUNTY to publish a history of the members of the

armed forces from that county and to levy a tax therefor; and authorize ALAMANCE COUNTY to appropriate not more than \$2,500 from the general fund for the erection of a monument to Alamance County veterans of all wars (S.B. 267).

S.B. 154 is in the form of a public bill but is actually applicable at present only to the CITY OF CHARLOTTE (cities of over 100,000 population). It authorizes that city to establish a veterans' recreation authority which may set up and operate recreational facilities for the use of veterans. S.B. 155 authorizes the CITY OF CHARLOTTE to purchase lands and buildings and convey them to the veterans' recreation authority.

G.S. 100-10 authorizes counties, cities and towns to join associations or organizations for perpetuating the memory of veterans of the Civil War and World War I, and to appropriate funds for such purposes. S.B. 76 makes the provisions of the section apply also to veterans of World War II. In further recognition of veterans, H.B. 784 authorizes the Governor to send certificates of appreciation on the part of the State to the men and women of the State in the armed forces.

Acts Granting Rights and Privileges

Records. A number of acts were passed which permit veterans to do things which are not permitted to the ordinary citizen. G.S. 47-109 through 47-111 already provided for the recording of discharges and certificates of lost discharges from the Army, Navy or Marine Corps of the United States. H.B. 577 extends to veterans of any other branch of the armed services the opportunity to have their discharges recorded and provides that the registration shall be without charge. It also directs the register of deeds to furnish certified copies without charge, and authorizes the County Commissioners to appropriate funds to cover the expense. H.B. 925 allows a representative of the North Carolina Veterans Commission to apply to registers of deeds and the Bureau of Vital Statistics and receive without charge copies of records concerning veterans the presentation or possession of which may be necessary or desirable in connection with applications for various benefits. The American Legion also, under G.S. 130-103, has the right to secure from the Bureau of Vital Statistics certain records without charge. By H.B. 926 this right is extended to other veterans' organizations.

Minor veterans and minor spouses of veterans. S.B. 252, in order to enable eligible veterans between the ages of 18 and 21 to secure the benefits of the Servicemen's Readjustment Act of 1944 and related legislation, authorizes them to do the following things in their own names without order of court and without the intervention of a guardian or trustee: purchase or lease any property, real or personal and execute notes, mortgages and deeds of trust for the purchase price; execute any other necessary contracts or instruments to obtain the benefits of that Act; execute contracts or instruments to enable them to make full use of property so obtained, including contracts for insurance, repairs, services, furniture, stock and equipment for farms, farm labor, and contracts in connection with a business. In all suits connected with such contracts minors are authorized to appear and plead in their own names and are not permitted to interpose a defense of lack of legal capacity by reason of age. The powers conferred are, of course, subject to all applicable provisions of the Servicemen's Readjustment Act. S.B. 253 makes similar provisions with respect to minor spouses of veterans.

Tax exemptions. The United States government gives to members of the armed forces certain exemptions from penalties on their income taxes and, indeed, certain additional exemptions in computing the tax itself. How far ought the State to go in creating tax exemptions for its own residents who are in the armed forces? That was one of the questions confronting the legislature and its answer seems to have been "not very far." The result was probably desirable from the standpoint

of sound principles of public finance; it also avoids, at least partially, raising a question of infringement of Article V, Section 3 of the Constitution, which requires uniformity in taxation.

G.S. 105-150 and 105-344 exempted from income tax in North Carolina amounts received by veterans of World War I from any of the allied countries by way of pension, insurance or compensation on account of any injury received while in the service. H.B. 478 extends those benefits to similarly placed veterans of World War II.

For bills granting relief or exemption from local taxes, see Local Taxation, page 11.

Two other bills to relieve veterans of state or local taxes failed to pass. H.B. 683 would have exempted from ad valorem taxation, subject to certain limitations, homes of veterans of both World Wars which had been purchased from the proceeds of disability compensation paid by the government of the United States. H.B. 705 would have exempted veterans who had served overseas and been honorably discharged from the payment of poll taxes and certain State and local Schedule B license taxes and fees for a period of ten years. Neither bill was ever reported out of committee.

Procedural Matters

Acknowledgments and interrogatories. Under the 1943 act, acknowledgments of members of the armed forces, if made before other than the ordinary civil authorities, had to be taken by a captain or officer of higher rank in the Army or Marine Corps or before a lieutenant, senior grade, or officer of higher rank in the Navy, Coast Guard or Merchant Marine. S.B. 27 permits such acknowledgments to be taken by a second lieutenant or officer of higher rank in the Army or Marine Corps or by an ensign or officer of higher rank in the Navy, Coast Guard or Merchant Marine, and validates acknowledgments before such officers heretofore made.

S.B. 17 permits the taking of interrogatories of persons serving in the armed forces before any commissioned officer of the branch with which the person to be examined is connected.

Wills. S.B. 38 amends slightly G.S. 31-26 with respect to probating, upon the oath of three credible witnesses to the signature, wills executed by persons who were at the time members of the armed forces of the United States. G.S. 31-26 authorizes the admission of such wills to probate if there were no subscribing witnesses or if they, or either of them, are out of the State at the time the will is offered for probate. The amendment makes it clear that the section applies even though the decedent was not still a member of the armed forces at the time of his death.

The Returning Veteran

The veteran who returns to State or private employment, whatever his special training in the service or other compensating advantages may have been, has nevertheless not only lost the continuity of his own work, but, legislation aside, has lost certain advantages with the State and industry which are customarily awarded to experience, priority or continuity of service. The interruption on account of the war was inescapable. Legislation can mitigate the hardship which loss of priority would otherwise entail.

Salary increments. S.B. 20 preserves to teachers, principals and superintendents in the public schools who after September 16, 1940, left their positions to enter the armed or auxiliary forces of the United States the normal experience increments which they would have received during their period of service if they had remained in the employment of the State. The amount of the increment is, of course, that provided in the State salary schedule. Under the bill as finally passed, there

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The Regulation of Businesses and Professions

The Regulation of Occupations

Dentists. The next time you visit your dentist, assuming that you are able to get an appointment, you will probably find your teeth being cleaned by a charming young lady who does not herself hold the degree of D.D.S. or D.M.D. She will be a dental hygienist, such as is authorized by H.B. 312. That act authorizes the State Board of Dental Examiners to conduct examinations and issue licenses for dental hygienists and sets out the requirements for obtaining and renewing licenses and for practicing the profession. The preliminary requirements are that the applicant be at least nineteen years of age, of good moral character, a citizen of the United States, the graduate of an accredited high school, who has successfully completed training in a school of dental hygiene approved by the Board. The dental hygienist is not allowed to set up an office by himself, but may practice in the office of any duly licensed dentist, in public school clinics as a State Board of Health employee, in clinics in a State institution as an employee of the institution, and in industrial and hospital clinics. The ordinary practicing dentist is allowed to employ only one dental hygienist, although more may be employed in clinics. The license is annual and a renewal certificate must be obtained each year. Revocation is authorized for certain specified offenses and for other actions which may constitute unprofessional conduct. The act repeals G.S. 90-49 through 90-52 which permitted the licensing of mouth hygienists but limited their employment to public institutions and the public schools.

Osteopaths and chiropodists. H.B. 372, which would have redefined osteopathy to include the use of drugs, was defeated, but H.B. 101 did redefine chiropody or podiatry as "the surgical or medical or mechanical treatment of all ailments of the human foot, except the correction of deformities requiring the use of the knife, amputation of the foot or toes, or the use of an anaesthetic other than local." The former definition had referred to "the surgical, medical and mechanical treatment," etc.

Nurses. H.B. 489, with respect to nursing, was never reported out of committee. It would have given the North Carolina State Nurses' Association complete, instead of majority control of the Board of Nurse Examiners and greater representation on the Committee on standardization, which would have been reorganized into a new board with full power to prescribe curricula and standards for nursing schools. It would also have provided for the training and licensing of practical nurses, who would have been called "licensed attendants."



A scene in the lobby. Josephus Daniels tells one to Edwin Gill, Commissioner of Revenue and H. E. Withers, while Deputy Sergeant-at-Arms Upchurch looks on.

Barbers. The statute with respect to barbering received fairly extensive amendment. The salaries of members of the State Board of Barber Examiners were raised. Fees were prescribed for the issuance and renewal of shop and school permits. A person entering the armed services whose certificate was in force one year previous thereto may renew his certificate within three years after receiving an honorable discharge by paying the current annual license fee and furnishing a satisfactory health certificate. Other persons dislocated by the war whose certificates were in force one year previous to its beginning may renew their certificates within three years after the end of the war upon complying with the same terms. Provisions of the present law with respect to the refusal to issue and the suspension and revocation of certificates are made to apply also to shop and school permits. Extensive provisions are made for the licensing and regulation of barber schools.

Pharmacists. H.B. 103 authorizes the North Carolina Pharmaceutical Association to employ inspectors and chemists as well as attorneys to assist in prosecutions. It also sets the fees for the original issuance and renewal of county licenses and for the original registration and renewal of permits for drug stores. The latter provision does not apply to permits to physicians to conduct drug stores in towns of not more than 500 inhabitants, the fee for which remains as before.

Embalmers. H.B. 93 removes the power to elect members of the State Board of Embalmers from the State Board of Health and places it with the North Carolina Funeral Directors and Burial Association, Inc.

Lawyers. S.B. 243 redefines the practice of law to include "aiding in the preparation of" deeds, wills and other instruments and of petitions and orders in probate and court proceedings.

Failed. Proposed legislation to regulate further or to relax regulations concerning the following classes of persons did not pass: accountants, cosmetologists, court reporters, opticians, plumbing, heating and air conditioning contractors and surveyors.

Banks and Loan Agencies

The State Banking Commission is authorized, by S.B. 239, to reduce its fees for the examination of banks. The Commission had been operating at a profit so that no tears have as yet been shed over the passage of this bill.

A considerable number of changes were made in the banking law, although most of them apply to industrial banks and trust companies rather than to commercial banks. H.B. 734 specifically excludes credit unions from the definition of banks, repeals the provisions with respect to acceptances by banks and rewrites the requirements as to the certificates of incorporation required of newly organized industrial banks. It makes many of the present provisions of the law which are applicable to commercial banks applicable to industrial banks. It permits any bank so authorized by its charter to do a trust business upon being licensed by the Commissioner of Banks. Any bank so licensed may act as a fiduciary without bond when it has received a certificate issued by the Commissioner of Banks showing that it is solvent to an amount not less than \$100,000. The authority formerly given by G.S. 58-113 through 58-118 to the Commissioner of Insurance to license corporations to act as fiduciaries is repealed.

As to general banking and trust powers, H. B. 359 permits banks to hold bonds as well as stock in the name of a nominee and H.B. 127, as amended by H.B. 734, permits assets of a trust held by a bank and trust company to be transferred from one trust to another by the unanimous vote of the board of directors if such a transfer is expressly authorized by the in-

strument creating the trust. S.B. 125, which would have changed the law with respect to the payment of joint accounts upon the death of one of the joint depositors, was never reported out of committee.

H.B. 127, referred to above, made several changes with respect to the investment of the funds of banks. It permits loans made on the security of North Carolina State bonds or of United States government bonds or certificates of indebtedness to exceed the limitation under G.S. 53-48 on loans to any one individual. It also extends the unification of regulation between commercial and industrial banks to make the more liberal regulations with respect to limitation of loans which previously applied to commercial banks apply now to industrial banks also. That is, instead of being limited, in loans to one individual, firm or corporation, to an amount not greater than ten per cent of its capital and surplus, an industrial bank, like a commercial bank, may now lend up to an amount equal to twenty per cent of the first \$250,000 of its capital and surplus and ten per cent of the amount by which its capital and surplus exceeds \$250,000. The standards formerly applying to commercial banks are also now applied to industrial banks with respect to the limitation of investments in bonds and the waiver of investment and loan limitations by the Commissioner of Banks.

Interest Rates. Undoubtedly the overhead in making small personal loans is considerable and the risk involved is very great. On the other hand, Victor Hugo speaks of "the most lucrative of all professions—that of lending money to the poor." In view of a general unsatisfactory situation and the activities of a local Ponzi which received considerable publicity during the fall of 1944, a number of bills were introduced with respect to the rate of interest and amount of fees which may be charged on loans. S.B. 124, which would have made collecting more than the legal rate of interest a misdemeanor and two convictions on the part of a corporation the cause of the forfeiture of its license or charter was never reported out of committee. Apparently it was decided to try a different method of handling the matter. The approach settled on was an attempt to make the legitimate business slightly more profitable with the hope of inducing reputable people into it and then to subject it to more stringent regulations than has heretofore been the case. Formerly, an industrial bank was authorized to collect interest in advance, and, in addition, to charge for investigation, etc. a fee of \$1.00 for each \$50.00 or fraction thereof up to and including \$250.00 and \$1.00 for every \$250.00 or fraction thereof in excess of \$250.00. The new act raises the permissible fees to \$2.50 on installment loans of \$50.00 or less and \$1.00 for each additional \$50.00 or fraction thereof up to and including \$250.00. The additional charge which may be made for amounts over \$250.00 remains the same. H.B. 176 then places loan agencies and brokers under the supervision of the State Banking Commission, which is authorized to draw up rules and regulations "for the protection of the public and the efficient management of the loan agencies or brokers."

The loan agencies are to be charged for supervision the same fees, in proportion to total resources, as those which are prescribed for banks. They are then authorized to collect the same fees and interest as those which are lawfully chargeable by industrial banks on installment loans. These fees are not to be charged more than once each sixty days on any one loan or renewal. Violation of the act is made a misdemeanor. The act does not apply to persons engaged solely in the business of making loans of \$50.00 or more secured by motor vehicles. The effective date is June 1, 1945.

State Warrants. H.B. 65 Sec. 1(30) repeals G.S. 53-69 which required all State departments and institutions to deposit moneys with or to the credit of the State Treasurer. H.B. 433 extends the prohibition on charging exchange on State war-

rants and the transmission of funds coming into the hands of the State Treasurer to all banks, whether they happen to be depositories or not, and makes the provision apply also to the funds of other State departments and agencies. H.B. 432, in addition, extends the provisions with respect to the presentation within sixty days of warrants drawn by the State Auditor and the issuing of new warrants for those not presented in time to all the other departments, agencies, bureaus and commissions of the State.

Building and Loan Associations

The question of joint accounts came up in connection with building and loan associations as well as in connection with banks. In their case, likewise, the proposed legislation did not pass. H.B. 172, the defeated bill, would have authorized building and loan associations to issue shares of stock in the names of two or more persons as joint shareholders and to repay the amounts so deposited to either shareholder, whether the other was still living at the time or not. H.B. 171, a bill which did pass, amends G.S. 54-20 to make it clear that borrowers who make or assume loans the payments on which are calculated as direct reductions of principal are none the less members of the association, to authorize associations to accept second mortgages which are guaranteed in whole or in part by the United States government or any instrumentality thereof, provided they hold the first mortgage also, to provide for the purchase of loans under certain conditions, and to authorize the investment of funds on hand in excess of the demands of shareholders in bonds or other evidences of indebtedness issued or guaranteed by the United States government or issued by the State, provided all requirements as to classes of shares, dividends and reserve funds are complied with.

The Purchase of Cotton

Two bills were introduced for the further control of the purchase of cotton. S.B. 305, which did not pass, would have provided for the registering of all cotton buyers, the affixing to each bale of cotton at the gin of a ticket showing the name of the person for whom it was baled, the date, the weight and the bale number. It would then have required the stamping of this gin ticket at the time of sale with the name, address and registered number of the buyer. H.B. 51, which did pass, requires brokers and other persons buying cotton from the producer after it is ginned to keep records showing the name and address of the seller, the date purchased, the weight or amount and the serial number of the bale. The record need not be kept for more than a year from the date of purchase, and the act does not apply to resales by purchasers.

Factors

Though some states have, for a number of years, had factors acts, the 1945 session of the General Assembly blazed something of a new trail, in so far as North Carolina is concerned, in its legislation with respect to factors. Factors are defined in S.B. 47 as "persons, firms, banks, and corporations, and their successors in interest, who advance money to manufacturers or processors on the security of materials, goods in process, or merchandise, whether or not they are employed to sell such materials, goods in process, or merchandise." The act goes on to provide for the creation of factors' liens by written agreement whether or not the goods covered are in the possession of the factor, have been acquired by the borrower, or are in existence. The statute requires that there be posted at the entrance of the place at which the materials are located a notice showing, among other things, the name of the factor, the location of his principal place of business, the name of the borrower, the interest he has in the materials, the character of goods subject to the lien, the date of the agreement

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Legislation Affecting Agriculture



Young North Carolina takes a healthy interest. From the expressions on the faces of these galleryites something important must be taking place on the floor.

Fairs. In addition to one or more bills with respect to local fairs, two bills were passed with respect to State or regional fairs. S.B. 354 authorizes the State Board of Agriculture to borrow not exceeding \$100,000 for building, enlarging and improving the State Fair and to issue bonds therefor, maturities and interest to be fixed by the Governor and Council of State. No part of the principal or interest is to be paid out of the general revenue of the State, and the credit neither of the State nor of the Board of Agriculture is to be pledged for the payment thereof. On the other hand, the Board of Agriculture is authorized to enter into contracts to carry out the purposes of the Act, to pledge gate receipts or other revenues coming to the Board from operation of any of the facilities of the Fair, and to accept gifts for the benefit of the Fair.

H.B. 546 authorizes any county named in the Certificate of Incorporation of the Western North Carolina Agricultural and Industrial Fair Association to make reasonable contributions to the Association out of surplus funds for the purpose of promoting an agricultural and industrial fair.

The promotion of agricultural development. In spite of the fact that the wine industry did not fare so well with the 1945 legislature in so far as taxation and the privilege granted to certain communities to prohibit the sale of wine were concerned, nevertheless H.B. 665, as originally introduced, would have appropriated \$5,000 for each year of the biennium for grape culture and research work. The sum would have been used by the Department of Agriculture to match federal funds for this purpose. As finally passed, the scope of the bill is enlarged so that it now applies to "small fruit culture and research," at least \$5,000 is to go to the Agricultural Experiment Station for research, and no part of the appropriation is to be available except to the extent that it is matched by federal funds for the same purpose.

In view of the presence of a potato wilt in eastern North Carolina and the danger of losing a substantial portion of this year's crop, H.B. 552 authorizes the appointment of a seven-member commission to study the matter and also to consider more effective methods of handling and marketing potatoes.

Poultry. Perhaps the business connected with agriculture that received the most extensive new regulation was that of raising and distributing for sale chicks and the young of other fowls. The legislation, of course, was precipitated by a desire to control and eradicate contagious and infectious diseases of poultry. S.B. 224 provides that no public hatchery, chick dealer or jobber may operate within the State without obtaining a permit from the Department of Agriculture, which is authorized to draw up rules and regulations. The Department is empowered to cancel permits, with the right of appeal, for violations of the act or of the regulations formulated thereunder. All baby chicks, turkey poults and hatching eggs offered for sale must originate in flocks that meet the requirements of the National Poultry Improvement Plan as administered by the North Carolina Department of Agriculture. Those shipped from out of the State must meet minimum requirements of pullorum disease control. All hatcheries, chick dealers and jobbers are to post notices describing the grade of chicks approved by the Department of Agriculture. No misleading advertising is permitted. Official records must be kept, and fees are established for the licensing of hatcheries and the inspection of flocks. The proceeds of these fees are to be used for the enforcement of the act. The act is to come into effect July 1, 1945, and an appropriation of \$40,000 is made from the Agriculture Fund for each year of the ensuing biennium. In addition to the other powers mentioned, the State Board of Agriculture is authorized to cooperate with the United States Department of Agriculture in the operation of the National Poultry Improvement Plan.

Livestock. If all of the bills which were offered relative to livestock had been passed, substantial changes would have been made in the field. Most of the proposals, however, were rejected, the only bill of State-wide application to pass being S.B. 173 relative to Bang's disease. Formerly, animals affected with this disease had to be branded and quarantined and could be sold only for immediate slaughter. The amendment authorizes the State Veterinarian to set up a program for the vaccination of calves between the ages of four and eight months, and older cattle, with Strain 19 Brucella vaccine in accordance with the recommendations of the United States Bureau of Animal Husbandry. The Committee of Agriculture is authorized to permit the sale of valuable animals that have reacted to an official Bang's test or are suspected of infection provided they go direct to infected herds that have been vaccinated and are held in quarantine in accordance with regulations of the Department of Agriculture. Such animals may be identified by tattooing or other appropriate method instead of by branding. They are to be tested again twelve months after vaccination and regularly thereafter, and if they react positively eighteen months or more after vaccination, they are to be branded. Dairy and breeding cattle six months or more of age which are offered at public sale for purposes other than for immediate slaughter must be negative to a Bang's test made within thirty days prior to the sale.

Failing to pass were S.B. 244 which would have put the operation of livestock markets more nearly upon a public utility basis, with permits issuable or revocable by the Commissioner of Agriculture upon a consideration of the markets already existing, the applicant's facilities for conducting a market, his reputation for fair dealing, and the best interest of the livestock industry; H.B. 573 which would have required the Commissioner of Agriculture to have a qualified person present at every sale conducted by public livestock markets to vaccinate swine not sold for immediate slaughter which had not been vaccinated within the time required by the statute, and

to furnish health certificates for those swine not otherwise provided therewith; H.B. 474 which would have included animals in the definition of "farm products" in G.S. 106-185 through 106-196, dealing with marketing and branding, and would have authorized the Commissioner of Agriculture to require those offering farm products for sale for propagation purposes, where standards have been promulgated, to secure permits and to submit satisfactory evidence of financial responsibility or to post bond not to exceed \$10,000, and to seize and dispose of products not meeting the standard or for the sale of which permits had not been issued; and S.B. 39 which would have required all male livestock used for stud or breeding purposes for compensation to be registered and to be examined by a licensed veterinarian at least once a year and be certified as sound for breeding purposes. This bill first ran into fierce opposition from friends of the family cow, but after it was amended to apply only to stallions and jacks and was passed by the Senate, it failed to find favor with the House committee.

H.B. 169, a local bill, regulates the hours of livestock auction sales in Guilford County.

Dairying. Except for the bill just considered and the placing of a reputable dairyman on the State Board of Health (see article on Health) no legislation was passed affecting the dairy industry directly. The indirect effects of legislation affecting frozen desserts and oleomargarine are likely to be considerable, however. If the legislation with respect to frozen desserts permits less and that with respect to oleomargarine encourages more apparent competition with the dairy industry, it is to be hoped that in both cases the legislators acted with due regard to materials and supplies available and to the health of the general public.

H.B. 574, which would have required the licensing of manufacturers of ice cream, was tabled, but H. B. 645 does prohibit the use of the terms "cream," "Milk," "ice cream" and similar expressions in connection with the trade name or brand of any frozen dessert not in fact made from dairy products and in accordance with standards and regulations promulgated by the Board of Agriculture. H.B. 675 removes the provision which formerly exempted Burke, Cabarrus, Catawba and Mecklenburg Counties from the ice cream plant inspection law.

H.B. 143, considerably amended before final passage, reduces the prohibition against selling colored oleomargarine so that it now applies to public dining rooms, restaurants, cafes, boarding houses and hotels only. It no longer applies to manufacturers, to wholesalers or to retail stores.

Fertilizer. Of particular interest to North Carolina farmers is any change in the law with respect to fertilizer. H.B. 263, introduced also in the Senate as S.B. 133, had a stormy passage but was finally ratified in a form differing considerably from the bill as originally introduced. Under the law as it was prior to this act, no superphosphate, no fertilizer with a guarantee of two plant food ingredients, and no complete mixed fertilizer might be sold within the State unless it contained as much as fourteen per cent of plant food. If it contained less than sixteen per cent, it had to be branded as low grade and carry a red tag. Under the new law, fertilizers of the types mentioned must, after October 1, 1945, contain at least eighteen per cent of plant food, except that there may be, with a lesser plant food content, one grade of tobacco plant bed fertilizer and one grade of regular tobacco fertilizer (3-8-5), the regular tobacco fertilizer to be branded as low grade and carry the red tag. Under neither the old nor the new law do the restrictions as to plant food content apply to natural animal or vegetable products not mixed with other materials.

The bill made one other important change in the law. The number of grades of fertilizer adopted by the Board of Agriculture with the agreement of the Director of the Experiment Station must now be not more than twenty-five nor less than fifteen, instead of not more than thirty-five nor less than

twenty-two, as was formerly the case. The provision authorizing compliance with any United States Government regulations which might establish a different number of grades is no longer a portion of the law.

Seed. Of interest also to farmers, merchants and farm agents is H.B. 168 which rewrote the entire North Carolina Seed Law and added provisions with respect to the labelling of poison-treated seeds, the dissemination of false or misleading advertisements concerning seed, and the selling or offering for sale of any "Foundation Seed," "Registered Seed," or "Certified Seed" not produced and labelled in compliance with the Act. Included also were provisions requiring merchants to keep for one year records of each lot of seed handled and making non-warranty clauses in contracts, invoices and labels inadmissible as a defense against violations of the Act.

Three joint resolutions showed at least some of the problems with which farmers are being confronted and the extent to which they look to the government for aid. All three, as it happens, concerned the growing of tobacco, and all were memorializations of the members of Congress from North Carolina to use their influence in its behalf. S.B. 33 asked for a continuation of the tobacco control program. S.B. 203 asked the members of Congress, in the interest of the seed beds then being started, to procure the necessary distribution of tobacco cloth by the War Production Board. S.B. 379 urged the Congressmen to lend their assistance in obtaining tobacco twine for the use of the farmers.

Agricultural tenancies. Only minor changes were made in the law with respect to agricultural tenancies. H.B. 65, Sec 1 (14) and (15) amends G.S. 14-358 and 14-359 with respect to advances on crops so as to make abandoning the crop on the part of the tenant or failing to make advances after promising to do so on the part of the landlord a misdemeanor only if it is done with intent to defraud the other party. S.B. 146 extends to Craven, Edgecombe, Greene, Halifax, Jones, Lenoir, Onslow and Pitt Counties, after the expiration of the current crop year, the provisions of G.S. 42-23 which makes agricultural tenancies run from December first to December first instead of from January first to January first. H.B. 805 makes G.S. 44-54 through 44-59 relative to advances for agricultural purposes apply to Lenoir County.

MARKETING AND OTHER MATTERS

Enrichment of grain products. As of June 30, 1945, there will be compulsory enrichment, for a vitamin-conscious public, of white flour, degerminated corn meal, degerminated hominy grits and white bread. H.B. 350, which brings this about, places certain minimum and maximum limits on the amount of thiamin, riboflavin, niacin, iron and calcium which must be contained in those articles, and the manufacture or sale of products containing less or more than the required amounts will be unlawful. This act does not apply to the product of mills which are operated by water power and which grind whole grain.

Weights and measures. H.B. 102 makes many changes in the law with respect to weights and measures. No longer will flour, for instance, be sold in the traditional bag weighing twelve or twenty-four pounds, but rather in packages with the prosaic weights of five, ten, twenty-five, fifty or one hundred pounds. No longer, after June 1, 1946, will stacked wood be sold by the occasionally-used unit of 160 cubic feet but only by the traditional cord of 128 cubic feet. Various other regulations are made with respect to liquid measure, weight and numerical count, and the terms, "gallon," "bushel," "barrel," etc., are defined in terms of cubic inches. The Board of Agriculture is authorized to establish standards in cases where no standard has been established by Congress. In no case, however, may it set a standard log rule measure.

(Continued on page forty)

Codification and Distribution of the Laws

In 1943 the General Assembly adopted the General Statutes, as prepared by the Division of Legislative Drafting and Codification of the Department of Justice under the direction of a Codification Commission created pursuant to an earlier legislative act, and North Carolina had a new official code for the first time in twenty-five years. As soon as the publishers could make them ready, the four new green volumes of the law of the land began to supplant the old red unofficial one-volume edition of the code in the offices of lawyers, judges, solicitors, clerks and others.

In 1945 the General Assembly created a General Statutes Commission with the general duties of studying and reporting to each regular session of the General Assembly matters relating to statutory revision and to co-operate with the Division of Legislative Drafting and Codification in these matters. H.B. 59 provides that the commission shall be composed of nine members, one member to be appointed for a term of two years by each of the following: the presidents of the North Carolina State Bar and the North Carolina Bar Association, the deans of the University of North Carolina, Duke University and Wake Forest College law schools, the Speaker of the House and the President of the Senate; two members are to be appointed by the Governor. (The first appointees of the bar presidents and the law school deans are to serve for one year, their successors for two years.)

To keep the General Statutes up to date, H.B. 750 requires the Division of Legislative Drafting and Codification to have a cumulative pocket supplement of the general laws passed by each General Assembly published within six months after adjournment, or as soon thereafter as possible, and interim supplements of annotations at other times. The act further provides authority for the Division to change section numbers and other designations, to rearrange sections, etc., in publishing the supplements, and provides the method for citing the supplements after they are published and distributed.

A separate bill, H.B. 661, was passed making an appropriation for the Division of Legislative Drafting and Codification. It appropriates \$5000 for each year of the biennium 1945-47 to the Department of Justice out of the General Fund to be used under the direction of the Attorney General for increasing the staff of the Division and paying the necessary expenses of its work.

The 1943 General Assembly directed the Codification Division to "prepare for submission to the General Assembly from time to time bills to correct such defects in the statutes as its research discloses." Pursuant to this direction, H.B. 65 was submitted as the 1945 version of the "omnibus General Statutes bill," correcting section numbers and references, eliminating duplications, harmonizing conflicting sections, etc., as seen below.

Many of the provisions of H.B. 65 have been men-

tioned and discussed in other articles where they were pertinent to the subject matter of the particular article. Other changes made in the General Statutes by this act, where the effect of the change is more than the correction of a section number, for example, are noted below. Among other changes, the Act:

Amends G.S. 6-22 on costs in connection with petitions for draining or damming lowlands so that the petitioner would not have to pay all the costs if other people also were benefited.

Amends G.S. 7-194 on sentences to be imposed by recorders' courts so that convicted persons would be "assigned to work under the State Highway and Public Works Commission" instead of assigned "to work on the public roads," and amends G.S. 7-207 and 229 to make them conform to this section.

Amends G.S. 14-75, which makes larceny of a chose in action a felony, so as to make it a crime of the same nature and degree as if the property stolen had been money, goods or other tangible property.

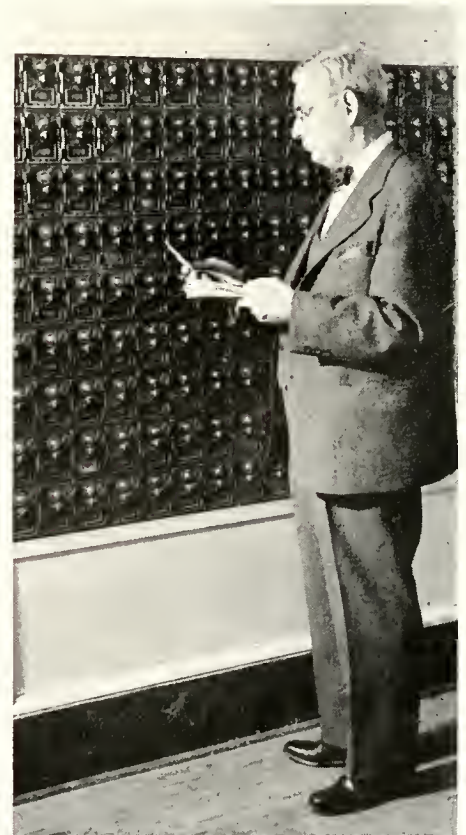
Deletes an ambiguous portion of G.S. 14-101, relating to obtaining signatures or property by false pretense.

Amends G.S. 14-199 by striking out the specific punishment for obstructing ways to places of public worship and making the punishment the same as in other cases of misdemeanor.

Corrects an error in G.S. 18-97, relating to the sale of fortified wines, which apparently made it unlawful to buy fortified wines from ABC stores in small quantities but not unlawful to buy it from them in quantities of over one gallon.

Amends G.S. 28-77 to allow distributees as well as creditors and legatees to object to the amount bid at private sales of personal property conducted by executors and administrators.

(Continued on page sixty)



The General Assembly has its own postoffice. Representative Robert Mosely of Guilford looks over letters from his constituents.

The Institute's Legislative Service

Origin and Development

The first step in the development of the Institute of Government's legislative service began in 1933, when Henry Brandis, Jr. of the Institute staff attended sessions of the General Assembly, analyzed and classified the public laws enacted and summarized them in a two-hundred-page book published and distributed by the Institute to five thousand city, county and state officials in North Carolina.

Early in January, 1935, Henry Brandis, Dillard S. Gardner, and T. N. Grice, of the Institute staff, with Elizabeth Coates as Secretary, went to Raleigh for the beginning of the 1935 General Assembly and laid the foundations of the unique and distinctive legislative service rendered by the Institute of Government in each succeeding General Assembly.

These staff members attended every session of the House and Senate, analyzed and digested all bills as they were introduced, followed them through committees, noting amendments and recording calendar actions, until the bills failed or passed the final reading. At the end of each day's sessions they wrote summaries of the proceedings, mimeographed them, put them in the mails and the following morning these mimeographed reports appeared on the desks of the Governor, Lieutenant Governor and Speaker, all legislators and state department heads in the State capital, and officials in every city hall and county courthouse in North Carolina. As soon as the General Assembly adjourned they wrote final summaries of all public, public-local, and private laws and special acts for distribution to all groups of city, county and state officials.

From the beginning they faced all the expected and unexpected difficulties of pioneering efforts. There was no place for them at the reporters' desks under the stands of the reading clerks in either House or Senate, nor in the open spaces around the dais of the presiding officers—only in the galleries where in single and solitary isolation they wrote down on desk pads on their knees what they picked up by ear from the intonations and the chants



Henry P. Brandis, Jr.



T. N. Grice
From 1935 to 1937



Dillard S. Gardner



Marion Alexander



Harry McGalliard
From 1937 to 1941



Elmer Oettinger

A picture of George Riddle, Jr., who was in charge of the 1941 legislative service was unavailable.

of the reading clerks and the comments of legislators, supplemented by a tortuous and precarious accessibility to copies of bills by virtue of the uncertain whereabouts of introducers, the uncertain leftovers of the press and the uncertain grace of office helpers too busily engaged in tending to their own business to help us tend to ours.

Without precedents to go by they blazed their own paths, during the lengthiest sessions of the General Assembly this generation of North Carolinians has experienced, under more mentally wracking, physically exhausting, and long continuing strains than any single set of staff members of the Institute of Government has ever faced.

Succeeding members of the Institute staff, pictured in these pages, have built on these foundations and every year made this legislative service a little better than it was the session before. Institute staff members through the years have slowly won a genuine ungrudging welcome

to the reporters' desks, to the open spaces around the presiding officers' dais, to the offices and records and full cooperation of the chief clerks and their assistants in House and Senate,—not as outsiders or intruders but as supplementary participants in the administrative machinery involved in the legislative processes. When we say that the legislative service furnished by the present Institute staff in the 1945 General Assembly was the most complete and most effective ever furnished in the ten years of its history, we are not stepping on the toes of predecessors of the present staff—we are standing on their shoulders.

The pictures on the following pages illustrate successive steps in the 1945 legislative service, described by Peyton B. Abbott, Assistant Director of the Institute of Government, charged with the responsibility of directing and carrying through the Institute's legislative service in the General Assembly of 1943 and 1945.

THE 1945 LEGISLATIVE SERVICE

Every week of the 1945 session of the General Assembly saw approximately 24,000 bulletins prepared by the Institute of Government delivered to State, county and city officials in North Carolina, to the North Carolina Congressional delegation, to various Federal officials, to the Library of Congress, to North Carolina colleges and universities, and to other interested parties. Each morning there was placed in a binder on the desk of each legislator and on the desk of the Governor and each member of the Council of State a special bulletin containing a digest of every bill introduced in either House during the preceding day. And each morning there was placed on the desk of each legislator and 1300 other State, county and city officials a bulletin containing a brief and concise digest of every bill introduced the preceding day, together with all legislative action taken during that day. Some 7,000 officials

received each week a summary of the work of the legislature, and about 7,000 local bulletins went out weekly to city and county officials to keep them abreast of all legislation affecting their particular city or county.

Undertaking and carrying out the task of preparing, assembling and delivering these 24,000 bulletins weekly is a testimonial to the Institute of Government's basic philosophy that information rather than reform is the only true and lasting answer to the critics of democracy.



Rosanne Guess sorts the envelopes according to counties and towns to facilitate handling in Raleigh.



The process of getting out bulletins begins in Chapel Hill. Edna Mae Clark pre-addresses envelopes for the daily and weekly mailings.

State and local officials possible within our budgetary limitations. Our goal dictates our watchwords: conciseness, completeness, economy and impartiality; and the greatest of these is impartiality. Human beings have human impulses and are subject to human foibles, but our bulletins have never consciously reflected our opinion upon the merit or lack of merit of any bill. Our belief that fair and full publicity will correct legislative defects has been



After discussion of final plans, Albert Coates wishes Peyton Abbott good luck as he leaves the Institute Building in Chapel Hill to set up the Legislative Office in Raleigh prior to the beginning of the 1945 session.

The task was performed only through a considerable exertion on the part of every member of the staff of the Institute, and of part-time assistants recruited in Raleigh. How the task was accomplished is partly depicted by the accompanying pictures. The large number of our friends who have asked us individually and collectively, "How do you boys do it?" leads us to believe there may be a genuine interest in our story; so we take a few words in addition to the pictures to outline the story of the Institute's legislative service.

The aim and object of the Institute's legislative service is to carry the greatest amount of legislative information to the greatest number of



Jack Atwater, the porter, also takes a direct part. Here he boxes up a batch of envelopes to be put on the Raleigh bus.



One or more representatives of the Institute attends every session of both the House and Senate. Leaving the Capitol after gathering all necessary information for the daily bulletin are, left to right, Peyton Abbott, Clifford Pace, Nancy Fewell, Louis Cherry and John Fries Blair.



Now the grind begins. Bills must be digested, statutes consulted, amendments checked and inserted and the daily report prepared. Engaged in the process are Blair, Pace and Abbott.



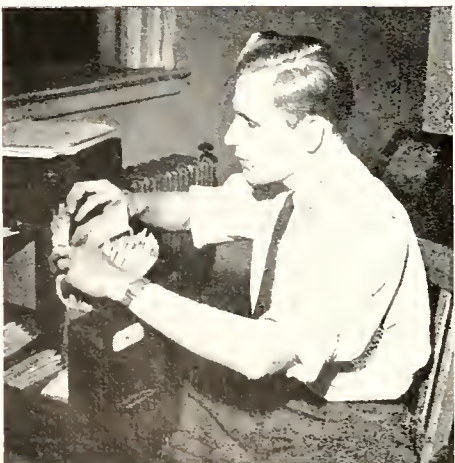
From the Capitol steps to the lunch counter is only about five hours.

amply justified by our experience. We know that reliable information must be uncolored information, that to express an opinion, especially by indirection, is to color the facts, and that colored facts are quickly recognized and lead to a loss of confidence. Therefore we "lean over backward"

must keep up with issues, with personalities and with problems, with local, State, national and international affairs in order to estimate the probable duration of the legislature and the volume of legislation. For we have to buy our supplies well in advance of the session, estimate our costs, locate and employ personnel and arrange office space and living quarters. There is no time to travel back and forth to Chapel Hill, because very often those two hours of travel time are the only sleeping time available. There is not



Quire upon quire of stencils must be cut. Engaged in this task are Mrs. Margaret Wilson and Miss Corinna Sherron.



Copies of all bills in both the original and final form must be obtained and files kept. Cherry is shown checking the bill files.

to avoid any appearance of partiality or partisanship. To one who loves this grand State and is jealous for its well-being, that is perhaps the most difficult phase of the job.

The difficulties of other phases of the job are not inconsiderable. We must begin planning some three or four months before the legislature convenes, and we must estimate closely an unknown quantity. We



Miss Fewell posts the day's entries in the journal which shows a record of all bills introduced and all legislative action with reference thereto.



Proofreading goes on for hours at a sitting. Here Abbott and Cherry proof local weekly stencils which are cut from the card index kept for each county and municipality.

time to make any major correction in estimates of supplies, and on the other hand there are no surplus funds to enable us to make our estimates "well on the safe side."

After lining up our necessary supplies—pins, thumb-tacks and rubber bands to paper, typewriters and a mimeograph machine—we were confronted with the acute war-time shortage of personnel. We sent over from the Chapel Hill office three staff members and one secretary. We employed immediately a mimeograph operator, a records-clerk (whose sole duty was to keep posted the various records and indices essential to the efficient operation of the service), three part-time stenographers who were proficient at the job of stencil cutting, and two crews of about nine each to work on alternate nights at the job of assembling, stapling and mailing the bulletins. Later in the session, the limits of



His own work completed and bed-time long since passed, Blair lends a hand in "tying out" in order to expedite the process.

human endurance having been exceeded, we sent over from Chapel Hill a fourth staff member, and occasionally we had to locate and employ replacements for part-time employees who had to drop out from time to time because of physical limitations.

The work of reporting legislative activity and of getting out the bulletins every day—and they went out every day though sometimes the "day" had run through the night and into the dawn—started off easy. It was at first possible, by working at not much more than a normal pace, to wind up a day's work in not much

The most remarkable thing, perhaps, was the way the part-time temporary employees entered into the spirit of the work, and how they vied with each other—often until five or six o'clock in the morning—in speeding up the assembly line. And they were all paid by the hour, rather than by the piece.

This little article does not, of course, answer the question, "How do you boys do it?" Even less does it answer the question sometimes asked of us individually: "Why do you do it?" The first question can be answered largely by pointing to the splendid cooperation we received



The mimeographing and assembly room is a little crowded, and so is the time. Shown above is one of the alternate crews of part-time assistants hard at work in getting out the bulletin.

more than eight or nine hours. That pace, fortunately, gave us time to discuss our methods and our system and to pull out a few "bugs" which inevitably creep into any intensive, seasonal undertaking. As the legislative process picked up speed, our pace had to be accelerated and intensified until, in the final weeks, we found ourselves putting in an intense, concentrated, no-time-for-idle-pleasantries eighteen and even twenty hours a day. The daily bulletins which had started off with one or two pages had grown to an average of fourteen pages of the briefest type of reporting which could cover the ground. They always covered the ground and they always came out before the "day" was over.



It's three o'clock in the morning . . .



It's been a long hard day, but another bulletin is on its way.

from the offices of the Chief Clerks of the Senate and the House, and from the various State departments. The balance of the first question and all of the second one can only be answered by the statement that we are trying to do something we believe in.



One of our most critical readers gets his bulletin.

We take pride in the fact that again in 1945 our Legislative Service earned the official recognition of the General Assembly, which was expressed in the following joint resolution:

"A JOINT RESOLUTION EXPRESSING APPRECIATION OF THE GENERAL ASSEMBLY FOR SERVICES RENDERED BY THE INSTITUTE OF GOVERNMENT.

"WHEREAS, the services rendered by the Legislative Staff of the Institute of Government, a division of the University of North Carolina, in analysis of bills, preparation of pending calendars, daily report of calendar action and other assistance to legislators has been of great value to members of the General Assembly and to interested citizens throughout the state; now, therefore,

"BE IT RESOLVED by the House of Representatives, the Senate concurring:

"Section 1. That the General Assembly of North Carolina express its sincere appreciation to the Trustees and Faculty of the University of North Carolina, to the Division of the Institute of Government, and to members of its Legislative Staff, for the valuable assistance rendered by them to members of the General Assembly in the conduct of its business.

"Sec. 2. That this resolution shall be in full force and effect on and after its ratification."

The staff of the Institute of Government takes this opportunity to express its sincere appreciation to the following officials for their courtesy and assistance which made possible the success of the 1945 Legislative Service: Governor R. Gregg Cherry, Secretary of State Thad Eure and officials of the Enrolling Office, Attorney General McMullan and his staff, Lieutenant Governor L. Y. Ballentine, Speaker O. L. Richardson, Principal Clerk of the Senate S. Ray Byerly and his staff, Principal Clerk of the House Mrs. Annie E. Cooper and her staff, the members of the General Assembly, and numerous other State officials who generously lent us their time, their advice, and sometimes their equipment.



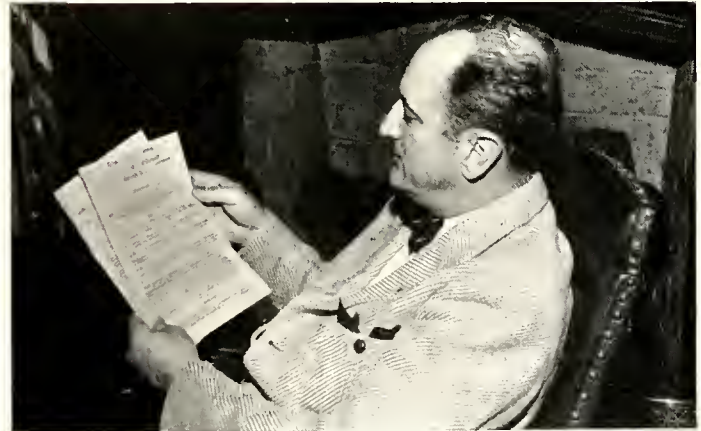
Governor R. Gregg Cherry



John Harden, Secretary to the Governor



State Treasurer Charles M. Johnson



Secretary of State Thad Eure



State Auditor George Ross Pou

Principal State officials, as well as local officials throughout the State, received each morning a copy of the daily legislative bulletin. In addition the Institute of Government prepared for the Governor, members of the Legislature, the Council of State and State Department Heads in Raleigh a special notebook which kept in chronological order digests of all bills. Shown on this page are the Governor and other officials in the Capitol Building examining their notebooks and bulletins.

State Departments, Institutions, Agencies, Officials and Employees

The business of running the State of North Carolina is a major enterprise. As the business becomes more and more complex, each session of the General Assembly sees the legislators taking the steps necessary to guarantee its execution — creating a new commission here, revitalizing an old one there; combining the duties of two executive posts in one instance, creating a new post in another; adding new administrative powers and clarifying old ones; raising salaries and keeping books — in general, doing all the miscellaneous (and sometimes apparently trivial) things expedient to the proper and timely functioning of the State governmental machinery.

Conservation and Development. The most spectacular and widely-publicized subject of legislation in the field of conservation and development in 1945 was the production of petroleum and natural gas. The now-familiar possibility that oil and gas will be discovered in commercial quantities in the eastern part of the State, made much stronger by the systematic prospecting operations of major oil companies in recent months, led to the enactment of:

S.B. 230, designed to regulate the exploration for oil and gas during the period prior to its discovery in large quantities. The Act requires registration of drillers with the Department of Conservation and Development and filing of bonds conditioned upon proper plugging of exploratory wells after abandonment.

S.B. 231, an extensive measure regulating and taxing the production of gas and oil if and when found in commercial quantities. Couched in language familiar principally only to those acquainted with the oil industry and its practices, the Act is based on the experience and laws of the great oil-producing states where pumped-out wells and flagging supplies testify to the folly of unregulated production. A new "Petroleum Division" in the Conservation Department would have charge of the administration of the Act.

Several bills relating to certain lands acquired, in the process of being acquired or to be acquired by the Cape Hatteras Seashore Commission for park purposes. These lands lie in the potential oil area and the possibility that oil may be discovered in profitable quantities has considerably altered the plans concerning these lands.

Other conservation and development measures enacted in 1945 were:

H.B. 45, a joint resolution providing for special committees

of the House and Senate to investigate and report on the advisability of separating the Division of Game and Inland Fisheries from the Department of Conservation and Development. A report was filed.

H.B. 270, which rewrites the provisions of G.S. 113-5 and 113-6 to change the term of members of the Board and to increase from two to four the minimum number of meetings per year.

S.B. 268, which added to the general powers of the Board (which are set out in G.S. 113-36) the power to regulate the taking of marine vegetation.

Three bills relating to the game and hunting laws of the State. H.B. 763 rewrites G.S. 103-2 to make it possible for a person to be in possession of a gun on Sunday without thereby violating the law (returning from a hunting trip, for example). H.B. 61 repeals G.S. 113-110, which codified in the General Statutes numerous local laws relating to the closed seasons for fox hunting; the Act provides that the local laws shall remain in effect and have the same status which they enjoyed prior to the adoption of the General Statutes. S.B. 285 has the following principal effects: fixes the fee for non-resident hunting license at \$15.75, for resident hunting license at \$3.10, and for resident combination hunting and fishing license at \$4.10; provides that 50c from each such fee shall be set aside for the purchase, lease and development of lands and waters for the propagation of game and fish and for public hunting and fishing.

Several measures to regulate both game and commercial fishing. S.B. 286 fixes the fee for nonresident fishing license at \$6.10 and \$3.10 for resident license, 50c of each fee to be set aside for the purchase and lease of lands and waters for the protection and propagation of fish and for public fishing; makes it mandatory that a person have a license for fishing in his own county with artificial lures or baits; and repeals the requirement that a metal button representing the purchase of a license be worn (the license must still be carried upon the person). H.B. 328 authorizes the issuance of 5-day nonresident State fishing licenses for a fee of \$2.60, \$2.50 to be for the use of the Department and 10c for the selling agent; nonresidents under the age of twelve are authorized to fish in the State without a license. H.B. 183 continued a 1943 appropriation for the construction and equipment by the Conservation Department of small-mouth bass fish hatcheries and substations for rearing fingerlings, increasing the appropriation by \$10,000. H.B. 825 creates a commission to study the situation with respect to the cultivation and marketing of clams and oysters in the State, and S.B. 196 makes extensive changes in the statutes fixing the license fees required to take and deal in fish, oysters, etc.

A combination hunting-fishing measure (H.B. 469) which permits members of the United States armed services home on furlough, and veterans receiving treatment in a U. S. veterans' facility or who have served overseas and are temporarily stationed in a redistribution or rehabilitation center, to hunt and fish during open season without obtaining a license.

Two measures expressing the State's interest in recreational and cultural facilities. S.B. 328 places the Roanoke Island Historical Association, Inc., which conducted the popular Lost Colony Pageant for several seasons prior to the war, under the patronage and partial control of the State. A board of directors is created by the act and the Governor and Coun-



A view of the
State Capitol at
Raleigh.



S.B.332 looks toward the restoration of Tryon's Palace at New Bern.

cil of State are authorized to allot not exceeding \$10,000 a year from the Contingency and Emergency Fund to aid in the restoration and production of the Pageant if it operates at a loss. S.B. 332 authorizes the Department of Conservation and Development to accept gifts, acquire property and restore Tryon's Palace, in New Bern, home of the early North Carolina governor, noted for its beauty and architectural perfection.

H.B. 564, which creates a "temporary North Carolina Forest Survey Commission" to study forestry practices, standards, etc., and to investigate the possibility of reviving the naval stores industry of the State. And S.B. 378, which creates the "State Stream Sanitation and Conservation Committee" and gives it the following general duties: to locate and study instances of stream pollution tending to impair the best use of streams, to determine the nature and circumstances of the pollution, to determine the technical and economic feasibility of remedying or improving the situation with respect to pollution, and to appraise streams with respect to present and probable "dominant use."

Unemployment Compensation. The first of the biennial unemployment compensation bills in 1945 was a joint resolution (H.B. 98) memorializing Congress to retain and continue unemployment compensation as a function of state government and to resist "any further federal encroachment in this field."

The bill containing the principal changes in the law recommended by the Unemployment Compensation Commission at this session was H.B. 123 (S.B. 78 was the identical Senate Bill). Concerned primarily with changes designed to facilitate the administration of the unemployment insurance program, the bill in original form contained two provisions of particular Statewide interest and importance. The first would have reduced from eight to one the number of employees required for an employer to come within the provisions of the compensation law and the second would have extended from sixteen to twenty the number of weeks for which an employee might receive benefit payments under the law. Both of these provisions were stricken out in the course of the legislative process. The section extending the number of weeks that benefits may be received was restored before final passage; but the biennial effort to increase coverage under the act was not successful.

This act provides a new schedule of weekly benefits for persons entitled to compensation. The new schedule provides a minimum weekly benefit of \$4.00 and a maximum of \$20.00, the former schedule having been \$3.00 and \$15.00, respectively. The increase is reported by the Unemployment Compensation Commission as bringing North Carolina more in line with other states in the schedule of benefits payable. Numerous changes were made in the law concerning the rights of returning veterans after they have exhausted the benefits of the G. I. Bill.

Of interest to clerks of court is a provision of H.B. 123 giving them the authority to issue, to persons refusing to obey a subpoena issued by the Commission or its agents, an order requiring such persons to appear before the Commission or its agents, there to produce evidence if so ordered or to give

testimony touching upon the matter under investigation or in question. The clerk is further authorized to punish any failure to obey such an order as a contempt of court. An independent bill, H.B. 285, also affects clerks in connection with the administration of the compensation law; it provides a uniform fee of \$1.00 for docketing a certificate of unpaid contributions, to be in lieu of any fee authorized by any other statutes.

Workmen's Compensation. The law regulating liability insurance, though not as regularly and extensively changed as the law regulating unemployment insurance, came in for some revising in 1945. S.B. 232 made the following important changes in the Workmen's Compensation Act of North Carolina: brings sawmills and logging operators within the Act if they employ as many as five persons (instead of fifteen, as formerly) except such operators who have less than ten employees and saw and log less than sixty days in any six consecutive months and whose principal business is unrelated to sawmilling or logging; changes the method of computing the average weekly wage in the case of permanent disability or death of a minor so as to take into consideration what the adult employees were earning in the business and what the minor might have been promoted to had it not been for the accident; allows counties to become self-insurers or to purchase insurance, to include subordinate agencies in such coverage, and to make appropriations, levying a tax if necessary, to pay for the coverage; make the purchase of workmen's compensation insurance the basis of a conclusive presumption that an employer not otherwise subject to the act has accepted its provisions for the life of the policy; allow a principal to insure any or all of his contractors and their employees in a blanket policy; revise the provisions with regard to death benefits, without changing the maximum, so that they more nearly reflect loss of earning capacity; and to change several administrative provisions of the Act.

S.B. 225 made several changes in the sections of the Act dealing with occupational diseases.

Miscellaneous Departmental Legislation. Related only by the fact that they are all designed to facilitate the functioning of various State departments and agencies are the following measures enacted by the 1945 General Assembly:

Re-enacting the "North Carolina Emergency War Powers Act" (which gave the Governor power to issue proclamations having the effect of law when necessary to the prosecution of the war effort) and providing that the Act shall be in force for the duration of the war and six months thereafter. (S.B. 13.)

Creating a State Ports Authority and authorizing the State, through this Authority, to engage in promoting, developing, constructing, equipping, maintaining and operating harbors and seaports and works or internal improvements incident thereto. (H.B. 816.)

Creating a State Recreation Commission composed of the Governor, the Superintendent of Public Instruction, the Commissioner of Public Welfare, the Director of the Department of Conservation and Development and seven members appointed by the Governor. The Commission, which is authorized to employ an Executive Director with the approval of the Governor, is to co-operate with local recreational systems and with State and Federal recreation agencies. (S.B. 140.)

Empowering the State Rural Electrification Authority to assist rural communities in securing telephone service from telephone companies serving their area and authorizing the organization of telephone membership corporations in the same manner that electric membership corporations are formed under the law establishing the REA, where telephone service cannot be secured from existing companies. (H.B. 714.)

Establishing an arbitration service in the Department of

(Continued on page fifty-eight)

Aviation and Airports



A page lines up the numerous stamps on the desk of the principal Clerk.

Perhaps the aspirations behind most of the state-wide legislation with respect to aviation which was passed by the 1945 session of the General Assembly would best be expressed by a paraphrase of the "declaration" contained in S.B. 80. That bill states the following as some of the purposes of the legislation: the protection and promotion of safety in aeronautics; the encouragement of an effort toward bringing about uniform state laws; the creation of a state agency to assume such functions with respect to aviation as the State must perform and to assist local communities in the establishment of a state-wide system of airports; cooperation with Federal authorities in the development of a national system of civil aviation and the elimination of unnecessary duplication of functions. For those and other purposes a North Carolina Aeronautics Commission was created which was, in addition, authorized to draft and recommend additional legislation and to administer any Federal funds which may be made available for distribution through a State agency.

S.B. 79, the bill which deals with local rather than State participation in aeronautics, defines in minute detail the terms used in the act and authorizes any municipality to acquire and maintain airports on land either within or outside its corporate limits, on water or reclaimed land, and even outside the State itself. Any municipality desiring to establish an airport is empowered to use eminent domain for that purpose, to acquire easements and other airport protection privileges and to mark hazards. The encroachment by anyone on these privileges is made a public nuisance. The acquisition of airports by a municipality is declared to be a public purpose and the property exempt from tax. Any acquisition prior to the time the act took effect is specifically validated. The powers of municipalities which operate airports are enumerated, including the acceptance of Federal aid, either directly or through the North Carolina Aeronautics Commission. Administration may be by a municipal officer or by a board or body established by ordinance or resolution. Two or more municipalities are permitted to con-

tract for the joint establishment and operation of airports and to provide in the contract for the exercise of joint control. If the contract does not specify the method of control, the statute itself supplies one in the form of a joint board of not less than five nor more than seven members, each municipality being represented as nearly as possible in the proportion that its financial contribution bears to the total amount of money or property available for aeronautical purposes. Counties are specifically brought within the provisions of the act.

Three additional bills round out the public legislation with respect to aviation. After S.B. 79 was ratified, S.B. 407 was introduced and passed to prevent a city from condemning, for the purpose of establishing an airport, property which is used in the business of a railroad company. H.B. 214 redefines "political subdivision" within the meaning of the Airport Zoning Act (G.S. 63-29 through 63-36) to include "any municipal corporation, authority or commission created by the General Assembly for the purpose of owning, operating or regulating airports," and extends the authority of political subdivisions to adopt zoning regulations to cover the approaches to airports, even though they may lie outside the corporate limits of the political subdivision. H.B. 65, section 1 (40), strikes out a restriction on zoning authority which formerly applied to trees.

LOCAL LEGISLATION

In view of the extensiveness and detail of the public bills, much of the local legislation seems, in retrospect, almost unnecessary. Many of these bills were introduced, however, before it became certain that the public bills would become law, and in some cases the controlling desire seems to have been to set up a separate Airport Authority, or at least to provide in detail for the constitution of the governing board rather than to allow it to remain a matter for future negotiation. Typical provisions authorize the expenditure for airport purposes of public funds other than those derived from ad valorem taxation and permit the combination of two or more governmental units, whether cities or counties, for the purpose of constructing and operating an airport. Recourse should be had to the particular bills for specific provisions. The bill numbers and the localities to which they apply are as follows:

S.B. 289—The County of Randolph and the Town of Asheboro.

H.B. 111—The Counties of Durham and Wake and the Cities of Durham and Raleigh.

H.B. 455—The Town of Morganton and the Town of Lenoir.

H.B. 649—The Counties of Granville and Vance and the Cities of Henderson and Oxford.

H.B. 914—The Town of Red Springs only, although one member of the commission is to come from Robeson County outside the town.

H.B. 949—Transylvania County and the Town of Brevard.

Three other bills are of more limited application. S.B. 306 simply authorizes the City of Hickory to expend for the operation and improvement of an airport certain sums not derived from tax sources. H.B. 212 increases the authority of the County of Guilford, the Cities of Greensboro and High Point and the Town of Gibsonville to borrow money and levy taxes, subject to an election subsequently to be held, for the support of the Greensboro-High Point Airport Authority, and H.B. 212 enlarges the power of that authority with respect to the investment of funds and the granting of concessions.

Motor Vehicles and Highways

In view of the importance of motor vehicles and highways to the lives of our citizens and of the magnitude of State expenditures on highways and the incidents thereof, it is not surprising that each General Assembly enacts a considerable volume of legislation in connection with the subject. The 1945 Legislature was no exception. Many of the new laws indirectly bearing upon the highways and their use are discussed elsewhere in this issue, and a comparison of appropriations for the coming biennium with past expenditures and requests is shown by the table on page 9. Collected below are those new acts which more directly affect the subject. Since many of them concern relatively few people or are of a technical nature, and since space is limited, no attempt is made to enter into an explanatory discussion or to do other than call attention to the changes effected.

Highway Patrol. H.B. 765 gives to the State Highway Patrol, in addition to the powers as peace officers which they already possess, the power to make arrests for any crime committed in their presence or on the highways, and the power to make arrests when called upon to do so by any sheriff or chief of police. Some of these powers they could exercise formerly when specifically directed to do so by the Governor, and by proclamations under the Emergency War Powers Act the right to exercise these powers as to certain crimes had become "standing orders." Now they have statutory authority to the limited extent of these extensions of their powers.

The much-talked-of bill which would have consolidated all state law enforcement agencies into a Department of State Police and Public Safety never materialized.

S.B. 277 requires members of the Highway Patrol, under penalty of \$100, to refer cases involving the seizures of vehicles or arrests for the unlawful transportation of intoxicating liquor to State rather than to Federal courts.

State-owned vehicles. As an alternative to the present requirement as to the marking of State-owned vehicles, H.B. 764 provides that they may be marked by a replica of the State Seal in a circle not less than eight inches in diameter and a designation of the department or agency to which the vehicle belongs.

Motor Vehicle Operators

Financial responsibility. Many citizens have been looking forward with mixed emotions to the postwar prospect of a tremendously increased use of the highways, with two cars hardly ever at home in the garage and two wrecks at every intersection. Preventive measures, such as the elimination of highway hazards, better traffic control, a program of safety education, etc., can and will be carried forward. Thought is also being given to the matter of lessening the hardship upon the poor innocent who literally gets "caught in the rush" and finds that his injuries and property damage have been caused by someone who has no present or prospective ability to pay the bill.

Three bills having this situation in mind were introduced, but none of the three got through. H.B. 290, a lengthy and involved bill of 100 principal sections and numerous subsections would have covered the field well if not too wisely. It would have established a "Motor Vehicle Responsibility Act" with detailed provisions covering the issuance and revocation of drivers' licenses, certificates of title and license plates, liability insurance coverage and other related matters. More modest was S.B. 126 which would have reduced from \$100 to

\$25 the amount of a judgment the non-payment of which will cause revocation of a license. A somewhat similar bill would have gone a little further and required both the payment of the judgment and the establishment of financial responsibility to answer in damages for future accidents as a condition precedent to the restoration of a license. Since the General Assembly seemed not to be able to make up its mind just what course to follow, it enacted H.B. 824 to authorize the Governor to appoint a commission to study the matter.

Taxicabs. One subject of legislation which produced sharp clashes in the committee rooms concerned the regulation of taxicabs. S.B. 69, a rather comprehensive bill which, among other things, would have required taxicab operators to obtain certificates of convenience and necessity from the Utilities Commission after having been approved by the city or town as to moral fitness, was reported unfavorably. Thereafter S.B. 190, after surviving a number of amendments, was passed. That Act places control of taxicabs in the governing bodies of cities and towns which have to certify that the operator has provided liability insurance or other form of indemnity and that the convenience and necessity of the public requires the operation of the taxicab before the State will issue a license. In all counties except Lee, Edgecombe, Nash and Union, however, all persons operating taxicabs on January 1, 1945, who have not subsequently had their licenses revoked are entitled to certificates as a matter of right for the number of taxicabs operated by them on that date. Municipalities are also given authority to establish rates. Section 1(22) of H.B. 65 strikes out the last paragraph of G.S. 20-200 which related to the furnishing of proof of financial responsibility on the part of taxicab, jitney and for-hire operators to the Commission of Motor Vehicles.

H.B. 269 repeals a local act applying to the *Town of Rockingham*.

License fees and regulations. Brief space only can be given to changes in license fees and other technical matters. S.B. 408 makes the registration fees for trailers towed by trucks of 4,000 pounds or less the same as for those towed by passenger cars. S.B. 325 provides, where the combination has four axles or more, for the allocation of weight for licensing purposes between the trailer or semi-trailer and the truck by which it is towed. S.B. 122 increases the maximum length of combinations of vehicles from 45 to 48 feet, re-defines axle load, and increases from 40,000 to 50,000 pounds the maximum permissible weight for vehicles with four or more axles. H.B. 70 makes the deferred half of the gross amount for licenses, where the total to any one owner exceeds \$400, payable June 1 instead of April 1 and reduces the carrying charge for the deferred balance from 2% to $\frac{1}{2}$ of 1%. H.B. 298 and H.B. 398 make several changes in the law with respect to franchise bus carriers and franchise haulers. H.B. 299 rewrites certain sections with respect to transfer of license plates, registration fees on motorcycles, farmer licenses, remedies for the collection of taxes, rescission and cancellation of certificates of title erroneously issued or fraudulently or unlawfully detained, display of an expired license and the weight of busses. H.B. 399 re-defines "owner" within the meaning of the law relating to leased motor vehicles and changes the provisions with respect to the computation of gross revenue for tax purposes in cases where vehicles are leased from other operators who are licensed as contract haulers or franchise haulers. Finally, H.B. 498 excludes from the definition of "for hire" vehicles those whose sole operations consist in carrying fuel for the exclusive use of the public schools of the state.

H.B. 888, which would have required the semi-annual in-

spection as to brakes, horns, lights and mechanism, failed to pass, but H.B. 960 authorized the Governor to appoint a commission to study the matter of inspection of motor vehicles and also the advisability of reviewing the qualifications of operators of motor vehicles and of refusing to reissue licenses to those found unqualified. The appointment of another commission to study and recommend legislation to revise regulations with respect to the transportation of property by motor carriers was authorized by H.B. 912, after bills to revise such regulations (S.B. 331 and H.B. 578) had been laid aside.

Another regulatory measure which failed was contained in S.B. 129, which would have required automobile dealers and salesmen to procure licenses for carrying on such business or occupation from the Commissioner of Motor Vehicles.

Transfers and liens. H.B. 305 adds a new provision to the law relative to the transfer of title and license to another upon the death of the owner of the motor vehicle. It provides that if the owner dies intestate leaving a surviving spouse and minor or incompetent children for whom no guardian has been appointed, the surviving spouse may transfer the interest of the minor or incompetent children in the vehicle.

H.B. 306 provides a statutory lien for the storage of motor vehicles and sets out the procedure for enforcing the lien, and H.B. 307 requires that a notice be sent to the Commissioner of Motor Vehicles twenty days in advance of any sale to enforce a mechanic's lien.

Driver's age. H.B. 303, as finally passed, extends for two more years, or until March 19, 1947 the 1943 law which lowered the minimum age of drivers to 15. It also permits 15-year-olds to drive any vehicle up to five tons, instead of limiting them to one and one-half tons as under the 1943 law, unless the vehicle is hauling inflammable materials or explosives or is a school bus.

S.B. 99, which would have taken jurisdiction over juvenile automobile offenders from the Superior Court and restored it to the juvenile and domestic relations courts, was defeated in the House.

School bus drivers. H.B. 58 permits school bus drivers to be examined by a representative designated by the Commissioner of Motor Vehicles as well as by members of the State Highway Patrol.

H.B. 301 would have eliminated the provision authorizing the employment of student drivers and substituted instead a provision that drivers shall be "sober men of good character and not less than twenty-one years of age." It also contained a provision with respect to a minimum salary for such drivers. However, by amendment, the provisions of the bill were somewhat changed and its operation restricted to *Craven County*. H.B. 36 requires the inspection of school busses in *Gates County* prior to the convening of every regular term of court.

Operating auto intoxicated. Nothing was done with the law on this subject, but several bills were concerned with it. Section 1(17) of H.B. 65 does repeal G.S. 14-387 relative to driving while under the influence of liquor or opiates, but the matter is still covered in G.S. 20-138, 139 and 179. Failing to pass were H.B. 203 which would have made a driver's license revocable by the Department of Motor Vehicles upon the second rather than the first conviction of driving drunk and left it in the discretion of the court to revoke on the first conviction, and H.B. 133 which would have made it unlawful to drive under the influence of "hypnotic" or "analgesic" drugs as well as under the influence of "narcotic" drugs as at present.

Other bills. H.B. 902 forbids the State Highway and Public Works Commission to plant Bermuda grass on highway shoulders without the consent of the abutting property owner, when the abutting property is under cultivation, and requires



Senator Roy Rowe of Pender County took a leading part in legislation affecting aviation. He is shown catching up on some work between sessions.

the Commission to use reasonable effort to eliminate Bermuda grass heretofore planted on shoulders of highways running through cultivated farm areas. H.B. 565 authorizes the Commission to regulate traffic signs on municipal street improvements which are financed by federal aid funds.

Section 1(23) of H.B. 65 repeals G.S. 20-220 through 20-223 relative to bringing used motor vehicles into the state, those sections having been declared unconstitutional by the federal courts.

S.B. 312 relieves the Boys' Road Patrol of the duty of looking after the maintenance of the roads and makes its duties consist of studying and aiding in road beautification, the prevention of forest fires, and the study and practice of the rules of safety.

Among bills that failed were H.B. 369 and H.B. 565 which represented attempts to have uniform waiting stations erected for children on school bus routes. The first bill would have provided a specific appropriation for the work, while the second would merely have authorized the state and county boards of education to use available funds for the purpose.

Agriculture

(Continued from page twenty-eight)

Weigh Masters. H.B. 948 authorizes the Department of Agriculture, through the State Superintendent of Weights and Measures, to administer the Article on Public Weigh Masters, and provides that all leaf tobacco offered for sale in warehouses in this state must be weighed by a Public Weigh Master and accompanied by his certificate. It is to remain in the custody of the warehouse operator from the time it is weighed until it is sold or the bid rejected by the owner. H.B. 438 removes the exemption formerly applying to Alamance, Rockingham, Surry, Person, Warren and Vance counties from the law making it illegal to sell or offer for sale upon warehouse floors piles of tobacco that are nested, shingled or overhung.

H.B. 341 provides for the appointment of cotton weighers in Union County by the Board of County Commissioners. H.B. 938 fixes the fees for the one at Spring Hope.

H.B. 608 changes the regulations with respect to the seizure and condemnation of insecticides and fungicides sold or offered for sale in violation of law.

Insurance Regulations

Revision of insurance laws. On June 5, 1944, the Supreme Court of the United States handed down an opinion in the case of *United States v. Southeastern Underwriters Association* in which Mr. Justice Black, speaking for the Court, said that his predecessors had not really meant it when they had held, seventy-five years previously, that the writing of a contract of insurance, and later that the business of insurance generally, did not constitute commerce, not to mention interstate commerce; that they had been using a form of words the purpose of which had been to carry into practice the idea that the states could regulate insurance; that that did not mean that the federal government was not able to regulate it under the commerce clause, and that the government having attempted to do so by an application of the Sherman Act, the suit ought to be entertained.

Although, as Mr. Justice Jackson pointed out in dissenting in part from the opinion of the court, if the question had been raised for the first time today it would have been the almost inevitable conclusion that insurance was commerce, nevertheless he was doubtful as to the advisability of upsetting the holdings of seventy-five years. That it should do so was finally decided by four members of the court, since there were three dissents and two members of the court did not participate in the decision.

Shortly after the Supreme Court decision heretofore mentioned, Governor Broughton appointed a commission of fifteen men to make a study of the insurance laws of North Carolina, to consider which of those laws needed changing in the light of the Supreme Court decision, and to make recommendations of changes to the 1945 session of the General Assembly. The time was short. An able commission did, however, recommend numerous changes. These were embodied in eleven bills most of which were amended in minor particulars but all of which were passed. Because of the technical nature of the bills anything short of an exhaustive study of them would be practically valueless. Limitations of space permit us to do no more than indicate the subject matter of the various bills which make extensive amendments to Chapter 58 of the General Statutes and also amend chapters 97 and 14. The following subjects are dealt with:

General regulations for insurance (S.B. 103).

Fire insurance regulations (S.B. 104).

Regulation of insurance agents (S.B. 105).

Life insurance regulations (S.B. 106).

The creation of a fire insurance rating bureau and the regulation of casualty and miscellaneous insurance rates. (S.B. 107)

The regulation of Workmen's Compensation and automobile liability insurance rates. (S.B. 108)

Embezzlement by insurance agents. (S.B. 109)

The organization of the Department of Insurance. (S.B. 110)

Foreign and alien insurance companies. (S.B. 111)

Accident and health insurance. (S.B. 112)

The organization and regulation of insurance companies. (S.B. 113)

The commission disavowed any claim that the job of revising the insurance laws was complete with the passage of those bills, and it recommended that a commission be designated to continue the study. This recommendation was followed in S.B. 373 which authorized the Governor to appoint such a commission of not more than twenty citizens.

In view of the added responsibility given to the Department of Insurance through the revision of the insurance laws, an

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Election Law Amendments

Although they touched on numerous points, the 1945 changes in the election law were not very extensive. The 1929 general election law, supplemented by the revision of the absentee voting law in 1939 and the changes wrought by the movement of many voters into the armed forces in the 1940's, remains today unchanged in its principal provisions.

General Amendments. S.B. 187 contained the principal changes made in the election law in 1945 and concerned itself primarily with administrative provisions rather than substantive changes in the law regulating the casting of the ballot. This act has the following effects: provides that the State Chairman of each political party must provide the names of the three persons he is recommending for members of the county board of elections in each county at least fifteen days before the tenth Saturday before the primary election is to be held (formerly only "on or before the tenth Saturday"); raises the pay of members of county boards of elections from three dollars to five dollars per day and chairmen from five dollars to seven dollars; increases the pay of judges and assistants from four dollars to five dollars and registrars from five dollars to six dollars (the amendment raising the pay of registrars is so worded that there might be some question as to whether the increase applies to their services on the preceding Saturdays or only on election day, but apparently applies to all days served), and provides that the board of commissioners of any county may provide for additional compensation for these officials in precincts where their duties require services for a substantial period of time after the closing of the polls; strikes out, in the article regulating primary voting by members of the armed forces, the proviso that the article shall become null and void after the National Selective Service Act is repealed by Congress (supposedly on the presumption that there may still be many men in the armed forces even though the draft law has been abolished); permits any certificate required by the absentee voting law to be under oath to be subscribed and sworn to before commissioned officers or non-commissioned officers of the rank of sergeant or chief petty officer, in the case of voters who are in the armed or auxiliary forces; provides that Article 11A of the General Statutes, which regulates absentee registration and voting in general elections by members of the armed forces, shall apply to registration and voting in primary elections as well, and authorizes the State Board of Elections to adopt and promulgate whatever rules and regulations it may deem necessary to make the provisions of the Article conform to the primary election law; provides that a person whose absentee vote is being challenged may act through any duly appointed representative to sustain the validity of his vote if he is absent from the county or physically unable to attend on canvass day; and makes minor amendments correcting editing errors.

Absentee Voting. One feature of the absentee law was changed by the 1945 General Assembly, but again the change relates to the administration of the law rather than to the law itself. H.B. 835 provides that the State Board of Elections may, under such rules and regulations as it may prescribe, and when it deems the action necessary and advisable, authorize the chairman of any county board of elections to delegate the authority, heretofore vested only in him, to receive applications for and to issue absentee ballots, to any member of the board. This act was amended before final passage to provide that the county chairman may, in his discretion, decline to delegate this authority.

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City Hall and County Courthouse

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for the fiscal year beginning on July 1 of the year in which the property was acquired. Such property is to be listed and assessed by the county tax supervisor after ten days' notice by registered mail to the owner, who is given the right to appeal to the board of county commissioners upon the question of valuation. In the event the property is acquired from a governmental unit which has been making payments in lieu of taxes for the fiscal year ending June 30 of the year in which the property was acquired, the tax for that year shall be one-half of what it would have been if the property had been regularly listed as of January 1.

Revaluation. In the absence of local legislation to the contrary, 1945 is a quadrennial revaluation year, when all real property is supposed to be reassessed for local taxation. The unsettled conditions in the State at the present time, the difficulty in securing competent assistance for the job, and the feeling that values are now unduly inflated and that revaluation at this time would be difficult and would probably result in inequalities after a return to "normalcy" after the war, added to a natural disinclination on the part of governing boards to "stir things up," have led many counties to seek a way to postpone revaluation in 1945 which would not make them carry on with the old valuations for four more years. S.B. 22 provides the way. It authorizes any county to defer the quadrennial revaluation in 1945 and 1946. It does not change the quadrennial year from 1941 "and quadrennially thereafter"; so it would seem that those counties which defer the 1945 revaluation to 1947 would still have a quadrennial year to face in 1949.

Wayne County anticipated that a two-year deferment might not be sufficient. H.B. 772 expressly defers revaluation in that county until 1946, and then authorizes the county commissioners to further defer revaluation from year to year until 1949.

Information from State Board of Assessment. Section 203(6) of the Machinery Act empowers the State Board of Assessment, upon its own motion or upon request of any tax supervisor or county board of commissioners, to transmit or make available to the supervisor or board of commissioners information contained in reports to the State Board, to the Department of Revenue, or to any other State department which will assist in the securing of more adequate tax listings. For the past several years a small handful of counties have taken advantage of the section by sending their tax supervisors to Raleigh for one, two or three days each year to "check the records" in the Revenue Department. These counties have been well repaid for their time and trouble through a substantial increase in listings, especially in the category of inventories. The great majority of counties have not taken advantage of the section, for a variety of reasons. In many counties the duties of tax supervisor are discharged by some other full-time official whose duties leave him no time to make the check-up in Raleigh. Some agricultural counties feel that the small amount of discoveries they might turn up wouldn't justify the expense. The tax lists of every county in the State would benefit from a full application of the section, both from the standpoint of actual discoveries and from fuller voluntary listings by taxpayers who would come to understand that their tax lists would be checked against their income and franchise tax returns and would have to be reasonably in line with those returns. But, though given the authority to furnish this information to the counties, the State Board of Assessment has not had the funds to do more than cooperate with those few supervisors who make the trip to Raleigh.

S.B. 400, as originally drawn, would have made it mandatory for the State Board of Assessment to transmit to tax supervisors "information to aid in the adequate listing of and

assessing of property," and would have allotted the sum of \$8,000 per year to cover the expense involved. The bill was amended, however, to direct the board to "make available personally" to the tax supervisor requested information, and the appropriation was reduced to \$2,000. While that sum is inadequate for the magnitude of the job originally contemplated, it is nevertheless a starter, and it is probable that if the experience of the next two years justifies the expenditure, a more adequate appropriation can be secured in 1947 and a substantial program beneficial to all of the counties and municipalities can be developed.

Payments in lieu of taxes. Two joint resolutions are concerned with the effort to get Congress to provide for payments to counties in lieu of taxes on federally owned property on account of which no payments are now made, and to provide better payments in those instances where some compensation for lost taxes is now made. S.B. 95 asks Congress to enact legislation "for the relief of counties whose taxable property has been taken over for national forests and parks." S.B. 28 asks North Carolina's Congressional delegation "to give careful consideration to the present method of payment by the Federal Government on forest lands, TVA properties and other properties owned by the Federal Government, with the view of providing a more stable form of payment on forest lands and a more equitable payment on TVA properties and other properties owned by the Federal Government." These two resolutions are occasioned by the fact that over the past several years the Federal Government has taken over large areas of land in North Carolina for parks, forests, flood control, hydroelectric development and other purposes, and this land has been withdrawn from taxation by the counties. The government permits the taxation of some indirectly held property, it makes payments in lieu of taxes on other property, and upon still other property it pays nothing. The situation with respect to TVA in the western part of the State is roughly this: the TVA dams in North Carolina, and the lakes created thereby, serve two principal purposes, one being flood-control and the other being hydro-electric power production. The first is conceived to be essentially governmental in nature, and the second is, traditionally at least, proprietary. The total investment of TVA is apportioned between the traditionally governmental aspects of the program and the traditionally proprietary aspects. No payments in lieu of taxes are made with respect to that proportion of the holdings allocated to flood control, but such payments are made with respect to the proportion of holdings attributed to power production. The formula by which these payments are made, however, works to the disadvantage of the North Carolina counties concerned. The payments are allocated partly on the basis of the location of the land taken over by TVA, and much of the land is in North Carolina. They are also allocated partly on the basis of where the power is used, and practically none of it is used in North Carolina. The western counties complain, with some cause, that they are called upon to "feed the cow, while Tennessee gets the milk." Not only is Tennessee benefited by the distribution of cheap power: she also gets the lion's share of payments in lieu of taxes.

Dog tax—Collection by rabies inspector. Those counties which have conducted thoroughgoing rabies vaccination campaigns under G.S. 106-364 through 106-387 have reduced the "mad-dog scares" of earlier days almost to the vanishing point. The procedure requires the rabies inspector to advertise the times and places (two or more in each township) where he will be present to vaccinate all dogs which the owners are required to bring in. The charge for vaccination is not more than 75c which, however, is allowed as a credit against the dog tax. After the rabies inspector has met all of his advertised appointments, he is required by G.S. 106-371 to make a canvass of the county and to vaccinate all dogs which had not

been brought in to the vaccination stations. He still collects a 75c fee, but only 50c of the fee is credited against the dog tax. Before the 1945 amendment, therefore, the owner of a male dog who brought his dog in for vaccination and who paid the 75c vaccination fee would only owe a balance of 25c on his dog tax—a sum too trifling to warrant a great deal of effort on the part of the tax collector.

H.B. 31 provides that the rabies inspector shall, at the time of vaccinating the dogs, collect the full amount of the tax and after deducting his fee of 75c plus 5c for reporting, remit the difference to the sheriff or tax collector who will credit the full amount of the tax. Where the dogs are not brought in to the advertised places but are vaccinated under the provisions of G.S. 106-371, the rabies inspector is to collect the full amount of the tax plus an extra 25c, and remit to the tax collector the amount of the tax less 80c. That is, the rabies inspector would retain the extra 25c for his extra trouble in going out and finding the unvaccinated dog. In either event the tax is collected in full on the spot, instead of leaving 25c or 50c for male dogs and \$1.25 or \$1.50 for female dogs to be collected later by the tax collector. Although the bill will only apply to those counties whose commissioners accept it by resolution, the following counties are excepted from its operation: Bladen, Pender, Alamance, Madison, Cabarrus, Durham, Burke, Wilkes, Ashe, Stokes, Surry, Scotland, Robeson, Sampson, Rowan, Stanly, Iredell, Anson, Pitt, Catawba and Rutherford.

Alias summons in tax and special assessment suits. Section 1719(e) of the Machinery Act of 1939 (G.S. 105-391) provided that in tax foreclosure suits under that section, alias summons might be issued or service by publication begun at any time within one year after the issuance of the original summons. G.S. 1-95 provided that alias or pluries summons must be issued within 90 days after the next preceding summons. The Attorney General has ruled that the latter provision applied to tax or special assessment suits brought under G.S. 105-414 (C.S. 7990). G.S. 1-95 further provided, apparently as a result of an erroneous carry-over into the new code of a provision which was applicable to the old C.S. 8037, which was repealed in 1939, that in tax suits instituted under G.S. 105-391 alias or pluries summons might be issued within two years after the issuance of the original summons.

H.B. 162 sets this conflict at rest by providing that in tax or special assessment suits instituted under either G.S. 105-391 (the Machinery Act) or G.S. 105-414 (C.S. 7990), alias or pluries summons may be issued within two years after the issuance of the original summons. H.B. 65 aids in the clarification by changing the one year provision in G.S. 105-391(e) to two years.

Docketing tax judgments under section 1720. G.S. 105-392 (section 1720 of the Machinery Act) as originally enacted apparently contemplated the use of a separate tax judgment docket for each year's tax judgments. Some units which are beginning to use the summary foreclosure procedure, however, find that a year's tax judgments take up very much less space than contained in a convenient size judgment docket book. H.B. 463 permits tax judgments to be docketed in a continuing volume rather than using a separate volume for each year.

Warranty deeds of municipalities and counties. After having gone to the trouble and expense of foreclosing and buying in real estate for the non-payment of taxes and special assessments, many counties, cities and towns have found that they faced even greater difficulties in selling the property, getting their money out of it, and getting it back on the tax books. Prospective purchasers are chiefly afraid of technical defects which, while perhaps not sufficient to divest them of title, may nevertheless be clouds upon the title and impair or destroy its marketability. Many prospective purchasers would be willing to take over the property under conveyances with warranties

of title. Legal opinion has been divided upon the question as to whether counties and cities have the power to enter into covenants of warranty. Many title experts assert that they may convey only such title as they have, by deed which amounts to no more than a quit-claim deed.

S.B. 233 would have removed the doubt on this point. Entitled "An Act to authorize counties and municipal corporations to execute conveyances with covenants of warranty and to relieve the members of governing bodies of said counties and municipal corporations from individual liability by reason of the execution of such conveyances," the act applies to the conveyance of any property, whether acquired through tax or special assessment foreclosure or otherwise. Although the act makes it discretionary with the governing bodies whether to execute conveyances with covenants of warranty, it was amended before final passage to apply only to the counties of Beaufort, Bertie, Bladen, Davidson, Edgecombe, Forsyth, Franklin, Gates, Halifax, Lenoir, Nash, New Hanover, Orange, Pender, Richmond, Rowan, Union, Wake, Wayne and Wilson.

Special Assessments — "Street Improvement." The only change made in the state-wide law relative to special assessments for local improvements was by S.B. 166 which expands the definition of "street improvement." Added to the definition is "bituminous surface treatment constructed on a soil stabilized base course with a minimum thickness of four inches, (such soil stabilizing agents to be top soil, sand clay, sand clay gravel, crushed stone, stone dust, portland cement, tar, asphalt or any other stabilizing materials of similar character, or any combination thereof)." Street and alley improvements through such bituminous surface treatment may now be financed through the levy of special assessments, just as in the case of improvements through grading, regrading, paving, repaving, macadamizing and remacadamizing.

Special Assessments — Local Acts. In view of the decision in *Ruleigh v. Mechanics and Farmers Bank*, 223 N. C. 286 (1943) which held that suits upon special assessments were subject to a ten-year statute of limitations, it would not have been surprising if a State-wide bill had been introduced with respect to that matter, or at least that several local bills would have come forward. There was, however, only one such bill, H.B. 801, applying only to Salisbury and Spencer in Rowan County. It permits the governing body of either of these cities to extend by resolution any special assessment or installment thereof by arranging them into a new series of ten annual installments. The power will expire on March 1, 1947.

Among other local acts affecting special assessments, H.B. 478 amends the charter of Sanford to make curb and gutter work and surface treatment of streets subject to special assessments, and to permit assessment districts to be created without the consent of the abutting property owners to be affected; H.B. 30 permits Salisbury to waive interest and penalties on special assessments against property owned by churches and upon which is located the church building or parsonage if payment of the principal is made by January 25, 1946; and S.B. 290 authorizes Asheboro to accept deeds in lieu of foreclosure of street or sidewalk assessments. This act also authorizes Asheboro to sell any real estate acquired by it and not needed for governmental purposes in the following manner: it may receive an offer from a prospective purchaser, the offer to be accompanied by a deposit of 5% of the price offered. The property would then be advertised for four weeks, the advertisement to describe the property and the amount of the bid and invite other bids to be filed not less than 21 nor more than 30 days after the appearance of the first notice, all bids to be accompanied by a 5% deposit. When all bids are in, the city may either accept the highest bid, readvertise, or discontinue further action. This new method of sale is optional and in addition to other lawful methods.

Schedule "B" Licenses

Cities have the general power, under G.S. 160-56 (old C.S. 2677), to "annually lay a tax on all trades, professions and franchises carried on or enjoyed within the city, unless otherwise provided by law." Counties, on the other hand, may not levy any license tax without specific authority. The principal restrictive provisions, with respect to cities and towns, and the principal enabling provisions, with respect to counties, are found in the Revenue Act of 1939, as amended. The 1945 legislature made a few important changes in Article II of the Revenue Act, which is the article dealing with Schedule B license taxes. The changes are outlined below.

Amusements — Athletic contests. Section 105 (f). The 1945 amendment exempts from taxation high school and elementary school athletic contests of all kinds, regardless of the amount of admission charged. This exemption applies to both the annual license fee and the 3% sales tax, and to the tax levied by cities and towns. Counties were already prohibited from making any levy under section 105(f).

Bondsmen. Section 109½. The Revenue Act sets out a graduated schedule of license taxes for professional bondsmen, ranging from \$10 for those operating in cities or towns of less than 2,000 population to \$40 for those operating in cities or towns of more than 10,000 population. The 1945 amendment provides that where a bondsman engages in business in more than one city or town, he shall pay the license fee prescribed for the largest city or town where the business is carried on. Counties, cities, and towns may still levy a license tax on professional bondsmen not in excess of the tax levied by the State.

The amendment, as so often happens when a statute is amended piece-meal without careful consideration of the effect on the whole, introduces an ambiguity. The sponsors of the amendment were concerned principally with the State's revenue problem, and the provision for State taxation of a bondsman who operates in two or more cities clears up the question as to how much the State tax shall be. But the section still provides that counties, cities and towns may levy a tax "not in excess of the tax levied by the State." If a bondsman operates in a town of less than 2,000 population and also in a large city of more than 10,000 population, the State tax would be \$40. Literally, the small town, and the county in which it is located, could also each levy a tax of \$40, and so could the large city and the county in which it is located, although it was doubtless the intention to restrict the small town and its county to a levy of \$10 each.

Peddlers. Section 121. It is improbable that any state has ever devised a satisfactory method of taxing and (even more improbable) of collecting the tax from peddlers, but our own State is still working at it. The 1945 effort concerns subsection (b) of section 121 which makes the employer or supplier of merchandise to peddlers liable for the tax, instead of attempting to hold the peddler liable. Prior to the 1945 amendment, the subsection applied to any employer or supplier of peddlers, under any kind of a contractual agreement. The 1945 amendment narrows the field down somewhat. It applies to one who employs, "and or furnishes to peddlers, spices, flavoring, extracts, toilet articles, soaps, insecticides, proprietary medicine and household remedies in original packages of the manufacturer and other packaged articles of the kind commonly used on the farm and in the home."

The use of the double conjunction "and or" (or whatever the combination may be called) would indicate that the draftsman used his conjunctions carefully and advisedly, and one could certainly gather a clear intent to make the person who either employs or supplies a peddler with the named articles to sell, or who both employs and supplies the peddler with the articles, liable for the tax. The use of the conjunction "and" between "manufacturer" and "other packaged articles," however, was probably not the result of a careful selection; for if

the amendment means what it says, a person would have to employ a peddler to sell, or furnish to a peddler for sale, all of the enumerated articles in order to come under the subsection, and not merely spices, etc. or other packaged articles.

Two other amendments to section 121 correct a minor typographical error, and add disabled veterans of World War II to the list of those whom the county commissioners may permit to peddle within their county without the payment of the State license tax.

Merchandising, music and weighing machines. Sections 130 and 130½. Section 130 was completely rewritten, the new section 130 being given over entirely to music machines, while sections 130½ new takes care of merchandising dispensers and weighing machines. The State schedules, however, are unchanged, both as to the distributor's or operator's occupational license and the per machine tax. The only change as to counties, cities and towns is that they may not levy any tax on 1c and 5c food vending machines. As they were formerly limited to a 25c and 50c tax, respectively, on these machines, the new exemption shouldn't hurt them too much. Certain drafting defects were corrected. For example, section 130(2) contained a proviso which exempted "machines that vend candy containing 50% or more peanuts." Under this language, taken literally, a machine which offered a wide selection of 5c candy bars would be exempt if any one of the several choices contained 50% or more of peanuts. This was corrected to confine this particular exemption to dispensers that vend "no other commodity than candy containing 50% or more peanuts."

Automobiles and motorcycle dealers and service stations. Section 153(1). This subsection was amended to make the \$10 minimum State tax on service stations apply to those in rural sections as well as to those in cities or towns of 2,500 or less population. Service stations in rural sections which sell only gasoline and oil are still taxed by the State at the rate of \$5 per pump, but if a motor vehicle repair shop or garage is operated in a rural section, the minimum tax is \$10. Counties, cities and towns may still levy a tax not to exceed one-fourth of the State tax.

Ice cream manufacturers. Section 161. The basis of the State license tax on ice cream manufacturers was changed from population of the place where the plant is located (plus a ½c gallonage tax) to the rated capacity of the freezer equipment used. Where the equipment is of the continuous freezer type, the tax is \$1.50 per rated gallon capacity per hour, with a minimum tax of \$10. When the equipment is not of the continuous freezer type, the tax is \$5 per rated gallon capacity, with a minimum tax of \$10. And where the equipment has no manufacturer's capacity rating, the tax is \$50. A new provision places a tax of \$100 per vehicle on trucks and other vehicles coming into this State from other states and selling or delivering ice cream upon which the State tax has not been paid. Retailers who sell ice cream purchased from manufacturers who have not paid the State license tax, and manufacturers using counter freezer equipment and selling ice cream at retail only are taxed \$10. Farmers who manufacture and sell only the product of their own cows are exempt from taxation under this section.

Counties are still prohibited from levying any tax upon the business taxed under section 161, and cities and towns are still limited to one-fourth of the State tax.

War-affected businesses. Section 192. The 1943 legislature added a new section, 192, to provide license tax reductions for certain businesses adversely affected by the war. This section would have expired by limitation on June 1, 1945. The 1945 legislature extended the operation of the section to June 1, 1947, and for the next biennium the reductions set out therein will apply to the State tax schedules set out in sections 117, 119, 126½, 132, 144, 147 and 150 (50% reductions); 153 and 162½

(75% reduction); and 161 (30% reduction). Section 192 does not affect the levies of counties, cities and towns.

City and County Finance

Besides changes in local taxation outlined above, a number of other State-wide bills deal with city and county fiscal affairs. These bills fall into no particular category or scheme, but concern various aspects of city and county finance, representing the usual biennial shifts, changes and extensions put into effect by every legislature. We outline below the various new acts in this field.

Municipal and County Capital Reserve Acts. The 1943 legislature, realizing that surplus funds which were accumulating in the treasuries of some cities and counties, were not really "surpluses," but were for the most part unexpended funds which normally would have been used up for repairs, replacement and normal expansion of facilities, authorized cities and counties, by appropriate resolutions, to establish capital reserve funds. Into these funds could be placed, and invested in specific securities, those unencumbered balances in various funds arising both from a curtailment of expenditures and better revenue collections. Although the two reserve acts appear to have ample safeguards against abuse, the idea of permitting local units to have a little cash on hand against a rainy day or future needs (except in sinking funds pledged to the payment of unmatured debts) was so novel that the legislature put them on a strictly limited basis; no funds could be deposited in them after July 10, 1945. The last legislature, finding the war still in progress and the conditions which they felt had warranted the passage of the capital reserve acts still in existence, extended for two years, to July 10, 1947, the time within which reserve funds might be established or additions made to those already established. (S.B. 188.)

Other amendments made by S.B. 188 make slight changes in authorized investments, permit checks drawn on the funds for investments in bonds to be made directly to the obligor or vendor of the bonds, and require new resolutions and the approval of the Local Government Commission for increases in the reserve funds. The section of the Act dealing with municipal capital reserve funds permits the ordinance or amendment establishing a reserve fund to stipulate that where revenues derived from municipally owned utilities are included as a source of the reserve fund, the moneys from such source shall be withdrawn or expended only for the purpose of repairing, enlarging, extending or reconstructing the utility or utilities.

H.B. 494, public in form but in fact applicable to a particular local situation, authorizes "sanitary districts contiguous to cities of fifty thousand population or more to establish capital reserve funds."

Retirement System for Counties, Cities and Towns.—Chapter 390, Public Laws of 1939 made provision for a retirement system for employees of counties, cities and towns. The system was to become operative on July 1, 1939, but by the time the 1941 legislature met, no local units had come into the system. The time was extended by the 1941 legislature to July 1, 1941, and again by the 1943 legislature to July 1, 1945. The 1945 legislature met, and still no local units had come in, but many local units were becoming more interested in a retirement system. For one thing, nearly every other major group of employees, except farm and domestic labor, had the benefit of some type of retirement plan. For another, there is a growing realization that a retirement plan is a benefit to the employer as well as to the employee: it makes for a more stable, satisfied employee by reason of the fact that, while he is able to save little or nothing from his usually too-meager salary, he can at least look forward to partial independence in his declining years, and it enables employers to retire em-

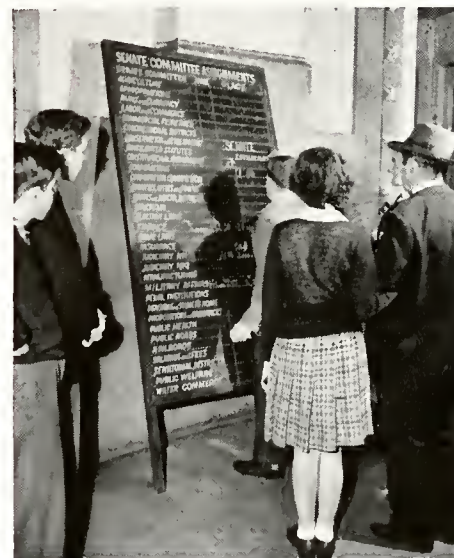
ployees who have served out their time and to make room for younger, more efficient men, rather than having to "make" jobs or hold back younger men from deserved promotions.

In view of the increased interest in local retirement systems, and perhaps in response to criticism of the Local Governmental Employees' Retirement System Act, the 1945 legislature, by H.B. 275, made numerous changes in the Act—too numerous to detail in the space that can be allotted here. Among other things, it "lifted" the operative date of July 1, 1945, and left it open for units to come in and participate whenever they will; it differentiated between general employees and uniformed policemen and firemen, thus recognizing a difference in expectancy; it made changes relative to the handling of the various funds and the matter of contributions by the employer; it made changes in the governing board to include one full-time executive officer of a participating city or town and a full-time officer of a participating county; and it eliminated the provision relative to a referendum upon the question of participating in the system.

As finally enacted, the bill exempted the following counties and cities from its provisions: New Hanover, and Wilmington, Buncombe County, Rutherford County, Randolph County, Vance County and the city of Henderson, Onslow County, Lee County, Granville County and Gates County. Separate bills, however, brought back in the following counties and one town and made H.B. 275 apply to them: Buncombe (H.B. 997), Granville (H.B. 991), Randolph (S.B. 368), Rutherford (H.B. 972), Vance (H.B. 994) and the Town of Aberdeen (H.B. 864). It therefore appears that the only counties and towns to which the act does not apply are: New Hanover County and the city of Wilmington (which have already set up separate retirement systems under local acts of the 1943 legislature), the city of Henderson, Onslow County, Lee County and Gates County. Unless otherwise provided by local acts, it would seem that H.B. 275 applies to all cities and towns in the excepted counties except those specifically named.

Section 8 of H.B. 275, which repeals the provision requiring approval of participation by a popular vote, does not apply to Person and Chatham Counties, nor to Moore County and any municipality therein. H.B. 864 permits the Town of Aberdeen in Moore County to come into the system at the discretion of its governing board.

H.B. 429 and H.B. 589 authorizes Forsyth and Union Counties, respectively, to establish retirement systems for their employees. The Forsyth County Act is an enabling act, giving the board of county commissioners rather broad powers to fix the



Bulletin boards in the rotunda outside the Senate and House chambers show the times and places of various committee meetings.

details of the system, except that the system must be upon an actuarial reserve basis. The Union County Act makes more detailed provisions, leaves less discretionary power to be exercised by the commissioners.

Municipal and County Bonds. Three bills which were introduced at the same time and traveled together shoulder-to-shoulder all the way to ratification deal with municipal and county bonds. S.B. 157 amends chapter 325 of the Session Laws of 1943 so as to further extend the time within which bonds of municipalities and counties heretofore authorized may be issued, to July 1, 1947. The 1943 legislature had extended the time within which such bonds might be issued to July 1, 1945. The necessity for the extension of time arises from the fact that some municipalities and counties had taken some or all of the steps necessary to the issuance of bonds, and had incurred all or a major part of the expenses incident to bond issues, only to find that because of material and labor shortages the purposes for which the bonds were authorized could not be presently realized. The extensions are for the purpose of saving the authorizations, time and expense.

S.B. 158 amends G.S. 160-378 to permit municipalities to issue bonds to fund or refund bond interest accruing not later than the year 1946. The limitation originally applied to bond interest accruing after 1938, but the date had been twice moved forward. The 1939 legislature changed it to 1940, and the 1943 legislature changed it to 1942.

S.B. 159 validates and authorizes the refunding of notes issued by any county and held by the State Board of Education which were issued to refund loans from the State Literary Fund under Article 24, Chapter 136, Public Laws of 1923, or from Special Building Funds under Chapter 147, Public Laws of 1921; Article 25, Chapter 136, Public Laws of 1923; Chapter 201, Public Laws of 1925; or Chapter 199, Public Laws of 1927.

*Statute of limitations—bonds or interest coupons incorporated in composition or refinancing plan—*S.B. 258 amends G.S. 1-53, the two-year statute of limitations, to make it apply to bonds, notes and interest coupons of counties, cities, towns, townships, road districts, school districts, school taxing districts, sanitary districts and water districts which mature on or after March 1, 1945, and which have been incorporated in and are subject to the terms of a plan of composition or refinancing of indebtedness providing for exchange of bonds and adjustment of interest thereon pursuant to which any bonds have been exchanged. Such bonds, notes and interest coupons which matured after March 22, 1935, but prior to March 1, 1945, must be presented within two years after March 1, 1945.

County Commissioners. Two State-wide bills were concerned directly with county commissioners. One passed and the other one failed. The successful bill was H.B. 145 which raised the maximum membership fee in the statutory State Association of County Commissioners. The original bill would have raised the maximum from \$10 per county to \$25. A committee substitute, however, provided a scale of fees based on population: \$10 for counties having a population less than 20,000 according to the last census; \$15 for those between 20,000 and 30,000; \$20 for those between 30,000 and 40,000; and \$25 for those having 40,000 or over, according to the last census. The minimum fee is still \$5, but the executive committee may raise the fees within the above limits. Counties are also authorized to pay the expenses of all of the members of the board while attending meetings of the association. The expenses of only one member could be paid formerly.

The bill that failed would have raised the maximum per diem of county commissioners under the general law from \$2, the maximum fixed by G.S. 153-13 "except where otherwise provided by law," to \$10. With the exception of a few disgruntled citizens who harbor real or fancied grievances against

particular commissioners, there is hardly anyone who does not believe a county commissioner who is worth anything at all is worth more than \$2 for each day spent upon the county's business, and it is difficult to find any good reason why the bill was tabled. Of course, a large percentage of counties have special acts setting or authorizing better compensation. Many authorizations were upped at the last session, the highest being the salary of the chairman of the Mecklenburg County Commissioners, fixed at \$5,000 per year by H.B. 542.

Bonds of City Employees. G.S. 160-277 requires every officer, employee or agent of any "city" who handles or has in his custody more than \$100 of funds belonging to the city at any one time to execute a bond to the city conditioned upon the faithful performance of his duties and a true accounting for all funds of the city which may come into his hands. S.B. 321 provides that, in the discretion of the governing body, such bonds may be conditioned only upon an accounting for funds, leaving out the condition for faithful performance of duties. Probably the bond conditioned only upon a true accounting for funds, since the hazard is limited and specific, will result in some reduction in premium, but cities would do well to seriously consider the matter before accepting a bond which does not include the faithful performance of duties as one of its conditions. The failure to perform duties may arise from many causes other than bad faith, such as laxness, ignorance of the law regarding certain duties, or the innocent and human desire to be "reasonable" or a "good fellow" in dealing with the public, and these failures are likely to cause a greater loss to the city, and especially to the citizens, than conscious defalcations.

Liability of Separate Contractors on Construction Work for Cities and Counties. G.S. 160-280 provides that when any county or city contemplates constructing, altering or repairing a building at a cost in excess of \$10,000 separate specifications must be prepared, and separate contracts must be let, for (1) heating and ventilating, (2) plumbing and gas fitting, (3) electrical installations and (4) air conditioning. H.B. 709 amends the section by adding a provision that "Each separate contractor shall be directly liable to the county or city and to the other separate contractors for the full performance of all duties and obligations due respectively under the terms of the separate contracts and in accordance with the plans and specifications, which shall specifically set forth the duties and obligations of each separate contractor."

H.B. 708 makes a similar amendment to G.S. 143-128 with respect to the liability of separate contractors on construction work for the State.

When is Monday? Article 33 of Chapter 160 of the General Statutes makes the provisions of the County Fiscal Control Act (G.S. 153-114 et seq.) apply to cities and towns. The County Fiscal Control Act requires several things to be done on designated Mondays. For example, the county commissioners are required to appoint a county accountant ("municipal accountant" being the city equivalent under the Municipal Fiscal Control Act) on or before the first Monday in April of the odd-numbered years; a "budget estimate" must be submitted to the board not later than the first Monday in July; the board must adopt the appropriation resolution not later than the fourth Monday in July; and the accountant must submit to the board a supplementary budget as soon as practicable after the first Monday in July. The time-table of counties is geared to Mondays: the regular statutory meetings of county boards are on the first Monday in July and December, and special meetings are held on the first Monday of other months. It is not so in the case of cities. Their boards meet more often on other days of the week than on Monday. This is doubtless the reason for the amendment to the Fiscal Control article in the chapter on Municipal Corporations by H.B. 42 which adds to the end of G.S. 160-410 the following definition: "Monday shall mean

the first regular meeting day of the governing body of a municipality on or after the Monday mentioned in the County Fiscal Control Act."

The counties, meanwhile, had some of their "Mondays" changed. H.B. 173 amends G.S. 153-8 "so as to allow meetings of boards of county commissioners which fall on holidays to be postponed to the next succeeding secular or business day." The provision is not mandatory, but is discretionary with the board of county commissioners.

Miscellaneous Acts Affecting Local Governmental Units

Purchase of surplus war material. The State, its various agencies and institutions, and counties, cities and towns have been looking forward for some time to the purchase of many items of needed equipment to be released as surplus war materials. A few pieces of equipment have already been picked up by various units, but the expected flood of such material and equipment has not yet arrived; nor was the State or the counties, cities and towns of the State prepared to take advantage of the expected offerings when made, prior to the passage of S.B. 41 and S.B. 102. For G.S. 143-129 makes mandatory certain formalities in connection with all contracts for construction and repairs or the purchase of material, supplies or equipment in the amount of \$1,000 or more—requirements that specifications be drawn, advertisement for bidders be made, that bidders post deposits, that successful bidders post bonds guaranteeing performance of the contracts, etc., which the Federal Government probably would not bother to comply with, since it will probably have plenty of prospective customers and will probably have enough of its own formalities to contend with. S.B. 41 recognizes this situation and amends G.S. 143-129 to permit the State, its institutions, and counties, cities and towns or other subdivisions of the State to enter into contracts with the United States or any agency thereof for the purchase, lease or other acquisition of any apparatus, supplies, materials or equipment without observing the requirements of the section. As surplus war goods may be sold at public auction (as some of it has already been sold) the Director of Purchase and Contract and the governing bodies of counties, cities and towns are authorized to designate an officer or employee as agent to enter bids at sales and to make partial or full payments according to rules which may be prescribed for the conduct of such sales.

S.B. 102, a supplementary bill, amends G.S. 143-59 by adding a new subsection (f) to authorize the Director of Purchase and Contract, with the approval of the Advisory Budget Commission, to "follow whatever procedure is deemed necessary to enable the State, its institutions and agencies, to take advantage of the sale of any war surplus material sold by the Federal Government or its disposal agencies."

County fire departments. S.B. 156 authorizes any county to provide for the organization, equipment, maintenance and government of fire companies and a fire department. It authorizes any county to provide for a paid fire department and to levy taxes for its support, the tax being designated as one for a special purpose. Whether such a tax would be for a necessary expense, of course, would be for the courts to decide. Perhaps, like parks and playgrounds, it would depend upon the particular county and the situation therein.

County planning and zoning. Somewhat related in purpose were H.B. 710 and 711. The first bill would have authorized county commissioners to establish zoning regulations and to zone all areas in the county not regulated by a municipal zoning commission, except farm lands. The bill was reported unfavorably by the House Committee on Counties, Cities and Towns. H.B. 711, which passed, adds a new subsection to G.S. 153-9 which authorizes counties to establish planning boards. If established, the county planning board must have from three to five members and it must report to the county commissioners at least once a year regarding the condition of the county and

any plans or proposals for development, together with estimates of the cost. Necessary appropriations for the expenses of the planning board are authorized, and the commissioners may fix the compensation of the members of the planning board. The Act further authorizes any county to enter into agreements with other counties and with cities and towns for the establishment of joint planning boards. The participation by cities in joint planning boards is authorized by an amendment to G.S. 160-22.

The Act, though permissive only, excepts from its operation the counties of Buncombe, Chatham, Durham, Stanly, Vance and Wake.

City and county recreation systems and playgrounds. H.B. 828 rewrites Article 12, Chapter 160 of the General Statutes, "Recreation Systems and Playgrounds." Calling itself the "Recreation Enabling Law," the act starts off with a "declaration of State public policy" which declares that recreational opportunities for citizens of all ages is a subject of general interest and concern, and a function requiring appropriate action by the governing bodies of the several political and educational subdivisions of the State, that the public good and the general welfare of the citizens of this State require an adequate recreation program and that the creation, establishment and operation of a recreation system is a governmental function and a necessary expense as defined by Article 7, Section 7 of the Constitution of North Carolina.

The legislature, by this declaration of public policy, did all it could to establish the acquisition and maintenance of local recreation systems and playgrounds as a necessary expense and therefore supportable through bond issues and tax levies without the approval of a popular vote. The legislature may authorize the levy of taxes for special purposes, but whether such levies are for necessary expenses depends upon the view of the courts. It has been held that legislative declarations are to be considered by the court and that, if made in good faith, are persuasive but not conclusive (*Martin v. Raleigh*, 208 N.C. 369). The Supreme Court has held in one case (*Atkins v. Durham*, 210 N.C. 295) that the acquisition and maintenance of parks and playgrounds was a necessary expense of a populous industrial city. The sponsors of the "Recreation Enabling Law" may have thought that a legislative declaration might help the Supreme Court extend the doctrine to cities not so populous or industrialized, and even to counties; yet they probably had in mind the case of *Twining v. Wilmington*, 214 N.C. 655 (1938) which decided, without mentioning the decision in the Durham case handed down two years earlier and without discussing population, juvenile delinquency, general health and happiness or any of the other considerations which supported the result in the Durham case, that neither outdoor nor indoor athletic and recreational facilities were necessary expenses. For the Act provides for a popular election upon the question of establishing a supervised recreation system and of levying a tax therefor, the election to be called by the governing body of any unit without a petition being presented, or upon the petition of 15% of the qualified voters. The tax, if levied, would be not less than three cents nor more than 10 cents on the \$100 valuation. The recreation system may be conducted by the local governmental unit, as a department of the city or county, or it may be conducted through a recreation board or commission. If the city or county decides upon a board or commission, it must appoint at least five members, of whom one must be affiliated with the government of the unit, one with the school system, one with the health department and one with the welfare department.

The Act also authorizes joint playgrounds or neighborhood recreation centers which may be jointly owned and operated by any two or more governmental units, "the expense thereof to be proportioned between the units participating as may to them seem just and proper."

Juvenile Courts. H.B. 90 amends G.S. 110-44 to make it discretionary instead of mandatory for cities of 10,000 or more population "by the last Federal Census report" (instead of by the 1920 census) to maintain juvenile courts, whether or not the county commissioners will agree to look after the city's juvenile cases upon a joint court basis. The Act also amends G.S. 110-22 to permit any county to cooperate with cities in establishing joint courts under G.S. 110-44 rather than restricting the provision to counties where the county seat is a city of 25,000 or more population. The amendments mean, therefore, that any county may cooperate with any of its cities of 10,000 or more population in establishing joint juvenile courts, and that any such city may establish a separate court, cooperate with the county in a joint court, or do nothing at all about juvenile courts. Such, at least, appears to be the intent of the amendment to G.S. 110-44, although not all of the mandatory expressions in the section ("shall," "must," "it is hereby made the duty," etc.) are stricken out or changed to the permissive.

Firemen's Relief Fund. Chapter 831, Public Laws of 1907 provided for the establishment of firemen's relief funds to be financed by a premium tax on fire and lightning insurance business derived from cities and towns having organized fire departments which meet certain standards. The law is now codified as chapter 118 of the General Statutes. The 1945 legislature, by H.B. 91 amended G.S. 118-6 relative to the composition of the local boards of trustees to provide: "If the chief of the local fire department is not named on the Board of Trustees as above provided, he shall be ex-officio a member, but without the privilege of voting on matters before the board." The act also amends the law relative to benefits. It still provides that one of the purposes of the fund shall be to safeguard any fireman who has honorably served for a period of five years from ever becoming an inmate of an almshouse, but it drops the purpose of safeguarding him against ever becoming "actually dependent on charity," and it drops, as one of the purposes of the fund, "to provide for any fireman or person dependent on any fireman from becoming a subject of charity due to other sickness or accident or condition not specified in this law."

Fireworks. G.S. 160-200, paragraph 17 gives cities and towns the power to regulate, control or prohibit the sale or use of fireworks within their respective corporate limits. Counties do not have such power, unless by special local acts, but attempts have been made from time to time to give it to them, the most recent attempt being made by H.B. 702. This bill, short and to the point, would have given county commissioners ample power to deal with the subject: "To regulate, control, restrict and prohibit the manufacture, possession, sale, use and explosion of pyrotechnics or fireworks of any and every kind at any place within the County outside of the boundaries of municipal corporations located therein." The bill proved to be as explosive as its subject matter. It was first reported favorably by the House committee which, however, had attached an amendment restricting the bill to Mecklenburg County. Then, from the floor it was further amended to make it inapplicable to manufacturing and to except possession by wholesalers for sale to retailers. As thus limited in its application, the bill found favor with approximately 50% of the House delegations who made the bill apply to their counties. Over in the Senate, the bill was quickly put to rest. Received on March 15 and consigned to the Committee on Judiciary No. 2, it was reported unfavorably the next day.

On the same day H.B. 702 was reported unfavorably in the Senate, however, S.B. 435 was introduced, passed three readings, was sent to the House and, still on the same day, passed its readings there. This bill authorizes the Board of County Commissioners of Mecklenburg County "to regulate and/or prohibit the sale, purchase or use of pyrotechnics in

Mecklenburg County." The exercise of these fulsome powers is not confined to the area outside of municipalities. Gaston County also got through a local bill (H.B. 370) on the subject. This bill directly prohibits the manufacture, purchase, sale, dealing in, transportation, possession, advertisement and use of pyrotechnics in Gaston County—a county-wide prohibition directly imposed by the legislature, and not a mere enabling act. Exceptions are made in the case of public exhibitions conducted by experts at fairs, exhibitions, celebrations, etc. under permits issued by the sheriff or a chief of police.

For some reason a bill similar to the Gaston County bill which would have put the same prohibition into effect in Guilford County was given an unfavorable report by the Senate Committee, although the bill was endorsed by a majority of the Guilford delegation.

BILLS CHIEFLY CONCERNING CLERKS OF THE SUPERIOR COURT

There were, as usual, a large number of bills enacted by the 1945 legislature of which clerks of the Superior Court will have to take cognizance—bills dealing with civil procedure, probate of instruments, wills and many other matters with which the clerk is concerned—all of which are discussed elsewhere in the issue of *Popular Government* under appropriate headings. Below is a discussion of those bills which affect the clerk of court more directly and personally.

Clerk's investments. The law relative to investments by clerks of the Superior Court is now scattered about in several sections of the General Statutes. It is possible to gather from the several sections a list of "authorized" investments which may be made by clerks, but there is no assurance that if such investments are made, although with the greatest of care and good faith, the clerk will be relieved of liability if loss occurs. The cases still appear to hold the clerk to the rigid liability of an insurer.

H.B. 99 would have changed this situation. It would have collected the authorized list of investments into one section, would have excluded from the list everything except what is generally considered "gilt-edged" investments, and would have provided that the clerk would not be liable for loss in such investments if he exercises reasonable care and good faith in complying with the law, that is, in selecting his investments from among the authorized list. The bill passed the House in its original form, but in the Senate it ran into heavy weather. It was first amended to exclude from permissible investments bonds of North Carolina counties and municipalities (which would have had to be approved by the Local Government Commission) and stock in building and loan and Federal savings and loan associations (which would have had to be insured by the United States or one of its agencies). A few days after these amendments were made, the bill was tabled.

A local bill (H.B. 804) relative to investments by the clerk of Forsyth County Superior Court was passed. This bill sets out the same list of authorized investments as was contained in H.B. 99 and it has the same provision in it relative to relieving the clerk of liability. The only amendment to the bill made it lawful for the clerk to invest in stock of building and loan associations organized under the laws of the State when approved by the Insurance Commissioner without requiring the stock to be insured by the United States or one of its agencies.

S.B. 391 would have required clerks to invest all funds held by them for more than 90 days and which belong to infants or incompetents, "in some of the income bearing securities designated and approved by law." The bill, however, was tabled on the sixth day after introduction.

C. S. C. Fees. G.S. 2-26 allows the clerk a commission (3% on the first \$500, 1% on the excess) on money placed in his hands by virtue of his office, "except on judgments,

decrees, executions, and deposits under article 3 of chapter 54." H.B. 604 strikes from the exception "deposits under article 3 of chapter 54." The bill, however, was amended to apply only to Wake County.

The reference in G.S. 2-26 to article 3, chapter 54 is erroneous, that article and chapter referring to loans of building and loan associations. The reference undoubtedly should be to article 3 of chapter 45—Sales under Mortgages and Deeds of Trust. Section 45-29 therein authorizes the payment of surplus funds arising from sales to the clerk of court. S.B. 165 would have corrected this reference by changing chapter "54" to "45". For some reason, however, consideration of S.B. 165 was "postponed indefinitely" which means it was killed by conscious neglect. Perhaps it was due to a mistaken understanding that H.B. 604 which struck the reference to chapter 54 from the statute was State-wide, making the correction unnecessary, overlooking the fact that the committee had amended H.B. 604 to restrict it to Wake County. At any rate, unless there is some other provision which has escaped this writer's attention, and in the absence of local laws to the contrary, a literal interpretation of G.S. 2-26 would permit all clerks of court to charge commissions on surplus funds paid into their hands from sales under mortgages and deeds of trust.

"Flat" or entire fees. There are a few things that legislatures over a period of years have succeeded in messing up as thoroughly as fees to be charged by clerks of court for various services and duties. Not only do a great many "local variations" make it impossible for the public or attorneys to know how much money to send along with papers to be handled by clerks in other than their own county, but the statutes relative to State-wide fees are so scattered as to be practically inaccessible. Some services may be charged for under different headings at different rates, so that it is possible to make out two bills of cost for the same proceeding which arrive at different total fees, but either of which may be "correct."

A fee bill (H.B. 138) enacted for Forsyth County may serve as an experiment which would help to end some of the confusion. This depends upon whether the Forsyth plan proves satisfactory and attracts sufficient favorable attention to lead to its adoption by the other counties.

Space does not permit a detailed analysis of the Forsyth County fee bill. Its principal feature is a schedule of flat or entire charges to be made by the clerk for all of his services in various types of actions and proceedings. These flat charges were arrived at by reviewing the actual bills of costs in a sufficient number of actions and proceedings to arrive at an average fair bill of costs in a typical proceeding. This flat charge is then collected at the commencement of the proceeding and all incidental fees of 25c, 50c or \$1 which were formerly collected when various services were rendered during the progress of the proceeding, as well as the final bill of costs with its attendant bothers, such as withholding the docketing of judgment until paid, sending out bills to attorneys, etc., are eliminated. The clerk gets about the same total of fees—perhaps a little less, to be fair to litigants—as under the old system, he avoids a lot of unnecessary paper work, and attorneys can know in advance what a proceeding will cost, advise their clients, collect the amount and thus avoid a lot of calls for petty amounts.

Auditing fees — G.S. 2-23 and 2-34 govern the amount of fees to be charged for auditing annual accounts and final accounts, respectively, of receivers, executors, guardians, administrators and other fiduciaries. H.B. 646 adds at the end of each of these sections: "Nothing in this section shall be construed to allow commissions on allotment of dower, on distribution of the shares of heirs, on distribution of shares of distributees of personal property or on distribution of

shares of legatees." The bill does not apply to Anson and Lee Counties.

S.B. 50 would have made \$25 the maximum fee that could be charged for auditing the final account of a fiduciary named in G.S. 2-34. However, the maximum was raised to \$50 and the operation of the bill was restricted to Durham County.

Minor and incompetent insurance beneficiaries — H.B. 63 is entitled "An Act to amend sections 2-52 and 2-53 of the General Statutes of North Carolina so as to make the sections harmonize." The bill does more than its title suggests. It makes G.S. 2-52, relative to the payment of the proceeds of insurance policies of \$500 or less to the public guardian or clerk of court where the beneficiary is a minor, applicable also to incompetent and insane beneficiaries, and it makes the disbursement of such funds by either the public guardian or clerk subject to the provisions of G.S. 2-53. Harmony between the two sections is promoted by striking out the third sentence in G.S. 2-53 which limited to \$300 the amount of insurance proceeds to be received by the clerk on behalf of a minor beneficiary. The fourth sentence, relative to disbursements by the clerk, was also stricken out, but it was rewritten into G.S. 2-52.

Clerk as temporary guardian. H.B. 607 is another one of the numerous acts made necessary by the complications of war in order to help look after the interests of servicemen and their dependents. It authorizes the clerk of court to serve as temporary guardian for the minor dependents of a serviceman and to receive and disburse allotments to such dependents, where the person designated by the serviceman to receive and disburse the allotments has died or become mentally incompetent and the serviceman has been reported as missing in action or a prisoner of war and is thus unable to designate another person to receive and disburse the allotment. The Act is retroactive in effect and applies to situations covered by it which may have arisen prior to its passage, and to allotments which have accumulated by reason thereof.

It is possible that the draftsman of the Act had in mind some particular situations. As drawn, the Act seems to be too limited to cover a variety of situations which would fall within the spirit of the purpose of the bill. For example, it does not authorize the clerk to act as temporary guardian for dependents who are incompetent for other reasons than minority, nor does it permit the clerk to act unless the person designated by the serviceman dies or becomes *mentally* incompetent. This does not cover such cases as the designated person's refusal to act, being guilty of misapplying the allotment, or being unable to act for reasons other than death or mental incompetency. It might also be noted that only the clerk of court of the county of the serviceman's legal residence is empowered to act, whereas the serviceman may have placed his dependents in the home of a relative in a county at the other end of the State or made arrangements for them to live in some other county for the duration of his service. In such cases, the clerk of court of the county wherein the dependents are residing could more effectively handle the allotments.

Lists of Justices of the Peace. G.S. 2-44 required the clerk of the Superior Court of each county in which justices of the peace are not elected by the qualified voters to certify to the Secretary of State biennially, on Monday next preceding the convening of the General Assembly, a list of the justices of the peace of the county, the list to set forth certain information required by the section. H.B. 64 amends the section to make it apply to the clerks of court of all counties, and to require the list to be sent to the Secretary of State annually, on or before February 1.

Powers of deputy clerks of court. Under the present law, deputy clerks of the Superior Court are limited in their

powers and have no authority to perform any of the judicial functions of the clerk except for probating instruments, this power being expressly conferred upon them by statute. (G.S. 47-1 and 47-14) H.B. 41 would have empowered deputy clerks to perform all of the duties and functions of the clerk as fully and to the same effect as if the clerk himself had acted in the premises. Although this greatly expanded power would have been given to deputies, the bill would not have relieved clerks of personal liability for their acts. Before final enactment, however, the bill was greatly altered. In its final form, it adds to the chapter on wills a new section, G.S. 31-31.1 which validates probates of wills heretofore based upon the examination of subscribing witnesses taken before notaries public in the county in which the will is probated or in other counties, and it validates "all acts heretofore performed by deputy clerks of the superior court in taking acknowledgments, examining witnesses and probate of any wills, deeds and other instruments required or permitted by law to be recorded."

Powers of administrator c.t.a. H.B. 67 rewrites G.S. 28-24 relative to the powers and duties of an administrator c.t.a. The rewritten statute makes it clear that such an administrator may exercise the discretionary powers conferred by the will upon the executor, as well as the other powers, and that all powers conferred upon the executor may be exercised by the administrator c.t.a. "unless a contrary intent clearly appears from the will."

Perpetual care of cemeteries. S.B. 134 amends G.S. 28-120 which authorizes expenditures by executors and administrators for gravestones, by adding a paragraph to authorize also expenditures for the perpetual care of the cemetery lot wherein the testator or intestate is buried. As originally introduced, the bill left the amount of the expenditure "in the sound discretion of the executor or administrator having due regard to the value of the estate and to the interest of the widow and legatees or distributees of the estate," and the expenditure was put in the first class, along with funeral expenses. As amended before passage, the act requires the executor or administrator to petition the clerk of court for authority to spend more than \$250 for perpetual care of the cemetery lot, and the expenditure is removed from claims of the first class. While the language of the act isn't entirely free from ambiguity, it is apparently intended to apply only when interment is in a cemetery authorized by law to operate as a perpetual care cemetery or association.

Change of name. Chapter 101 of the General Statutes sets out the procedure for a person to follow in order to effectuate a legal change of name. G.S. 101-3, relative to the contents of the petition to the clerk of court formerly required, among other things, that the applicant state that his name had never been changed before by law, and G.S. 101-6 provided that no person could change his name under chapter 101 more than one time. H.B. 6, taking cognizance of the fact that sometimes a person acts in haste and lives later in regret, amends G.S. 101-6 to permit a person to resume his former name through petition to the clerk of court, and it amends G.S. 101-3 to require the petition to state, not that applicant's name had never before been changed by law, but "whether his name has ever before been changed by law, and, if so, the facts with respect thereto."

Also ran. Among the bills which would have affected the clerk's office but which failed to get through were three bills relative to wills. H.B. 261 would have made a minor change in G.S. 31-27 relating to wills of non-residents. The bill would have changed the word "such" in line 3 to "any," and the effect would have been to permit a duly authenticated copy of a will of a non-resident to be filed and recorded in this State, provided the will had been proved and allowed in "any" state or country, rather than in the State or country

of the testator's residence. S.B. 98 would have amended G.S. 31-9 to permit a trustee under a will to be a witness to prove the execution of the will, as executors are now permitted by the section to do. And S.B. 29 would have added a new section to authorize the execution of a will by acknowledgment before any official authorized to take acknowledgments of deeds and other instruments and who has a seal. A will so executed and acknowledged would have been admitted to probate upon the certificate of the officer before whom it was acknowledged, with no other witnesses required.

Another bill that failed (H.B. 624) would have required all deeds and other instruments subject to registration to bear the name of the draftsman, and would have made it unlawful for clerks of court to accept for filing or probate, or for registers of deeds to accept for filing or registration such instruments unless the name of the draftsman appears therein. H.B. 286 would have required the clerk of court or the resident judge to approve all deeds based upon the promise of the grantee to support the grantor in the future.

Chiefly Affecting Registers of Deeds

Registers of deeds, like clerks of court, will have to familiarize themselves with a large number of new laws which do not directly affect their office, such new laws being discussed elsewhere in this issue under appropriate headings. We discuss below those new laws which most directly affect registers of deeds and in which they are primarily interested.

Records of fees. Introduced as a State-wide bill but amended to apply only to Pamlico County, H.B. 491 requires the register of deeds to enter on the record where instruments are recorded the amount of the fees charged, and to keep a book record of all instruments recorded and the fees charged therefor.

Photographic recording. H.B. 256 is one of those Acts which were amended by the same legislature which enacted them. It authorizes boards of county commissioners to contract for the photographic recording of instruments and documents filed for record in the offices of the register of deeds, clerk of court and other county offices. The act permits the photographic recording or photographing on film or sensitized paper of any county records. As to instruments filed for record in the offices of the clerk and register of deeds, provision is made for keeping a temporary index and a temporary record through the use of the original instruments. H.B. 256 does not allow instruments to be taken from the county or to be kept away from the office longer than ten hours. The amendment, however, (H.B. 916) strikes out the prohibition against taking the original instruments out of the county and authorizes the board of county commissioners to extend the time for photographing and returning the original instruments to the office.

Section 2 of H.B. 256 seems to present an impasse. It provides: "That the Register of Deeds of any county, where such photographic recording is contracted for, shall use the original instruments or documents as a temporary recording, and shall keep them in a temporary binder arranged in the chronological order of filing for record, assigning to each page a number which shall be arranged in consecutive order, and shall, at all times, keep a temporary index thereto." How will the register of deeds be able to "keep them in a temporary binder" as a temporary recording while they are away being photographed?

Torrens Law Amendment. S.B. 51 amends G.S. 43-17.1 relative to the issuance of a new certificate upon the death of the registered owner to make the section apply also when a corporation which is a registered owner is dissolved. The Act provides for filing a petition without attaching the old certificate if it is lost, and for service upon interested parties by publication if necessary. It also provides for petitioning for

a new certificate where the registered owner has conveyed title without surrendering his certificate.

Marriage ceremonies by J. P.-register of deeds. Article XIV, section 7 of the Constitution of North Carolina prohibits double office holding, but the office of justice of the peace is expressly excepted. Apparently some justice of the peace has also been holding the office of register of deeds and using those two offices to expedite marriages. At any rate, H.B. 440 appears to be directed toward a particular situation, and its amendment to G.S. 51-1 is short and to the point: "No justice of the peace who holds the office of register of deeds shall, while holding said office, perform any marriage ceremony."

Oaths incident to delayed birth certificates. H.B. 131 adds a new section, G.S. 130-88.1 which provides: "The Register of Deeds is hereby authorized to take acknowledgments, administer oaths and affirmations, and to perform all other notarial acts necessary for the registration of a birth certificate four years or more after birth." The Act also validates such notarial acts heretofore performed by registers of deeds.

Mortgages—presumption of satisfaction after 15 years. Subsection 5 of G.S. 45-37, enacted in 1923, provides that mortgages, deeds of trust and other instruments securing the payment of money shall be conclusively presumed to be satisfied after 15 years from the due date of the last installment secured by the instrument or the date the terms of the instrument were due to be satisfied. The Supreme Court has held, however, that the statute does not apply to instruments executed prior to its passage. There are hundreds of old deeds of trust and mortgages executed prior to 1923 which are uncanceled of record but which have probably been long since satisfied. Attorneys have been unable in many instances to clear the records because parties have died or moved away, original papers have been lost or destroyed, etc., and such uncanceled deeds of trust and mortgages still constitute clouds upon titles. Because of them, many a sale has fallen through and many a loan which would have financed improvements has been refused. H.B. 880 seeks to clear up these titles by making the 1923 Act apply to instruments executed prior to its passage, the amendment to be effective on March 20, 1946 (one year after the date of ratification). Interested parties are given until that date to file affidavits or make marginal entries on the records showing that the instrument is unsatisfied.

Cancellation of mortgages and deeds of trust. The title of H.B. 996 is "An Act to authorize the cancellation by the register of deeds of a mortgage or deed of trust upon affidavits of full payment and satisfaction thereof when the mortgage or deed of trust and notes have been lost and the mortgage remains uncanceled upon the records under certain circumstances." Examination of the Act reveals, however, that it applies only to mortgages executed by corporations a majority of the capital stock in which is owned by the State, and that it probably applies to only one particular instrument.

H.B. 411 would have authorized the "beneficiary" under any deed of trust to make the marginal entry of satisfaction under G.S. 45-37. Such purported cancellations have been made in the past in some counties and have later caused title attorneys considerable trouble in trying to get legal cancellations. The obvious impossibility of identifying the "beneficiary"—holder of negotiable notes—under a deed of trust and of being certain that the entry was made by the proper party was probably one of the reasons why the House committee killed the bill. (But such cancellations, made prior to January 1, 1930, were validated by H.B. 866.)

Form of chattel mortgage. H.B. 740 amends G.S. 45-1 to set out a form of chattel mortgage to be used when the debt is payable in installments. H.B. 740 was itself amended, however, to restrict its application to New Hanover County.

Attorneys-in-fact—execution of instruments. In the past considerable confusion has arisen from the careless way in

which attorneys-in-fact have sometimes executed instruments. The proper way to execute an instrument is to sign it in the name of the principal, by the attorney-in-fact, as "John Doe, by Richard Roe, Attorney-in-fact." Sometimes, however, they are signed, "Richard Roe, Attorney-in-fact for John Doe" or simply "Richard Roe, Attorney-in-Fact." Such signings often are the source of controversies relative to the liability of the principal and even as to the personal liability of the attorney-in-fact. H.B. 118 legalizes these careless executions and seeks to fix the liability of the principals. It writes a new article and section, G.S. 47-114 which provides that any instrument in writing executed by an attorney-in-fact shall be good and valid as the instrument of the principal whether or not the instrument is signed in the name of the principal by the attorney-in-fact or by the attorney-in-fact designating himself as attorney-in-fact for the principal, "from which it will appear that it was the purpose of the attorney-in-fact to be acting for and on behalf of the principal mentioned or referred to in the instrument." The Act does not clarify the possible personal liability of the attorney-in-fact. The new law applies to all instruments heretofore executed, but does not affect pending litigation or the status of any matter heretofore determined by the courts.

Registers of deeds are required to index all such instruments both in the name of the principal and in the name of the attorney-in-fact. Instruments heretofore registered and indexed only in the name of the attorney-in-fact are validated.

Bills that failed. Among the bills affecting the office of the register of deeds which failed to pass, one would have given registers of deeds a great deal of extra work to do. H.B. 907 would have required them to ascertain and record in a special book, within six months after the death of any person dying in the county, or the death of a resident of the county dying outside of the county, a list of the names and addresses of all of the heirs at law of such deceased persons. As an aid toward the discharge of this task, the registers of deeds would have been empowered to demand sworn affidavits of executors, administrators, surviving spouses, ancestors, children, and others. The bill would have also required undertakers to file certificates showing the heirs at law of deceased persons.

Another bill, H.B. 396, would have required the recording in the office of the register of deeds of allotments of homesteads. Like H.B. 907, however, it received an unfavorable report by the committee.

CURATIVE STATUTES

The careful examiner of titles could hardly perform his functions were it not for the fact that the General Assembly from time to time passes or brings up to date acts curing certain recurrent defects. The acts passed at any one General Assembly are not likely to seem particularly important, but the cumulative effect contributes greatly to the security of titles. The purpose of this article is little more than to enumerate the changes made at the 1945 session. For more detailed information reference should be had to the acts themselves.

As to the acts of parties which have been made effective, H.B. 496 validates conveyances made prior to January 1, 1945, by non-resident executors who had authority to execute conveyances under valid wills recorded elsewhere but who failed to give bond and obtain letters of administration in this State. H.B. 866 validates entries of cancellation made on deeds of trust by the original beneficiaries or their assignees of record where the entry was made prior to January 1, 1930, and witnessed by the register of deeds or his deputy.

As to the acts or omissions of clerks, H.B. 846 validates sales made under foreclosure decrees and under powers of sale contained in mortgages and deeds of trust where there has been no order of confirmation (or report of sale, for that matter) but a deed reciting such order or report was given

prior to March 1, 1945. S.B. 363 extends to the same date G.S. 47-99 which cures verifications and certificates of acknowledgment before clerks of the Superior court which have been recorded in a county other than that in which the clerk resides but which do not bear the official seal of the clerk. S.B. 394 limits G.S. 47-48, which was formerly unlimited and which applied to the failure of the clerk to pass on all prior certificates, to instruments executed prior to January 1, 1945.

As to the acts or omissions of notaries, S.B. 363 also brings down to January 1, 1945 G.S. 47-102, which cures acknowledgments omitting notarial seals, and rewrites G.S. 47-53 so as to cure, as of the same date, the omission of the officer's name from the body or at the end of the certificate, provided it appears elsewhere therein, and also the signing of a certificate in the wrong capacity. Three other bills also affect the acts of notaries. H.B. 196 validates acknowledgments and privy examinations before notaries who at the time held other offices. H.B. 741 extends from January 1, 1943, to January 1, 1945, the provisions of G.S. 47-64 validating acknowledgments and probates of instruments to which a corporation is a party before a notary or clerk who is an officer, director or stockholder of that corporation. Finally, H.B. 599 validates acknowledgments and other acts performed by persons who, although having been appointed as notaries, have never qualified as is required by law.

In almost all cases the acts provided originally or were amended to provide that their passage should not affect pending litigation.

Election Law Amendments

(Continued from page forty-one)

Printing Ballots. A question that has long concerned officials charged with the printing of ballots, and one that has given rise, in some instances, to considerable ill-feeling between those officials and the candidates concerned, is whether nicknames, titles, degrees and other such name-appendages may be included on the ballot along with the proper name of the candidate. H.B. 713 attempts to clarify this matter. It provides that no appendage such as doctor, reverend, judge, etc., may be used either before or following the name of any candidate on a ballot. The bill originally prohibited "so-called nicknames" but this provision was eliminated before the bill was passed.

Bills that Failed. Two bills offering changes in the election laws failed to pass. S.B. 250 would have submitted to the voters at the next election a constitutional amendment lowering the voting age to eighteen. H.B. 538 would have declared national and State-wide election and primary election days holidays.

Insurance Regulations

(Continued from page forty-one)

additional appropriation was made to it by S.B. 255 of \$33,785 for the first year of the biennium and \$31,330 for the second year.

Taxes on insurance companies. The decision of the United States Supreme Court referred to above was probably responsible for two other bills dealing with the taxation of insurance companies. One bill, H.B. 811, provides a new schedule for the taxation of insurance companies. The other, H.B. 71, authorizes domestic insurance companies to comply with the taxing statutes and ordinances of any state unless the taxes have been declared invalid by an appellate court of final juris-

diction, and it relieves the officers and directors of any insurance company in this State of personal liability for paying such taxes and failing to contest their validity.

The State as self-insurer. Previously mentioned in this issue is the fact that the legislature made the State a self-insurer of its properties. This was accomplished by S.B. 359, which provides that present insurance coverage will not be renewed upon its termination. Instead, biennial appropriations will build up a reserve fund sufficient to cover damage to property belonging to the State and its agencies up to 50% of its value.

Other bills. Other bills in the field of insurance are H.B. 232, which raises the maximum of insurance which the Farmers Mutual Fire Insurance Association may have in force in any one county from \$5,000,000 to \$10,000,000, and H.B. 65, section 1(31), which makes a specific disposition of fees collected by the Commissioner of Insurance for receiving the annual statements of cooperative organizations.

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(Continued from page ten)

schedule would be approximately the same as under the old. However, the effort to restore the gross receipts tax was defeated in committee by the theater interests, and so decisive was the defeat that the matter was never brought to the floor.

Appropriations

The general appropriations bill, though hitting an all-time high of over 116 million dollars and exceeding by some 30 million dollars the appropriations for the 1943-45 biennium, was nevertheless kept within the estimates of revenues to be received during the biennium. This was done even though some appropriations—notably the "emergency salaries" or bonuses for teachers and other State employees—had to be put on a contingent basis, the contingency being based upon whether revenues will be sufficient to meet the payments after all firm appropriations have been taken care of. Highways accounted for about 24 million dollars of the total increase, which was net after a decrease of some five million dollars for general fund debt service. The General appropriations bill did not include the \$51,585,079 set aside for debt retirement.

Schools

Increases in the appropriations for the operation of the public schools amounted to a little less than six million dollars, or about one-fifth of the increase in the general appropriations bill, bringing the total appropriations for schools for the biennium to nearly 89 million dollars, or about 44½ million dollars per year, exclusive of the contingent appropriation for "emergency salaries." The "war bonus" provided for teachers and other State employees by the 1943 General Assembly was incorporated in the appropriations bill and made a part of the regular salaries subject to the Retirement System Act.

One of the hardest fights over the appropriations bill centered upon the matter of teachers' pay. Two points were involved: (1) the method of setting the salary schedule, and (2) the amount of the salaries to be provided. For the first time since the State took over the full support of the schools, the teachers' salary schedule was written into the appropriation bill. The school people objected strenuously to this, contending that the actual salary schedule was not a legislative matter but was an administrative matter to be handled by the State Board of Education, and they finally succeeded in having the schedule stricken from the Act. A compromise was reached as to salaries, the final appropriation being more than that recommended by the budget bureau, but less than that de-

sired by the teachers and their friends. It is sufficient to give the A-grade teacher a beginning salary of \$125 per month and to provide experience increments which will give the A-grade teacher with nine or more years' experience up to \$175 per month, with additional allowances for those in the graduate classifications. It is sufficient, also, to put principals upon a ten-month basis to compensate them for their work preliminary to the opening of school terms and in closing the year's work after the term.

Mental Institutions and Medical Care

As expected, the mental institutions and their friends put up a hard fight for greatly increased appropriations. Total appropriations for the charitable and correctional institutions slightly exceeded ten million dollars, an increase of some three and one-half millions, but most of the increase was for current expenses, some repairs, very little capital expenditures. As in other fields, the legislature took the view that it would do what it could toward meeting the *current* needs of the State's institutions within the limits of estimated *current* revenues, but declined to authorize any sizeable capital expenditures. A case in point is that of Caswell Training School at Kinston. Jammed to the bursting point with some 800 unfortunate children, and with probably that many more vainly trying to gain admission, the need for expansion and improvement was impressed upon and admitted by all. Yet, the best that was done by way of permanent improvement and expansion was to adopt, after it became apparent that the "hold the line" front couldn't be broken, a joint resolution (H.B. 297) "recognizing the primary claims of the Caswell Training School for a building program to expand its facilities to take care of additional patients as soon as conditions permit such expansion." A somewhat similar fate befell other worthwhile and meritorious enterprises. For example, S.B. 148 and S.B. 178, respectively, provided for the care of feeble-minded Negro children and for the care of spastic children. That is, machinery was provided for making surveys and recommendations, and for the acceptance of gifts and otherwise putting the programs into effect. But, except for expenses of drawing plans, reporting, etc., no funds were appropriated and it was expressly provided in both bills that no public funds should be spent for permanent improvements.

The medical care program is another case in point. The report of the commission appointed by Governor Broughton envisaged the establishment of a full four year medical school at the University of North Carolina, complete with a teaching hospital and nurses' and doctors' quarters. It called for the expansion of hospital facilities and health centers and clinics, with State aid, throughout the State, and it laid down a program for the encouragement of more doctors to train and practice in North Carolina, particularly in the greatly underserved rural areas. The act which was finally adopted recognized the program but for the most part, deferred the plans. It set up a Medical Care Commission which was authorized to approve a four year medical school at the University. It authorized the commission to study and report on the matter of building a teaching hospital or other hospital facilities, but ordered no work to be done along that line until a survey has been made by the Rockefeller Foundation or some similar agency. An appropriation was made to pay the expenses of the commission, a small appropriation was made to set up a student loan fund, and a contingent (upon the availability of revenues) appropriation of one million dollars was made for the purpose of aiding, at the rate of \$1 per person per day, local units in the cost of hospitalizing their indigent sick. But no appropriation, contingent or otherwise, was made for permanent improvements.

Veterans

As in the fields of higher education, mental and charitable institutions, medical care, and others, the prevailing mood of watchful waiting, of liberal expressions and conservative actions was applied also to legislation concerning veterans. It is hoped and expected that during the next biennium a very large percent of our three hundred thousand sons and daughters now in the Armed Forces will be permitted to return to their homes, to take up their lives where they left off, to re-enter schools, to learn trades or professions, or to seek jobs. Under the "G. I. Bill of Rights" a very large number of veterans will be entitled to enter our colleges and universities with subsistence and tuition paid by the federal government; yet no provision was made for expanding our educational facilities, on the ground that the extent of the necessary expansion would be mere guesswork. Definite provisions for expansion of vocational or trade schools were likewise deferred, on the ground that it is now impossible to tell how much facilities should be provided for what kind of training.

Although there were a number of acts directly affecting veterans, such as certain tax exemptions, relief from tax penalties, free access to vital statistics records, and enabling acts such as those giving minor veterans and minor spouses of veterans legal competency with respect to pursuing rights and privileges under federal and State legislation, and legislation with respect to veterans' estates and estates of veterans reported missing, perhaps the legislation which will affect more veterans than any other is the act setting up a Veterans' Commission. It will be the duty of the Veterans' Commission to keep informed of the various rights and benefits available to veterans under federal or State legislation and, through offices in various parts of the State, to assist veterans and their dependents in securing those rights and benefits. Looking backward to the relatively few benefits available to the relatively few veterans of World War I and remembering the difficulty those relatively few veterans experienced in obtaining their relatively few benefits, and the sharp practices which sometimes victimized those veterans, it is apparent that the establishment of the Veterans' Commission, if sufficiently staffed with competent and energetic personnel, will enable the State to perform a really substantial service for its returning servicemen.

As for direct appropriations to prepare for the return of servicemen, there were practically none. Again it was thought best to "wait and see" what needs develop, and to stand ready to meet those needs out of the post-war reserve fund if the then current revenues are insufficient for the purpose.

Other Legislation

In addition to its perplexing problems in connection with fiscal affairs, the matter of when and where to provide greater services to the citizens, and the question of what and when provisions should be made for returning veterans, the General Assembly also had to concern itself with its usual business of drawing up rules and regulations under which the people of the State must conduct themselves and their affairs. Even in this less disturbed field of legislative activities, the prevailing mood of "wait and see" and "no major changes" seemed to be echoed. This mood, added to a normal antipathy toward regulatory measures, probably accounted for the death of a number of measures which would have given to various State departments, particularly the State Board of Health and the Department of Agriculture, substantially enlarged supervisory powers.

The greatest increase in power went to the Department of Insurance. The now-famous decision of the U. S. Supreme Court which broke a 75-year-old precedent to hold that insur-

ance was commerce which, if conducted across State lines, was subject to federal regulations, coupled with suggestions from Washington that federal intervention would not necessarily result from the decision unless it was found that the control machinery of the several states was inadequate, led to the somewhat remarkable spectacle of State officials, private citizens, and representatives of insurance companies sitting down in apparent harmony and drawing up what amounts to a practically new code of insurance laws. The result of the committee's deliberations, set forth in eleven lengthy and technically phrased bills which were enacted without substantial changes, was admittedly short of perfection or finality. But the time was short and the task was great. Although not perfect, those eleven bills make the difference between a shocking lack of control in the past to a substantial and perhaps ample power of supervision over rates, schedules, forms and other aspects of the many facets of the insurance business in the future. And, since insurance costs directly and indirectly affect the cost of living, the full exercise of this new power could result in substantial benefits for the citizens of North Carolina.

The State as Self-Insurer

The State has been appropriating about \$185,000 each biennium for insurance on its buildings and property. Due to a program of fire-proofing and to other effective fire-prevention measures and to more efficient fire-fighting services, the fire-loss ratio has been materially reduced. Although the State's fire-loss record in recent years and the persistent efforts of the Commissioner of Insurance have resulted in very favorable insurance rates, it is obvious that insurance companies cannot and will not accept risks unless the mathematical odds are in favor of a profit. And the mathematical odds must be achieved after making due allowance for the costs of doing business, which include a substantial commission to the agent who secures the business.

After a hard fight featured by debates which, if not actually so, certainly bordered on the acrimonious, an act was adopted which made the State a self-insurer. That is, instead of paying out \$185,000 every two years on insurance premiums, it will set aside a reserve for losses which were formerly covered by insurance. Although the first year as self-insurer might bring more loss than the reserve set up, or more than the \$92,500 in premiums paid out in the past, there is little doubt but that in the long run the State will save money by the move. Records of the past 40 years, 20 years and 5 years so indicate. And the State has the qualifications of a prudent self-insurer: the financial ability to absorb and spread losses over a number of years as the cost of insurance is absorbed and spread, and property which is not too bunched and therefore not subject to destruction by a single calamity, but which is spread over the entire State.

Principal arguments against the bill were (1) that it launched the State into a new enterprise and (2) that it deprived insurance companies, which contribute materially to the State by way of taxes, of legitimate business, and (3) that it opens the door to all sorts of non-governmental, competitive enterprises on the part of the State. These arguments were met by the assertion that the State was not thinking of engaging in the insurance business, but was merely deciding to carry its own risks; that it was no more depriving business of its opportunities than it is now doing by having State prisoners make articles for State use, or by permitting State institutions to prepare and serve meals to their inmates rather than having them served by private business.

It is not a novel experience for the State to act as self-insurer. In 1929 the General Assembly enacted the Workmen's Compensation Act, which provided a maximum indemnity of \$6,000 for the death of an employee from injuries sustained in

connection with his employment. The Act provided that under certain circumstances employers might become self-insurers. The State so elected. And the State was the first to pay out the maximum compensation of \$6,000, for the death of a highway patrolman killed in line of duty.

Local Legislation

As previously pointed out, about 60% of the 1150-odd acts passed by the 1945 General Assembly were local Acts. (Incidentally, it is no easy matter to classify some acts as "public" or "local"; so the percentage may vary somewhat according to the criterion adopted.) Over a third of these local bills were concerned with the salaries and fees received by local officials, and made necessary adjustments in view of the increase in commodity prices and the fact that so many local salaries were fixed or limited by legislative Act rather than being left within the discretion of local governing boards.

Many local bills were concerned with fiscal affairs other than the matter of salary adjustments, such as bills to authorize the payment of delinquent tax proceeds into the county general fund, and bills to authorize special levies for special purposes, the "special purpose" often being to pay the salary of the accountant, tax supervisor or farm agent. Other subjects which were frequently the concern of local bills were: beer and wine, veterans' service officers, the county's liability for damages caused by dogs, corporate limits of towns, local elections, fees of jurors and various officials, local airports, and municipal traffic bureaus. A number of local bills merely took a particular county out of or into the provisions of a State-wide Act.

Some local legislation is necessary, some is needless, and some is absolutely forbidden by Article II, Section 29 of the State constitution—a section which appears not to receive too much notice. Constructive local legislation can be and in the past has been the forerunner of some of our soundest State-wide measures. Sometimes an innovation cannot gain acceptance of the State as a whole and the legislature might refuse to pass it as a State-wide law. But the legislature is usually willing to enact any local legislation which is sponsored by the county delegation. Sometimes the merit of such local laws, after being tried out and proven in a particular county, is recognized by other counties which "tie on" to the act or have similar bills introduced for themselves, until the law is finally made State-wide.

But many of the local bills do not deserve the time and attention of 170 legislators—bills such as those to authorize the appointment of a stenographer or other clerical assistant in some county office, or to fix the salary of a jailer—nor do they get it. Ordinarily, all the other members of the legislature want to know about a local bill is that it is, in fact, a local bill and that the county delegation is for it. The effect of many local bills, therefore, is merely to have the county delegation pass upon local matters while in Raleigh and presumably busy enough with State-wide affairs, rather than letting these local matters be handled by the county commissioners while in session at the county seat for the purpose of passing upon local affairs. But an overplus of these local bills seriously clogs the legislative machinery and diverts energy which might be spent more profitably upon the business of the State as a whole.

Appraisal

The press of the State pretty well agreed that the 1945 session of the General Assembly was hard working, serious minded and conservative. Some thought it was too conservative while others thought it was not conservative enough, and not all used "conservative" in the same sense. Since conservatism is good or bad depending upon the individual political viewpoint of the appraiser and his own idea as to the meaning of the term, it might be better said that the legislature was cautious. It was not given to counting chicks before they were

hatched, and certainly not before the eggs were laid. It accepted the administration's estimate of the surplus as of June 30, 1945, and of the revenue for the coming biennium, and it kept appropriations within that estimate although many of the legislators were privately convinced that the estimates were too low. They knew the estimates had to be based largely on guesses, and they knew the estimators would prefer to err on the side of pessimism rather than take a chance on an over-estimate.

With few exceptions, the approach to all problems and new suggestions was characterized by caution. The typical solution to these problems and suggestions was to declare an interest in the matter and to authorize the appointment of a commission to make further study and report back to a subsequent session of the General Assembly. This solution enabled the legislature to lay the ground-work or set under way movements which might result in progressive measures, and at the same time keep the State uncommitted until the future can be more clearly discerned. Hindsight being far superior to foresight, in two years from now we can judge much better than at present whether the legislature should have followed a more aggressive policy. But at the present time and in view of all of the unanswerable questions which make the future such an uncertain quantity, the consensus of opinion is that the legislature was wise in following a path of caution.

Veterans and Servicemen

(Continued from page twenty-four)

is no requirement that the return to the State's service need be within any particular time.

But members of the teaching profession are not the only ones who get the advantage of the increases in salary they would have received if they had remained in the employment of the State. Under H.B. 122 any employee of the State who has been granted a leave of absence for service in the armed forces, the Merchant Marine or the Red Cross in connection with its overseas activities and returns to his former position within the period of his leave is entitled to at least the salary he was receiving when leave was granted, plus the step increments he would have received during each year he was in the service, counting a fraction of a year as a year. In no case, however, is he entitled to more than the top salary applicable to the classification to which he is assigned upon his return.

Retirement. The general amendments to the act creating the Teachers' and State Employees' Retirement System are considered elsewhere in this issue. Senate Bill 362, however, a separate act, does make a minor change to the advantage of a few veterans so as to allow full credit for prior service to all those who entered the armed forces of the United States "on or after" instead of "after" September 16, 1940.

Unemployment compensation. Most of the Unemployment Compensation amendments apply equally to veterans and others and are considered elsewhere. Section 25 however, of H.B. 123, which is the comprehensive bill making these amendments, rewrites the section with respect to "trainees," who are now called "veterans," so as to bring it in line with changes made in other portions of the act, redefines the "first benefit year" to make it begin with the first day of the first week following the exhaustion of the veteran's rights under Title V of the (Federal) Servicemen's Readjustment Act of 1944, and allows veterans to elect whether their rights to benefits shall be determined under this specific section of the Unemployment Compensation Act, or under the general provisions of the law.

Veterans' children. H.B. 477 extended to the children of de-

ceased and disabled veterans of World War II certain educational advantages given originally to the children of deceased and disabled veterans of World War I and extended only partially by the 1943 act to the children of veterans of this war.

Missing Persons

The concern of the State is not confined to veterans who return nor to the children and other relatives of veterans whether they return or not. Though the soldier is absent, his property is nevertheless an economic fact and has occasionally to be dealt with in one way or another whether or not his permission can be obtained. The situation is rendered all the more complicated if the soldier is reported "missing" or "presumed to be dead." Several bills sought to make provisions for such situations.

Power of attorney. A great many soldiers executed powers of attorney on going into the armed services. It is elementary law, however, that a power of attorney, uncoupled with an interest, terminates upon the death of the donor of the power. This legal situation presented no more than the usual hazards as long as most of the men were in camps in this country. When our men began fighting on the battlefronts of the world, however, the serious question arose whether a person dealing with the holder of such a power of attorney could rely upon it when the morning's paper might bring the news that the power had been terminated before the transaction took place. H.B. 110 is an attempt to remedy at least a part of this situation. It provides that no transaction conducted under the authority of a power of attorney from a person in the armed forces shall be rendered invalid by the previous death of such person as long as the agent was without the knowledge or actual notice of the death. An affidavit executed by the agent shall be conclusive proof, in the absence of fraud, of the lack of knowledge or actual notice, and no report or listing, official or otherwise, of "missing" or "missing in action" shall be construed to constitute such notice. The provisions of the act, however, do not invalidate provisions with respect to revocation or termination contained within the power of attorney itself.

Conservators for missing persons. S.B. 248 provides for the appointment, under certain circumstances, of a conservator for the property of a person who has been reported missing, interned in a neutral country or captured by an enemy. The appointment can be made only upon the petition of a person who would have an interest in the property of the absentee if he were deceased, after notice to or waiver by the other heirs and next of kin, and then only if a definite need for care of the property is shown to exist. The conservator, if appointed, would post bond and have the same powers as a guardian. He may be authorized to make provision for the wife, husband, infant children or other dependents of the absentee. Petition to have the conservatorship terminated could be filed by the absentee, by someone holding a power of attorney from the absentee, or by an executor or administrator subsequently appointed.

Official death reports. H.B. 516 makes prima facie evidence in courts and elsewhere the official findings, records and reports, or certified copies of them, concerning death, presumed death, missing or other status issued by the Secretaries of War and Navy and other federal officers and employees authorized to make such records and reports pursuant to the Federal Missing Persons Act.

Dependents of incompetent wards. H.B. 132 permits guardians of insane or incompetent wards who receive pensions or other benefits from the government of the United States on account of military service to make payments to any relatives who previously received any part of their maintenance from the ward to such extent as shall be approved by the clerk and the Judge of the Superior Court.

Confederate Veterans

Eighty years after the surrender at Appomattox the differentiation for pension purposes between blind, maimed and paralyzed and other Confederate veterans is removed by S.B. 121 and the pensions of all raised to \$864 per year. The annual pensions of colored servants and widows of Confederate veterans are also raised by H.B. 808 as follows: colored servants — \$200 to \$320. Class "A" widows — \$300 to \$420; Class "B" widows—\$100 to \$220.

Veterans' Bills That Failed

Among the bills concerning or affecting members of the armed forces which failed to pass were H.B. 152 which would have permitted members of the armed forces to acquire residence for the purpose of instituting divorce proceedings by being located on a military or naval reservation in the State for a period of six months; H.B. 909 which would have instructed the Veterans' Affairs Committee of the Assembly to prepare a bill to provide free vocational, agricultural or professional training for veterans whose education was interrupted or who have service connected disabilities; S.B. 65 which would have raised a presumption of the death of a person two years after being reported missing in action; and S.B. 25 which would have authorized the partial distribution of the estates of persons reported by the war, Navy or Maritime offices as presumed to be dead.

Regulation of Business

(Continued from page twenty-six)

and the time during which the loans or advances are to be made. The lien is then perfected by recording the notice also with the register of deeds. The lien is effective from the time of filing as against all claims of unsecured creditors, but is subject to the subsequently attaching liens of processors, dyers, mechanics and other artisans, and of landlords. When goods subject to the lien are sold in the ordinary course of business they are released from the operation of the lien. Methods are provided for the cancellation of the lien upon satisfaction of the claim. The act provides that the posting and filing of the notice shall not be necessary when the factor is in possession of the goods, and that nothing in the act shall be construed as abridging or limiting any lien which the factor might have had at common law.

The Assignment of Accounts Receivable

Another important legislative innovation was S.B. 48, which deals with the assignment of accounts receivable. It provides for the protection of the creditor, in this case an assignee, when he has taken and filed a "notice of assignment," signed by the assignor and assignee and acknowledged by the assignor, which contains the name and address of both parties and a statement that the assignor has assigned or intends to assign one or more accounts to the named assignee. The notice may be cancelled by the assignor at any time by a marginal entry or by the register of deeds upon presentation of the original instrument marked satisfied in full. The assignor also may file a "notice of discontinuance of assignment" which states that he will not make any further assignments to the designated assignee after a specified date. An assignment becomes "protected" within the meaning of the act when the notice of assignment has been filed, whether the actual assignment has taken place before, at, or in some cases even after the filing of the notice. An assignment also becomes protected, even though no notice has been filed, when the assignee gives written notice to the debtor that the account has been assigned to him. The

protected assignee acquires a right superior to those of other creditors, and this right extends even to returned goods, although with respect to them it is subject to any liens which may have arisen on the particular goods which have been returned. Protection is afforded to an honest debtor who pays the wrong person, but the creditor who is not entitled to payment holds the proceeds in trust for the protected assignee. For his own advantage in dealing with others the assignor may at any time demand from the assignee a statement in writing of the balance due and a list of all accounts which have been assigned as security therefor.

Public Utilities

Few changes were made in the law with respect to public utilities. H.B. 553, an amendment to G. S. 62-82, does liberalize the law with respect to refinancing outstanding shares of utility stock, permitting the exchanging and redeeming of such shares and the changing of classes and dividend rates in a way that would not be permitted to ordinary corporations, provided the Utilities Commission finds it to the best interest of the public, of consumers and of investors, and provided the redemption is at not less than par and at a time or times stated or provided for in the utility's charter or stock certificates.

Other bills introduced in the Senate and House, one applying to all common carriers and the other to railroads only, would have required that unlawful fares collected by such carriers pending appeals from orders fixing rates be reported to the Utilities Commission. In the event of a ruling adverse to a carrier it would then have had to pay the amount of such illegal fares to the State Treasurer for distribution under orders of the Commission to those entitled to them. All undistributed portions would have escheated to the University after three years, any subsequent claims being paid from the escheat funds without interest. These bills were never reported out of committee.

Also defeated was S.B. 310, which would have placed on railroads and bus companies unlimited liability for the loss of baggage.

Other Businesses

The statute authorizing the operation of mutual burial associations is revised considerably by H.B. 94 and the special act applying to Gates County is repealed by H.B. 405. S.B. 60, which would have changed the method of election of the directors of hospital service corporations was reported unfavorably. In its place there was passed S.B. 123, which applies to all non-profit, non-stock corporations. It authorizes such corporations to provide in their charter or by-laws for the selection of their trustees or directors "by election by the members or subscribers, or by selection by other designated associations, corporations or individuals, or by any combination of such methods of election set forth in the charter or by-laws." H.B. 417 authorizes an assessment against perpetual care cemeteries.

No longer need every corporation, in January, unless another time is fixed, declare and pay to its stockholders on demand the whole of its accumulated profits over and above its paid-in capital stock and the amount fixed by the stockholders as a reserve for working capital, unless the directors have themselves been specifically authorized to fix the amount of this reserve. This little-observed provision of the law, formerly contained in G.S. 55-115, is repealed by H.B. 335.

For the first time corporations are specifically authorized by statute to make charitable donations, although they have been entitled to deductions on their income tax for such donations. S.B. 259, which authorizes these donations, provides that

they must not exceed 5% of the net income of the corporation and must not render it insolvent.

H.B. 65 makes several other minor changes with respect to corporations.

S.B. 18 exempts employer trusts from the rule against perpetuities and restraints on alienation.

S.B. 444, which would have made it a misdemeanor for any labor organization to contribute directly or indirectly to any political campaign, was never reported out of committee.

Practice and Procedure

(Continued from page twenty-two)

discovered evidence, but only on questions of law," and "upon declaring a statute unconstitutional."

H.B. 754 would have amended G.S. 14-21 to add a proviso that if the jury shall so recommend, in the trial of rape cases, the punishment shall be imprisonment for life in the State's prison, instead of death, as at present. After a rather heated debate, the bill failed to pass its second reading in the House. Also failing to pass was H.B. 125, which would have provided for the segregation of youthful offenders in the prison system.

H.B. 849 related to a subject that has been legislated about from time to time for a good many years—the disposition of seized gambling property. This bill would have provided that such property which is suitable only for gambling purposes be destroyed, and that of the money and other property seized, one-half should belong to the person seizing them and the other half should go to the use of the poor. But the bill was never reported out of committee. For other bills relating to the disposition of seized property, see the section on alcoholic beverages.

Although it probably pertains more to the civil than the criminal side, H.B. 371 is worth mentioning here. It penalizes the unlawful injury or removal of timber from the land of another, allowing the owner double the value of the products involved.

Alcoholic Beverages

(Continued from page fourteen)

effect were passed for the same locality. Or it may have been that the introducers, uncertain of the exact treatment that local wine and beer bills were going to receive, wanted to have several samples available for the committee's consideration.

In the end, the most common variety of local bill in final form was as follows: the county commissioners for the county, and the city governing body of any municipality within the county for its municipality, may, in their discretion, prohibit completely or regulate in any manner the sale of wine. This type of bill was passed for the following counties: Ashe, Buncombe, Burke, Caldwell, Caswell, Chatham, Duplin, Guilford, Haywood, McDowell, Montgomery, Moore, Northampton, Richmond, Robeson, Rutherford and Sampson. The same authority was granted to the following towns: Angier, Bessemer City, Jonesboro, Lenoir, Sanford, Sparta and Spencer.

The county commissioners of the following counties, and the governing bodies of any municipalities therein, were simply authorized to refuse to issue wine licenses: Granville, Moore, Person, Scotland and Vance.

The county commissioners of the following counties, but not the governing bodies of the towns therein, were authorized to refuse to issue wine licenses: Avery, Bladen, Camden and

Madison. The following towns were likewise authorized to refuse to issue wine licenses: Faison, Mt. Airy, Rose Hill, Wallace and Warsaw.

By virtue of bills adding them to the list of counties and towns enumerated in G.S. 18-77, Macon and Vance counties and the municipalities therein and the City of Greensboro were authorized to refuse to issue "on premises" wine licenses.

The following counties were authorized, in a bill which had one of the most turbulent careers of the entire session, being at various times on and off the Senate's unfavorable calendar, and finally amended to exclude beer from its provisions, to call elections on the question of whether wine should be prohibited in the counties: Cherokee, Clay, Graham, Macon and Swain. Such an election was also authorized for the Town of Huntersville.

Lee County, but not all the municipalities therein, was authorized to prohibit and regulate the sale of wine.

The governing bodies of the towns of Rockingham and Hamlet were authorized to exceed the present Statewide authority in municipalities to regulate the hours of sale of beer and wine on weekends. Their governing bodies were authorized to prohibit the sale from 7 P.M. on Saturday until 7 A.M. on Monday.

Special areas for which beer and/or wine bills were passed are as follows: the sale of wine was prohibited within one-half mile of Reynolds Park in Forsyth County; the sale of wine was prohibited within one mile of New London High School in Stanly County; the sale of beer and wine was prohibited near certain churches and schools in Chinquapin Township of Duplin County; and the county commissioners of the respective counties in which they lie were authorized to prohibit completely or regulate in any manner the sale of wine in the territory outside the corporate limits of the town but within one mile of the corporate limits of the towns of Angier and Bessemer City and that part of Mt. Airy Township which lies outside the corporate limits of the Town of Mt. Airy.

LIQUOR

Transportation. First of the major bills introduced affecting liquor, and the only one of general Statewide interest passed, was S.B. 72, regulating and controlling the transportation of liquor into and through the State. The bill had the sanction of the administration and came in answer to considerable complaint at the liquor violations which were growing out of the transportation of liquor to military reservations in the State and through the State to other states.

The chief device offered by this act to eliminate these violations is a rigid bonding procedure for the transportation over the roads to a federal reservation in the State or through the State of more than one gallon of alcoholic beverages other than those defined in G.S. 18-64 (beer and unfortified wines) if purchased from a person licensed to sell such beverages in this State, those authorized to be transported under G.S. 18-100 through 18-104 (light domestic wines and fruit ciders made by natural fermentation), and those wines defined in G.S. 18-94 through 18-99 (fortified or "sweet" wines). Persons so transporting such beverages must post a \$1000 bond with the State Alcoholic Control Board, running in the name of the State and with surety approved by the Board, conditioned that they will not unlawfully transport or deliver any such beverages. Any bonds forfeited will, upon conviction of the offender, be paid to the school fund of the county in which the seizure is made and such county is authorized to sue for the bond.

The act provides the following regulations for the transportation of all beverages affected. 1) a certification that the bond has been furnished and a bill of lading from the consignor describing the beverages, stating the name and address of the consignee and the route to be followed (which must be "substantially" the most direct route); 2) transporting vehicles

cannot "substantially" vary from the route specified; 3) names of consignors and consignees must be their true names, the consignee must have a right to order, and the consignor to ship, the beverages, and the consignee must have previously authorized in writing the shipment of the beverages; and 4) persons in charge of transporting vehicles must submit the required papers to law enforcement officers for inspection upon request.

Violation of the act, or of any further rules and regulations relating to the transportation of such beverages promulgated by the State Board (the act grants the board such authority) is made a misdemeanor punishable in the discretion of the court. Vehicles engaged in illegal transportation are subject to confiscation and are to be disposed of in accordance with the provisions of G.S. 18-6; the beverages being illegally transported are to be disposed of in accordance with the provisions of G.S. 18-13.

The present "one-gallon" law is not affected and the act specifically exempts "sleeping car companies and railroads in the lawful operation of their business."

Referendum. Though the charge was heavier in 1945, the anti-liquor forces were again unsuccessful. Various explanations were advanced for the failure of S.B. 193, the referendum bill — that it was too long (28 pages in printed bill form) and complicated to have been introduced at such a late time in the session, that the passage of a referendum measure should await the return of those citizens who are in the armed forces, etc. In any event, the bill was reported unfavorably by the Senate Finance Committee.

Administration of present liquor law. Two bills relating to the disposition of confiscated liquor cars were introduced. Passed was S.B. 277, requiring members of the State Highway Patrol and other law enforcement officers seizing cars or making arrests in connection with the illegal transportation of liquor to "refer the cases to the state court having jurisdiction thereof" and making it a misfeasance in office subject to a \$100 fine to "refer such cases to courts of another jurisdiction." Never reported out of the committee was H.B. 739, which had virtually the same effect as S.B. 277 except that it referred specifically to the federal officers (S.B. 277 presumably is aimed primarily at prohibiting the surrender of cars for disposition by federal officials) and carried a heavier penalty for violations.

State Departments

(Continued from page thirty-seven)

Labor for the voluntary arbitration of labor disputes. (H.B. 761.)

Authorizing the State Board of Agriculture, with the approval of the Governor and Council of State, to invest surplus agriculture funds (funds in excess of the amount required to meet the current needs of the Department) in interest-bearing securities of the State and Federal governments, including securities issued by any agency of the Federal government which are guaranteed as to principal and interest by the government. (H.B. 931.)

Authorizing the State Eugenics Board to accept gifts. (S.B. 314.)

Authorizing the Board of Corrections and Training to combine the office of Commissioner of Correction and the Office of General Business Manager. (H.B. 68.)

Amending the law with respect to transportation rate hearings before the Utilities Commission to make the provisions applicable to any rate changes, instead of merely to "increase" as before. (H.B. 465.)

Authorizing members of the Industrial Commission to punish for contempt. (H.B. 457.)

Authorizing the Assistant Commissioner of Motor Vehicles to sign and verify pleadings and other legal documents in any action to which the Commissioner is a party or in which he is interested. (H.B. 300.)

Authorizing the State Director of Purchase and Contract to take whatever steps are necessary, with the approval of the Advisory Budget Commission, to take advantage of the sale of war surplus materials. (S.B. 102.)

Redefining and clarifying the duties and functions of the State Department of Archives and History. The Executive Board of the Department is re-created and provision is made for a "Director" of the Department. (S.B. 52.)

Lowering the minimum and raising the maximum age for members of the band of the State Guard and exempting members of the State Guard and Civil Air Patrol from jury duty. (H.B. 325.)

Authorizing the appointment of a fourth assistant Attorney General.

Continuing the commission appointed by the Governor pursuant to a 1943 resolution for the purpose of making further investigations and recommendations to the General Assembly of 1945 for a rearrangement of the judicial and solicitorial districts of the State. (S.B. 208, a joint resolution.)

Authorizing the appointment of a commission to inspect and report to the next General Assembly on the State's penal institutions. (S.B. 168, a joint resolution.)

Permitting the retirement of Supreme Court justices when they reach the age of eighty, whatever the length of their service on the bench. (S.B. 330.)

Continuing the authority in the Governor to appoint special judges of the Superior Court. (H.B. 208.)

Buildings, Grounds and Colors. The 1945 General Assembly enacted several measures laying the ground-work for the State's return to its normal program of building, decorating and repairing.

H.B. 979, a joint resolution, empowered the Governor to appoint a special commission for the purpose of studying a building program for the State and the allocation of space in State buildings to the constitutional officers. The commission is empowered to request the services of State-employed architects and engineers and to acquire options on lands deemed desirable as sites for necessary buildings.

H.B. 852 directs the State Board of Buildings and Grounds to study the feasibility of installing elevators or escalators in the State Capitol building. If the Board should find the project feasible, it is authorized to enter into the necessary agreements for the installation of lifts, the funds to come from the Contingency and Emergency Fund.

One memorial to North Carolina greats was authorized and one refused in 1945. S.B. 245 authorizes the erection of a statue on the south side of Capitol Square in Raleigh as a memorial to Andrew Jackson, James K. Polk and Andrew Johnson. The statue is to be erected in accordance with the recommendations of a commission appointed at the 1943 session. The committee reported unfavorably S.B. 358, which would have authorized the Boone Trail Highway and Memorial Association to erect a monument to Daniel Boone on Nash Square in Raleigh.

In 1943 the General Assembly adopted an official State bird. In 1945 it was colors. H.B. 820 designates red and blue, of the shades used in the North Carolina and United States flags, as the official State colors. Use of these colors on ribbons attached to State documents is permissible but not mandatory under the act.

Officials and Employees: Salaries and Retirement. Being a large paymaster, the State is constantly faced with the problem of pay schedules. The problem has been particularly vexa-

tious since the coming of the war with its great increases in the cost of living. In 1945 the General Assembly took some action with respect to salaries in all three branches of the government.

Pursuant to the constitutional amendment approved at the last general election authorizing the General Assembly to fix the compensation of the Lieutenant Governor, S.B. 1, passed while the former Lieutenant Governor was still presiding and prior to the qualification of the present Lieutenant Governor, fixes the salary at \$2100 per year, to be in addition to the salary as presiding officer of the Senate and the traveling expenses already allowed him.

The salary of the Private Secretary of the Governor was raised by S.B. 61 from \$4500 to a maximum of \$5000, to be fixed by the Governor with the approval of the Advisory Budget Commission. H.B. 856 repealed the statutory limitation (\$7500) on the salary of the Chairman of the State Highway and Public Works Commission and authorized the salary to be fixed in the discretion of the Governor and Advisory Budget Commission.

H.B. 721, passed after much rewriting and amending, provides for the submission at the next general election of a constitutional amendment which would allow members of the General Assembly, in addition to salaries now provided for, the sum of ten dollars per day for each day not to exceed sixty days in any one session, in "commutation for expenses incurred for travel to and from their homes to the seat of government, subsistence, and other necessary expenses." By the language of the act, the expense allowance covers both regular and special sessions; but there appears to be some question whether it includes the presiding officers. S.B. 24 amends G.S. 120-33 to provide that committee clerks shall receive compensation on the basis of their qualifications according to the following schedule: \$6.00 per day for secretaries who are stenographers and typists and \$5.00 per day for typists.

Regular and special judges of the Superior Court were granted, in addition to the salary and expense allowance now paid them, an additional expense allowance of \$950 a year, provided the funds are available to pay the allowance after payment of the teachers' and state employees' salaries and emergency salaries under the Budget Appropriation Act for the 1945-47 biennium. Solicitors received an increase in salary and expense allowance, subject to the same contingency. The salary was raised from \$4500 to \$5000 and the expense allowance from \$500 to \$750. Neither of the bills (S.B. 226 and 227) becomes effective until July 1, 1945.

H.B. 2 continued the war bonus of teachers and other State employees, which expired December 31, 1944, until June 30, 1945, the end of the fiscal year.

The Retirement System. With the exception of one minor bill affecting a few veterans, only three of the numerous bills which would have made changes in the retirement system for State employees received so much as a favorable report from the committees to which they were sent. Those three were passed. S.B. 143 permits members to participate as to any portion of their salaries up to \$5000, instead of up to \$3000, as before. H.B. 119 amends G.S. 135-5, which permits a withdrawal of his accumulated contributions by an employee leaving the service of the State, by authorizing the employer to deduct from the amount of such withdrawal any sum by which he has previously overpaid the salary of the employee and by providing that the employer shall be reimbursed by the Retirement System for the amount of such overpayment if the employee does not apply for the withdrawal within sixty days. S.B. 367 provides certain benefits in the way of retention of membership and privileges of reinstatement for former State employees who have been performing services for the federal government on a loan basis.

Health, Welfare and Hospitals

(Continued from page eighteen)

seat (or if this town does not have a mayor, then the clerk of the court) and the superintendent of schools. Under the former law the *ex officio* members elected the three other members, two of whom must be doctors and one a dentist. Under H.B. 116 and H.B. 321 the elected members must now be one a physician, one a dentist, one a pharmacist and one a public spirited citizen. If there is not a person belonging to one or another of those professions resident in the county the bill provides that his place may be filled by another public spirited citizen.

H.B. 321 also enlarges and expands the provision under which local and district health departments may be formed, provides how their boards shall be constituted and their regulations enforced, and arranges for the election of district health officers and of county physicians. Provisions in the original bill that a county physician could not also serve as a county or district health officer were stricken out prior to final passage.

Failing of enactment entirely were H.B. 315, which would have redefined the duties of county and district health officers and H.B. 322 which would have required each county to levy a tax sufficient to carry on a "minimum, standard and full-time health program" according to requirements to be laid down by the State Board of Health.

As to purely local legislation, S.B. 8 authorizes the Board of Commissioners of *Forsyth County* and the Board of Aldermen of the City of *Winston-Salem* to establish by agreement a joint City-County Board of Health and to employ a joint City-County Health officer. The Act also authorizes each unit to levy for this purpose a tax of not over ten cents on the one hundred dollar valuation. H.B. 32 repeals an old Act of 1921 relating to the Health Fund Budget of *Mecklenburg County*, and H.B. 889 repeals an act of 1935 which gave special authority to the Board of Commissioners of *Graham County* with respect to forming health units.

Contagious and Other Diseases

H.B. 554, which would have established a Cancer Commission, was defeated, but under H.B. 786 the State Board of Health is authorized, under such rules and regulations as it may establish, to furnish to indigent cancer patients financial aid for diagnosis, hospitalization and treatment, to establish minimum standards for cancer clinics or departments in general hospitals (provided they meet the minimum requirements of the American College of Surgeons for tumor clinics), to accept gifts, establish laboratories, and assist generally in a cancer control program.

H.B. 316, 317 and 319 revise the provisions with respect to the immunization of children against diphtheria and small-pox, and add whooping cough to the list of diseases against which immunization must be had. No child is to be admitted to the public schools without being immunized against these three diseases, unless, in the case of small pox or diphtheria, the immunization would be considered detrimental to the child's health, or unless the parents or guardians are bona fide members of a recognized religious organization whose teachings are contrary to the practices required by the Act.

H.B. 479 provides for the incarceration of persons having tuberculosis in a communicable form who are guilty of failing to observe precautionary instructions.

H.B. 318 prevents the issuance of an ordinary marriage license to applicants infected with a venereal disease, whether in the communicable stage or not, but re-writes the exceptions under which a license may be issued in the light of modern innovations in the treatment of the disease.

Among defeated measures was one which would have required at least annual inspection by the State Board of Health

of all nursing, kindergarten, elementary and high schools, whether public, private or parochial, and would have authorized that board, together with the State Board of Education, to issue rules and regulations with regard to the sanitary facilities of such schools. Another would have appropriated \$75,000 for each year in the biennium to assist in securing modern sanitary facilities and water supplies for the schools of counties unable to provide such facilities. A third, as amended before being tabled, would have provided not only inspection, but grading, of all State institutions in which food is prepared. Relating more specifically to private businesses were other bills which would have increased the penalty for a first violation of the Bakery Inspection Law, changed the regulations with respect to the return of bread, and provided for licensing and other regulations of persons engaging in the towel and linen supply service and of pest exterminators and fumigators.

Surviving alone among the bills of this type was H.B. 229, which did enlarge the provisions for inspection and install a system of grading for *private* hospitals, sanitariums, sanatoriums and educational institutions. For reasons not apparent to this reviewer, however, the same bill repealed G.S. 72-8 through 72-29 containing certain sanitary regulations with respect to hotels.

PUBLIC WELFARE

"What's in a name?" asked lovely Juliet. "Thou art thyself." To many people, likewise, S.B. 44, which changed the name of the State Board of Charities and Public Welfare to the "State Board of Public Welfare" and the name of each county board to "County Board of Public Welfare" might seem comparatively unimportant. It represents, however, not a change in functions but a change in the theory on which those functions are performed. Particularly since the Great Depression the idea has been growing and is now enshrined in the law that care for the aged, the children, the infirm and the weak is not "charity" in the old sense, with its connotations of shiftlessness on one side and condescension on the other, but is rather an obligation of the State which is charged with the duty of promoting the welfare of its people. Another evidence of the new attitude is the defeat of S.B. 145, which would have rendered persons, whose near relatives were receiving old age assistance or aid to dependent children, ineligible to serve on county welfare boards.

Old Age Assistance and Aid for Dependent Children. Of the major bills which were passed with respect to welfare, perhaps those dealing with old age assistance and aid to dependent children were most important. S.B. 91 increases the maximum old age assistance which anyone may receive from \$30 to \$40 and the maximum which may be paid out of State and County Funds from \$15 to \$20, in order to take full advantage of federal appropriations. It also, under the aid for dependent children provisions, permits, within the limitations of the state appropriation, an increase of aid per child not in excess of the amount which may hereafter be matched by the federal government and strikes out the qualification which excluded a child 16 to 18 years of age from the definition of a "dependent child" if he was not "regularly attending school." It permits counties, when necessary, to make transfers between old age assistance and aid to dependent children funds with the consent of the State Board of Allotments and Appeal, and slightly redefines eligibility under both funds. It establishes a more flexible method for division of costs between the counties and the State Board of Allotments and Appeals. Finally, it revises the machinery of disbursement by providing for the endorsement of checks payable to allottees who die and by establishing a manner for disbursing county welfare funds in the event of the death of one of the necessary signatory officers.

Special Poor Tax. S.B. 87, in a sense a companion bill,

authorizes the board of county commissioners of each county to levy a special tax not to exceed 5c on the \$100 valuation for the maintenance of the poor and declares this tax to be for a special purpose. The former law contained rather intricate provisions for the removal of destitute persons to the counties of their origin. When the federal government and the State are paying a considerable portion of the expense the removal provisions seem unnecessary. The provisions were not repealed, but a proviso was added that counties should not thereby be prevented from rendering assistance to needy persons living within their borders, though they might not have lived there long enough to establish legal settlement, and that if such persons are eligible for old age assistance, aid to dependent children, or any type of general assistance in which State and federal funds are involved, assistance may be granted provided funds are available.

H.B. 49 changes the terms of the members of county boards of welfare from two years to three, after providing for staggering of terms.

Local Acts. In *Mecklenburg County* a special tax was authorized by H.B. 541 for "poor relief, old age assistance, dependent children, welfare and like purposes." The tax is not to exceed fifteen cents on the one hundred dollar valuation and is to be in addition to taxes authorized by any other special or general act. The Act also provides for the maintenance of a county home and the employment of a superintendent therefor.

In *Forsyth* the county and city together were authorized by S.B. 291 to establish as an agency of the Forsyth County Juvenile Court a home for the temporary detention of children.

Visitational Powers

Among the already existing powers of both the State Board of Public Welfare and the State Board of Health are those to visit and inspect certain types of public and private institutions. Under H.B. 50 there were added to the types of institutions which may be inspected by the State Board of Public Welfare boarding homes, rest homes and convalescent homes for the aged and mentally or physically infirm which care for two or more persons who obtain services from the county welfare department or who are supported in whole or in part by public welfare funds. The authority includes the power not only to visit and inspect but also to lay down standards for and license such homes. It does not apply if the patients are related to the person keeping the home or if no charge is made for their care. The bill as originally introduced would have applied to all such homes, whether or not they received patients supported by welfare funds, but these more sweeping provisions were removed by an amendment to the bill.

The other visitational bills were defeated. S.B. 45 would have authorized the State Board of Public Welfare to prescribe forms for all juvenile court records and would have made all information contained in such records available to the County Superintendents of Public Welfare or to the State Board. H.B. 451 would have increased the powers of both the State Board of Health and of the State Board of Public Welfare in the inspection of jails.

Codification

(Continued from page twenty-nine)

Amends G.S. 39-23 on bulk sales to clarify the provisions with respect to fraud.

Amends G.S. 41-2, which abolishes joint tenancy in real estate, by eliminating the word "assigns" and providing that the title shall descend to the heirs, executors or administrators of the deceased tenant.

Clarifies G.S. 105-90, relating to license taxes on employ-
(Continued on page sixty-four)

The Attorney General Rules

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



Presented below are a number of rulings issued in response to requests for information as to the effect of various bills enacted by the 1945 General Assembly. In addition there are several other rulings of particular interest to local officials at this time.

I. AD VALOREM TAXES

A. Matters Relating to Tax Listing and Assessing

25. Revaluations and review

To John F. Matthews.

(A.G.) SB 22, authorizing counties to postpone revaluation of property during the years 1945-1946, should be construed to mean that the various boards of county commissioners may postpone the quadrennial assessment through the entire two-year period.

30. Exemptions—\$300 personal property

To John F. Matthews.

(A.G.) I do not believe that an administrator, as such, is entitled to the \$300 exemption on household and kitchen furniture, etc., provided in the Machinery Act. No mention is made of an administrator in the section granting the exemption, and statutes granting exemptions from taxation are strictly construed.

B. Matters Affecting Tax Collection

30. Tax foreclosure-law applicable

To E. G. Johnson.

Inquiry: May a county sell for taxes and give a good title to real estate when the taxes for which the property was sold were due prior to 1936 and all subsequent taxes had been paid?

(A.G.) I know of no reason why a county may not sell real property for taxes due prior to 1936 and subsequent to 1927 and make a good title to the same, notwithstanding that all taxes since 1936 have been paid.

72. Tax collection—levy on personal property

To Fred P. Parker, Jr.

Inquiry: Is the person in possession of personal property liable for the tax on such property where there is a dispute as to the ownership of the property?

(A.G.) G.S. 105-304 provides that if any dispute arises as to the true ownership of personal property, the person in possession thereof shall be regarded as the owner unless the list taker or supervisor shall be convinced that some other person is the true owner. This section seems to leave no doubt but that personal property about which a dispute has arisen as to the ownership should be regarded as the property of the person in possession.

HARRY McMULLAN

Attorney
General
of
North
Carolina



II. POLL AND DOG TAXES

A. Levy

1. Exemptions

To Miss Polly Redmon.

Inquiry: Does a board of county commissioners have a right to refund to the children of a deceased veteran the amount of poll tax paid by him since his discharge was registered?

(A.G.) Section 105-342 of the General Statutes provides that an honorably discharged veteran who received injuries in the line of duty in the military service warrants exemption in the payment of the poll tax. G.S. 105-343 provides that in claiming the exemption the veteran must furnish proof of his service and injury to the Commissioners, and it is in their discretion to grant the exemption. In my opinion, County Commissioners do not have the authority to refund these poll taxes, because where certain conditions must be met by the veteran before he is entitled to the benefits conferred by the statute and these conditions have not been met, I am compelled to say that the refund cannot be made.

To W. B. Rodman, Jr.

Inquiry: For what years is the cancellation of poll taxes applicable for servicemen, as provided in Chapter 3 of the Public Laws of 1943?

(A.G.) While the Act amends the Machinery Act of 1939, it is my opinion that the Act relieves the members of the United States Merchant Marine from all poll taxes which such persons were required to list prior to induction into the armed forces, including the poll taxes which may have been levied prior to 1939, if such taxes are unpaid by the serviceman.

E. Uses

To W. P. Kelly.

What are the purposes for which poll taxes levied by municipalities may be used?

(A.G.) While G.S. 105-341(1) restricts the use of poll taxes levied by a county to the benefit of the public fund and the poor of the county, there is no such limitation as to the use of said taxes by municipalities. G.S. 105-341 provides that "cities and towns may levy a poll tax not exceeding that authorized by the Constitution, and poll taxes so levied and collected may be used for any purpose permitted by law. It is my opinion that the poll taxes levied by your municipalities may be used for any lawful purpose included in your town budget.

III. COUNTY OR CITY LICENSE OR PRIVILEGE TAXES

A. Levy

14. Privilege license—beer and wine

To Thomas C. Hoyle.

Inquiry: May the authority to issue beer and wine license be delegated by the board of commissioners to the sheriff, tax collector, or any other officer or employee?

(A.G.) I do not think that the commissioners may delegate the responsibility, which the statute places upon them, to determine whether the license applicant has complied with the law and is entitled to a license. There is some discretion which must be exercised.

To H. E. King.

Inquiry: May a beer license be revoked for a place where gambling is carried on continuously and patrons have been arrested and convicted?

(A.G.) According to G.S. 18-78, a license may be revoked by the governing body of the municipality or the board of county commissioners, after the licensee has been given an opportunity to be heard in his defense, if the premises are "used for any unlawful, disorderly, or immoral purposes. . . ."

To T. E. Hinson.

Inquiry: Is it mandatory upon the governing body of a municipality to issue a beer license to a person who has been convicted of a felony involving the receiving of stolen property knowing it to have been stolen?

(A.G.) G.S. 18-75 (5) provides that a license may not be issued to a person who has been "convicted of a felony or other crime involving moral turpitude." It seems to me that one who has been convicted of the criminal offense of receiving stolen property knowing it to have been stolen, has been convicted of a crime involving moral turpitude and is not entitled to receive a beer license.

To W. A. Blount, Jr.

(A.G.) The licenses granted under Article 6, Schedule F, of the Revenue Act for beer and wine are issued only on an

annual basis and there is no provision in the law for payment for parts of the year, as is the case in licenses granted under Section 100 of Schedule B. Such licenses are not transferable, but are personal to the individual in whose name they are secured.

EFFECTIVE DATE OF LAWS

To Miss Ellen Commons.

(A.G.) There is no provision in G.S. 120-20, which provides that acts of the General Assembly shall be in force only from and after thirty days after the adjournment of the session unless the commencement of their operation is expressly otherwise directed, which excludes Sundays and holidays when determining the day on which laws become effective and these days should be counted.

IV. PUBLIC SCHOOLS

D. Powers and Duties of Present School Districts and Agencies

15. Recreational facilities

To Harold D. Meyer.

(A.G.) While the 1945 Recreation Enabling Act supersedes the old recreation act insofar as they are in conflict, it has no bearing as to the status of school districts so that any authority vested in school districts to maintain recreational facilities remains intact.

F. School Officials

50. Principals and teachers—election and contracts

To L. S. Weaver.

Inquiry: What is the effect of the 1945 amendment to Section 7 of the School Machinery Act relative to notice of re-election of teachers and principals?

(A.G.) The purpose of the notice of acceptance of employment by teachers and principals required by this section is to provide the school authorities a roster of teachers for the ensuing year. Prior to 1945, teachers and principals were required to give notice of acceptance of employment regardless of whether or not such teachers or principals received notice of re-election. Under the amendment, a teacher or principal is required to give notice of acceptance of employment only when he or she receives notice of his or her re-election.

To Theodore F. Cummings.

(A.G.) I do not think there is any requirement for notice of election of a city superintendent of schools and that the board of trustees may proceed to elect such superintendent without having given the previous notice required as to county superintendents.

H. School Health Laws

5. Compulsory vaccination

To Dr. Carl V. Reynolds.

(A.G.) It is my opinion that the provisions of H.B. 316 require the immunization against whooping cough of all chil-

dren hereafter entering school before they are admitted.

V. MATTERS AFFECTING COUNTY AND CITY FINANCE

L. Local Budgets and Audits

25. Frequency of audits

To Mrs. Gertrude G. Joyce.

Inquiry: Do town books have to be audited annually?

(A.G.) If a town accountant is appointed, I know of no statute which requires that the books be audited; but, if the duties of the accountant are imposed upon another town officer and the officer upon whom the duties are thus imposed is a tax collecting officer, G.S. 160-275 requires a semi-annual auditing of his books in towns of less than 1000 population.

VI. MISCELLANEOUS MATTERS AFFECTING COUNTIES

J. Airports

To C. S. Vinson.

(A.G.) Under the provisions of S.B. 79, counties are given specific authority to purchase lands and construct an airport either for themselves or in cooperation with the federal government. Ample authority is given in this act for the condemnation of land for this purpose. If a county can provide for its part of the expense without having to issue bonds and without levying a special tax for this purpose, it is my opinion that it may make appropriations of this character without a vote of the people.

P. Costs Payable by the Counties

12. Dog damages

To J. C. Ellis.

Inquiry: Where a county was removed by the 1945 Legislature from the provisions of the statute authorizing the payment from the proceeds of the dog tax of damages caused to livestock by dogs, would a person be entitled to payment for damages caused prior to the ratification of the act but for which a claim was not made until after the ratification?

(A.G.) The right to present a claim and be compensated under the statute above referred to is a right that exists by virtue of the statute as distinguished from a right which exists by virtue of the common law. In the absence of this statute there would be no legal liability or duty on the part of the county to pay the claimant. And this right existed only during the life of the statute; it would have had to be perfected before the county was removed from the statute.

X. Grants and Contribution by Counties

26. Compensation to list takers for farm census

To Nat S. Crews.

Inquiry: Is the payment of compensation to tax listers for collecting statistical data for the North Carolina Board of Agriculture and the U. S. Government a necessary expense for which money can be expended by the county?

(A.G.) By G.S. 106-26, the legislature has authorized the payment of additional compensation for the performance of this additional duty. This compensation, if allowed by the county commissioners, be-

comes a part of the salary of a county official or employee and stands, in my opinion, on exactly the same basis as the salary of any other county officials. These salaries are, I believe, necessary expenses.

VII. MISCELLANEOUS MATTERS AFFECTING CITIES

N. Police Powers

20. Regulation of trades and businesses

To W. Dennis Madry

(A.G.) Unless a town has a public-local act to the contrary, I am of the opinion that it has no authority to regulate or prohibit the operation of fortune tellers, phrenologists, etc., within the town.

V. Miscellaneous Powers

5. Veterans' bureaus.

To H. B. Campbell.

(A.G.) It seems to me that the purpose which a city has in mind of organizing a veterans' information center may possibly be done under authority of H.B. 436, enacted by the recent General Assembly, and the objects intended reasonably served thereby. As the Legislature has authorized the expenditure of appropriations for this purpose by a city, I am of the opinion that the towns could properly act upon this authority, assuming, of course, that no special tax would be levied therefor.

DIVORCE IN ABSENTIA

Assuming that a person meets the necessary residence requirements and that the grounds for divorce are such that the court may find the person entitled to divorce, I am of the opinion that a person may obtain a divorce in this State in absentia.

VIII. MATTERS AFFECTING CHIEFLY PARTICULAR LOCAL OFFICIALS

B. Clerks of Court

8. Acknowledgment and probate of instruments

To Miss Louise Wilkinson.

(A.G.) It is my opinion now that acknowledgments to deeds and other instruments requiring the acknowledgment of a married woman are on the same basis as the acknowledgments of a married man, and it is not necessary to take the private examination of a married woman in order to have a valid and legal instrument. I call attention, however, to the fact that it is still necessary in deeds between husband and wife, that is, where the wife makes a conveyance to the husband, that the certifying officer shall make a finding that such contract or conveyance affecting the property of the wife which is being conveyed to the husband is not unreasonable and injurious to her.

To H. V. Rose.

(A.G.) I am of the opinion that in charging fees for the acknowledgment of a deed by a married woman, a clerk should treat her on the same basis as any other signer and that the fee for a husband and wife (now that the requirement for private examination has been abolished) who acknowledge a deed at the same time would

To H. C. Wilson:

(A.G.) I agree with you that G.S. 130-206, 207 and 208 authorize health officers to examine persons confined or imprisoned in any State, county or city prison to determine whether or not they are infected with a venereal disease, whether or not the person has been convicted. The reason for the confinement, whether the person is awaiting trial or has already been convicted, has nothing to do with, nor does it affect the duty to make, the examination.

be 25c. just as it would be in the case of any other two signers or all persons who sign at the same time. It is my thought that the difference in fees formerly existing has now been repealed by implication.

26. Duties with respect to incompetents

To C. G. Smith.

Inquiry: Can a clerk appoint a guardian under Section 4 of S.B. 36 for an incompetent blind person without an inquisition before a jury?

(A.G.) The guardianship referred to is only for the special purpose of handling the monies available for the needy blind, and these monies do not constitute an estate or part of an estate. I am of the opinion that a clerk can appoint such a guardian without an inquisition before a jury. I think it would be safest to have some affidavit or other evidence that the blind person is unable to manage his own affairs because of extreme physical or mental incapacity. The clerk should make a finding of fact as to his condition in his order and should limit the powers of the guardian strictly to the handling of the monies provided as governmental assistance.

To John H. Vernon.

Inquiry: Where the property of a minor is located in one county, and the guardian has been appointed by the Clerk of Court in another county, in which should the proceedings to authorize the sale of the property be instituted?

(A.G.) H.B. 135, passed by the 1945 General Assembly, provides that all petitions filed under the authority of this section wherein an order is sought for the sale or mortgage of the ward's real estate, or both real and personal property, shall be filed in the Superior Court of the County in which all or any part of the real estate is situated.

To Robert F. Young:

(A.G.) I am of the opinion that osteopathic physicians are authorized by law to sign birth and death certificates and such certificates signed by them must be accepted by the officers of the departments to whom the same are made. There being no authorizing statute as to chiropractors, I am of the opinion that officers and departments required to accept such certificates could not accept such certificates signed by chiropractors.

36. Deputy clerk—powers

To John R. Jones.

Inquiry: Does a deputy clerk of court have power to appoint an administrator of an estate?

(A.G.) When appointed, deputy clerks may do all the acts which the clerk may do except such as are judicial in their character or such as a statute may require specially to be done by the clerk himself. But under a dictum in 202 N. C. 715 ("... the clerk in appointing or removing a personal representative exercises functions separate and distinct from his duties as clerk, as certainly as if he were entitled judge of probate."), I am of the opinion that a deputy clerk may not legally appoint an administrator.

L. Local Law Enforcement Officers

65. State Highway Patrol

To T. Boddie Ward.

(A.G.) It seems to me that it would be desirable that members of the Highway Patrol, in making arrests when called upon by the sheriff of any county or chief of police of any municipality, pursuant to the provisions of H.B. 765, should have some written request from the sheriff or chief of police. The statute does not require this request to be written, but the writing would be evidence of the patrolman's authority which would protect him in the event he received any injury while engaged in the performance of his duty, under the Workmen's Compensation Law or the Officers' Benefit and Retirement Fund. If there is not time for a written request prior to the arrest, it might be secured later as a record.

M. Health and Welfare Officers

31. Health Laws and Regulations

To Dr. William P. Richardson.

Inquiry: Do health authorities or health officers have the right to compel an examination of persons reasonably suspected of being infected with a venereal disease?

(A.G.) Section 130-206 of the General Statutes gives the health officials the power to make examinations of persons reasonably suspected of being infected with venereal disease, to detain such persons until the results of the examination are known, and to require such persons infected with venereal disease to report for treatment to a reputable physician and to continue treatment until cured. The right and authority of health officials to interfere with the liberty of individuals in these respects has been upheld as constitutional and valid and a proper exercise of the police power of the state as an essential protection to public health. In compelling an examination the health officials should act upon reasonable information, and not mere gossip or community rumor; the person must be reasonably suspected of being infected with a venereal disease before action can be authorized.

T. Justices of the Peace

18. Resignation

To L. B. Pope.

Inquiry: Who has the authority to accept the resignation of a justice of the peace and fill the vacancy caused by the resignation?

(A.G.) Justices of the peace who wish to resign must deliver their letters of

To C. W. Tillett:

Inquiry: Are the present State statutes sufficient to permit cities to receive aid under and comply with the Federal Aid Highway Act of 1944?

(A.G.) The power of a municipality to control, grade, macadamize, cleanse, pave and repair streets and sidewalks of a city as it may deem best for the public good is provided in G.S. 160-222 and subsequent sections. The municipalities generally having this power, it would seem to me to follow that they could accept the benefits of the Federal Act which provides the grants to enable them to carry out their authority with respect to streets.

Under the Federal Act the money will go to the State Highway and Public Works Commission who will have complete control of the expenditure of it, so it would seem that the cities and towns really have only an indirect interest in the matter, because the benefits they would receive would depend upon the action of the State Highway and Public Works Commission.

resignation to the clerk of the superior court, who must file the resignations. G.S. 7-114 provides that all original vacancies occurring before qualification for office shall be filled by the Governor and that all other vacancies shall be filled by the clerk of court.

XI. GENERAL AND SPECIAL ELECTIONS

H. Municipal Elections

35. Failure to call—holdover officials

To Rudolph Pelletier.

Inquiry: When the officials of a town fail to call a primary and election, what steps should be taken to continue the corporate existence of the town?

(A.G.) G.S. 128-7 provides that all officers shall continue in their respective offices until their successors are elected or appointed and duly qualified. Whether they call a town meeting for the purpose of selecting a mayor or board of aldermen, and then resign or not, they have a right to continue to function as the mayor and board of aldermen of the town and to carry on the work of the town.

To G. M. Angel:

Inquiry: What is the right and propriety of a justice of the peace to dismiss a criminal warrant pending before him at the request of the prosecuting witness?

(A.G.) The dismissal of a warrant in a criminal case, once the warrant has been sworn out, is within the sound discretion of the justice of the peace and no criminal case should be dismissed merely because the person who swore out the warrant requests that the prosecution be discontinued and the warrant withdrawn. A person swearing out a warrant has no right to withdraw it unless the court authorizes and permits it to be done.

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Women and Domestic Relations

(Continued from page twenty)

cient in the case of a child born out of wedlock. The written consent of any of the officials is not necessary when the mother of either a legitimate or illegitimate child places it with near relatives or in a licensed boarding home or institution.

S.B. 22 permits blood-grouping tests to be made in cases involving the question of paternity, upon motion of the defendant, and the results of the test to be offered in evidence when offered by a licensed physician or other qualified person. The probative force of blood-grouping tests is principally negative in character. That is, the fact that the child and the putative father fall within the same blood group no more establishes paternity than does the fact that both are of the white race. On the other hand, the test may prove, scientifically at least, that the defendant could not be the father of the child. The jury, however, isn't bound by the result of the test even where the blood grouping test shows that the defendant could not be the father of the child, as the weight to be given to the evidence as well as the credibility of the witness giving it are matters for the jury to determine.

Among the bills that failed in this field was H.B. 610 which would have made the begetting of an illegitimate child a misdemeanor.

Apprenticeship agreements. H.B. 514 repeals G.S. 94-10, which provided the method by which violations of apprenticeship agreements were to be heard. The Act also permits the voluntary termination of such agreements, but in the event of such termination the director of apprenticeship must be notified.

Special commissions. Our domestic relations laws have grown up through the years somewhat like Topsy, with no over-all guiding principles or objectives and with no continuity of effort toward betterment. And, judging from the press and other writings, our juvenile delinquency problems have either grown worse in recent years or the statisticians have started paying particular attention to the subject. Perhaps there may

be some causal connection. At any rate, S.B. 201 and S.B. 355, respectively, authorize the appointment of special commissions to study juvenile delinquency and the domestic relations laws of the State.

Codification

(Continued from page sixty)

ment agencies, to make the section apply only to those persons, firms or corporations *engaging in the business* of soliciting, hiring and/or contracting with laborers.

Harmonizes G.S. 113-59 and 113-54 as to the amount that county commissioners are authorized to contribute toward forest fire protection.

Amends G.S. 113-109 to require, in cases of conviction of a violation of the game laws, a revocation of the license by the court, surrender of the license, and a forwarding of it, together with a record of the conviction, to the Board of Conservation and Development.

Distribution. H.B. 669, which would have rewarded this year's members of the General Assembly who were not members of the 1943 session with a set of General Statutes (each member received a set in 1943) died in committee.

The separate codification of a particular phase of the law, for greater convenience and utility, was the subject of S.B. 422. It authorizes the Secretary of State, with the advice of the Attorney General, to insert all subsequent amendments into the Machinery Act of 1939 and to have 2000 copies printed, to be delivered to the State Board of Assessment for distribution (presumably to State and county officials and others in the tax field). This compilation is declared by the act to be official when certified by the Secretary of State and the Attorney General.

H.B. 473 increases from three to four the number of copies of the Session Laws and the Supreme Court reports which the law requires to be delivered to the North Carolina Industrial Commission.

FOR THE FISCAL YEAR 1945-1946

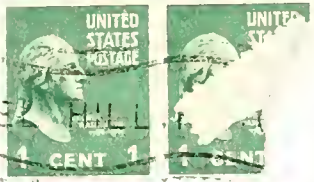
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