POPULAR GOVERNMENT

PUBLISHED MONTHLY BY THE INSTITUTE OF GOVERNMENT
UNIVERSITY OF NORTH CAROLINA

POPULAR GOVERNMENT

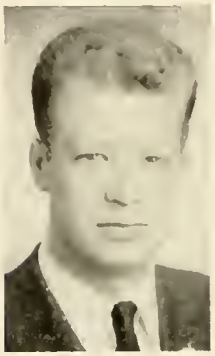
VOLUME 10
NUMBER 1

PUBLISHED BY THE INSTITUTE OF GOVERNMENT
UNIVERSITY OF NORTH CAROLINA

MARCH
1944

EDITOR: Albert Coates

ASSOCIATE EDITORS: Peyton B. Abbott, George B. McGehee, Clifford Pace, Louis A. Cherry



CLIFFORD PACE
Assistant Director
Institute of Government

ALBERT COATES
Director
Institute of Government

GEORGE B. MCGEHEE
Assistant Director
Institute of Government

TABLE OF CONTENTS

COVER PICTURE

POPULAR GOVERNMENT with this issue presents the third of a series of pictures from the murals on the walls of the Institute of Government.

The first two pictures of this series began to sketch the grandeur and simplicity of North Carolina through a contrast of the east and the west. On these two covers there appeared the sand dunes of the east and the mountains of the west.

On the cover of this issue this contrast between east and west grows through the presentation of a rushing mountain stream and a quiet coastal lagoon. The contrast between the motion and the quiet of the waters, the rocks and the soft earth, the small leaves of the trees and the hanging moss may mean many things to many people—but to all they are North Carolina.

POPULAR GOVERNMENT is published by the Institute of Government, University of North Carolina, Chapel Hill, 10 times a year. Editorial, business and advertising address: Box 990, Chapel Hill, N. C. Subscriptions, per year: $2.00. Single copies, 25 cents each. Advertising rates will be furnished on request. Address all communications to Box 990, Chapel Hill, N. C. Entered as second class matter at the Post Office at Chapel Hill, N. C.

Streets Superintendents' Schools

Institute of Government and State Highway Commission Conduct Street Construction and Maintenance Institute

At the Institute of Government in Chapel Hill on Wednesday, March 1, City Engineers, Commissioners of Public Works and other interested officials gathered for a one-day institute. Representatives of 30 municipalities participated in the program. The instruction staff included Charles Ross, Chairman of the State Highway and Public Works Commission, W. Vance Baise, State Highway Engineer, James S. Burch, Engineer of Statistics and Planning, Barrien W. Davis, State Maintenance Engineer, Frank H. Brant, Landscape Engineer, W. E. Hawkins, State Construction Engineer, T. V. Fahnestock, Bituminous Engineer, C. E. Proudley, Chief Materials and Testing Engineer, L. D. Hicks, Senior Materials and Testing Engineer, and S. C. Austin, Equipment Engineer—all from the State Highway and Public Works Commission.

Representatives of 30 municipalities gathered in the assembly room of the Institute of Government for a Street Superintendents' Institute Session.

Albert Coates, Director of the Institute of Government, welcomed the officials present and traced the background of the Institute's interest in municipal street work. The Institute of Government from its earliest inception has had an Engineers Division. For some years the Institute of Government has studied the legal and governmental aspects connected with the construction and maintenance of streets and sidewalks together with the liability of cities and towns for injuries growing out of defects. Results of these studies have from time to time been sent to street superintendents, engineers, and public works officials. With this meeting the Institute's program was expanded to include the engineering and maintenance problems themselves.

Charles Ross, Chairman and Attorney, State Highway and Public Works Commission.

Albert Coates acknowledged with appreciation the cooperation of the State Highway and Public Works Commission and the members of its engineering staff who made the program possible. To Charles Ross, Chairman of the Highway Commission, W. Vance Baise, State Highway Engineer, and to James S. Burch, Engineer of Statistics and Planning, who were particularly active in the planning and carrying out of the program, he expressed gratitude for their effective work.

Roy Williamson, Raleigh's Commissioner of Public Works, and H. W. Kueffner, Durham's Director of Public Works, led discussions of street problems shared by officials of municipalities. The liveliest discussions centered around the two problems (1) trees on public streets and (2) unimproved or dirt streets. Tree roots and branches, potholes and dust, dollars and cents brought forth vigorous discussion from representatives of large cities and small towns.

Digests of the talks and papers presented by the instruction staff are printed on succeeding pages. Accompanying each digest there is either a picture or a by-line to identify the member of the instruction staff responsible for the subject matter sketched therein.

Postwar Cooperation

Cooperation between Municipalities and the State Highway and Public Works Commission in the Postwar Period was the topic of the talk by Charles Ross, Chairman of the Commission. The subject became under his hand a vehicle for

expressing his fundamental philosophy on the importance of roads to the life of the State.

After stating his conviction that no highways should be built merely to give employment, he laid down a barrage of cogent reasons for his stand that highways are essential facilities of such importance to the cultural and economic life of North Carolina that only sound engineering plans growing out of economic and social needs should determine our future highway program.

Highways have eliminated the one-room schoolhouse and have brought to all the children cultural advantages formerly impossible. Highways have made possible sunshine, breathing space, and truck gardens for factory workers. Roads formed a tie between the factory and the farm. Roads made possible the growth of towns away from waterways and railroads.

Roads opened the retail market to our mills. Gastonia's thread mills by delivering direct to retailers by truck turned what had been a trickle of orders into a steady flow. Burlington's mills gave better service to customers and saved money when they closed expensive-to-maintain warehouses in distant cities and shipped direct by truck to their customers. Factories throughout the State are dependent on the highways: first to get raw materials to the factories and second to get finished products to markets.

Cities and towns that often complain of the congestion in their streets would be hungry but for the congestion brought in by the highways. Customers for city stores come in over the road system; Hudson-Belk says that 80% of its customers come from rural areas over the highways. Roads mean a livelihood for doctors and lawyers as well as merchants in municipalities.

"The meeting of the problem of congested traffic in municipalities is the sole responsibility of neither the city nor the state, but a common problem that we should approach in a spirit of mutual understanding and co-operation." By-passes and high-speed through-ways have been suggested, but traffic analyses show that almost 90% of the traffic from the highways goes to, not through, the cities; and this suggests that such remedies would give but little relief from congestion. The regulation of parking in congested areas would seem a better solution, and the law now gives to the Highway Commission authority to regulate traffic on state highway links within municipalities. Mr. Ross suggested that, if for local reasons such regulation is too hot to handle, the Highway Commission will bear the heat.

Postwar Highway Program

I.

"As most of you know, the State Highway & Public Works Commission has been responsible for the maintenance of the city streets that are a part of the State Highway System, since July 1, 1935. The Legislature of 1935 set up an appropriation of $500,000 out of highway funds to be used for the maintenance and upkeep of the State Highway System, through municipalities. Each succeeding Legislature, until 1941, appropriated this same amount, per year, for the maintenance and upkeep of this system. In 1941, this appropriation was increased to $1,000,000, and the law was broadened not only to take care of the State Highway System, but other important connecting streets also.

"Since that time, this Commission has adopted a policy of maintaining not only the State Highway System, through municipalities, but also all extensions of the County roads, from the city limits to their terminus with a State highway, or other County road extension within the municipality. In a few exceptional cases, other city streets which carry a large amount of traffic that accumulates in rural areas, and moves into municipalities, have been taken over and the maintenance and upkeep assumed by this Commission.

"There is a total of 992 miles of city streets on the State Highway System, and a total of 930 miles of County road extensions, and other connecting streets which are now being maintained, or the funds provided for maintenance thereof, by this Commission. In that connection, you might be interested to know that out of the total appropriation of $1,000,000 for maintenance and improvement of streets within municipalities, there was actually spent during the fiscal year ending June 30th, 1943, $191,855.84 for maintenance of the State Highway System; $77,675.15 for maintenance of streets involving extensions of the County road system, $62,154.68 for new construction in connection with streets on these 2 systems within the cities and towns, or a total expenditure of $331,685.67.

W. Vance Baise, State Highway Engineer.

"As result of Conservation Order L-41, issued by the WPB in May, 1942, we are not permitted to begin any construction work involving more than $1000.00, unless we first secure the approval of the WPB, and their approval cannot be obtained unless the project is considered necessary and essential to the war effort. This has practically eliminated the possibility of widening any of the narrow pavement now being maintained by this Commission within municipalities, and, therefore, most of the new construction has also, of necessity, been eliminated.

"It is anticipated we will not be in position to spend as much as 50% of the appropriation for maintenance and improvement of certain streets, within municipalities, until after the war is over, and we have not been able to use nearly all the funds available for some time past. This will mean a considerable amount of surplus will have accumulated in most of the municipalities, and will be retained for use in the maintenance and improvement of State highways and county road

extensions, within such municipalities, after the war.

II.

"There is now pending in Congress a bill providing for $1,000,000,000 per year, over a three year period, for highway construction, immediately succeeding the war. While this bill has not moved far enough to make any definite prediction at this time as to whether or not it will pass, there is reasonable certainty that a substantial Federal appropriation will be made to carry on a postwar highway program during the transition period, from war to peace, and this will, no doubt, include funds to be expended within municipalities, as well as on rural highways.

"On the basis of $1,000,000,000 per year, over a three year period, for the nation, as a whole, it means that this State will receive approximately $25,000,000 each year, or a total of $75,000,000 for the three years, to be used in the improvement and rehabilitation of a Federal Aid primary and secondary road system in this State. This, of course, will permit the improvement of links in either of these systems which are within municipalities. This bill, if passed, will provide for the expenditure of these funds on a 75-25 percent basis; that is 75% Federal and 25% State funds, and will also permit Federal funds to be used for securing right-of-way. This is a new innovation as no appropriation up to the present time has permitted Federal funds to be used in securing right-of-way.

"There is plenty of work in connection with the further improvement and rebuilding of certain links in the existing highway system, to take care of all the appropriation that will be provided in this bill, and the necessary State, or other funds, required to match Federal funds thereby provided. A short time ago, I made a rather rough estimate of the amount of funds that would be required to rebuild and improve our primary and secondary road system in order to bring it up to the standards necessary to properly meet the requirements of traffic after the war, and this estimate amounted to approximately $175,000,000.

III.

"We have been considering the construction of a few by-passes around cities and towns in order to relieve the congestion on certain State highways, within the municipality, in connection with our postwar program. In that connection, we have recently completed an origin and destination survey in Charlotte to determine whether or not sufficient traffic would use a by-pass to justify the cost involved. These surveys will be made in a few other towns and will be for that purpose. There is no doubt, in my mind, but that in the majority of large cities, a very great percentage of the traffic will be of a local nature; that is, they will desire to go into the town, and would, therefore, not use a by-pass if constructed, and such by-pass would not effectively relieve the congestion on the existing thoroughfares.

"This, of course, means that in many cases, the only remedy will be either to find wider streets over which to move the traffic, or to increase the width of the existing streets. This will, of course, involve many complications, of which the greatest will be securing the necessary right-of-way.

IV.

"I only desire to emphasize the importance of properly maintaining the pavements you have at all times, including the pouring of cracks so as to eliminate the possibility of surface water getting under the pavement; patching failed places and the resurfacing of all asphalt streets when the existing pavement has become dry and badly cracked. I have seen streets in many towns in this State, during my travels, that were deteriorating rapidly, due to the lack of proper maintenance. I believe I am safe in saying it is more of an exception than a rule to find city streets—that are not being maintained by this Commission, or by use of funds provided by this Commission—where the cracks have been properly sealed and where patching has been handled within a reasonable time after the pavement failed. There are many thousands of square yards of city streets that are deteriorating more rapidly than they should, for the reason that the asphalt has become oxidized and brittle, and needs a new treatment to liven it up and seal it so water will not be able to get into the subgrade.

"There is no question in my mind that the old adage "A stitch in time saves nine" is truer in no case than in the maintenance of streets and highways, and while I realize that in many instances, the difficulty which the City Officials and Street Superintendents have in properly maintaining the streets, is available funds; on the other hand, it would certainly be wiser economy to secure these funds, even if it is necessary to increase the taxes to provide them, as in the end, such a proposition will pay dividends in less total street maintenance cost."

Highway Design and Construction

Dirt Roads Take Cover—"Dusty in dry weather, impassable in wet or winter weather" described the streets of North Carolina's 480 municipalities before 1915. All-weather streets were first produced by blanketing these dirt roads with crushed or broken stone. However, the automobile was on the way in and rough roads were on the way out. Even asphalt and tar treatments did not render these dirt roads filled with rock smooth enough to satisfy the demand of the increasing number of car owners in cities and on farms. Cities began to construct sections of concrete pavements or sections of asphalt surface laid on a concrete base. Good roads were on the way.

W. E. HAWKINS, State Construction Engineer

Consulting engineers were called in by some cities to construct hard surface roads. Other cities and towns set up a department of public works employing a competent engineer. In smaller towns the work was left to a street superintendent or to the police department.

Streets as State Highway Links—In 1921 the legislature passed the

Highway Fifty Million Dollar Bond Issue Act. To 400 odd towns in North Carolina of under 3,000 inhabitants this meant that the entire cost of construction of links in the State Highway System forming part of their streets would be paid for by the State. To the 60-odd towns of over 3,000 inhabitants it meant that the State would bear a proportionate part of the cost of any paving improvement on their streets whenever those streets were links in the State Highway System. In 1931 the Highway Commission became responsible for those city streets that were links in the county road system. In 1934 Federal funds were made available for streets and highways on state routes within municipalities. Thus 2,000 miles of streets in North Carolina cities and towns demand the cooperation of municipal officials and State Highway Commission personnel. The development of the necessary cooperation has been a steady growth that will undoubtedly continue.

Highway Commission Data: Records and Laboratory—The technical staff of the Highway Commission has developed a wealth of data on the importance of climatic conditions, soil characteristics, and drainage in highway construction. In its files and in the heads of its engineers there is a source of information available to cities and towns on:

1. North Carolina soils in their relation to a sound subgrade, so important to the life of all types of base and surface construction.

2. Base construction problems such as finishing, curing and protecting the base; and the relation of the base to the subgrade and to the surface.

3. Surface course construction, with recent developments in techniques and materials, whether the surface is concrete or bituminous and whether the problem is one of repairs or new construction.

Economy through uniform specifications—For purposes of economy it is urged that construction and material specifications of the State Highway Commissiion and the cities of the State be brought into conformity. Lack of uniformity in gradation and sizes of coarse aggregates prevents material companies from promoting considerable economies through limiting their products. Lack of uniform specifications for construction work adds to contracting costs.

Economy through long range planning—The relation of planning by competent engineers to the overall cost of streets lies in a comparison of first costs to maintenance costs. Where construction has been undertaken with little consideration of (1) drainage of the subgrade, (2) drainage of the streets of the surrounding area, and (3) the volume of future traffic, maintenance and reconstruction costs have been so high that the importance of competent engineering plans as sound economy is convincingly demonstrated.

Economy through field control—The time and effort spent in preparing plans and specifications and in selecting and testing the materials is useless unless competent engineers or experienced men are employed to supervise and inspect the work during construction. Failures result if field control is inadequate and these failures mean excessive replacement and maintenance costs.

Some current problems—Low cost improvement of newly acquired and outlying streets and roadways is a problem for all cities and towns. Sound economy and satisfactory results demand drainage and grading suited for use in the future development of these streets regardless of the type of wearing surface used.

Postwar plans being developed by cities and towns call for the reconstruction of hundreds of miles of worn out, unsatisfactory streets. The importance of timing this work to fit employment needs is not second in importance to the need for (1) strict engineering control over this planning, (2) accurate specifications, and (3) capable inspection.

Street Planting and Erosion Control

The aim of all street plantings and erosion control by cities and towns should be to achieve a balance between "eye-appeal" on the one hand and safety and convenience for motorist and pedestrian alike on the other, giving due consideration to the type, amount and cost of the maintenance which the plantings and erosion control will require as time goes by.

FRANK H. BRANT
Landscape Engineer

Plantings and Safety

Plantings must not make unsafe, or prevent the full use of, the traveled portion of the street. Customarily, plantings are made between the sidewalk and the street, be it wide or narrow, with many resultant headaches for municipal officials.

This photograph illustrates how a small shrub, pretty and neat when planted, may become both dangerous and inconvenient when full grown: cars scratched or windows broken if they approach too closely, pedestrians compelled to dodge around the spreading branches.

Small trees with low spreading bows, planted in an area too narrow, have similar disadvantages. This picture shows how vehicles are forced to park away from the curb, thereby reducing the usable portion of the street and increasing traffic hazards.

Intersections may often be made into "blind corner" death traps by unplanned plantings, either in front

of or behind the sidewalk, as seen in this photograph.

One answer to eliminating the traffic hazards and inconveniences which such plantings create is to make the plantings *behind* the sidewalk, putting the narrow area in front of the sidewalk in grass, as shown in this illustration. The co-

operation of property owners will be necessary for such a plan, but the advantages offered—safety and convenience, easier maintenance and a better chance for permanence—seem to make it worth the effort.

No plantings of shrubs or low-headed trees should be made in a sidewalk-street area less than eight feet wide. But when such plantings are made, they should not be too thick and continuous. Not only does a "hedgerow" type of planting make the street *seem* narrower, but it increases the danger of injury to pedestrians stepping out from behind dense growth.

Erosion Control

As eroding soil washes across the sidewalk into gutters to stop up the gutter line, fill catch basins and storm drains and put a slick coat of mud on the traveled way, or, on streets with no curbs and gutters, drainage channels silt up or become eroded gullies, municipal authorities see the necessity of engaging in some erosion control operations.

Seeding, using topsoil containing grass roots, and sodding are the three principal methods of erosion control. A mulch of hay, straw or woods litter is helpful in connection with seeding and topsoiling or by itself in off-seasons when weather will not permit seeding.

A grass cover for all areas between curb and sidewalk, and the slopes behind the sidewalk (if property-owner cooperation can be secured), is ideal. But grass can bear only so much traffic, and much used areas, such as bus-stop corners, should be surfaced with pavement or gravel.

Plant Maintenance

Trees, shrubs and grass are living things and must have food, air and water. They cannot be planted and forgotten. Shrubs and grass can be fertilized by working the fertilizer into the top layer of soil.

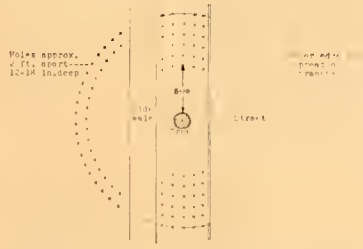


FIGURE 1—Fertilizing Large Trees

Feeding roots are approximately beneath the outer edge of the spread of branches, so fertilizing should be done in one, two, or three rows of holes (depending upon the condition of the tree) near the outer edge of the tree spread as shown above. Since much of the root growth of a street tree is usually beneath a street, the fertilizing between curb and sidewalk can sometimes be continued to advantage inward to within 8 or 10 feet of the trunk. In punching or boring holes be careful not to damage the roots.

But for large street trees the fertilizer must get down deep. Proper fertilizing of trees is shown in this illustration.

Under the ground, street trees must compete with sewers, water lines, gas lines, and storm drains; above the ground with power lines and telephone lines. Survival against such competition can at least be aided in the following ways: (1) place new utility lines on back-lot line instead of the street; (2) prune without ruining: keep the tree balanced, make cuts flush with the tree trunk (if limbs are large, make first cut on underside out from the trunk, then on top slightly further out, then cut the stub away), cover all cuts with an asphaltum base tree paint; (3) tunnel under large roots when possible.

Further argument for behind-the-sidewalk plantings is presented in this picture of a sidewalk buckled

by tree roots. Result: costly maintenance, possible damage suits by persons injured through failure to maintain sidewalk in safe condition.

Planting Design

(1) Choose from native or thoroughly naturalized plants; don't try to make a street into a botanical garden with new and exotic varieties that will look out of place and be hard to maintain.

(2) Keep a uniformity of street planting; don't change the variety of tree or shrub every block or within each block. Some cities and towns have obtained uniformity and greater traffic safety by enacting ordinances governing the placement and maintenance of street plantings.

(3) Avoid plantings so close together that they obscure views of adjacent property and give the ef-

fect of walling in the street, as in the above photograph.

Traffic Signs and Street Markings

Sign and pavement markings have a definite place in the street maintenance program and should not be neglected. In this war period when there is a shortage of labor and material, it is natural to look for some place to cut down on unnecessary services. But not unnecessary are:

(1) Signs that are needed to warn traffic of dangerous conditions;

(2) Signs needed to show traffic directions and locations, hence avoiding delays;

(3) Signs needed to publish necessary regulations, such as speed limits, parking restrictions, one-way streets, truck routes, etc. While shortages may prohibit a pre-war sign program, they should not cause neglect of these essential signs which help keep traffic moving in an orderly manner.

Regardless of what they are made of, if signs are clean, fool-proof as to meaning, well-placed, brief and well-worded, following the standard as nearly as possible, they will create more good will than any other service for the same money. Failure on any of these points will create the notion, usually justifiably, that the street department is not on the job.

Signs must have authority. They should be sanctioned by the governing body, and, to maintain the authority, violations must be prosecuted when discovered or the signs should be removed.

Do not use too many signs for *warning* or *regulating* traffic. Place signs only where they are needed for safety or where they will help to avoid delays.

Standard signs — The American Association of State Highway Officials in joint action with the Institute of Traffic Engineers, the National Conference on Street and Highway Safety, and with the approval of the American Standards Association, have set up sign standards, *which are available in book form.* Town and city street signs will be more effective if they follow these standards, which assign meanings both by shape and color. When it is necessary to vary from these standards, at least the standard shapes and colors should be followed.

For still more effective signs, with the standards established, use one of the following methods: (1) Make the sign larger, *keeping the same proportions.* (2) Paint the sign post with diagonal stripes using the same colors as the sign. (3) Use reflectors. (4) Use two signs for the same warning, one as an advance warning.

Classification

(1) Signs to regulate.

a. Stop — should be used only where it is necessary for vehicles to come to a complete stop before continuing — should be placed as near as practical to the place where vehicle is to stop at intersections and drawbridges, 15 to 50 feet from the track at railroad crossings.

b. Other regulating signs, used for special conditions: speed limit, turning regulations, parking restrictions, one-way streets. Speed signs should state the maximum speed allowed, which should be reasonable and enforcible.

(2) Signs to warn.

a. Slow type—to be used where some condition of the street itself—a curve, turn, narrow bridge, etc. —requires reduced speed—diamond shape.

b. Caution type—to be used where it is necessary to drive with caution but not necessarily slow, such as cross streets, side streets, school zones, etc.—square shape.

(3) Signs to guide.

Arrows, detours, information and route markers—special signs for special purposes.

Location and installation—Signs should always be located on the driver's right, with the edge of the sign nearest the street not less than 12 inches from the curb (not more than 10 feet from edge of street where there is no curb). To keep parked vehicles from obscuring it, the center of a sign should be eight feet above the pavement.

Maintenance — Signs should be cleaned at a regular time and inspected at least once a year. Material shortages make it necessary now to use plywood, pressed wood or wood instead of metal for signs, and untreated wood instead of treated wood or steel for posts. These substitutes will not last as long but they are satisfactory for a while.

BERRIEN W. DAVIS,
State Maintenance Engineer

Street markings—Markings have a relation to signs and should be used with them, although their value is limited because they cannot always be seen. Markings can be grouped as follows:

(1) Pavement markings.
- a. Lines
- b. Words
- c. Metal or reflector units
- d. Arrows

(2) Curb markings
- a. Solid color
- b. Words and colors
- c. Stripes

(3) Object markings
- a. Stripes
- b. Solid color

Patching Concrete Pavements

Filling holes in concrete pavements, like filling holes in decayed teeth, requires skill and knowledge beyond common guesswork. The major causes of such breaks, some ways to prevent them, and the best pro-

cedures to repair them when they do occur, are outlined here.

Causes and Prevention

Breaks in pavement are of three general types: (1) Deliberate breaks, made to allow the laying of a water, sewer or other utility line. (2) Breaks produced by poor maintenance. (3) Breaks brought about by traffic loads greater than the road was designed to bear, characterized by general failure rather than isolated instances. The first cannot be prevented but must be repaired. The second can be prevented—by sealing joints and cracks to keep water out of the subgrade, by keeping all drains in top-notch working order; these too, must be repaired. The third cannot usually be prevented and should be replaced or covered with additional pavement rather than repaired.

Preparing for a Patch

When a break occurs and must be mended, the first step in installing the patch is to mark out the area to be patched: (1) full width patch—feasible only if traffic can be detoured; (2) half width patch—one lane only; (3) outside edge patch—from the outside of the road to *not closer than 4 feet* to the the center seam; (4) inside edge patch—from the center seam *to not closer than 4 feet to* the outside edge; (5) plug patch—filling a hole which is surrounded by old concrete in sound condition (should be marked off in rectangle, either diamond-shaped or square to sides of road).

How small can a patch be?—The minimum dimension of a patch, to keep the patch from rocking as vehicles pass over it, should be at least four feet, preferably six. In marking off the area, an effort should be made to have the joint between old and new concrete as far outside the usual wheel tracks as possible.

Should expansion - contraction joints be installed in patches?—Joints should not be re-constructed in patches (except when absolutely necessary) ; they are difficult enough to install when the road is built. But if a patch comes opposite an existing joint in the old pavement, the joint will have to be preserved.

How thick should a patch be?—Patches are normally the same thickness as the old pavement, never of less thickness—10% thicker seems to be a fair rule. Providing a good subgrade will produce more permanence than increasing the thickness of the concrete.

Patching Procedure

Removal of old concrete—Whether hand or power equipment should be used to remove the concrete in the area marked out depends upon the extensiveness of the operations and the availability of equipment. 12 to 16 pound rock hammers, with spikes or crowbars, will do the job; pneumatic breakers, powered by a portable compressor, 50 feet of hose per breaker, and a truck to haul the compressor and tools, will speed up operations.

The sides of the opening when finally prepared should be as nearly vertical as possible, to prevent the formation of thin strips of new concrete at the surface of the joint which would be broken out by traffic. The face of the cut and the surrounding pavement should be thoroughly cleaned.

Preparing the subgrade—Thorough tamping of the subgrade—in layers not over 6 inches thick—cannot be over-emphasized. Under-pinning the old slabs is not recommended.

C. E. PROUDLEY, Chief Materials and Testing Engineer

Tile drains to the ditch or pipeline provide the most satisfactory drainage. If a stone drain is used, it should be of uniform ¾-inch, or less, stones covered with slabs of stone or concrete or a coat of bituminous cold patch.

Before the new concrete is poured, the subgrade and concrete surfaces should be dampened, *not wet*, to prevent excessive absorption from the fresh concrete.

Concrete — High-early-strength cement is the most satisfactory to use for patches. If the work is being done in cold weather, two pounds of dry calcium chloride per sack of cement will accelerate hardening.

No concrete mixture leaner than a 1-2-4 mix should be used for patches. A safe assumption in designing a patch mix would be that the water used will cost fifty cents a gallon—be sparing with the water! The State Highway and Public Works Commission offers its assistance in the selection of a proper mix.

Inspection — Competent inspection is the only satisfactory method of obtaining uniform workability in concrete, whether ready-mixed or self-mixed. An inspector should see: that cement, water and aggregate are measured accurately; that the ingredients are mixed for at least two, preferably five, minutes; that test specimens are taken; that concrete is poured properly and thoroughly tamped.

Finishing—The concrete should completely fill the hole and the finished surface should conform to that of the surrounding pavement. Finishing should be delayed as long as possible to allow initial shrinkage to take place and thus secure better bond between old and new concrete. The finished patch should be rough enough to prevent skidding.

Curing—Curing should be applied *at once*: cotton mats, saturated when applied and resaturated twice daily, are most satisfactory; thinner cotton cloths or burlap are all right but must be saturated oftener; waterproof paper is good if properly applied and cared for; waterproof coating applied by spraying has recently come into considerable use, but tests should be made before a brand is chosen. Keep the concrete moist until opened to traffic, and protect patches by means of signs, barricades, flambeaus, etc.

Construction and Maintenance With Bituminous Materials

By T. V. FAHNESTOCK, *Bituminous Engineer, S.H. & P.W.C.*

I. *Construction of Pavements*—No attempt is made here to cover construction procedure in detail but

rather to outline a few of the important points.

Bituminous Bases—The success of bituminous pavements depends on the support provided for the pavement by the base and subgrade. Very satisfactory bituminous bases can be constructed by mixing selected aggregate with bituminous materials; but whatever material is used, two essential requirements must be observed in constructing any base: (1) the base course material must, by itself or with treatment, be able to withstand the harmful effects of water; (2) the base course must be thoroughly compacted.

For heavy traffic, the aggregate used in the base should be well graded to provide adequate stability, and the bituminous material should be as soft as practicable so as to prevent cracking, to secure longer service from the road.

For lighter traffic, less grading of the aggregate will be necessary, and it is sometimes possible to use local aggregate at a considerable saving in cost.

Stage Construction — Bituminous surface treatment lends itself very well to construction by stages, a layer at a time. The Highway Commission has found the following type very adequate: a water-proof wearing surface one inch thick on a suitable base course; surface treatment consists of a light bituminous material applied on the base, then a mat application of heavier bitumen with a cover of 1¼ inch aggregate and a seal of light bitumen with ½ inch aggregate to fill and seal the voids in the mat. Advantages: easy to construct, low in cost, long service (light re-treatments every three to six years).

II. *Resurfacing Existing Pavements*—The advances made recently in spreading and finishing equipment for bituminous mixes has greatly increased the usefulness of resurfacing old pavements. "Lane at a time" work causes little interference with traffic and accomplishes great improvement of the riding surface as well as increasing the strength of the entire surface.

Before applying the new surface —If an old pavement is badly out of shape or contains numerous quarter-inch or wider cracks, a binder course preceding the surfacing to tune up the shape and fill in the cracks is very desirable. The binder mixture should contain coarse aggregate to provide a bridging action over the cracks.

Resurfacing mixes — (1) Hot mixes must be kept at 250 to 325 degrees to be workable. The surface should be thoroughly cleaned before the mix is applied and a squeegee coat put on to insure a better bond.

(2) Cold mixes—Some cold mixes make use of a solvent to soften the bitumen, becoming stable when the solvent has evaporated. The amount of solvent must be controlled very carefully, for too much will cause the mix to remain soft, while too little will make it difficult to handle; in other mixes, the aggregate is covered with a light bituminous material, then powdered asphalt is distributed through the mix and combines with the aggregate when pressure is applied. Some cold mixes do not require the use of squeegee, as do hot mixes; the producer should be consulted.

Resurfacing proecdure—Although road-mix methods are somewhat cheaper, greater traffic interference and weather delays bring about greater use of the plant-mix method; better uniformity of proportions is obtainable with the latter. By either method, not less than a minimum compacted thickness of *one inch* should be used.

Retreatments—To smooth up minor irregularities and protect surfaces, either on asphalt or old concrete pavements, the following light retreatment is recommended: 30 to 35 pounds of ½ inch aggregate, N. C. Specification No. 9, and approximately .4 gallon of rapid-curing cut back asphalt, RC-1 or RC-2, per square yard—apply, with pressure distributor, half of cut back, cover uniformly immediately with 25 to 30 pounds aggregate; apply remainder of cut back and mix with a long-base broom drag; cover with remaining 5 pounds of aggregate, roll with a 5-ton roller.

III. *Maintenance of Pavements with Bituminous Materials*—Careful maintenance — the "stitch in time" of street work — can save many dollars to taxpayers and thereby earn for street departments and municipal administrations in general their respect and appreciation. The judicious use of bituminous materials will greatly lengthen the service life of any pavement and postpone the date when over-all resurfacing becomes necessary.

Of the many ways to repair failures, the following features should be common to all: (1) check existing ditches and underdrain; (2) remove any unsuitable material in base or subgrade at point of failure and replace; (3) compact thoroughly all replaced material; and (4) cut all edges vertical and in a straight line.

Recommended method and materials for bituminous patching—Premixed cold patch materials, with cut back asphalt as a binder—prepared by mixing dry sand or sand and coarse aggregate with 16 to 20 gallons of cut back alphalt, RC-2, per ton of aggregate. The cold patch should be allowed to cure for 24 hours before using and may be kept in tight pile under shelter for months. The patch should normally have a minimum thickness of 1½ inches after compacting.

Purchase and Care of Equipment

Purchase

Dollars spent on suitable equipment for maintenance of the city streets produce maximum results for every dollar spent. Careful study of municipal requirements should precede a decision to purchase multiple use equipment or special equipment. The high cost of depreciation must be charged against idle equipment; therefore, special machines should be purchased only if the work to be done will keep these machines busy. The size of machines purchased should be the result of a careful study of maintenance work to be done computed against the manufacturer's capacity rating of the machine.

First cost is only one consideration in the economy of equipment purchased. Quality of materials determine the life built into the machine. Available repair parts in the hands of a local distributor determine the out-of-service time when moving parts wear out. Small daily savings in operation cost, such as a quart of oil and a gallon of fuel per day, can soon overbalance the savings on first

cost. These quality and service features should outweigh first costs when equipment purchases are being made. Standard equipment from reliable firms with ready service facilities is far more important than first cost.

Safeguards in the bidding procedure for purchases of equipment include: (1) carefully drawn specifications by the purchaser, (2) fully stated structural data and operational cost figures from the bidders, and (3) provision for the running of tests on the equipment offered. Only with these safeguards can the purchaser be relatively sure of obtaining the equipment best suited to his needs.

Care

After suitable equipment built by reliable firms with satisfactory local servicing facilities has been purchased, the service life of the machine is still determined by the care, responsibility and skill of its operators. The common failures of equipment arise from: (1) overloading, (2) lack of systematic and careful lubrication, (3) dirty or improper fuel, (4) tire abuse, (5) delayed repairs, (6) careless repairs by poor mechanics, (7) operating the engine at excess speeds, and (8) poor adjustment of braking equipment. To insure efficiency in the operation and care of equipment, city officials are practicing sound economy if they hire experienced and responsible operators and reliable mechanics to preserve the service life of all construction and maintenance equipment. Careful servicing and periodic inspections by responsible maintenance men prolongs the useful life of machines and provides data essential for timely replacement of equipment.

Accurate and detailed records of repair costs and out-of-service time are the only basis for a decision to replace equipment. These same records are also the key to the selection of the most economical equipment in terms of quality, service, and price.

Summary:

1. Buy good, reliable machines chosen to meet particular needs.
2. Operate them with utmost care.
3. Retire and replace them when their useful life is over.

Soils in Street Construction

The subgrade or foundation for roads bears the same relation to the road's life that solid foundations bear to the life of a house. Soils engineering is the analysis of the properties of the different types of soils. *Internal Friction, Cohesion, Capillarity, Compressibility,* and *Elasticity* are the five basic physical properties of soils important in determining the suitability of the soils as subgrade or foundation material for road construction.

Internal Friction is the resistance of the soil grains to sliding over each other. *Cohesion* is the resistance offered by the soil grains to being pulled apart. These two properties are positive characteristics adding to the soil the stability necessary to make that soil suitable for subgrade construction.

Capillarity is the ability of the soil to absorb moisture and transmit it through the pores of the mass in all directions in spite of gravity or other forces. *Compressibility* is the ability of the soil to decrease in volume under load or pressure with subsequent loss of water and air from its pores. *Elasticity* is the ability of the soil to deform under load or pressure and rebound to its original position without change in volume upon removal of the load or pressure. The last three properties are of importance as they affect the *Internal Friction* and *Cohesion* of the soil.

A limited amount of water absorbed through *Capillarity* is an aid to soil stability. On the other hand high *Capillarity* causes excess water absorption and soil becomes too liquid. *Capillarity* is also a contributory factor in frost upheavals. *Compressibility* and *Elesticity* affect the *Internal Friction* and *Cohesion* by causing fluctuations in the moisture content, and variance in the moisture content affects in turn the contact of the soil particles.

While soil mechanics is not an exact science, laboratory tests do indicate the probable behavior of tested soils when exposed to field conditions. Laboratory tests likewise indicate clearly the necessary admixture of coarse aggregate, clay or sand needed to produce stabilization of a tested soil sample.

Soil stabilization is a process whereby a soil which is incapable of supporting the loads imposed during the prevailing climatic and moisture conditions is rendered stable either (1) by the addition of other soil materials or (2) by the addition of substances that change the properties of the binder soil.

L. D. HICKS, Senior Materials and Testing Engineer

The stability of a soil is dependent upon two basic physical properties, Internal Friction and Cohesion. The three constituents of soil—sand, silt, and clay—possess these two properties in different degrees. Sand has high Internal Friction but no Cohesion and is stable only when wet to the degree that Cohesion is furnished by moisture film. Silt has low Internal Friction and no Cohesion and is only fairly stable within a narrow moisture range. Clay has high Cohesion at low moisture content but possess no Internal Friction. At high moisture content the water in clay acts as a lubricant and the clay becomes highly unstable. Clay is stable only when fairly dry. A mass of soil consisting of these three constituents in proper proportions is stable because sand, assisted by the silt which fills the voids in the sand and acts as embedment support, furnishes the Internal Friction, and clay furnishes the Cohesion necessary.

In North Carolina, soil stabilization by the admixture of other soils or soil materials in amounts necessary to secure the desired proportions of soil constituents in the resulting mixture is very common. Laboratory soil tests will indicate whether the soil of the upper coastal plain needs more sand or more clay, whether the top soil of the Piedmont section needs coarse sands because of the excess of fine sand and silt, or whether the low silt and clay contents in the topsoil calls

for the admixture of 40% or 60% coarse aggregate.

A second type of soil stabilization is treating the soil with substances that change the properties of the constituents. Bituminous materials mixed with the soils may furnish cohesion, or in the case of clay may waterproof a cohesive material, rob the clay of its cohesive property, but act as the cohesive agent. Portland cement mixed with soil also produces a very stable mass. Other materials are also used as stabilizing agents, their success depending upon their ability to change the properties of the constituent most affected by water—clay.

Stabilization processes are generally confined to the construction of bases as the wearing qualities of stabilized materials are rather poor. Very thin bituminous wearing surfaces may be used over stabilized bases as these bases have high bearing values which are retained even under adverse moisture conditions.

An interesting development in the use of stabilized materials is the use of soil cement in road patching. A mixture of friable clay or other suitable material with 12% of cement, covered by a thin wearing surface, has proved very satisfactory. If rock dust is used, the proportion of cement can be reduced to 8%.

Highways: Lifelines of Business

The State's Industrial Engineer, with our Department of Conservation and Development, says that in every inquiry from a potential new industry there is the question, "Is there an adequate hard-surfaced highway close to the plant site?" This is a standard requirement of all companies who consider opening a new industrial business in this state.

To consider this fact is to focus attention on a fact not often enough realized. The average person is well aware of the importance of highways to farmers, and their convenience for other obvious uses. But their tremendous service in acting as the actual lifelines of business in North Carolina is *so* evident that it escapes the public's observation. Examples are everywhere in North Carolina's chief industries—farming, tobacco, cotton, furniture, paper manufacturing, and mining. As representative of the others, and as one of the largest, the tobacco business exemplifies this statement. In all stages of processing, tobacco almost never leaves the road, from the first time the farmer carries the cured leaves off the farm, until a package of cigarettes reaches the corner drugstore. To the warehouse to be sold, to the re-drying plant, to the storage warehouse, to the factory for manufacture, to the distributor, to the retailer—each of these steps finds it on a ceaseless trek back and forth across the roads of the state.

Cotton rides these highways to the gin, the crushing mill, the warehouse, the processing mill, the manufacturing plant, and the finishing factory; each of these, in turn, relies on the highways for receiving essential supplies to handle their product. Furniture uses the roads no less, in getting timber to the sawmill, lumber to the manufacturing plant, and the finished product to the dealer. The greater ease, speed and economy provided by the road system have enabled North Carolina to lead the nation in this industry. The indispensability of our highways is clear whenever the paper manufacturing business, the mining industry, the dairy industry, seafood, poultry, wholesale produce, newspapers, and building supplies are called to mind. It is difficult to think of any product in the State which does not depend upon highway transport to a considerable extent.

But highways do more than perform immeasurable services for industry. They aid the counties, the cities and the towns in three special ways. First, our highways carry considerable weight in determining where new projects are to be established. So essential are hard surface roads today for the success of an enterprise that those areas with the best highway facilities often attract the more profitable concerns.

A second way in which highways benefit county and municipality is by attracting retail business. Statistics prove that from 80 to 85% of traffic consists of short trips between towns, and that the major use (71%) of these highways is by urban-owned vehicles. People generally go *to* towns, not *through* them, so that greater benefits are gained from good roads by urban than by rural vehicle owners. These cities and larger towns draw the traffic from rural areas; in fact, 25% of the dollar value of all sales and 58% of the individual customers of all stores come from out of town. Again the importance of highways is undisputed.

Third, in the case of some 1900 communities where the roads provide the only means of transportation they determine even the size and nature of these communities.

JAMES S. BURCH
Engineer of Statistics and Planning

Not the least of the beneficiaries of the highways has been labor. For with the improvement of transportation, the worker's job opportunities and his living conditions have grown progressively better.

Also of benefit to labor (and to management) is the fact that roads have enabled industry to become decentralized. This has resulted in economies and has produced flexibility for industry, but with this scattering process, additional labor markets have been created for areas that otherwise would never have had them.

With these services of our highway system, it emerges as a vast public utility owned by the people. The savings to its users is more than its cost to them so that they are willing, even eager, to support it through taxation. Business, governmental units, individuals — all recognize the highway's benefits, and knowing that the fees produce ever-increasing and better service, naturally take a keen interest in highway development.

Delinquent Special Assessments and the Statute of Limitations

Must the cities and towns of North Carolina say "Farewell forever" to assessments over ten years old?

PEYTON B. ABBOTT
Assistant Director Institute of Government

In *Charlotte v. Kavanaugh*, 221 N. C. 259, 20 S. E.(2d) 97 (1942), unanimously, and again in *Raleigh v. Mechanics and Farmers Bank*, 223 N. C. 286, 26 S. E. (2d) 573 (1943), by a four to three decision, the Supreme Court of North Carolina held that C. S. 2717(a) is an independent statute of limitation, barring the foreclosure of any installment of any special assessment levied for any local improvement after ten years from the date due.

Those decisions bear upon the collectibility of every special assessment owing to every city and town in North Carolina, and there are millions of dollars worth of such assessments outstanding. They directly apply to every installment of any special assessment which has been due and owing to any city or town in North Carolina for more than ten years, and there are hundreds of thousands of dollars in such delinquent installments on the books of the cities and towns of the State. For C.S. 2717(a) is a statewide Act, applicable to all special assessments for local improvements, whether levied under the general law or local acts.

These cases raise certain pertinent and practical questions. How did it happen that such a large amount of special assessments was levied in North Carolina? Why and under what circumstances, did cities and towns permit installments to become ten years past due before enforcing collection? Since C. S. 2717(a) has been held to be an independent statute of limitation, must all installments over ten years delinquent be counted a total loss, or is there still a possibility of collection? To put it another way: we are confronted by a serious situation. How did we get in it? Can we get out of it?

The Era of Local Improvements

During the "roaring twenties," cities, towns, villages and special districts vied with each other in the construction of "local improvements"—all sorts of local improvements. Streets were widened, straightened, extended, opened and paved. Sidewalks were laid out and hard-surfaced. Sewers and water lines were constructed and extended. Curbs and gutters were built. Storm sewers were put in. The State's highway building program, begun with the project of connecting the one hundred county seats by ribbons of surfaced roads, expanded into a program of farm-to-market roads, and ended as a model highway system for the nation, was matched by the program of cities and towns which began as a project to pave the principal business streets, expanded to include all principal streets and thoroughfares, and ended with the paving of streets upon which motor vehicles had theretofore feared to venture. By 1930, a stock statistic in chamber of commerce pamphlets was a statement of the number of miles of paved streets within the corporate limits.

High Assessment Plus Low Real Estate Values Equals Trouble

By the time the stock market collapsed in 1929, thousands of parcels of real estate, improved and unimproved, were pretty well plastered with special assessments, and property owners had begun missing their annual instalments with increasing regularity. By 1931, when the "recession" was deepening into a "depression" and settling down for an extended visit, when lines were forming for the "battle of Anacostia" and mid-western farmers were banding together to defy court evictions, assessment delinquencies were becoming general and serious. Many owners of improved property awoke to find that the balance due upon the mortgage which they had been paying on since 1926, '27 or '28, added to the balance of special assessments outstanding, plus a couple of years of unpaid taxes, amounted to more than the current market value of their property; so they stopped making payments upon mortgages, assessments and taxes, with the result that thousands of pieces of property were taken over by loan and insurance companies. Such companies would often pay up the back taxes, but leave the assessments in a delinquent status. Many owners of vacant lots awoke to find that the balance of unpaid assessments alone was more than the current market price of the property; so they stopped paying taxes or assessments, with the result that cities and towns took over thousands of vacant lots under foreclosure proceedings (and found later that they were liable for county taxes upon such property. *Winston-Salem v. Forsyth County*, 217 N. C. 704, decided in 1940). Other property owners found that in spite of deflated values they had equity in the property worth protecting. They attempted to protect it by applying what money they could scrape together—first to the mortgage payment, second to taxes, and third to special assessments. Often their funds were exhausted before they got to the latter.

Delinquencies Equal Distressed Property Equal Still Lower Values

The downward spiral continued. Delinquencies resulted in distressed

properties which resulted in lowered market values which resulted in more delinquencies and so on, until, early in 1933, with a large part of court dockets being taken up with receiverships, foreclosures and evictions, with runs on banks becoming commonplace, with what little money that remained going into hiding, very little property was exchanging hands except by forced sales, and then the exchange was from the hands of the owner to those of the lien holder. Rather than unnecessarily aggravate the situation, rather than take over property and take it off the tax books when such a step could be avoided, most cities and towns were willing to allow the special assessments to remain delinquent as long as taxes were kept reasonably up to date.

Lo! The Poor Taxpayer

Many of the local improvements were carried through under the provisions of Chapter 56, Public Laws of 1915, which provided that one-half of the total cost of street assessments, excluding the cost incurred at street intersections and the share to be borne by railroads and street railways, be assessed against abutting property. Many improvements were carried through under local acts, providing for varying percentages of the cost to be assessed against the property benefitted. So a large part of the cost was left to be absorbed by the cities and towns, to be amortized over a period of years and paid through general taxation. Local acts passed from time to time authorizing various cities and towns to adjust or compromise claims for assessments in view of depreciated real estate values, to remit interest on assessments, and to cancel or remit assessments against church property have made some increase in the burden of the general taxpayer. But the largest addition to the original share of the general taxpayer may have been added by the recent decision of the Supreme Court in *Raleigh v. Mechanics and Farmers Bank*, 223 N. C. 286, 26 S. E. (2d) 573.

A Substantial Addition to the Taxpayer's Share of the Burden

That case held that C. S. 2717 (a), originally enacted as Ch. 331, Public Laws of 1929, barred the foreclosure of the lien of any installment of special assessments after ten years from the maturity of such installment. The special assessment liens placed upon real estate during the twenties have been by no means fully paid off and discharged. A great number of such assessment accounts, of course, have been paid in full. Other accounts have been kept current through extensions in the time for payment. Others have been brought to suit, reduced to judgment and a schedule of payments upon the judgment worked out, with sale being held in abeyance as long as the schedule is reasonably met. Thousands of assessment accounts have been transferred to the real estate account through foreclosure and sale. But thousands of dollars in assessment accounts still remain on the books unpaid, not extended, not brought to suit—just delinquent accounts. To all installments upon such accounts (or extended accounts) more than ten years past due, the decision in *Raleigh v. Mechanics and Farmers Bank* squarely applies.

The Winds Blew Both Ways

Cities and towns had some reason to feel that installments would be collectible although more than ten years past due. The Supreme Court had stated, eight years after C. S. 2717 (a) became law: "Where the sovereign elects or chooses to proceed under C. S. 7990, no statute of limitations is applicable." That statement was made by the Court in *Asheboro v. Morris*, 212 N. C. 331, 193 S. E. 424 (1937), which was an action to foreclose the lien of a street assessment. Cities and towns also had some forewarning of the possible result in the *Raleigh* case. The year before in *Charlotte v. Kavanaugh*, 221 N. C. 259, 20 S. E. (2d) 97 (1942), the Court had squarely held that C. S. 2717 (a) barred the foreclosure of special assessments as to any installment more than ten years past due, even though the suit was instituted under the provisions of C. S. 7990. The Court had repeatedly held that no statute of limitations applies to an action to foreclose the lien of *taxes* when brought under C. S. 7990. (See *Logan v. Griffith*, 205 N. C. 580, 172 S. E. 348.) The Court in the *Charlotte* case drew a distinction between *taxes* and *special assessments: taxes* are levied upon all property of the same class, generally, to defray the cost of government, while *assessments* are levied only against the property specially benefited by the local improvement; *taxes* involve a personal liability, while *assessments* may look for satisfaction only to the property against which the assessment was made. Just what implications are to be drawn from these distinctions are not clear, except possibly to suggest that earlier cases dealing with the foreclosure of *taxes* are not necessarily controlling when dealing with an action to foreclose *assessments*. The decision was finally based upon the fact that C. S. 2717(a) expressly referred to municipalities, which would seem to be a sufficient answer to the principle that "no statute of limitations runs against the sovereign unless it is expressly named therein," regardless of whether there may be a significant distinction between taxes and assessments.

The *Charlotte* case pointed out that in *Asheboro v. Morris*, only the three-year statute was involved, and that the attention of the Court had not been directed to C. S. 2717(a). On the other hand, it stated: "The following cases have held that the ten-year statute of limitations does apply. *Schank v. Asheville*, 154 N. C. 40, 40 S. E. 681; *Drainage District v. Huffstetler*, 173 N. C. 523, 92 S. E. 368; *High Point v. Clinard*, 204 N. C. 149, 167 S. E. 690." But the *Asheville* and *Drainage District* cases were decided nineteen and twelve years, respectively, before C. S. 2717 (a) was enacted and obviously could throw no great light upon the effect of that statute. Again, the *Asheville* case merely held that the assessment roll had the effect of a judgment and lien. No statute of limitations was involved. The *Drainage District* case held that the three-year statute, which was the one pleaded, did not apply for the somewhat left-handed reason that the ten-year statute (C. S. 437—Actions on judgments) which was not pleaded, did apply, since the assessment roll has the status of a judgment. The *High*

Point case was decided four years after the enactment of C. S. 2717(a), but the three-year statute was the one pleaded in that case also, the Court holding that it did not apply because a ten-year statute did, citing *Drainage District v. Huffstetler* in support of this proposition. So the Court must have been thinking of C. S. 437 rather than C.S. 2717(a) even in the *High Point* case. It would seem that the best reason for holding that C. S. 2717(a) applies to special assessments is because it specifically refers to assessments—not because assessment rolls have the effect of judgments; that it applies to a suit by a municipality because it says "municipality"—not because there is a difference between assessments and taxes.

An Important But Comparatively Unnoticed Decision

The *Charlotte* case apparently did not attract a great deal of attention. This may have been partly due to the fact that it was largely concerned with local acts of interest only to Charlotte. No doubt it was largely due to the fact that its competitive position as news was about as poor as could be imagined. On the day it was filed, the press carried screaming headlines over the story of the capitulation of Corregidor and the details of the final mopping up operations of the Japanese on Bataan. The Allies were "making swift withdrawal from Burma" and China's back door was being slammed shut to make effective the blockade of her ports. Oil-slick from our stricken tankers was spreading over our East Coast bathing beaches. Our merchantmen were being torpedoed within sight of our shores. As an anticlimax, low "nonessential" gasoline allowances were being announced. It is scarcely to be expected that an obscure court decision concerning street assessments, which at first glance concerned only the City of Charlotte, could create much excitement in the face of news that we were being pushed off the highways of the world, and even being greatly curtailed in the use of our own State highways.

Not that *Charlotte v. Kavanaugh* was without importance: the Charlotte *Observer* of May 15, 1942, reported that the city stood to lose $52,499 in installments and interest that had become due in 1932 unless suits could be started by October, and that it had already lost $143,705.02 by reason of uncollected installments, together with interest thereon, due in 1931 and prior years—nearly a fifth of a million dollars in one city alone. Assessments ten-plus years delinquent throughout North Carolina probably multiplied that figure several times over. There is little reason to believe that Charlotte was the only city to be in that situation. It is certain that she at least had the company of the City of Raleigh; for Raleigh appealed from a similar ruling by the Superior Court the following year.

Twice-Threshed Wheat

The Supreme Court felt that the decision in the *Charlotte* case was of sufficient importance to justify a thorough review of the matter when the point was again raised in *Raleigh v. Mechanics and Farmers Bank*. Chief Justice Stacy and Justices Winborne and Barnhill thought it so important that, after a full review, they voted for a reversal. The twenty-one page dissenting opinion, written by Justice Winborne, began:

"The questions involved in this appeal are of great concern not only to all taxpayers within the city of Raleigh but to all those in every municipality in the State of North Carolina. The statute pleaded by defendant in limitation of this action is in derogation of sovereign authority and of common right. The case calls for deliberate consideration in the 'cold neutrality' of law and justice unaffected by pride of opinion in former decisions rendered by this Court."

The dissenters argued that C. S. 2717(a) was not intended as an independent statute of limitations, imposing limitations where none existed before, but should only be given the effect of extending to ten years any shorter period of limitations that might be contained in local acts. They pointed out that assessments are a species of tax, and that prior to the enactment of C. S. 2717(a) there was no statute of limitations applicable to actions brought under C. S. 7990 to foreclose assessments and that the cases holding that no statute of limitations is applicable where suit is brought under C. S. 7990 should be followed. They reviewed the earlier cases involving assessments and noted that while all of the cases, except *Asheboro v. Morris*, had assumed that either the three-year or the ten-year statute applied, the municipality won in every case except in *Morganton v. Avery*, 179 N. C. 551, 103 S. E. 138, which held that the action was barred by the three-year statute, C. S. 441(2)—Actions upon liabilities created by statute—without referring to the case of *Drainage District v. Huffstetler*, which had held to the contrary three years earlier. They contended that the ancient principle that "statutes of limitation never apply to the sovereign unless expressly named therein"—a modification of the maxim *nullum tempus occurrit regi*—still retains its vigor at least with respect to taxes, and that since C. S. 7990, under which the action was brought, set no time limit, the principle should be given effect. They urged that C. S. 2717(a) is somewhat ambiguous as to its intent and meaning and therefore should not be so construed as to abrogate sovereign right.

Charlotte v. Kavanaugh Is Adopted and Extended

The majority opinion, written by Justice Devin, admitted that C. S. 2717(a) "may be lacking in that degree of precision ordinarily to be found in restrictive statutes," but concluded that the legislative intent to fix a time limit of ten years for the institution of a suit to foreclose special assessment liens sufficiently appeared. The majority was assisted to this conclusion by the fact that the caption of the section, "Sale of Foreclosure for Unpaid Assessments Barred in Ten Years: No Penalties," was enacted by the legislature as a part of the new section, and not merely a catch-line that was added later by the editor of the Code.

As in the *Charlotte* case, the Court discussed the distinction between *taxes* and *special assessments*. As in that case, the court noted that in *Asheboro v. Morris*, attention was not directed to C. S. 2717 (a). And the

Court decided to follow the *Charlotte* case in holding C. S. 2717(a) to be an independent ten-year statute of limitations, pointing out that the question was there squarely presented and decided by a unanimous Court. The *Raleigh* case even went further than the *Charlotte* case: it found no error in the ruling of the Superior Court that in the event of a foreclosure sale, the proceeds would be available only to the discharge of installments which were less than ten years delinquent at the time of the institution of the suit, so that any excess could not be applied to barred installments. The Court stated that the ruling in *Demai v. Tart*, 221 N. C. 106, 19 S. E. (2d) 130 (1942), did not apply to actions to foreclose special assessments. In that case, suit was instituted to foreclose a deed of trust after one of two notes secured thereby had become barred, the Court holding that the proceeds of sale under the decree of foreclosure could be applied to the note that was barred as well as to the note that was not out of date.

A Real Problem Is Presented to Cities and Towns

The holdings in the *Charlotte* and *Raleigh* cases present to many cities and towns a serious problem. If the relative amount of delinquencies reported in Charlotte is typical of the situation throughout the State, the aggregate of the amount involved is staggering. If these delinquent assessments cannot be collected, there is no answer except to shift the extra burden to the general taxpayer. An immediate increase in tax rates will not necessarily result. In some cases, long-hoped-for tax relief will be delayed. The blow can be softened by the issuance of refunding bonds, but this will only mean that general taxpayers will have to pay not only the uncollected assessments, but interest thereon as well.

Questions Posed and Answers Proposed

Must this additional burden be assumed by the general taxpayer? Must all assessment installments more than ten years past due be marked off the books? Does C. S. 2717(a) operate with the finality of the guillotine, or may the bar be lifted and the victim restored to health by proper care and treatment? The Institute of Government, in an effort to find the answer to these questions, has prepared a study which indicates (1) The General Assembly has the power to revive the right to collect or foreclose the liens of installments more than ten years delinquent; and (2) C. S. 2717(b), which was first enacted in 1931, may be construed as giving cities and towns the present right to extend the time for payment, and thus extend the collectibility of such delinquent installments.

The Power of the Legislature to Revive Barred Installments

The Court Has Repeatedly Affirmed The Existence of Such Power

The Institute's study points out that in 1868 the Supreme Court of North Carolina held, in *Hinton v. Hinton*, 61 N. C. 410, that the General Assembly had the power to revive a right of action after it had become barred by a statute of limitations. That particular case arose upon a petition for dower. The law at that time gave widows six months after the probate of a will in which to dissent and petition for dower. After the expiration of the six months, the legislature passed an act giving widows additional time. The devisees pleaded the six months statute of limitations and contended that the act, purporting to revive the right after it had already become barred, impaired vested rights and was therefore unconstitutional. But the Court held the act valid and effective to restore the widow's right of action. It stated that statutes of limitation do not extinguish the *right*, but only bar the *right of action* thereon. The same principle was adverted to in the *Raleigh* case in the Court's discussion of C. S. 2717(a) when it said (page 294): "But the statute here invoked is applicable not so much to the right as to the remedy, not so much to the power as to its particular exercise. It affects the right 'to enforce any remedy provided by law for the collection of unpaid assessments'."

The *Hinton* case has never been overruled by our Supreme Court. On the contrary, similar results have been reached in a number of cases and especially in cases involving the right to enforce the payment of back taxes under legislation enacted after the right to proceed had become barred by the lapse of time. Sometimes the Court appeared to deny that the statute under consideration was one to revive barred rights of action, preferring to state that the statute merely removed an "obstruction arising from the lapse of time," as in *Jones v. Arrington*, 91 N. C. 125 (1844), or was "the act of the sovereign directing the collection of taxes for the years in which the delinquent's property has not paid its quota," as in *Wilmington v. Cronly*, 122 N. C. 383; 30 S. E. 9 (1898). Whatever the theory applied in the particular case, the Supreme Court has uniformly given effect to statutes which have sufficiently expressed a legislative intent to permit the collection of back taxes, even when such statutes were enacted after time had already terminated the power to collect. Indeed, the power of the legislature in that respect seems to have been so well settled in the mind of the Court as early as 1884 as to be beyond question; for, in *Jones v. Arrington*, the Court said:

"It would thus seem that the power to remove the obstruction arising from the lapse of time, and again exposing the delinquent taxpayer to the remedies provided for the enforced payment when it is due, has been so long exercised, and promptly vindicated by judicial decision when denied, that it must now be settled beyond the reach of controversy."

Specific Statutes and Cases in Point

The study analyzes a number of cases which have directly upheld and given effect to statutes, enacted after the original right of action had expired through passage of time, which authorized the collection of back taxes, the assessment of real estate for taxes, and the foreclosure of tax sale certificates.

Such statutes upheld and given effect by the Supreme Court include: Ch. 158, Laws of 1879, which authorized the retroactive assessment of real estate for taxes, although the time within which assessments for the years involved had already expired, held valid in *Railroad v. Commissioners of Alamance*, 82 N. C. 259 (1880); *Ch. 182, Public Laws of*

1895, which authorized the City of Wilmington to collect *any* back taxes regardless of how long delinquent, although there had been in effect a three-year statute of limitations, upheld in *Wilmington v. Cronly*, 122 N. C. 383, 30 S. E. 9 (1898), in which suit was instituted in 1896 to sell land for taxes as much as twenty years delinquent; *Ch. 79, Laws of 1883*, which gave a former sheriff who had settled with the State and county the right to collect back taxes, enacted after the right had expired, held valid in *Jones v. Arrington*, above; *Ch. 89, Public Laws of 1927*, extending earlier acts passed in 1921, 1923 and 1925 "For the relief of sheriffs and tax collectors," which revived the right to collect taxes after the taxes had become uncollectible, upheld in *Hunt v. Cooper*, 194 N. C. 265, 139 S. E. 446 (1927); and *Ch. 204, Public Laws of 1929* (extended by Ch. 260, Public Laws of 1931) which extended the time for instituting suits to foreclose tax sale certificates, although foreclosure was already barred under the 1927 amendment to the Machinery Act when the 1929 act was passed, given effect in *Forsyth County v. Joyce*, 204 N. C. 734, 169 S. E. 655 (1933).

The power thus conceded to the General Assembly in the cases mentioned above would appear to be equally available to authorize the foreclosure of special assessment installments more than ten years delinquent, the provisions of C. S. 2717(a) and its construction in the *Charlotte* and *Raleigh* cases to the contrary notwithstanding. It is submitted that the recognition of such power when exercised for the benefit of municipalities and the public at large, involves a less liberal concession than when exercised for the benefit of individuals, as recognized in *Jones v. Arrington* and other cases. And it is further submitted that the concession of the power to render again collectible assessments which were valid when levied, involves a no more liberal concept than that displayed from time to time by the Court in upholding the power of the legislature to validate special assessments which were invalid at the time levied, because not in conformity with the enabling act, as in *Holton v. Mocksville*, 189 N. C. 144, 126 S. E. 326 (1924). In that case the Supreme Court, in discussing such an act, said:

"Nor can the act be successfully attacked because it is retroactive or retrospective. The General Assembly having the power in the first instance to confer upon the authorities of the municipal corporation power to improve its streets and sidewalks and to assess the owners of abutting property with a part of the cost of such improvements without a petition, has the power to validate proceedings for the improvement of streets and sidewalks which were begun and which have been concluded without an initial petition. This power has been recognized and its exercise approved as within the constitutional authority of the General Assembly by this Court." (Citing cases)

The above language may be paraphrased and "brought home" to the question under consideration without doing violence to the principle upon which the Court proceeded: "The General Assembly having the power in the first instance to specifically provide that no statute of limitations shall apply to actions to foreclose the liens of special assessments duly levied in accordance with law has the power to authorize municipalities to institute and maintain actions to foreclose such liens notwithstanding they were not instituted within the time originally allowed."

Whether the legislature will see fit to exercise this power is another matter. To put it mildly, it would certainly be a nice gesture toward the general taxpayer. It would go far toward restoring his faith in the overall advantage of discharging his public obligations promptly, rather than holding back in the reasonable hope that time, and other citizens, will eventually take care of them for him.

Has the General Assembly Already Provided Legislation Through Which Municipalities May Avoid the Bar of C.S. 2717(a)?

Find the Legislative Intent and Find the Answer

The Institute of Government's study concludes that C. S. 2717(b) may be construed as presently giving cities and towns the power to extend the time of payment of *any* installment of special assessments, even if at the time of the exercise of that power such installments are more than ten years in arrears. This construction may turn upon whether the court will find and ascribe to the statute such legislative intent. The study suggests that from the history of the statute, the conditions which attended its enactment, the situation attending its various amendments and extensions, and construction of analogous statutes, a strong argument for the existence of such legislative intent to exercise a power which has been amply demonstrated may be advanced.

Indeed, from a study of the wording of the statute, considered in connection with prior decisions of the Court, it is suggested that the Court would have to find affirmatively an *absence* of such intent rather than merely failing to find a *presence* of it, in order to deny this present power to cities and towns.

C. S. 2717(b) was first enacted in 1931, as Ch. 249, P. L. 1929. It authorized the governing body of any city or town, by resolution duly adopted prior to July 1, 1933, to grant extensions of time for the payment of *any* past due installments, by tacking the delinquent installments on the end of the original installments. That is, the delinquent installments could be advanced leap-frog fashion and be made to become due and payable in annual installments after the non-delinquent installments had matured.

The Intent to Keep Alive This Power Since 1931 Is Demonstrated in Words and Deeds

This act has been amended, and the power given to municipalities to extend delinquent installments by arranging them into a new series of installments has been extended, by every successive legislature, up to and including the General Assembly of 1943. The power was extended to July 1, 1935, by Ch. 410, P. L. 1933, as to any installments which were due prior to July 1, 1932; extended to July 1, 1936, by Ch. 126, P. L. 1935, as to *any* installment, without limitation; extended without limitation

to July 1, 1938, by Ch. 172, P. L. 1937; to July 1, 1940, by Ch. 198, P. L. 1939; to July 1, 1942, by Ch. 160, P. L. 1941; and finally extended to February 1, 1945, by Ch. 4, Sess. Laws 1943. As amended by the 1941 Legislature, the Act appears in the 1941 supplement to the North Carolina Code Annotated as follows:

"*Extension of time for payment of special assessments. —At any time or times prior to July the first, one thousand nine hundred and forty-two, the governing body of any city or town may adopt a resolution granting an extension of the time for the payment of any instalment or instalments of any special assessment, including accrued interest thereon and costs accrued in any action to foreclose under the lien thereon, by arranging such instalment or instalments, interest, and costs into a new series of ten equal instalments so that one of said instalments shall fall due on the first Monday in October after the expiration of one year after adoption of the aforesaid resolution and one of said instalments on the first Monday in October of each year thereafter.*"

As stated above, the powers granted to cities and towns in the above statute are now in full force and effect, having been extended by the 1943 Legislature to February 1, 1945.

Salient Features of C.S. 2717(b)

The Wording of the Statute and the Court's Construction of Analogous Statutes Sanction the Right of Municipalities to Proceed

Certain important features of C. S. 2717(b) should be noted in connection with the question under consideration.

1. The statute is directly concerned with the same subject as C. S. 2717 and 2717(a)—the collection of special assessments; and all three statutes should be read together in order to see just what the legislature has provided with regard thereto. C. S. 2717 sets up the Machinery for the collection of assessments. C. S. 2717(a), added later, says that this machinery cannot be put in operation after the assessment becomes more than ten years past due. Now comes C. S. 2717(b) to say that the bar of the preceding section is dependent upon the non-exercise of the power to extend the time for payment within the time allowed. It is suggested that under the present wording of C. S. 2717(b), the effect of all three sections may be stated thus: "The power to enforce the payment of special assessments herein given will become barred ten years after they have become payable, unless the municipality, by February 1, 1945, shall exercise the power to extend the time for payment."

2. The statute empowers cities and towns to extend the time for payment of *any* installment of *any* special assessments. It does not limit the power to installments less than ten years past due. The only limitation is as to the time within which the power must be exercised. Since the statute itself does not provide a limitation with respect to the age of the assessment thus permitted to be brought forward for future collection, the maxim *nullum tempus occurrit regi* applies. The case of *Wilmington v. Cronly*, 122 N. C. 383, 30 S. E. 9 (1898), is directly in point. The Act of 1895 there construed authorized the enforcement and collection "of all claims in favor of said state, county and city, for delinquent taxes against any person or property, whose names appear delinquent on the tax books or list of said city or county. . . ."In holding that the act authorized the maintenance of an action to collect taxes as much as twenty years past due, in the face of the plea of an earlier statute of limitations, the Court said:

"2. The other exception is that the court did not hold that arrearages of taxes were protected by the three years statute of limitations, Code, Sec. 155(2). But, as was held in *Davie v. Blackburn, supra*, Montgomery, J., a tax, though in one sense a debt, is something more, and is not liable to the incidents of debts between individuals. It needs no citation of authority to show that statutes of limitation never apply to the sovereign unless expressly named therein—*nullum tempus occurrit regi*—and the act in question (Acts 1895, Ch. 182), authorizing the State, county, and city to recover these delinquent taxes contains no limitation, and neither the ten years nor the three years statute applies. *Jones v. Arrington*, 94 N. C., 541, 544."

The last part of the above quotation could be paraphrased as follows: "The statute in question (C. S. 2717(b)), authorizing cities and towns to extend the time for the payment of these delinquent assessments contains no limitation, and neither the ten years nor the three years statute applies."

Conclusions Reached

The over-all conclusion reached by the Institute of Government's study is that C. S. 2717(b) is susceptible of a construction that will permit cities and towns to extend the time for payment, and thus collection, of any installments of any special assessments, even though the installments were due more than ten years ago; that such construction could be sustained under prior cases unless the Court should find that the legislature did not intend to extend the power to assessments already ten years past due, notwithstanding strong arguments to the contrary, including expressions of public policy found in the Constitution of North Carolina; but that if such construction should be rejected, prior decisions of the Court apparently concede to the General Assembly ample power to enact appropriate legislation to "remove the obstruction" to the collection of installments more than ten years past due, if it should see fit to do so.

Appropriate to the entire discussion is the statement made by Justice Clark in the case of *Wilmington v. Cronly*, 122 N. C. 388, at 392:

"*The same right to collect arrearages of taxes is generally recognized. 'Unless there be some constitutional restriction the Legislature may authorize a municipality to levy and collect retrospective taxes, and for this purpose use the assessment roll of a previous year.'* 2 Dil. Mun. Corp. (4 Ed.), 751. *There is no hardship in this proceeding. It is essentially just. It merely compels taxpayers who have evaded their share of the public burdens to fulfill their duty, and to that extent relieves those who have faithfully borne the heat and burdens of the day and will discourage like evasions in the future.*"

Tax Supervisors' Institute

Approximately sixty tax supervisors, assistant supervisors , and county commissioners attended the tenth annual meeting of the Tax Supervisors Division of the Institute of Government in Chapel Hill on December 9 and 10 to discuss the practical problems facing them during the 1944 listing period.

Participating in the program were: J. Henry Vaughan, Chairman of the Nash County Commissioners and President of the State Association of County Commissioners; A. J. Maxwell and W. O. Suitor, of the State Tax Research Department; D. D. Carroll, Dean of the University's School of Commerce; E. Y. Floyd, of the Plant Food Institute, Raleigh; J. C. Ellis, Nash County Accountant and President of the Tax Supervisors Division; Virgil Joyce, Forsyth County Tax Supervisor and Vice President; Clifford Pace and Peyton Abbott, Assistant Directors of the Institute of Government; and leading tax supervisors from all over the State.

The Institute of Government's guidebooks for county and city officials covering the listing and assessing of property for taxation were rewritten for 1944 use by Clifford Pace and Peyton Abbott of the Institute staff.

A seventy-page guidebook covering the entire listing procedure was put in the hands of the one hundred tax supervisors of the State, who are in general charge of the listing and assessing process, and the one hundred county attorneys, who represent the counties in the legal aspects of listing and assessing. A twelve-page guide outlining the powers and duties of county commissioners in listing and assessing property was sent to the four hundred and eight commissioners, and to the two thousand list takers in the one hundred counties of the State was sent for the first time, a twenty-page guidebook, outlining their powers, duties and functions as they go about the job of getting the property and polls on the tax books.

First row, left to right: J. C. Ellis, President of the Tax Supervisors Division of the Institute of Government, Nash County; Miss Mary T. Covington, Richmond County; Mrs. Virginia Harrell, Henderson County; Mrs. B. C. Jones, Randolph County; Miss Flora Wyche, Lee County; Miss Maida Jenkins, Moore County; Mrs. Dorothy Mitchell, Transylvania County; G. D. Bradshaw, Mecklenburg County Accountant; W. O. Suitor, Assistant Director, State Tax Research Department; J. C. Bethune, Secretary of the State Board of Assessment; J. E. Simmons, Mecklenburg County.

Second row, left to right: J. Henry Vaughan, President of the State Association of County Commissioners, Chairman Nash County Commissioners; French Smith, Davidson County; J. E. Haynes, Rowan County; W. Z. Penland, Buncombe County; J. S. Benner, Beaufort County; Virgil W. Joyce, Vice President, Forsyth County; R. L. Smith, Stokes County; Marvin Johnson, Johnston County; A. A. Maness, Montgomery County; R. P. Spell, Sampson County; Lloyd Williamson, Rutherford County.

Third row, left to right: F. N. Patterson, Stanly County; John Coward, Pitt County; Gilbert Ray, Orange County; C. E. Gwin, Catawba County; C. D. Stevenson, Iredell County; D. M. Calhoun, Bladen County; R. B. Gates, Lincoln County.

Fourth row, left to right: Peyton B. Abbott, Assistant Director, Institute of Government; J. W. Emerson, Jr., Chatham County; M. L. Laughlin, Edgecombe County; T. L. Ware, Gaston County; John McGoogan, Hoke County; U. V. Hawkins, Mecklenburg County; Rufus A. Grier, Mecklenburg County; Clifford Pace, Assistant Director, Institute of Government.

Registered but not shown in the picture: Mrs. Mary G. Burgin, McDowell County; Nat S. Crews, Forsyth County Attorney; Mark Goforth, Chairman of the Caldwell County Commissioners; J. H. Hawley, Jr., Wayne County; Addison Hewlett, Chairman of the New Hanover Commissioners and Tax Supervisor; M. S. Hodges, Rockingham County; J. Spicer Holmes, Wayne County; Eugene Irvin, Rockingham County; Francis E. Liles, Anson County; A. P. McGimsey, Chairman of Burke County Commissioners; F. W. McGowen, Duplin County; W. M. Monroe, Scotland County; Roy J. Moore, Union County; C. A. Oldham, Durham County; J. A. Orrell, New Hanover County Auditor; Miss Lillian Ross, Burke County; L. D. Sewell, Onslow County; James H. Sherrill, Caldwell County; Lake V. Shope, Macon County; Troy R. Short, Guilford County; C. V. Smith, Wadesboro Tax Collector; Mrs. Vera G. Smith, Onslow County; Mrs. J. C. Spencer, Caldwell County; C. S. Vinson, Halifax County; H. T. Warren, Durham County; J. Harry Weatherly, Guilford County Manager; Miss Dorothea O. Woodlief, Vance County.

Officers of the Tax Supervisors Division of the Institute of Government, elected for the year 1944, from left to right: John McGoogan, Hoke County, second vice-president; Virgil Joyce, Forsyth County, first vice-president; J. C. Ellis, Nash County, president (Mr. Ellis filled out an unexpired term this year).

The Attorney General Rules

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

★

It would not take a Baron Munchausen fan to believe that a shot from a Jap sniper's rifle on New Britain recently had ruffled the feathers of the weathercock atop a North Carolina courthouse, for virtually that is happening.

1. Registration of Military Discharges

Already some of the men who have been serving in the armed forces at home and abroad are being discharged for physical incapacitation or for other reasons. The Attorney General has ruled that a register of deeds may not charge a fee for the registration of a discharge from the military or naval forces of the country; Section 1, Chapter 599, Session Laws 1943, repealed that portion of Section 2, Chapter 198, Public Laws 1921, which allowed a fee of 25c to the register of deeds for registering such a discharge. But this is the only provision in the law exempting veterans from the payment of fees for registering instruments or securing certified copies of records in the registrar's office.

2. Members of Armed Forces as Candidates

While some men are coming out of the service, others are still going in, among them some incumbent officeholders who wonder if they will be eligible to seek re-nomination in the spring primaries though they be inducted prior to that time. The Attorney General has replied to an inquiry on this point that there is no provision in the Selective Service Act prohibiting a member of the armed forces from becoming a candidate for office. But he points out that such a person, if elected, might be prevented from qualifying because the branch of the service to which he might be assigned might have regulations prohibiting its members from becoming candidates.

3. War Centers

Of the myriad governmental problems of those communities which have become war centers, some have solutions and some do not. The Attorney General pointed out, in answer to one inquiry, that under the general law contained in C. S. 2807 a town has ample authority to furnish water to persons outside the corporate limits if the water supply is available and that under this direct grant of authority there is no reason why a portion of the general fund of the municipality could not be expended to provide a water supply outside the limits. But a problem with less an answer is this: in the opinion of the Attorney General, the general law will not permit a city to prohibit fortune tellers, attracted by the booming business and high wages of the times, from operating within the city.

4. Juvenile Delinquency

True of all communities is an alarming war-born increase in juvenile delinquency. To clarify the law applicable to specific cases arising with this increase, the Attorney General has ruled: that a person under sixteen years of age charged with larceny, comes within the jurisdiction of the Juvenile Court under C. S. 5038-62 and that Chapter 760 of the Session Laws of 1943 removed from Juvenile or Domestic Relations Court jurisdiction only those offenses involving violation of the motor vehicle laws when committed by a person over fifteen years of age; and that, in the absence of a local statute designating some other person or in the absence of employment of some other person under the provisions of Chapter 270, Public Laws 1939, the county superintendent of public welfare is still the person charged with the duty of investigating and prosecuting all violators of the compulsory school attendance laws.

5. Postwar Implications

Knowing that the Jap sniper and his Nazi counterpart will in due time be exterminated, many communities are casting an eye to the future. Along this line, the Attorney General has ruled that the engaging of an architect whose services are of a strictly professional character would not constitute a contract for "construction or repair work or for the purchase of apparatus, supplies, material or equipment," so that a governing body would not be violating the provisions of C. S. 1316(a) by engaging such architect without competitive bidding.

HARRY McMULLAN

Attorney General of North Carolina

6. Recorder's Authority to Perform Marriage Rites

There is a lighter side to the story of the sniper and the troubles he has caused. The marriage business traditionally booms in wartime. And whether because the manpower shortage has cut down on the number of J. P.'s and ministers or because the existing supply of knottiers just isn't great enough to take care of the increased demand, inquiry has been made as to whether the judge of a recorder's court would be authorized to perform a marriage ceremony in North Carolina. The answer is—fortunately or unfortunately, as the case may be—no.

Digests of recent rulings of the Attorney General of particular interest to city and county officials follow.

A. Matters Relating to Tax Listing and Assessing

50. Listing and assessing of property.

To C. E. Gwin. Inquiry: Does a county tax supervisor have authority to cause to be listed for taxation, under the provisions of C. S. 7971 (164), property which was acquired by the owner in 1925 and not listed for taxation until 1930, and not listed for 1931, but listed for 1932 and each succeeding year?

(A.G.) Paragraph 3 of subsection 164 of Section 7971 provides, in part: "The county commissioners may assess any such property or list such polls for the preceding

years during which it escaped taxation, not exceeding five, in addition to the current year." I am therefore of the opinion that a county may not cause to be listed for taxation property for the years 1925 to 1930, and 1931.

B. Matters Affecting Tax Collection

To R. B. Gates. Inquiry: May a county sue a taxpayer in a civil action for unpaid taxes for 1938, 1939, and 1940, secure a judgment against said taxpayer for debt, and levy execution against the after-acquired real estate held by the taxpayer.

(A.G.) I am of the opinion that since the Supreme Court has held in the case of Gatling v. Commissioners, 92 N. C. 536, that a tax is not a debt in the usual sense of the word, but is a visitational tax (Lumber Co. v. Graham County, 214 N. C. 167, 170), and since the General Assembly has provided methods which are exclusive for the collection of property taxes in the manner prescribed in the Machinery Act of 1939, a county would not be authorized to institute a civil action for debt against a person owing property taxes and to issue an execution upon a judgment obtained in such a case.

35. Tax foreclosure—costs and fees.

To Mrs. Wanda S. Campbell.

(A.G.) The process tax of $2.00 should not be included in bills of cost and collected in tax foreclosure suits.

72. Tax collection—levy on personal property.

To Zeb V. Turlington. Inquiry: May a tax collector levy upon the personal property of a taxpayer where the tax lien has been sold and a foreclosure action instituted but no judgment entered in the foreclosure action?

(A.G.) In my opinion a tax collector would have no right to levy upon the personal property of a taxpayer after a tax foreclosure complaint has been filed against such taxpayer.

RATE OF INTEREST ON TAX SALE CERTIFICATES

To E. H. Smith. Inquiry: Is it mandatory for a county to collect interest at the rate of eight per cent per annum on the amount represented by tax sale certificates held by the county?

(A.G.) Under the pertinent sections of the Machinery Act (Sections 1401, 1704, and 1716) interest at the rate of eight per cent per annum accrues on the amount bid by the taxing unit from the date of sale. In the absence of a local statute authorizing a lower rate of interest the rate of eight per cent per annum is mandatory.

II. POLL TAXES AND DOG TAXES

A. Levy

1. Exemptions

To Charles W. Tillett.

(A.G.) Section 4 of Chapter 3 of the Session Laws of 1943 not only relieves the members of the military forces mentioned in said section from payment of poll taxes listed the year immediately preceding induction into the armed forces, but also relieves them from the payment of all poll taxes for prior years.

To Henry B. Edwards. Inquiry: Does Chapter 3 of the Session Laws of 1943 apply to a member of the armed forces who was discharged prior to the ratification of the Act?

(A.G.) I am of the opinion that the relief afforded members of the United States armed forces from the payment of poll tax under Chapter 3, Session Laws of 1943, would extend to any person who was a member of the armed forces at any time after the declaration of war by the United States.

III. COUNTY AND CITY LICENSE OR PRIVILEGE TAXES

A. Levy of Such Taxes

11. For hire vehicles

To W. P. Kelly. Inquiry: May cities and towns impose license taxes on bus companies operating busses from such cities and towns to points outside when such busses stop anywhere along the route within a city or town to pick up passengers?

(A.G.) If these busses are motor vehicle carriers within the meaning of C. S. 2613 (j), subsection (k), which defines such carriers, it is my opinion that cities and towns have no authority to impose license taxes upon them. The Motor Vehicle Act (1937, c. 407) levies a license tax and a gross receipts tax on such motor vehicle carriers, and Section 61 (a) of the Act specifically provides that no city or town may impose a franchise tax or other fee upon motor vehicle carriers taxed under the Act.

92. Gross sales as basis

To Charles W. Tillett. Inquiry: Where a municipal ordinance imposes an annual license tax upon wholesale dealers based upon their annual gross sales, should sales to Army or other agencies of the U. S. Government be considered as part of the total gross sales for the purpose of determining the amount of this license tax?

(A.G.) Such sales may legally be included in arriving at the tax base. The tax imposed in the municipal ordinance is not a tax on sales, but a license tax imposed for the privilege of engaging in business within the city.

B. Collection of License Taxes

1. Means of collection

To James E. Holshouser. Inquiry: What is the proper procedure for collecting municipal privilege or license taxes?

(A.G.) I have been unable to find any statute which expressly provides the machinery by which a municipality may collect unpaid privilege taxes. Since these taxes are levied by ordinances which usually provide that it shall be unlawful to engage in the taxable activity without a license, and since C. S. 4174 provides that the violation of a municipal ordinance shall be a misdemeanor, punishable by a fine of not more than $50 or by imprisonment for not more than 30 days, it is clear that if a person undertakes to carry on the activity without paying the tax, he could be prosecuted under this section.

Since municipal corporations are empowered to levy license taxes and also to sue in their corporate names, it is my opinion that a municipality would be empowered to collect unpaid license taxes or fees by civil action.

IV. PUBLIC SCHOOLS

F. School Officials

3. County Board of Education — powers and duties

To H. G. Connor, Jr. Inquiry: Where an architect's fee amounts to more than $1,000.00, is a County Board of Education violating Section 1316 (a) by engaging his services without competitive bidding?

(A.G.) The engaging of an architect whose services are of strictly professional character would not, in my opinion, constitute the making of a contract for "construction or repair work or for the purchase of apparatus, supplies, material or equipment."

40. Superintendent of Public Welfare — school attendance

To Nathan H. Yelton. Inquiry: Is it an obligation and responsibility of the State Board of Education to enforce school attendance?

(A.G.) It would seem to me that in the absence of a local statute designating some other person as chief school attendance officer or truant officer, or in the absence of employment of such a person under the provisions of Chapter 270 of the Public Laws of 1939, the county superintendent of public welfare would still be charged with the duty of investigating and prosecuting all violators of the compulsory attendance law. There is no statute which makes it the duty of the State Board of Education to enforce the compulsory school attendance law. Theirs would be only a general supervisory capacity as provided in the constitution.

PROCEEDS FROM DISCONTINUED NINTH-MONTH LEVY

To S. Ray Lowder. Inquiry: What should be done with funds realized by a city administrative unit from a special levy for the purpose of providing the ninth month of the school term, since the ninth month is now supported by the State and the special levy has been discontinued?

(A.G.) If the purpose for which the taxes in question were levied no longer exists, it seems to me that the taxpayers of the city administrative unit should be entitled to the benefit of these funds by their application to some item of expense which must be borne by the taxpayers of the city administrative unit.

58. School bus drivers.

To Mae Oliver. Inquiry: May teachers in the public schools of North Carolina be employed and receive pay as drivers of school buses?

(A.G.) Section 27 of the School Machinery Act of 1939, as amended, provides: "The authority for selecting and employing the drivers of school buses shall be vested in the principal or superintendent of the school at the termination of the route, subject to the approval of the school committeemen or trustees of said school and the county or city superintendent of schools: Provided, that each driver shall be selected with a view to having him located as near the beginning of the truck route as possible and it shall be lawful to employ student drivers wherever such is deemed advisable. The salary paid each employee in the operation of the school transportation system shall be in accordance with a salary schedule adopted by the State Board of Education for the particular type of employee."

No statute has been found which would prohibit the local school authorities from employing a school teacher to drive a school bus if such teacher possessed the proper qualifications in order to become a school bus driver.

VI. MISCELLANEOUS MATTERS AFFECTING COUNTIES

X. Grants and Contributions by Counties

To J. S. Benner. Inquiry: Does a county have authority to pay the rent on an office for the use of the State Highway Patrol?

(A.G.) I am of the opinion that the county has no legal authority to rent such an office for the use of the State Highway Patrol. Such an expenditure would not be for a county purpose or authorized by statute.

VII. MISCELLANEOUS MATTERS AFFECTING CITIES

B. Matters Affecting Municipal Utilities

7. Services outside corporate limits

To J. C. Ramsay. Inquiry: May a town furnish water to persons outside of the corporate limits and use the general funds of the town for extending the water lines to these individuals, sufficient water being available and the town expecting to realize eventually enough revenue from the outside individuals to reimburse it for the extra expense?

(A.G.) C. S. 2807 provides: "The city may own and maintain its own light and waterworks system to furnish water for fire and other purposes, and light to the city and its citizens and to any person, firm or corporation desiring the same outside the corporate limits, where the service is available, but shall in no case be liable for damages for a failure to furnish a sufficient supply of either water or light. And the governing body shall have power to acquire and hold rights of way, water rights and other property within and without the city limits."

Under this section the town has ample authority to furnish the water if the supply is available. Under this direct grant of authority there is no reason why a portion of the general fund of the municipality could not be expended to provide a water supply outside the corporate limits. C. S. 2803 gives the municipality authority to fix such uniform rents or rates as will provide for the maintenance and operation of the water system. This section also provides that the municipality may fix a different rate for those outside the corporate limits from that charged within the corporate limits.

MEMBERS OF ARMED FORCES AS CANDIDATES

To P. H. Crawford, Jr. Inquiry: Can incumbent office holder who expects to be inducted into the armed forces of the United States within a short time be a candidate for re-election in the primary to be held next summer?

(A.G.) The Selective Service officials advise me that there is no provision in the Selective Service Act prohibiting a member of the armed forces from becoming a candidate for office, and I do not know of any State law which would deny such right. However, there might be some difficulty in qualifying for the office if elected, for it is entirely possible that the branch of the armed forces to which a person might be assigned would have some military regulation prohibiting its members from becoming candidates.

C. Police and Fire Protection

8. Regulation of traffic

To Jack W. Jennette. Inquiry: May the governing body of a municipality validly enact an ordinance restricting the speed limit of vehicles upon a city street which is a main thoroughfare through a residential district to fifteen miles per hour where no particularly hazardous conditions exist?

(A.G.) In my opinion, the speed limits prescribed or authorized in C. S. 2621 (288) apply to city streets which are not parts of the State Highway system as well as to those which are. Since this statute authorizes a prima facie speed limit of 25 miles per hour in any residential district (except as this may be modified by local authorities under provisions of subsection (f) and (g), which are not pertinent to this inquiry), it is my opinion that a municipal ordinance lowering this limit to fifteen miles per hour in the absence of special hazards authorizing action under the general law, would be invalid as conflicting with the State-wide law.

F. Contractual Powers

3. Contracts with county

To C. W. Tillett.

(A.G.) It appears to me that the provisions of Chapter 195 of the Public Laws of 1933 (C. S. 1382 (20)), relating to the consolidation, annexation and joint administration of counties, are broad enough to authorize a county and a municipality located therein to enter into an agreement relative to the joint operation and maintenance of a consolidated health department.

N. Police Powers

9. Outside city limits

To W. M. Allen.

(A.G.) It is my opinion that a municipality would not have authority to establish and operate an abattoir within the corporate limits of another municipality located in an adjoining county.

20. Regulation of trades—and businesses

To Tillett and Campbell, Lacy S. Collier.

(A.G.) I am of the opinion that a city is without authority under the general laws of the State to prohibit fortune tellers from operating within the city. It is entirely possible that particular city charters might confer this right; but the general law does not.

X. Ordinances

1. Validity of ordinance

To John B. Lewis. Inquiry: May a municipality adopt an ordinance providing a higher price for cemetery lots to non-residents of the municipality than the price charged residents of the town?

(A.G.) As maintenance of the cemetery is paid for out of the general tax fund, there would seem to be no discrimination in such a statute. The fact that residents pay maintenance charges through taxes and the non-residents purchase with a guarantee of perpetual maintenance without further charge removes the only ground of objection that could be made to the ordinance.

Inquiry: May ad valorem taxes be collected after expiration of ten years?

(A.G.) When an action is brought by a municipality under C. S. 7990 to collect a tax duly levied as provided by law, no statute of limitations applies.

VIII. MATTERS AFFECTING CHIEFLY PARTICULAR LOCAL OFFICIALS

B. Clerks of the Superior Court

To J. A. Williams. Inquiry: Is a Clerk of the Superior Court required by law to invest the trust funds which are under his supervision, and, if invested, is he allowed to make any charge against the income for overhead expense?

(A.G.) By C. S. 962 (b) it appears that it is entirely in the discretion of a clerk as to whether or not he invests funds coming into his hands by virtue or color of his office. Under the latter portion of C. S. 3903, I am of the opinion that a clerk is entitled to receive 3% on the first $500.00 and 1% on the excess thereof coming into his hands by virtue or color of his office.

JURISDICTION OVER MINOR CHARGED WITH LARCENY

To Coy Etheridge. Inquiry: Has the Juvenile Court jurisdiction over a minor fifteen years of age charged with the larceny of a motor vehicle?

(A.G.) I am of the opinion that a person under sixteen years of age charged with larceny, comes within the jurisdiction of the Juvenile Court under C. S. 5038-5062 and that Chapter 760 of the Session Laws of 1943 removed from Juvenile Court or Domestic Relations Court jurisdiction only those offenses involving violation of the motor vehicle laws when committed by a person over fifteen years of age.

To J. E. Swain. Inquiry: Is a Clerk of the Superior Court liable for money deposited in his hands where he pays it out in accordance with a mistakenly rendered judgment signed by a Judge of the Superior Court? May he be attached for contempt if he refuses to comply with such an order of the court?

(A.G.) Clerks of the Superior Court are insurers and guarantors of funds coming into their hands by virtue or color of their office. Thacker v. Deposit Co., 216 N. C. 135 and cases cited. There seems to be no case holding that a Clerk of the Superior Court would be liable for payment out of funds in his hands by virtue or by color of his office, in accordance with a judgment of the Superior Court signed by the Judge thereof. It is probable that the Clerk of the Superior Court, like anyone else, and particularly as an officer of the court, would be bound to comply with the judgment of the court and a failure or refusal to do so would subject the person so refusing to a contempt proceeding. The clerk would probably not be personally liable for complying with the order of the court, in paying out the funds in his hands as directed by the court.

To J. E. Swain.

(A.G.) In the matter of the Hess case: it is conceivable that the court might, under the authority of the Sawyer case, still hold the clerk liable, if persons who had not been made parties appeared and showed that the claims for the fund were fraudulently conceived and proven, and that the parties to this proceeding had imposed a fraud upon the court.

To J. P. Shore. Inquiry: Where should a coroner file his reports?

(A.G.) Coroner's reports and verdicts should be filed with the Clerk of the Superior Court of the county in which the investigation is conducted or the inquest held.

1. Salary and fees.

To Fred Proffitt. Inquiry: Is a Clerk of the Superior Court entitled to a commission on funds paid into his office by parents for the use and benefit of their chil-

dren, pursuant to an order of court in abandonment or non-support actions?

(A.G.) It will be noted that C. S. 3903, in providing commissions for clerks on monies paid into their hands by virtue of their office, specifically provides: "Except on judgments, decrees, executions and . . ." I am of the opinion that such funds are in the nature of a judgment or decree of the court, and that a clerk would not be entitled to commission thereon.

To C. D. Murphy.

(A.G.) Section 20 of the Revenue Act, relative to the collection of inheritance taxes, provides that the Clerks of the Superior Court in the several counties shall be allowed the fees provided for in this section in addition to other fees or salaries received by them, and any and all provisions in local conflict with the Act are thereby repealed.

11. Collection of process tax—Clerk's commission.

To A. R. Higdon. Inquiry: What commissions, if any, is a Clerk of Superior Court allowed on the amount collected as process tax under the provisions of Section 157 of the Revenue Act?

(A.G.) The Clerk of the Superior Court is entitled to five per cent on the process tax which is collected for the State, regardless of whether or not he is on a salary basis.

32. Intangible taxes.

To George A. Hux. Inquiry: Is a Clerk of the Superior Court required by law to compute and pay intangible taxes upon trust funds belonging to minors when such taxes are not paid by the bank in which they are deposited?

(A.G.) Section 714 of the Revenue Act permits the clerk to pay the taxes directly to the Commissioner of Revenue. The Revenue Act contains no exemption from the tax of funds held by the clerk in trust for minors and it is my opinion that such funds are subject to the intangible tax.

Inquiry: Is the clerk required to pay the tax upon trust accounts which have an average quarterly balance of less than $100?

(A.G.) Section 701 of the Revenue Act allows such accounts to be disregarded.

Inquiry: When one of the trust accounts is to be closed before December 15 of the taxable year, is the clerk required to compute and pay intangible taxes upon the account?

(A.G.) In my opinion Section 701 indicates an intent that the tax shall be paid even on accounts that have been closed out before the last quarterly balance. The proper basis for computing the tax would be to take the average of as many of the quarterly balances as were available at the time the account was closed.

REGISTERING MILITARY DISCHARGES

To French Toms. Inquiry: May a Register of Deeds charge a fee of 25c for the registration of a discharge from the military and naval forces of the United States?

(A.G.) Section 1 of Chapter 599 of the Session Laws of 1943 repealed that portion of Section 2 of Chapter 198 of the Public Laws of 1921 which allowed a fee of 25c to the Register of Deeds for registering such a discharge.

C. Sheriffs

1. Salary and fees

To A. R. Higdon. Inquiry: Is a sheriff entitled to a fee for service of summons in a special proceeding, where he makes his return and states that after due and diligent search the defendant cannot be found in the county.

(A.G.) In the absence of a local statute allowing to the sheriff a fee for unsuccessful attempts to serve processes, it would seem that the sheriff is entitled to a fee only when the process is served.

D. Registers of Deeds

1. Fees

To Leo L. Fisher. Inquiry: Is there any statute relieving war veterans from the payment of fees for certified copies of records in the offices of Registers of Deeds?

(A.G.) The only section of our statutes exempting veterans from the payment of the fees for certified copies of records is Section 1 of Chapter 599 of the Session Laws of 1943, which specifically strikes out the provision in Section 2 of Chapter 198 of the Public Laws of 1921 allowing the Register of Deeds a fee of twenty-five cents for the payment of the registration of official discharges of the military and naval forces of the United States.

14. Birth certificates

L. Local Law Enforcement Officers

7. Prohibition law—confiscated automobile

To P. H. Johnson. Inquiry: Where a defendant has been convicted in a county recorder's court for transportation of intoxicating liquors, and the judge has ordered confiscation of the automobile in which the liquor was transported, may the sheriff sell said automobile at private sale since he has obtained a private offer for more than he anticipates he will receive at public auction?

(A.G.) I know of no authority under which sale of the automobile in question can be made at private sale. Section 3411 (f) of the Consolidated Statutes specifically provides that the court "shall order a sale by public auction of the property seized."

9. Prohibition law—confiscated automobile

To D. C. McCotter, Jr. Inquiry: May an automobile be confiscated and ordered sold under C. S. 3411 (f) and 3411 (77), where the operator is convicted of transporting taxpaid whiskey for the purpose of sale?

(A.G.) It is my opinion that where taxpaid liquor which bears the proper revenue stamps is seized while being transported in violation of the law, and the operator of the vehicle in which the liquor is being transported is convicted, such vehicle may be condemned and sold under the provisions of Section 3411 (f).

60. Powers of an Officer

To Walter G. Sheppard. Inquiry: What authority if any does a police officer have to pursue a person accused of violating the law within the town limits, and make arrests outside the corporate limits and within the county?

(A.G.) This question is decided by the recent case of Wilson v. Mooresville, 222 N. C. 283. The doctrine of "hot pursuit" is not applicable to municipal police officers. Their authority to make arrests does not become any greater than it would otherwise be by reason of the fact that they are in pursuit of a person accused of violating the law within the corporate limits.

P. Officials of Recorders' and County Courts

15. Jurisdiction and powers.

To Walter D. Siler. Inquiry: Would the judge of a county recorder's court be authorized to perform a marriage ceremony under the North Carolina statutes relating to marriage?

(A.G.) C. S. 2493 provides that a marriage ceremony may be performed by an ordained minister of any religious denomination, minister authorized by his church, or a justice of the peace. It is my opinion that the judge of a county recorder's court would not be authorized, under this section, to perform a marriage ceremony.

POWER TO REPOSSESS LIQUOR BOOKS

To C. C. Reid. Inquiry: Does a county ABC Board have the right to have its enforcement officers repossess whiskey sales permit books because of violations by the holders thereof (under rules laid down by the State ABC Board)?

(A.G.) The only right of the Board, in my opinion, is to demand the sales permit, but if the holder will not surrender it, there is no method of forcing him to do so.

T. Justices of the Peace

5. Costs

To Zebulon A. Shipman. Inquiry: Are Justices of Peace required to collect $2.00 process tax as part of their costs?

(A.G.) Under C. S. 7880 (88), which levies the process tax, "cases in the jurisdiction of magistrates, whether civil or criminal," are specifically excepted. Upon appeal to the Superior Court from the judgment of a magistrate the process tax will become due, but it is assessed and collected by the Clerk of the Superior Court.

It is important, however, to distinguish the process tax from the $2.00 tax which is required to be assessed in the costs in every criminal conviction and remitted for the benefit of the Law Enforcement Officers Benefit and Retirement Fund.

To A. J. Bradshaw. Inquiry: Should a Justice of the Peace include in a bill of cost in cases tried before him jail fees of a defendant who was confined in prison prior to his trial, found guilty of a misdemeanor and required to pay the costs?

(A.G.) I am of the opinion that a J.P. should include in a bill of cost assessed against a defendant convicted in his court of a petty misdemeanor the necessary jail fees.

U. Notaries Public

To N. Henry Moore. Inquiry: Is an instrument executed by a partnership and acknowledged before a Notary Public who is a member of the partnership a proper and valid instrument?

(A.G.) Such an acknowledgment would be invalid since a Notary Public cannot legally act in any instrument to which he is a party or in which he is interested. See Long v. Crews, 113 N. C. 256.

10. Contracts in which employer is interested.

To Joseph W. Timberlake.

(A.G.) I am of the opinion that a Notary Public who is a stockholder, director or officer of a building and loan association may take acknowledgments of any party to any written instrument executed to or by such corporation or of any stockholder, director, officer, employee or agent thereof, except as to those instruments where such Notary Public is individually a party.

★JEFFERSON STANDARD FINANCIAL STATEMENT★

37TH ANNUAL REPORT

FINANCIAL STATEMENT, DECEMBER 31, 1943

ASSETS

Cash	$ 7,953,056
United States Government Bonds	15,596,911
State, County and Municipal Bonds	4,292,145
All Other Bonds	10,555,473
Stocks — Listed securities carried at market, cost or call value, whichever is lower.	7,255,908
First Mortgage Loans — On farm property $6,749,875. On city property $50,593,035.	57,342,910
Real Estate — This includes our seventeen story Home Office Building.	6,251,889
Loans to Our Policyholders — Secured by the cash values of policies.	11,957,245
Premium Loans and Liens — Secured by the cash values of policies.	2,816,123
Investment Income in Course of Collection	999,902
Premiums in Course of Collection	3,034,321
All Other Assets	190,442
Total Admitted Assets	$128,246,325

LIABILITIES

Policy Reserves — This reserve is required by law to assure payment of policy obligations.		$102,568,427
Reserve for Policy Claims — Claims in course of settlement on which proofs have not been received.		605,495
Reserve for Taxes		672,119
Premiums and Interest Paid in Advance		1,104,637
Policy Proceeds Left with Company		9,126,364
Dividends for Policyholders		1,172,251
Reserve for All Other Liabilities		997,032
Liabilities		$116,246,325
Contingency Reserve — A fund for contingencies, depreciation on real estate and Investment fluctuations.	$2,000,000	
Capital	4,000,000	
Surplus Unassigned	6,000,000	
Total Surplus Funds for Additional Protection of Policyholders		12,000,000
Total		$128,246,325

TO THE PUBLIC:

The Jefferson Standard presents to policyholders and friends its annual report, which reflects outstandingly successful achievement along all lines. President Julian Price, in his annual message to those insured in the Company, points out several important facts relating to its service, growth and strong financial position. Facts in brief are given here. The detailed annual report booklet is available upon request.

INTEREST EARNING MAINTAINED

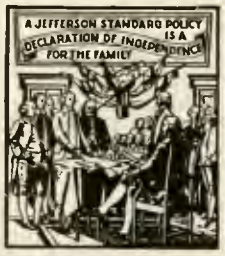
★The gross rate of interest earned on invested assets for 1943 was 5.23%. Jefferson Standard maintains its national leadership in this field.

INTEREST PAYMENT MAINTAINED

★In 1943, as in every year since organization, 5% interest was paid on funds held in trust for policyholders and beneficiaries.

ASSETS SHOW INCREASE

★Assets now total $128,246,325—an increase of $13,230,309. For each $100 of liabilities there are $110.32 of assets indicating an unusually strong financial position.



BENEFITS PAID

★The Company paid policyholders and beneficiaries $6,305,910 in policy benefits during 1943. Total benefits paid since 1907—$137,771,775.

SURPLUS FUNDS INCREASED

★Surplus, capital and contingency reserves total $12,000,000. This is $23.88 surplus for each $1000 insurance in force—an exceedingly high surplus ratio.

SPLENDID INVESTMENT RECORD

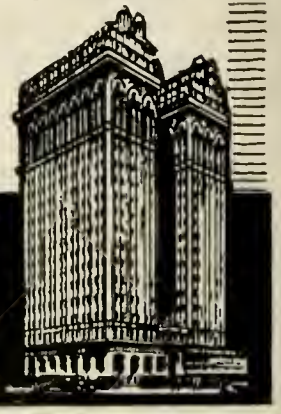
★Less than $25,000 interest is past due on Mortgage Loan investments of $57,342,910. Only one-half million dollars is owned in foreclosed real estate.

INSURANCE IN FORCE

★Jefferson Standard's 200,000 policyholders now own $502,533,041 life insurance. The Company has very proudly announced having over a half-billion dollars life insurance in force. This was a gain of $32,202,404 for the year.

JOHN W. UMSTEAD, Jr., Manager

136 East Franklin Street, Chapel Hill



JEFFERSON STANDARD

LIFE INSURANCE COMPANY

Julian Price PRESIDENT • GREENSBORO, NORTH CAROLINA