POPULAR GOVERNMENT

PUBLISHED MONTHLY BY THE INSTITUTE OF GOVERNMENT
UNIVERSITY OF NORTH CAROLINA

POPULAR GOVERNMENT

VOLUME 10
NUMBER 2

PUBLISHED BY THE INSTITUTE OF GOVERNMENT
THE UNIVERSITY OF NORTH CAROLINA

MAY
1944

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Popular Government is published monthly by the Institute of Government, University of North Carolina, Chapel Hill. 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.

1944 Waterworks Operators' School

North Carolina Waterworks Operators' Association

Above is Winston Hall, home of the Chemical Engineering at State College and the place where the 1944 Waterworks School will be held. Against the background of Winston Hall are four of the principal figures instrumental in planning this year's school.
Lower Center: Dr. E. E. Randolph, Head of the Department of Chemical Engineering at State College, one of the most beloved figures among waterworks operators.
Upper Center: Edward W. Ruggles, Director of Extension at State College.
Right: Albert O. True, President of the North Carolina Waterworks Operators Association.
Left: Max Saunders, Chairman of the Program Committee of the North Carolina Waterworks Operators Association.

In the spring of 1944 in a conference with Albert Coates, Director of the Institute of Government, and Russell Grumman, Head of the University Extension Division at Chapel Hill, Edward W. Ruggles, Director of Extension at State College, pointed out that the Institute of Government represented the Consolidated University and that therefore the Institute belonged to State College and to the Woman's College as well as to the University at Chapel Hill. Mr. Ruggles suggested that the Institute of Government in its great In-Service Training program should utilize the resources of all three branches of the Consolidated University rather than just the resources of the University located at Chapel Hill. Mr. Ruggles then urged that the Institute join with him in the request that the North Carolina Waterworks Operators Association hold the 1944 school at State College. Albert Coates wholeheartedly agreed to this program and asked Mr. Ruggles to represent both him and the Institute of Government at the meeting of the executive committee of the North Carolina Waterworks Operators Association in Greensboro on March 25.

ALBERT COATES
Director
Institute of Government
University of North Carolina

At this meeting of the executive committee, plans for the Waterworks Operators' School, to be held under the auspices of the North Carolina Waterworks Operators Association, and conducted by the Department of Chemical Engineering at State College were worked out. The Institute of Government through its Director and its Staff have since that time been working with Edward W. Ruggles, Head of the State College Extension Division, and with Max Saunders, Chairman of the Association's Program Committee, to make the 1944 school a complete success.

Program of 1944 Waterworks Operators' School

To Be Held in Winston Hall, Home of the Chemical Engineering Department of the School of Engineering, N. C. State College, Raleigh, N. C.

Max Saunders, superintendent of the University water plant at Chapel Hill and Chairman of the Program Committee, called a meeting of that committee for Monday, April 24, in Winston Hall of the Engineering School at State College. Those present at the meeting were: W. S. McKimmon, Dr. E. E. Randolph, E. W. Ruggles, Max Saunders, and W. O. Spence.

At this meeting the program for the five-day school to be held in Winston Hall beginning May 29 was worked out. In addition to courses of instruction and lectures by men outstanding in the field of water purification, there will be ample opportunity for the operators to talk with members of the sales division of industrial companies about practical problems of plant operation. Also the program will include a business meeting of the North Carolina Waterworks Operators' Association on Tuesday evening, and will close on June 2 after the examinations for "A," "B," and "C" certificates, set for that day, have been completed.

A schedule of the program—still subject to possible amplification and change—is set out below. Notice of all changes in this program will come to you through the mail either from the Institute of Government or from the Program Committee:

1944 WATERWORKS SCHOOL
Program for Candidates for Certificates

	"A" Certificate	"B" Certificate	"C" certificate
Monday, May 29th			
10:00 A.M.—12 NOON	Registration	Registration	Registration
12:00 NOON—1 P.M.	Welcome	Welcome	Welcome
1:00 P.M.—2 P.M.	Lunch	Lunch	Lunch
2:00 P.M.—5 P.M.	Bacteriology Laboratory	Bacteriology Laboratory	(2-3 P. M.) Chemicals Commonly Used in Water Purification (3–5 P.M.) Chemistry and Chemistry Laboratory
7:00 P.M.—9:00 P.M.	Committee Meetings	Committee Meetings	Committee Meetings
Tuesday, May 30th			
9:00 A.M—12:00 NOON	(9–11 A.M.) Hydraulics (11–12 N) Elementary Electricity	Chemistry and Chemistry Laboratory	Bacteriology Laboratory
12:00—1:00 P.M.	Corrosion Control	Venturi Meters and Rate Controllers	Venturi Meters and Rate Controllers
1:00—2:00 P.M.	Lunch	Lunch	Lunch
2:00—5:00 P.M.	Analytical Chemical Solutions	(2–3 P.M.) Pumps and Motors (3–5P.M.) Bateriology Laboratory	(2–3 P.M.) Corrosion Control (3–5 P.M.)Chemistry and Chemistry Laboratory
7:00—9:00 P.M	Business Meeting of N. C. Waterworks Operators Association	Business Meeting of N. C. Waterworks Operators Association	Business Meeting of N. C. Waterworks Operators Association
Wednesday, May 31st			
9:00 A.M.—12:00 N	Hydraulics	Chemistry and Chemistry Laboratory	Bacteriology Laboratory
12:00 N—1:00 P.M.	Treatment of Water from Chemical Analysis	Filters	Filters
1:00 P.M—2:00 P.M	Lunch	Lunch	Lunch
2:00 P.M.—5:00 P.M.	Treatment of Water from Chemical Analysis	(2–3 P.M.) Pumps and Motors (3–5 P.M.) Bacteriology Laboratory	(2–3 P.M.) Cross Connections (3–5 P.M.) Chemistry and Chemistry Laboratory
7:00 P.M.—	Barbecue Supper	Barbecue Supper	Barbecue Supper
Thursday, June 1st			
9:00 A.M.—12:00 N	Hydraulics Pertaining to Pumps and Meters	Chemistry and Chemistry Laboratory	Bacteriology Laboratory
12:00 N—1:00 P.M.		Chlorinators	Chlorinators
1:00 P.M.—2:00 P.M	Lunch	Lunch	Lunch
2:00 P.M.—5:00 P.M.	Question and Answer period	(2–3 P.M.) Coagulation (3–5 P.M.) Bacteriology Laboratory	(2–3 P.M.) Coagulation (3–5 P.M.) Chemistry and Chemistry Laboratory
Friday, June 2nd			
9:00 A.M.—1:00 P.M.	Examination for Certificates	Examination for Certificates	Examination for Certificates

What's Wrong With Tax Titles?

The Summary Foreclosure Procedure May Produce Titles More Marketable than Those Under Court Action

By
PEYTON B. ABBOTT
Assistant Directnr Institute of Government

There has grown up in North Carolina a widespread belief that no tax title is or can be good, or at least that such a title is so doubtful that the actual value of property must be sharply discounted before purchasers can be induced to come forward and run the risk of what is considered a hazardous investment. The feeling is that even though a title will meet all of today's exacting requirements, tomorrow's requirements may raise clouds upon the title; that tax titles are always subject to attack, with two strikes already chalked up against the holder of the title when the attack begins. Instability and marketability are as oil and water: they won't mix, and the presence of one excludes the other.

The situation has become so serious that many cities, towns and counties are unable to find purchasers for property necessarily taken over through foreclosure proceedings except at a fraction of the worth of the property, and this is true even where the tax attorney has exercised the greatest care in following the law as understood at the time of the foreclosure. Other tax attorneys, knowing of this situation or having experienced the difficulty in disposing of property, are reluctant to spend the time and money necessary to carry through a process that offers little prospect of accomplishing much beyond the removal of property from the tax books. And governing boards, naturally inclined to avoid suing the citizens if possible, are not encouraged to urge their attorneys to take action which seems to them rather futile and a waste of money. Result is that in times of prosperity when tax collections are relatively easy, those taxpayers who find it "inconvenient" to pay their taxes promptly are permitted to become delinquent for several years. Then, when a recession sets in and collections slow up, those people who have been permitted to become delinquent, who might have paid if pushed during good times, and who are even less able to pay even current taxes, let alone the accumulated arrearages, must be the first to see their property go under the hammer. By reason of the difficulties and uncertainties attendant upon foreclosures by court action, it is inevitable that taxes will be allowed to become delinquent at the time they should be pushed, and that they will have to be pushed at the very time governmental units should be able to follow a policy of leniency.

The uncertainties and general lack of faith in tax titles are undoubtedly due in no small part to the complex procedure in general use, and the somewhat conflicting body of cases that has from time to time interpreted those provisions. Some of those cases are mentioned later. However, it is not the purpose of this article to discuss those cases at any length, and at this time it is sufficient to point out that the situation is such that many tax attorneys who have seriously and conscientiously studied the procedure and rulings are sometimes not certain whether they have fully complied. Title examiners, if they certify tax titles at all, feel constrained to so hedge, restrict, and note exceptions that the certificate amounts to more of a condemnation than a certification. Title insurance companies run from tax titles as if they had urgent business elsewhere. The prospective purchaser, if he attempted to study the law, would simply be bewildered. All he knows is that his city or county is offering property for sale at ridiculous prices, and that when he says "tax title," his attorney is apt to smile and slowly shake his head.

If this situation is attributable to or even materially aggravated by the use of a complex foreclosure procedure, why not try a simple one? The tax attorney need not go overboard if he thinks the water may be a little chilly. He may test the water first with his toe, then with his whole foot, then, if the temperature suits him, he may boldly dive in. Even if the water turns out to be colder below the surface than his testing promised, he can still go back to the old pool with all its charted and uncharted rocks and snags. For the summary procedure, to be discussed below, specifically provides that if any of its provisions should be declared invalid, a formal foreclosure proceeding may be instituted within one year from the date such invalidity is declared. It is the purpose of this article to outline that summary procedure and to discuss the validity of titles that may be acquired thereunder.

Summary Procedure Under Section 1720

In its 1939 session the General Assembly, in response to appeals for an inexpensive and simplified method for enforcing the payment of taxes by subjecting real estate to sale, enacted section 1720 of the Machinery Act.

The need for such a simplified procedure was real. The need for a direct affirmance of the validity of such procedure *is* real. For example, take a lot or tract worth on the market about $800. It will be listed on the tax book at a valuation of about $500. With a tax rate of $1, the tax will be $5. In order to begin to enforce payment through a formal court action of foreclosure, the attorney must spend at least $10 worth of time examining the title to the property. He must spend at least an additional $10 worth of time in attending to the various steps in the procedure, seeing that all necessary parties are brought in by personal service or by publication and seeing that all technicalities are observed. And he must incur at least $10 worth of costs, fees, etc., order to carry the proceeding to a conclusion—all to collect $5. So the tax on that property must be allowed to become from six to ten years delinquent before it becomes economically profitable even to attempt to enforce collection. Take a thousand such cases, and you have from $30,000 to $50,000 that must be allowed to become and remain delinquent because it is not economically profitable to enforce collection. And all this time there is property almost within walking distance out of which the tax should be readily collectible! Government imposes no such burden upon private business. Business would demand and receive procedures more suited to its needs, and the courts would recognize that in the case of business, "justice delayed is justice denied." For example, if landlords still had to resort to the old common law writ of ejectment in order to dispossess a tenant, they could easily lose an entire year's rent before they could get rid of a non-paying tenant; so they were given a summary ejectment procedure. Other examples of summary remedies afforded private business will be mentioned later.

Taxing Units Entitled to Procedures Suited to Needs

Why should taxing units, exercising sovereign powers, be forced into the use of methods more cumbersome than is required of private parties who have a much weaker claim of right to summary remedies? Is the difference founded upon the necessity of guarding against abuse and oppression? The constitutional requirements of uniformity and equitable administration of the taxing power impose safeguards not found to such a degree with respect to individual action. It is much easier for private parties to resort to arbitrary, oppressive and discriminatory action than for governmental units to do so. Whatever the tax law may be, it must be applied to all persons in the same situation alike, and all must be fed out of the same spoon. The office holder who resorts to capricious or oppressive measures, who misuses his power, who singles out individuals for harsh or unwarranted treatment, can be and usually is voted out of office. Not so with officers of private corporations or private individuals who, as an aid to the conduct of their businesses, are given efficient and simple remedies. They are "within the law" if they violate no criminal statute. They can and often do personally profit by taking advantage of others through some short-cut afforded them by law. Public officers may not profit personally from such action, and therefore have less incentive to misuse their power. It would seem that governmental units ought to be trusted at least as much as private parties in the use of summary remedies.

Unnecessary Burdens Created by Cumbersome Procedures

The mischief created by the imposition of unduly elaborate and exacting tax procedures is two-fold: (1) an unnecessary burden of expense and delay is placed upon the taxing unit, therefore upon the taxpayer, both individually and collectively. (2) The complicated procedure now followed affords innumerable opportunities for minor errors, causes titles to be subject to "technical defects," raises doubts in the minds of prospective purchasers as to the validity of any tax title, and results in the serious impairment of the marketability of property necessarily acquired through foreclosure, thus adding heavily to the burden of the taxing unit and hence to the burden of the taxpayer.

"Hard cases make bad law." Many hard cases have made much bad tax law. In an understandable and human desire to help a particular taxpayer hold on to his property—a taxpayer who has been less vigilant than the court in protecting his interests—the courts have gradually extended the requirements necessary to perfect technically a tax title, with the result that the burden of government is increased and must be paid for by thousands of taxpayers who know that taxes fall due year after year and that foreclosures may be instituted if the taxes are not paid, and who have been alert to protect their own interests. Why should this situation exist? Why should not the maxim *vigilantibus et non dormientibus subvenit lex* apply as well to taxation as to commercial transactions?

In section 1720 of the Machinery Act the legislature has provided a simple, inexpensive method for the sale of real estate for taxes which has its equivalent in a number of procedures in use for the enforcement of individual rights — procedures which result in the transfer of titles which go blithely into the channels of commerce unstigmatized by any whisperings of illegitimacy.

Outline of Procedure Under Section 1720

1. Notice to the Taxpayer

The first step in a proceeding under section 1720 consists of mailing to the listing taxpayer, at his last known address, by registered mail,

a letter stating that a judgment will be docketed against him and that execution will be issued thereon as provided by law. The letter must be mailed at least two weeks before docketing the judgment, and must be sent by registered mail. The section states that the receipt of the letter by the taxpayer, or receipt of actual notice by the taxpayer or by any interested party shall not be required for the validity or priority of the judgment or of the title acquired by the purchaser at the execution sale.

Proof of the mailing of the letter, if it should become necessary, would be facilitated by the retention of a carbon copy of the letter, together with the registry receipt, in the files of the collector or attorney.

2. Filing Certificate of Taxes Due

The second step in the procedure is to file with the Clerk of the Superior Court a certificate showing the tax due. This certificate must show the name of the listing taxpayer, the amount of taxes, interest, penalties and costs, the year for which the tax is due, and a description of the real estate upon which the tax is a lien. The description of the real estate must be sufficient to permit its identification by parol testimony.

Other than the above requirements, no form of the certificate or judgment is set out. Since the certificate is to be docketed by the Clerk *as* a judgment, and since the section requires that a separate tax judgment docket be kept for each year's taxes, it would seem to be practical for the collector or attorney to make up the tax judgment docket himself, in a form approved by the Clerk of Court, and deliver the docket to the clerk who would endorse on each certificate therein the fact and date of filing and docketing, and fill in his fee (50c) for docketing and indexing the judgment. The judgment docket sheets could be printed with two or more certificate forms to the page, leaving the reverse side, which would be the facing page for the preceding sheet, blank but ruled to conform to the upper and lower edges of each certificate for the entry of assignments or cancellations. Each certificate should be signed by the collector, either personally or by a rubber stamp facsimile signature. Since section 1722 authorizes a rubber stamp facsimile signature but no other, a facsimile printed on the forms might be questioned.

3. Issuance of Execution

At any time after six months from the *indexing* (not docketing) of the judgment, and before the expiration of two years from such indexing, the governing body may request the clerk of court to issue execution. Execution is issued in the same manner and form as other executions against specific property issued in the Superior Court, and the sheriff is required to sell the property therein described in the same manner as in other execution sales, except that no homestead exemptions are allowed. The Act provides that in lieu of personal service of notice upon the owner of the property, notice by registered mail may be sent to the listing taxpayer at his last known address at least one week prior to the date fixed for the sale. It is not stated whether this duty should be performed by the sheriff or by the tax collector. It probably should be done by the collector, but in any event the collector should make certain that the notice is mailed. While the Act says such mailed notice is "in lieu of" personal service, it also says such notice "shall be mailed"; so that it would be safer to mail the notice as required even where personal service is obtained.

Dower Rights

While the Act is silent as to dower rights, by inference such rights are cut off by the execution sale, as the Act provides that the purchaser at the execution sale "shall acquire title to said property free and clear of all claims, rights, interest and liens except the lien of other taxes and as price and not included in the judgment." Although it is not required, it would probably be prudent to include the listing taxpayer's wife in the notices and in the judgment, and thus obviate the question of dower arising later. This action is especially indicated in view of the fact that the wife's dower interest is being subjected to sale to satisfy taxes assessed against personal property in which she may have no interest.

Where One Other Than the Owner Lists the Property

The Act does not provide for any notification to the record owner of the property where it is listed in the name of one other than such owner, and it is probable that the notices to, and a judgment certificate drawn against, the one who listed the property would be sufficient. The court stated, in *Forsyth County v. Joyce*, 204 N. C. 734, 169 S.E. 655 (1933), in which the property was listed by one other than the owner, that an action instituted against the tax lister would have been maintainable without making the true owner a party, if the property was sufficiently described, unless the true owner had listed it and paid taxes on it. A provision to this effect is incorporated in the Act. However, it would undoubtedly be better and render a title more readily marketable if the records were checked at least to the extent of seeing that the property were listed in the name of the record owner. If listed by someone other than the record owner, it would be prudent to send the notices to the record owner as well as to the tax lister, and to include the record owner and spouse in the judgment certificate.

Judgment Liens May Be Consolidated

By agreement, two or more taxing units may consolidate their liens for the purpose of docketing judgment, and they may also include two or more judgments against the same property in one execution. If, after docketing a judgment, another taxing unit institutes a foreclosure action against the same taxpayer with respect to taxes upon the same property and makes the tax judgment

creditor a party, such tax judgment creditor should file an answer and set up its tax lien claim in the action. The action then proceeds as if the tax judgment had not been docketed. The Act is silent on the point, but it would seem to be proper, upon judgment being rendered in the foreclosure action, to make an entry upon the tax judgment docket to the following effect: "The lien for taxes upon which this judgment is based has been included in a judgment entered in an action entitled " vs. " which judgment is recorded in Judgment Docket , Page , and this tax judgment is accordingly cancelled."

Notice and Advertisement of Sale Required

As heretofore stated, the execution sale is to be conducted in the same manner as other execution sales, with the exception of registered mail notice to the listing taxpayer at least one week prior to the date set for the sale, in lieu of personal service upon the owner. There is this further difference: the sheriff may, and at the request of the taxing unit must, include more than one execution in the same notice and advertisement of sale. The execution should direct the sheriff to sell the property which is described in the judgment, and the notices and advertisement should describe the property sufficiently to permit its identification by parol testimony.

If two or more executions are included in the same advertisement, the property described in each judgment should be separately set out, and the name of each listing taxpayer should be set out in connection with each parcel.

Limitations in Proceedings Under Section 1720

Judgment may be docketed under section 1720 at any time after six months from the sale of the tax certificates, and within two years after such sale. If the principal amount of the tax is $5 or less, the judgment may be docketed at any time within four years of the certificate sale (but after the six months waiting period has expired). Since the section does not provide for including taxes for two or more years in the same judgment, and since it does provide for a separate judgment docket for each year, the extra two years allowed for docketing small items is apparently designed only to allow that much longer time to attempt collection by other methods. Since the execution cannot issue until after six months from the date judgment is indexed, and must be issued within two years of such date, some economy can be effected with respect to small tax items by holding off the docketing as long as possible, then docket for several years at once (three years would ordinarily be the limit) and issue one execution upon all of the judgments.

Special Assessments

Any special assessments due a taxing unit may be included in a tax judgment, or a separate judgment for special assessments may be docketed under provisions of section 1720.

It is not too clear as to what limitations may apply to proceedings upon special assessments under the section or as to when the statute begins running. Subsection (f), which makes the only mention in the section as to special assessments, is silent on the matter. The limitation as to *taxes* has reference to the sales date of the certificates, and the lien of special assessment installments are not necessarily sold. Then there is C.S. 2717(a), which provides that "no statute of limitation, whether fixed by law specially referred to in this chapter or otherwise" shall bar the right to enforce any remedy for special assessments until ten years after default. That statute hasn't been repealed, but the Machinery Act, passed ten years later, provides a new remedy and a new statute of limitations. If the new remedy is elected, the court would probably hold that the limitations attached to it would be applicable. *Wilkes County v. Forester*, 204 N. C. 163, 167 S.E. 691 (1933). In instances where no assessment lien sales are held, it is probable that the statute would start running on the due date of the installment. Unless, upon default of one installment the remaining installments are declared due and collectible under C.S. 2716, it doesn't seem that section 1720 affords a very convenient method of handling special assessments. For the short period of limitations allowed for taking the initial step and then for issuing execution puts enforcement of special assessments upon a piece-meal basis.

Validity of Title Acquired Under Section 1720

Although section 1720 has been available as a method for enforcing collection of taxes for five years, the Supreme Court has not passed upon the validity of titles that may be acquired under that procedure. The method is in use, and reports are to the effect that it provides an effective means of keeping fairly well up-to-date those relatively small amounts of taxes individually, but large in the aggregate, which hardly justify the expense involved in a court action. It is particularly effective as an aid to the regular collection of taxes upon vacant lots and small pieces of property which are usually permitted to remain delinquent from year to year until the aggregate tax becomes such that the taxing unit finds it has purchased a piece of property on the installment plan. The remedy is effective in spite of a widespread but rarely defined feeling among tax attorneys that the titles thus acquired are invalid.

What is wrong with a title acquired through this summary procedure? The principal suggestion is that the procedure fails to observe the requirements of due process of law. And what is due process of law? Our Court has stated many times that notice and an opportunity to be heard fulfills the requirements of due process. An actual hearing is not required, but rather an opportunity to

be heard. What kind of notice? To whom must it be given?

The Proceeding Under Section 1720 Is In Rem

Section 1720 designates the procedure thereunder as an *in rem* proceeding, and it is in fact such a proceeding. The theory and purpose of the section is well stated by the legislature:

"It is hereby expressly declared to be the intention of this section that proceedings brought under it shall be strictly in rem. It is further declared to be the intention of the section to provide a simple and inexpensive method of enforcing the payment of taxes necessarily levied, to the knowledge of all, for the requirements of local governments in this State; and to recognize, in authorizing such proceeding, that all those owning interests in real property know, or should know, without special notice thereof, that such property may be seized and sold for failure to pay such lawful taxes."

The subject matter of the proceeding is the property itself. The object of the proceeding is the enforcement of a lawful lien thereon—a lien which everyone knows must be satisfied and which is also a matter of record. Personal notice has never been thought necessary in such proceedings. The act of the court in taking possession of the property in such proceedings has always been considered to be sufficient notice to interested parties. The practice in admiralty cases is a good example. The seizure by the court serves as notice to interested parties and to give the court jurisdiction. After the property is seized, the subsequent proceeding is for the purpose of determining the amount of the lien and for the formal entry of the order of sale. In tax cases, the amount of the lien has already been determined.

Taxes Are Judgments When Properly Assessed

Sometimes lost sight of is the fact that the ad valorem tax is not a claim merely, or a chose in action, or a circumstance that gives rise to a right of action. The tax is the result of an action. There has already been an adjudication in a quasi-judicial proceeding of which everyone is charged with notice, and the tax, when lawfully assessed and levied, is a judgment. The amount of the judgment is fixed by the assessing and levying procedure, and the incidents of the judgment are fixed by law. Among other things, the law makes it a specific and prior lien upon the property taxed. That is no more than the admiralty court does with respect to claims for salvage. The theory of the admiralty law is that without the salvage operations, the ship may have been lost, and therefore the work benefited all interested parties and the claim for such services should have priority over pre-existing liens. The fact that the sale of the ship may cut off those liens as effectively as if the ship had been allowed to sink appears not to alter the theory. As to taxes, if government cannot enforce its own support, very little value will be left in any property. Even the man whose lien is superseded and cut off by a tax sale receives an indirect benefit through the continued operation of government.

Tax Assessment Procedure Meets the Requirements of Due Process

The amount of the tax lien has been adjudicated, and upon that matter the taxpayer has had his opportunity for a hearing. If he did not agree with the valuation at which his property was assessed, he had an opportunity to protest, and to appear before the county board of equalization. From the ruling of that board he could appeal to the State Board of Assessment, from there to the Superior Court and from there to the Supreme Court. It certainly can't be said there there has been a want of due process so far as the owner is concerned. To so hold would invalidate all tax levies. The tax having been regularly assessed and levied, and having been given the force and effect of a judgment and execution thereon in the hands of the collector (section 1103), there would appear to be no fundamental or constitutional requirement for giving further notice before docketing the tax judgment in the collector's hands as a judgment of the Superior Court. It amounts to no more than transcribing a judgment of a justice of the peace and docketing the transcript as a Superior Court judgment. No one contends that the defendant in the magistrate's court or any one else must be given notice of such action. It is the purpose of the judgment to give notice to the world of the adjudication therein contained and of the legal rights that flow therefrom.

Notice to Other Interested Parties

Why should interested parties other than the owner of the property be given special notice of the docketing of a judgment for duly assessed taxes, or of the issuance of execution thereon? They are not accorded this special attention in the case of ordinary litigation. For example, John Doe sues Richard Roe on a note for an amount within the jurisdiction of a magistrate. He gives Roe legal notice by causing summons to be served upon him, but he is not required to give notice to anyone else. Roe may but does not have to appear, just as the taxpayer may but does not have to appear before the board of equalization. After the magistrate renders judgment, Doe may have it docketed as a judgment of the Superior Court without giving notice to anyone. Thereafter, he may cause an execution to issue and have Roe's property sold under the execution without causing any notice to be given to mortgagees or other judgment creditors except such notice as is required to be given by the advertisement of sale under execution. Does anyone contend that the execution sale does not effectively cut off the lien of junior judgments or of subsequently recorded mortgages, or any liens of lesser dignity? Why should not the same thing be true of execution sales under tax judgments, taxes being an annually recurring

matter of which everyone is charged with notice? Docketing and executing a judgment upon ordinary commercial or private transactions is sporadic, indefinite as to time, and might well catch interested parties by surprise. But not so with taxes.

Ample Publicity Provided

Not only is everyone charged with notice that taxes become due annually and that certain legal procedures are provided for their collection, but any interested party has ample opportunity to inform himself as to the amount of any tax lien upon any piece of property in which he is interested. Section 1705 of the Machinery Act provides:

"All persons who have or may acquire any interest in any property which may be or may become subject to a lien for taxes are hereby charged with notice that such property is or should be listed for taxes, that taxes are or may become a lien thereon, and that if taxes are not paid such proceedings may be taken against said property as are allowed by law. Such notice shall be conclusively presumed, whether such persons have actual notice or not."

Section 1711 requires tax collectors to give any interested party a statement of taxes due upon any specified piece of real estate upon request. Section 1715(c) requires the annual sale of the liens of unpaid taxes to be advertised for four weeks by public posting and also by newspaper if one is published in the county. This advertisement must carry the name of the person in whose name the property was listed, a description of the property upon which the tax is a lien, and the amount of the lien. This advertisement alone affords more publicity than many procedures available to private parties.

After the tax certificates are sold, the collector must wait at least six months before he can docket the tax judgment. After indexing, the judgment must lie at least another six months as a matter of public record in the clerk of court's office. Finally, upon issuance of execution, the sale must be advertised by posting notice thereof for thirty days at the courthouse, and also by newspaper advertisement once each week for four successive weeks. Again, the name of the person who listed the property and a description of the property must be set out.

The above would certainly appear to be ample provisions for publicity of an *in rem* proceeding, especially one that is based upon an annual, recurring liability, rather than upon an occasional, extraordinary one arising from torts or contractual obligations not of a periodic nature.

Finally, section 1721 provides that no action or proceeding shall be brought to contest the validity of any title to real property acquired through any proceeding authorized by the Machinery Act, nor any motion to reopen or set aside the judgment in any such proceeding be entertained after one year from the date on which the deed is recorded. This limitation of one year should further protect a title acquired through an execution sale.

Analogy to Earlier Practice

For a good many years the tax laws of the state provided for a method of selling lands for taxes and for conveying such lands to the purchaser with less requirement for notice than is contained in section 1720. For example, ch. 323, Laws of 1891 provided that a purchaser of a tax sale certificate could apply to the sheriff, after the one year period for redemption had expired, and receive a deed to the land. There was no further sale under execution or otherwise, no docketing of the certificate as a judgment, no further notice or advertising required, as under section 1720. Yet, the court sustained such titles as valid as against the whole world. In *Powell v. Sikes*, 119 N. C. 231, 26 S.E. 38 (1896), which arose under that act, it was held that the sheriff's deed conveyed good title as against a mortgagee whose mortgage was duly recorded before the sale of the certificate, and who had no notice of the sale and consequently no notice that the grantee was entitled to a deed.

Powell v. Sikes, supra, cited *Exum v. Baker*, 115 N. C. 242, 20 S.E. 448 (1894), which went even further in charging interested parties with notice of the lien for taxes and the possibility of proceedings thereon which might cut off their interests. A mortgage conveying the land in question was executed in 1875, and plaintiff claimed under a decree of foreclosure of the mortgage and a deed executed pursuant to the decree. The land was sold in 1894 for taxes due for the year 1886 by virtue of a special act, ch. 391, Laws of 1891 which revived the right to collect the tax after such right had become dormant. Defendant received a deed after the expiration of the period for redemption. In discussing the duty of a mortgagee to keep himself informed as to proceedings upon tax liens, the court said (page 243):

"The lien of the tax on the land, if it be a lien at all, as against a person without notice, is generally superior to the right of either mortgagor or mortgagee. *Wooten v. Sugg*, 114 N. C., 295. Hence it is ordinarily the duty of the mortgagee, certainly on the failure of the mortgagor to discharge such lien, to avail himself of the privilege given him by statute (The Code, sec. 3700) and save his security. If the assignee or mortgagee negligently suffered another to acquire a superior right by purchasing at a tax sale, he cannot complain of consequences which naturally followed. If the lien for tax was superior, Jasper Baker acquired, on the expiration of the time allowed for redemption and the execution of a deed by the tax collector, a better title, legal and equitable, than that of mortgagor or mortgagee."

The Court even charged the mortgagee with notice that a dormant tax lien might be revived by the legislature. On page 245 we find the following:

"The mortgagee was required to see to the discharge of the tax liens as they fell due, if the mortgagor should make default in the payment, or submit to the consequences of his neglect to do so. He is presumed to have known that the tax for 1886 was not paid when he conveyed to the plaintiff as trustee in 1888, and that it constituted a lien which it was competent for the Legislature to revive after it should become dormant."

So we see that in the past our Court has upheld the validity of tax titles acquired in proceedings more summary in nature than that provided by section 1720. While there are some vagaries in the cases, the main current of opinions which have held tax titles defective have been based on the ground that the particular procedure prescribed by the law in effect at the time had not been followed, rather than upon the ground that certain procedure must be both prescribed and followed. The cases have required that procedure provided by law be followed, but the cases dealing with the early summary procedure do not support the proposition that the constitutional requirement of due process means that personal notice must be given to all interested parties, or even that a formal court action is necessary in order to divest titles and interests because of the non-payment of taxes.

A fairly clear cut case is presented in *Stanley v. Baird,* 118 N. C. 75, 24 S.E. 12 (1896) where the Court upheld the tax title although patently unsympathetic with the summary nature of the procedure under which the land was sold, and although it was clear that a presumption (prior exhaustion by the sheriff of recourse to the personal property of the taxpayer) made conclusive by the statute was contrary to the actual facts of the case.

In that case one Richardson listed the land while he was the owner. He still owned the land when the tax list was placed in the hands of the sheriff for collection, but sold the land to Stanley before the sale of the tax certificate on April 2, 1894, the deed to Stanley, which was duly recorded, having been executed on January 2, 1894. Notice of the certificate sale was given personally and by mail to Richardson, the former owner, but not to Stanley, and the sale was legally advertised in the newspaper and by posting notices as required. At the sale, the county became the purchaser of the land, which was valued at $250, for $5.79, the amount of its lien and costs of sale. After the expiration of the period of redemption, the county assigned its bid to Baird who, a few months later and without any notice to Richardson, Stanley or anyone else, and without any further publication, demanded and received from the sheriff a deed to the property. It was held that Baird took a good title as against Stanley who had received no notice other than that given to the general public through the advertisement of the tax certificate sale. The Court, speaking through Justice Furches, questioned the policy of the legislature in going as far as it had in simplifying tax foreclosure procedure, but approved of its right to do so. Said the Court:

"From the great difficulty in collecting taxes and in sustaining tax titles for land, under the law as it existed prior to 1887, it was necessary that there should be legislation on the subject. But in providing for an admitted defect in the law it may well be considered whether the legislative pendulum did not swing too far the other way, and whether the time for redemption should not be extended and the purchaser be required, at least six months before the expiration of the time at which he will be entitled to demand a deed, to give the owner of the land notice of his purchase, the amount paid and the time when he will be entitled to demand a deed, personally, if the party resides in the State and is known, and by publication if he does not reside in the State or is not known to the purchaser. But this is a matter for the Legislature to determine, and not for us. It is our duty to declare the law as we find it, and not to make the law. And, this being so, we find no error in the judgment appealed from."

Since the procedure under section 1720 is different from that provided by earlier statutes, no useful purpose would be served by a further discussion of those earlier cases. The purpose of referring to those earlier cases is to point out that the Court has sustained titles acquired through procedures with less provisions for notice to interested parties than is required by section 1720. When those cases held titles invalid, it was due to failure to follow the procedure prescribed by the legislature, not because the procedure itself was constitutionally defective. With respect to such procedures, the Constitution now requires no more of such procedures than was required when those earlier statutes were being upheld and given effect by the Court.

United States Supreme Court Sustains Summary Tax Procedures

The Supreme Court of the United States has held that summary procedures for the assessment and collection of taxes are valid if at some stage in the proceeding before the tax demand becomes final and irrevocable the taxpayer has an opportunity to be heard by a competent tribunal. For discussion as to requirements as laid down by that Court, see *Nickey v. Mississippi,* 292 U.S. 393, 54 Sup. Ct. 743, 78 L.ed. 1323 (1934); *Phillips v. Commissioner of Internal Revenue,* 283 U.S. 589, 51 Sup. Ct. 608, 75 L.ed. 1289 (1931); *American Surety Co. v. Baldwin;* 287 U.S. 156, 53 Sup. Ct. 98, 77 L.ed. 231, 86 A.L.R. 298 (1932). As heretofore pointed out, the ad valorem taxpayer in North Carolina is given the opportunity to be heard with respect to the proposed assessment even before it is made, with the right to appeal to the courts if not satisfied with the action of the county board of equalization and the State Board of Assessment. Since a tax scroll in the hands of the collector is given the force and effect of a judgment, an assessment made without notice and an opportunity to be heard is void. *Lumber Co. v. Smith,* 146 N.C. 199, 59 S.E. 653 (1907). To deny that the procedure provided by the Machinery Act for the assessment of ad valorem taxes does not meet the requirements of due process would automatically void every ad valorem tax levy of every municipality and county in North Carolina; for, if the procedure does not provide the essential elements of due process the tax, which is given the force and effect of a judgment, would be a nullity. That the essential elements of due process are found in the current listing and assessing procedure which has been in use in North Carolina for a long number of years, and that following such pro-

cedure results in judgment liens against the property taxed has been held in numerous cases. It would not appear to subject the Constitution to any undue strain to permit such judgments to be executed and to give effect to the dignity of the liens created thereby.

Recent Tax Foreclosure Cases Do Not Render Summary Procedure Invalid

In the above discussion of the procedure provided by section 1720 of the Machinery Act, and in making the suggestion that there are no constitutional prohibitions against a declaration that a title obtained pursuant to that procedure is good as against other lienors as well as against the owner, we are not brushing aside or discounting the holdings in those cases which have held that in an action to foreclose the lien of taxes, it is necessary to make all persons who have an interest in the property—holders of junior as well as prior recorded mortgages and judgments—parties in order to foreclose such interests. In mind are those cases which started in Orange County in the center of the State with the holding that only the listing taxpayer and spouse need be personally served with process (*Orange County v. Jenkins*, 200 N.C. 202, 156 S.E. 774 (1930), and *Orange County v. Wilson*, 202 N.C. 424, 163 S.E. 113 (1932)), followed by cases from the west (*Buncombe County v. Penland*, 206 N.C. 299, 173 S.E. 609 (1934)) and from the east (*Beaufort County v. Mayo*, 207 N.C. 211, 176 S.E. 753 (1934)), which added the requirement that all lien-holders of record must be made parties, and culminated in another Orange County case which set aside a sale under foreclosure at the instance of a holder of a note secured by a deed of trust who had not been made a party to the foreclosure suit (*Orange County v. Atkinson*, 207 N.C. 593, 178 S.E. 91 (1935)).

Those cases have extended the requirements to the point of practical impossibility of compliance in some cases. For example, suppose there is on record a judgment against the taxpayer in favor of a former domestic corporation that has ceased to do business and has forfeited its charter more than three years prior to the institution of the tax suit. The stockbook of the corporation cannot be located. Against whom must summons be issued? How can an affidavit be drawn that will support service by publication? Suppose it later turns out that some of the stockholders are well-known residents of the county? The progressive extension of requirements introduced by those and other recent cases, and the successive overturning of prior decisions have contributed substantially to the popular lack of faith in the validity of any tax title, entertained alike by lawyers and laymen. Because of that popular lack of faith there is an urgent need for an affirmance of the validity of titles acquired through a simple process that can be easily followed and understood.

Those cases are open to some suspicion that the more stringent rules laid down therein are in some degree a by-product of the depression, when a natural sympathy for persons whose property is being foreclosed was somewhat heightened by the prevalence of forced sales at grossly inadequate prices. For instance, it was mentioned in the opinion in *Buncombe County v. Penland, supra*, that property worth $12,000 had been sold for $413.13, and in *Beaufort County v. Mayo, supra*, that property having an assessed tax value of $129,695 brought $12,959.80—roughly 3½% and 10%, respectively, of the assessed values.

Basis of Recent Decisions

Those recent decisions, however, do not detract from the position that a title obtained through the summary procedure provided by section 1720 of the Machinery Act is valid, not only as against the taxpayer but also as against judgment and mortgage lienors. On the contrary, a careful reading of the cases, their basis and precedents serves to buttress that position. Those cases are based upon the provision of the tax law that tax liens may be enforced "by an action in the nature of an action to foreclose a mortgage." It is probably unfortunate that procedure in tax foreclosure actions was referred to the procedure in mortgage foreclosure cases instead of outlining a procedure especially provided for taxes. However, at the time the reference to mortgage foreclosure proceedings was first inserted in the tax law, the Court had been following the rule that in the foreclosure of a superior lien it was not necessary to make inferior lienors parties in order to divest their interest in the land; that their liens were transferred from the land to any surplus realized from the sale. When they were made parties it was for the purpose of determining their rights to the surplus. *Gammon v. Johnson*, 126 N.C. 64, 35 S.E. 185 (1900). This rule apparently prevailed until, in 1911, in *Jones v. Williams*, 155 N.C. 179, 71 S.E. 222, 36 L.R.A. (n.s.) 426, the Court held, with Chief Justice Clark dissenting on the ground that the majority opinion was changing the settled law on the subject, that a decree of foreclosure does not bind a junior lienor who was not made a party to the action, and that the right of such junior lienor to redeem was not affected. *Guy v. Harmon*, 204 N.C. 226, 167 S.E. 796 (1933), which stated: "Foreclosure is an equitable proceeding and the law as interpreted and applied in this State, has uniformly commanded a day in court for parties in interest," cites *Jones v. Williams* as its authority on this point. The same case is the authority for the decisions in *Beaufort County v. Mayo, supra*, and *Buncombe County v. Penland, supra*.

Distinction Recognized in Jones v. Williams

The majority opinion in *Jones v. Williams* drew a clear distinction between sales held under contractual

or statutory powers and those held pursuant to an equitable proceeding in a court. The distinction is pertinent to this discussion and important; for without it a large number of procedures in daily use which lawyer and layman alike accept without question would be rendered useless, and titles which are acquired every day through such procedures would be of such doubtful validity or the procedures would have to become burdened with such expense and delays through elaborations as to virtually deprive many claimants of their rights. The purpose of such procedures as the law provides for the execution of judgments, the foreclosure of mortgages and deeds of trust under powers of sale, the enforcement of liens given to materialmen, artisans, laborers, warehousemen and others, and other procedures which will readily come to the lawyer's mind would be largely defeated. Said the Court:

"There is no analogy between this case and those where sales are made under a power contained in a mortgage or deed of trust, or under an execution issued upon a judgment, for in the former case when the party acts under a power he is proceeding out of court, *and in the case of an execution he is proceeding under a statutory power or mandate,* and the court is not called upon to exercise its equitable jurisdiction and do what is manifest justice as between all parties interested. The plaintiff is merely enforcing a right acquired at law by legal process and that is all. *In such cases, third parties must be vigilant and take care of their interests.*" (Italics ours)

The Distinction Is Applicable to Tax Procedures

It is inescapable that the distinction thus drawn is necessary and valid, and is directly applicable to tax procedures. There is no more reason why there should be, with respect to mortgages than there is with respect to taxes, two different procedures for foreclosures, one with and one without the necessity of a court action, but either of which will vest in the purchaser a clear title if the prescribed procedure is properly followed. The tax foreclosure procedure provided by section 1720 of the Machinery Act is that of an execution upon a judgment. *It is a proceeding under a statutory power or mandate,* and while there are also provided two other procedures in the nature of an action to foreclose a mortgage, the Supreme Court held valid a more summary procedure than that provided by section 1720 when such a procedure was on the statute books, a few pages removed from C.S. 7990, at an earlier date. The *law* of those earlier cases remained good through the years and has not been changed by the recent cases dealing with foreclosures by court action. The legislature merely suspended the statutory *power* for a few years, but in 1939 reinstated it in a slightly different and more elaborate form.

The distinction drawn in *Jones v. Williams, supra* is strongly pointed up by two opinions which were filed by the Supreme Court of North Carolina on January 28, 1935, and reported in the same volume with only one case intervening. Neither opinion referred to the other, which is significant of the fact that the distinction is so well recognized that the necessity of differentiating between foreclosures by court actions and those under powers of sale apparently did not occur to the Court. In one opinion (*Orange County v. Atkinson,* 207 N.C. 593, 178 S.E. 91) the Court allowed a motion to set aside a sale under a decree of foreclosure at the instance of a *holder of a note* secured by a deed of trust on the premises. In the other opinion (*Biggs v. Oxendine,* 207 N.C. 601, 178 S.E. 216) the Court held that a foreclosure sale under a power was valid although the mortgagor received no notice of the sale, and apparently the mortgagor's name was not mentioned in connection with the advertisement of the sale.

Conclusion

A study of the early cases upholding earlier statutory authority for summary tax foreclosure procedures, the comparison of the procedure outlined in section 1720 of the Machinery Act with other summary remedies universally acknowledged to be valid, a consideration the cases dealing with titles transmitted through the use of such remedies, and the recognition by the Court of the distinction between equitable court proceedings and those under statutory powers or mandates with respect to the transfer of titles free and clear of encumbrances, leads us to the conclusion that there is nothing in the Constitution of North Carolina, nothing in our statutes, and nothing in our court decisions which militates against the view that the procedure provided by section 1720 of the Machinery Act of 1939, if properly followed, will vest in the purchaser a clear title to the premises involved.

It is suggested that a return to a simpler method of tax foreclosure would save the municipalities and counties of North Carolina, that is to say, the taxpayers, many thousands of dollars in costs and expenses paid out annually in court actions, many more thousands of dollars involved in tax liens too small individually to justify promptly putting the expensive court machinery in motion, and many other thousands of dollars tied up in foreclosed real estate for which purchasers can be found only at grossly inadequate prices because of doubts as to the validity of the title. It is further suggested that the use of the method provided by section 1720, a procedure which the tax attorney can easily and therefore more surely follow, against which the title examiner can easily check without having to refer constantly to a mass of somewhat conflicting cases, and which the average business man can learn to understand since it approximates his own methods and is removed from the realm of what he regards as legal mysticism or hocus pocus, would go a long way toward restoring the marketability of tax titles. And that would be no mean service to the cities, towns and counties of North Carolina.

FAITH, WORK AND PLAY IN WARTIME

Continuing a Series of Articles by the Dean of Administration of the University of North Carolina

R. B. HOUSE

"Will you have some pickle, Governor?" asked my mother as she was preparing the dinner plate of a Negro farm hand.

"Yes, Mistis, I love pickle," replied Governor.

"Do you like sweet pickle or sour pickle?" continued my mother in hospitable conversation.

"Pickle's pickle," responded Governor.

I would not say that he qualified in this instance as a gourmet or as a connoisseur of the many flavors in the art of enjoying pickles. But I do say he illustrated in this broad generalization a strong matter of fact philosophy which has been a stabilizing emotional influence on me ever since that time when I was at school to him on the farm, learning directly from him the art of the plow, the hoe, and the shovel; learning indirectly a spirit of gusto in matter of fact acceptance of reality.

This latter was my most useful and lasting lesson for I could not get to farming as an art because I was filibustering about it in my own mind. The sawmill at home was our chief work. In this, in the logwoods, and on the railroad running from woods to mill were all my older brothers and cousins and all the more competent men, white or black, in the neighborhood. They stepped about conscious of economic and social prestige superior to Governor's and mine. We, I thought, were unjustly declassed by the whim of Papa and Uncle Charlie—the twin Jupiters of our childhood world.

I would descant on this injustice to Governor Bell as we plowed, hoed, and dug. Not only was the work inferior to that of the sawmill in status, the hours were longer. We would be plowing before the mill started and we would be plowing after it stopped. I would be conscious of many gibes spoken and many more conveyed by an amused glance, as the superior beings of the sawmill would pass by us. But not so Governor Bell.

"Work's work," was his only comment to them as they gibed to me as I writhed and filibustered. Governor knew whereof he spoke, for he was master of sawmill no less than of farm. What work was he showed me by example, never by precept. The Chinese philosophers would have called Governor a "Taoist." Tao means a principle in each thing to be manipulated in work, a principle by which it practically manipulates itself. In plowing, for example, I would fight my mule, my plow, and my furrow. All things connected with plowing seemed to fall apart in confusion and turmoil. But Governor's plow seemed to run itself, the land seemed to love to curl away from his plowshare, and he never seemed to be tired. Apparently, he never needed to rest; he only stopped and started again according to the needs of his mule for rest, food, and water. He always seemed to be quietly eager and ready. And yet I was younger and stronger than he, and always fretted and tired. It was the same way with hoe or shovel.

In that long summer with him in the fields I caught from Governor something of the art of making oneself one with the thing to be done. But his silence about my distracting emotions and quarrelings with my fate taught me a deeper lesson about emotional control as the basis of artistic skill. He kept himself free from emotional distractions so that he could watch what he was doing, and he seemed while he worked at the same time to relate his work and his whole self to all things around him. Not a bird sang, not a vista opened in the morning mist, not a friend passed along the path without an instant and appreciative response from Governor. His talk, his laughter, and his song were abundant in appreciation of fineness. He was silent or laconic in utterance only in the face of distractions. He set his spirit as well as his hand to his work.

And why do I celebrate here so long after their utterance the "pickle's pickle" and "work's work" of Governor Bell? It is because I have observed in myself and in my friends during depressions and wars a tendency to distract ourselves by over-indulgence in over-imaginative concern with considerations of doubt, worry, and fear so much that we miss the plain constructive road of the day's responsibility and work, considerations of regret, remorse, discontent, false prophecy, fear. At risk of missing some of the finer distinctions, no doubt, we would do well to catch more of the matter of fact spirit and counter so many of life's negatives with the art of positive and appreciative performance. At any rate, old Governor Bell began his day with a song while he waited for his mule to eat, continued it with joyous alacrity, and contemplated it at its close with a cheerful mind.

Public Purchasing in the City of Durham

Purchasing Agent at Work

GEORGE B. McGEHEE

Assistant Director Institute of Government

Durham's Purchasing Personnel. In the Durham City Hall, a second floor inner office is the purchasing headquarters of A. T. Crutchfield. Mrs. Blanche P. O'Brien presides over its adding machine and typewriter among the files, forms and records in the outer office. Here are two rooms and two people—the Purchasing Department of a city.

Everyone feels at home in these offices. "Crutch" has a ready twinkle and Mrs. O'Brien a warm smile. Twinkle and smile are no small part of the atmosphere of the rooms. This atmosphere—not easy to create—is shared by all who enter here. The essential cooperation of the various department heads thrives because of it. Any business of the day is easier because of it. The Durham City Hall is a warmer, pleasanter place because of these two very human folks in its Purchasing Department.

Purchasing Problems. Durham's purchasing set-up requires that all purchases for the city be made through the purchasing department. Crutchfield says that the only exception to the rule that all purchases must be made through the Purchasing Department is the right of the repair shop to purchase small parts necessary for repair jobs on the city's cars and trucks when a requisition form filled out and routed through the regular purchasing department channel would hold up the repair job in the shop.

In answer to the question, "What does a city the size of Durham buy?" Crutchfield's reply is, "Everything from safety pins to fire engines." Further discussion is sure to enlarge the fire engines into rock crushers or something larger and reduce the safety pins to straight pins or even to iron filings, for the simple answer is that a city buys almost every conceivable item and commodity in the course of rendering services to the citizens of the community. A glance through old purchase orders will give rise to a hundred questions, such as "Why would a city buy hair pins?" But women prisoners in the city jail give a ready answer to that question, just as one of the multitude of city services will answer the question for any one of the thousands of items listed in the purchase orders.

War Conditions Affect Purchasing. Crutch's voice, like the voice of other purchasing agents, grows almost wistful when he states that any discussion of how public purchasing is conducted cannot be a discussion of public purchasing today. No purchasing agent today is purchasing as he normally does. Under war conditions competitive bids are hard to get, materials and supplies are hard to get, and the purchasing agent's real job consists of finding what is needed by the city departments. In many cases he must buy where he can.

Despite the trials of priority ratings, scarcity of materials, and the scarcity of bidders, Crutchfield finds purchasing today even more interesting than purchasing in normal times. The ingenuity required to find essential supplies or substitutes for essential articles lends zest to the work of the daily purchasing routine.

By WPB ruling, malleable iron or cast iron couplings for fire hose were in, and brass couplings were out for the duration. Yet Durham's new hose has brass couplings, and no WPB order was violated. Durham's Fire Department supplied brass couplings from old hose and received a credit of eight cents a foot on the purchased hose. The radio sending apparatus of Durham's Fire Department today is functioning with tubes that were never intended for such use. The Fire Department is operating at least two pieces of apparatus not originally designed for fire fighting.

The purchase of the two 1½ ton trucks and their use by the Fire Department deserves a few words of explanation. On each truck there was installed on the drive shaft a front-mounted booster pump rated at 500 gallons of water per minute. These two trucks as part of Durham's firefighting apparatus will be rated by the fire-insurance underwriters as two additional pumpers. The direct savings growing out of this action, however, are apparent when a grass fire breaks out. A $1500 piece of apparatus, not a $15,000 piece of apparatus, leaves the fire house to handle a grass fire. Here is a dollars and cents savings of tax money.

Authority to refuse requisitioned articles. Under what circumstances the purchasing agent has authority to refuse to purchase requisitioned articles is a question that seems to warrant discussion. If the budget account against which the expenditure is to be charged lacks the funds to cover the cost of the requisition, the purchasing agent is under a legal duty to refuse to purchase the requisitioned articles. Arthur Crutchfield also refuses to purchase if the article requisitioned does not seem to constitute a reasonable expenditure. He has refused to purchase hand lotions and special soaps for stenographers in at least one department. His feeling is that if any one has the right and duty to refuse to purchase requisitioned articles on the ground that their purchase is not reasonable that burden rests on his shoulders. In practice, the weeding of requisitions is largely delegated to department heads by the expedient of refusing to honor requisitions unless they are over the signature of the head of the department. In the case of the hand lotions, the department head signed the requisition in answer to repeated requests, but when "Crutch" called to tell him that the stenog-

raphers would have to purchase their own hand lotions and special soaps, the two of them had a laugh over the "buck passing." Feminine beauty aids come under personal not city expenses and the purchasing agent is the watch dog at one of the main doors of the city treasury.

Statutory Divisions in Purchasing Procedure

[City Purchases and Contracts are regulated by C.S. 2830, 2831, and 2831(a) and the subsequently enacted C.S. 1316(a) and 1316(b); the provisions set out in 1316(a) and 1316(b) are substantially the same as those given in 2830, 2831, and 2831(a). Throughout this article reference is made to 1316(a) and 1316(b). In the General Statutes of North Carolina now coming off the press the citation of sections summarizing the law applying to city purchases and contracts are: G.S. 160-279 and 280 and 143-129 and 131.]

An outline of purchasing procedures as practiced in the Durham City Hall falls into three divisions: (1) purchases of under $100 in value (2) purchases of $100 or over, but under $1000, and (3) purchases of $1000 and over. These divisions are exactly the divisions set forth in C.S. 1316(a) and 1316(b), but for the dollar value limit in the lowest bracket. C.S. 1316(b) gives to the purchasing agent of a governmental unit broad discretion with reference to purchases of under $200 in value.

In Durham on purchases of under $100 the purchasing agent examines past purchase records for price range, looking only at firms shown by the purchase records to be reliable for quality and service. He then asks three or more of these firms for price quotations on the materials and supplies needed. On small orders these quotations are often procured by telephone. On larger orders a request for quotations is sent through the mail. (Precisely this authority seems to be granted by C.S. 1316(b) on purchases or contracts of under $200 in value.)

For purchases of $100 or over but under $1000, the Durham purchasing practice is to secure informal bids in just the manner provided in 1316(b) for purchases of over $200 but under $1000. The requirements of the law are: (1) to secure informal bids (2) to award the contract to the lowest responsible bidder, and (3) to keep of all bids submitted a record for public inspection. The usual practice in the Durham office with reference to these informal bids is for at least three, five if possible, to be secured, though the statute is silent as to the number of bids to be secured. The awarding of contracts under these bids is based not entirely on price, for fortunately the statute uses the words "shall be awarded to the lowest responsible bidder." The word "responsible" permits purchasing agents to consider quality, service, and price in awarding bids. Arthur Crutchfield puts *quality* and *service* ahead of price in his consideration of informal bids, for experience has proved to him that the lowest priced article may prove a costly investment if either the quality or service features are short.

A contract involving the expenditure of $1000 or more for "construction or repair work, or for the purchase of apparatus, supplies, materials, or equipment, involving the expenditure of public money," requires the sanction of the governing body of the governmental unit doing the purchasing. The contract must be let only after advertisement for bids; the bids must be in writing and sealed and accompanied by a cash deposit or certified check equal to 2% of the contract; the sealed bids must be opened in public on a day and hour specified in the advertisement; all bids must be recorded on the minutes of the governing body; etc. (C.S. 1316a). The Statute is so specific in its requirements that procedures in various governmental units are narrowly restricted on purchases of over $1000. On purchase contracts of "two thousand ($2,000) dollars or more, the board shall require the person, firm or corporation to whom the award of the contract is made to furnish bond in some surety company authorized to do business in this State or require a deposit of money, certified check or government securities, for the full amount of said contract for the faithful performance" of the contract. This portion of the statute further provides that "no such contract shall be altered except by the written agreement signed by the contractor, by the sureties on the bond, and by the board or governing body." (Under the provisions of the General Statutes, the surety requirement seems to begin with contracts of $1,000.)

The Purchasing Agent's part in the negotiation of contracts of $1000 or over is five-fold: (1) He advertises a request for sealed bids. (2) He opens the bids in public at the time and place specified. (3) He checks the specifications stated in the bids against the specifications in the advertisement requesting the bids. (4) He makes recommendation to the governing body with reference to the awarding of the contract. (5) He returns the checks of the unsuccessful bidding firms.

The Attorney General in a recent ruling stated that C.S. 1316(a) would not apply to a contract for an architect's services estimated at over $1000. The Attorney General's ruling was to the effect that a County Board of Education would have authority to engage the architect's services without competitive bidding, as such services were of a strictly professional nature; and therefore, the contract was not one for "construction or repair work or for the purchase of apparatus, supplies, material, or equipment."

Forms—The Bony Structure of Purchasing Practice

In a discussion of purchasing the matter of the forms used is significant. The forms are the bony structure of the purchasing process. The process may limp, falter, or reach out only feebly because of deformity arising from either rigidity and complexity, or laxity rooted in oversimplicity. The forms used should be so designed that all parties to the purchasing transaction are aided by them in transmitting in concise terms every item of information necessary for each step in the purchasing procedure to the person or persons who are responsible for the successive steps; so designed that all parties to the transaction have in their possession at all stages a record of what has been done, is being done, and have in hand all facts necessary for what must be done

next; and so designed that when the full transaction is complete the forms used will serve in the files as an adequate record of the transaction for every participating department. In other words, the originating or ordering department, the purchasing department, and the auditing or accounting department should each have in its possession as a natural incident from the use of the purchasing forms every item of information necessary for its function with regard to every purchase.

In addition to definite, complete, and accurate specifications which describe the article, material or service desired so that the vendor can understand clearly the quality and type thereof, the forms should clearly show the vendor what information the purchasing agent requires with reference to "terms of payment" and "terms of delivery." In the terms of delivery the time and means of shipment as well as who will bear the shipping costs are included. The terms of payment will show whether or not there is a discount. All of these items of information should be set forth for the vendor's benefit, since all of them are material questions, answers to which the purchasing agent must have before he can weigh, one against the other, the bids submitted. Shipping costs and no discount could easily make a bid low on its face move to high bid if quoted F. O. B. Chicago or Seattle.

The forms used by the Durham Purchasing Department have stood the test of time; therefore we submit for the inspection of purchasing departments of the cities and counties of North Carolina a discussion of these purchasing forms with actual reprints of the forms. Since we believe that this display of forms should prove of interest and value to purchasing agents, the Institute of Government intends to put on display in the Institute of Government Building at Chapel Hill, forms used by various purchasing departments throughout the State. Further, we shall discuss in bulletins, in guidebooks, and in the pages of POPULAR GOVERNMENT in succeeding issues unique forms, important forms, and significant procedures and practices encountered in the purchasing departments of the counties, cities, and towns throughout the State.

Forms Used by Durham's Purchasing Department

The Purchasing Department of the City of Durham in the normal course of public purchasing uses eight separate types of forms. The purchasing process begins with the use of one of two requisition forms: (1) a requisition on the city's previously purchased stores of routinely used supplies, or (2) a requistion looking to the issuance of a purchase order for materials from outside sources of supply.

NO._____ CITY OF DURHAM, N. C. (DEPT. COPY)

REQUISITION ON STORES

DELIVER TO_____ DATE_____

JOB OR CLASSIFICATION	QUANTITY	UNIT	ARTICLE	PRICE	TOTAL

SIGNED_____

RECEIVED BY_____ TITLE_____

This 8" by 5" form is made out in triplicate: copy 1 (white) is the "store's" copy; copy 2 (pink) is the auditor's copy; copy 3 (green) is the purchasing department's copy. The form is self-explanatory.

DEPT. REQ. NO._____ CITY OF DURHAM, N. C. DATE_____

DEPARTMENT OF_____

TO THE CITY PURCHASING AGENT: DEPARTMENT COPY OF REQUISITION

WE REQUIRE THE FOLLOWING FOR WORK UNDER APPROPRIATION FOR _____

CODE	QUANTITY	DESCRIPTION AND OTHER DATA	DATE NEEDED	DELIVER TO

FROM _____ SIGNED _____

_____ TITLE _____

This 8" by 5" form is likewise in triplicate: copy 1 (white) goes to the purchasing agent; copy 2 (blue) remains in the department originating the order as its permanent record; copy 3 (yellow) is retained by the department originating the order until the material ordered is received. On receipt of the ordered supplies, the originating department sends copy 3 to the purchasing agent as notice that the supplies requisitioned have been delivered. Copy 3 reads "Material Receipt" where copy 1 reads "Purchasing Agent's Copy of Requisition" and copy 2 reads "Department Copy of Requisition." The first column on this form headed "Code" is for budget purposes. In this column the code number of the budget account against which the purchase is to be charged is entered. This column represents one of the tie-ins between the accounting and auditing work of the city and its purchasing.

Below is set out a copy of the "code key" used by the purchasing agent, auditor, and department personnel in the City Hall for charging to the proper budget account all expenditures of each department. This code key under the glass on the purchasing agent's desk top makes a glance all that is required for recording on the requisition the particular budget account chargeable with the expenditure growing out of the requisition. From this requisition the budget code number is copied on the purchase order when the purchase order is written.

DEPARTMENT CODE NUMBERS (GENERAL FUND)

100—Administrative Department
105—Public Buildings & Grounds
110—Sewer Department
115—Engineering & Public Works
125—Sanitary Department
130—Street Maintenance Division
135—Street Lighting and Hydrant Rentals
140—City Stables
145—City Garage & Shop
150—City Parks
155—Recreation Department
160—Fire Department
165—Electrical Department
170—Police Department
175—License and Dog Pound
180—Building & Plumbing Department
185—Juvenile Court
190—Cemetery Department
195—Department of Hospitalization
205—Rock Crusher
210—Cold Storage Division
215—City Armory
220—Durham Athletic Park

DEPARTMENT CODES

(Dep'ts)
(all departments) C-1—Maintenance of Equip. Other Than Autos & Trucks
(135) C-3 —Maintenance of Whiteway
(135) C-4 —Maintenance of Signal Lights
(170) C-5 —Maintenance of Radios & Radio Station
(160) C-6 —Maintenance of Fire Alar m
(130) C-7 —Maintenance of Street Signs
(105) C-8 —Maintenance of Auditorium & Grounds
(155) C-8 —Maintenance of Playgrounds
(105) C-10—Maintenance of City Hall & Grounds
(105) C-14—Maintenance of Police Building
(105) C-16—Maintenance of Fire Department Buildings
(105) C-18—Maintenance of City Stable Buildings
(105) C-20—Maintenance of Incinerators
(105) C-21—Maintenance of Incinerator Dwellings & Stables
(105) C-22—Maintenance of Garage Building
(105) C-24—Maintenance of Rock Crusher Buildings
(370) C-24—Maintenance of Third Folk and New Hope Plants
(105) C-28—Maintenance of Forest Hills Club House & Ground
(370) C-28—Maintenance of City Station and Grounds
(105) C-30—Maintenance of Library
(370) C-30—Maintenance of Flat River Station & Grounds
(370) C-32—Maintenance of Northside Plant
(105) C-35—Maintenance of City Armory

WATER DEPARTMENT CODE

300—Administrative Department
310—Water Shed Division
320—Boating & Fishing Division
330—Flat River Station—Electrical
331—Consolidated Stations—Power
340—City Station—Electrical
341—Laboratories
344—Northside Station
345—Third Fork & New Hope Plants
350—Transmission Lines & R/W Mains
360—Distribution and Meter Division
370—Public Buildings and Grounds
380—New Equipment
390—Capital Outlay—New Work
E-1—Telephone & Telegraph
E-4—Amusements—Movies
E-5—Lights, Current, Fuel, & Ice
F-1—Office Supplies and Expense
F-5—Traveling Expense
F-8—Publishing
P-2—Softball Field
H-4—Auto and Truck Expense
D-3—Clothing for Delinquents
G-6—Rent for Recreation Centers and Hospitalization —and Cold Storage Division

WATER DEPARTMENT

K-4—Galvanized Mains
K-5—New Meter Construction
K-6—Cast Iron Mains and Fire Hydrants

J-2—Misc. Supplies
J-4—Paving Supplies
J-6—Drain & Bridge Supplies
J-8—Traffic Zone Supplies
J-12—Chemicals
K-1—Sapital Outlays—Equipment
L-2—Explosives
N-2—Feed, Horseshoes, Nails, & Harness
N-4—Veterinary & Medicine
S-1—Flowers & Shrubbery
S-2—Meals for Police & Fire Dept.
S-8—Identification Bureau
S-6—Laundry
S-10—Ammunition & Gloves
S-12—Tree Surgery

City stores or stockrooms. A number of items that are regularly used by the various city departments and agencies do not deteriorate if placed on shelves. It is possible to estimate the quantity of ink, carbon paper, standard paper products, record forms, paper clips, thumb tacks, typewriter ribbons and other office supplies that will be required by the city. It is also possible to anticipate the quantity of many durable items that will be needed by various city services. If such purchases are made in driblets in response to individual department requisitions, the prices paid for them are retail prices. Furthermore, breaks in office routine may well grow out of delay in deliveries if small quantities are bought in response to the needs of individual departments. The keeping in a city stockroom of reasonable yearly inventories of routinely used items makes possible wholesale prices on quantity purchases. Significant savings through timely wholesale buying of such items is not unusual.

A full discussion of city and county stores or stockrooms and the procedures and practices followed with reference to them would be out of place here, but there are sufficient variations in these procedures and practices to warrant a special treatment of the subject in connection with public purchasing.

Request for Quotation (see accompanying cut on this page).

It was at one time the practice to require an "F. O. B. Durham" quotation and this is still possible simply by typing in the word "Durham" after the "F. O. B." in the lower center of the form. If different bidders quote "F. O. B. Detroit," "F. O. B. New York," and "F. O. B. Chicago," it is necessary for the purchasing agent to learn the freight rates to Durham from the various points in question before a real comparison of the bids is possible.

For purposes of making accurate comparisons of bids, the purchasing agent needs information on the matter of "discounts" and "time of shipment" in order to determine the cost to the city of an actual purchase from that particular distributor; therefore, the soundness of a quotation form is determined by how effectively it sets forth its request for the various essential items of information.

The problem of specifications or "description" of the articles or services required is of the first importance to a purchasing agent, for that problem is inherent in every negotiation and is often a source of difficulty. Reference to past purchase orders, a call for the cooperation of reliable firms, and the use of specifications worked out by the Federal Bureau of Standards are the chief reliance of most city purchasing agents in the preparation of concise and accurate specifications. The utility of accurate, complete and practical specifications has long been recognized, and the legislature wrote into the law creating the State Division of Purchase and Contract provisions looking toward the creation of a library of soundly conceived specifications. The Division of Purchase and Contract may in the period after the war prove of great service to North Carolina counties, cities, and towns through purchasing specifications that have been worked out by the staff of the Division, since these specifications can be made readily available for use by all who are engaged in public purchasing.

CITY OF DURHAM, N. C.

OFFICE OF THE PURCHASING AGENT

Date .....

Terms:

REQUEST FOR QUOTATION

No 2021

..... Days

To

Please Quote on Following Items
Filling All Questions

Can Ship ..... Days
after Receipt of Order

ITEM	QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL

F. O. B.

Submitted by

Address

THIS IS NOT AN ORDER

Date

FOLLOW UP COPY OF QUOTATION

This "Request for Quotation" form is made out in triplicate: copy 1 (white) and copy 2 (yellow) go to the prospective vendor: copy 1 is for the purpose of returning a quotation to the purchasing agent; copy 2 (yellow) is for the vendor's files; copy 3 (white) is retained by the purchasing agent as a "follow up copy." All three copies bear the same serial number, an identification that aids greatly in abbreviating correspondence with reference to the negotiation. The request for "Filling All Questions" that appears in the upper left-hand corner under the serial number calls the distributor's attention to questions on "Terms of Payment" and "Terms of Delivery" as these items of information all bear on the actual price quoted in the bids.

City of Durham, N. C.
PURCHASING DEPARTMENT

TO

Nº 94750

Date
Dept.
Dept
ACKNOWLEDGMENT
Please Return Immediately

QUANTITY	DESCRIPTION AND OTHER DATA	UNIT PRICE	TOTAL	Mark all Packages

To the Purchasing Agent of Durham, N. C.
We have received and accepted the Original of this Order. Signed
Shipper
Delivery will be made on or about Per

The 8" by 5" "Purchase Order" form is issued to the firm whose quotation in terms of quality, service and price is the best buy. The purchase orders are made out in quadruplicate and must bear the purchasing agent's signature to validate them. Each of the quadruplicate forms bears the same serial number: copy 1 (white) is the vendor's permainent record; copy 2 (blue) goes to the vendor, but is returned to the purchasing agent to acknowledge receipt and acceptance of the order; copy 3 (pink) remains in the purchasing agent's office as a permanent record; copy 4 (yellow) is sent to the department originating the order as notice that the contract has been awarded; and for return to the purchasing department on the day that delivery is made or for retention by the originating department for its numerical purchase order file. If it is returned to the purchasing department, it becomes part of a second numerical purchase order file in the outer office.

On page 25 is a cut of a tracer form used for following up unfilled orders and incomplete deliveries.

ORDER RECORD

DATE	ORDER NO	DEPARTMENT CHARGE	MATERIAL

This card is used for an alphabetical Kardex file of firms from whom purchases have been made. This Kardex file is on wheels and is called "the baby carriage." Each firm name has on its card the record of all purchases from that source: the date, the order number, the ordering department, and the material ordered. This file is the key to the quality and service record of each firm with which the Durham Purchasing Department has dealings.

CITY OF DURHAM, N. C.
OFFICE OF PURCHASING AGENT

19

We thank you for your quotation No. in response to our recent request covering

Having secured a more favorable proposition than that named by you, we have placed the order. We hope to have further associations with your firm however.

Very truly yours,

Purchasing Agent.

Above is a copy of the penny postcard sent as a business courtesy to all unsuccessful bidders. The date, the serial number of the "Request for Quotation," and the purchasing agent's name give notice that that particular negotiation is closed.

Filing Records Growing Out of The Purchasing Forms

The purchasing procedure in Durham provides to the purchasing agent, to the auditor, and to each department through the purchasing forms a ready means of keeping adequate files on all purchasing transactions carried on by the City of Durham.

To summarize by calling attention to actual files kept in various departments, especially in the purchasing department, will we hope so clarify the Durham purchasing procedure that from the discussion of it, here set forth, a similar set up could be put into effect by any one who has read the analysis of what Arthur Crutchfield is doing.

Purchasing Department Record Files

In the purchasing department, the records kept are:

(1) *A file of "material receipts,"* copy 3 (yellow) of the requistion form. This file is kept under the budget code numbers assigned to the separate budget accounts. The utility of this file can be readily seen since it is the purchasing agent's responsibility to check the estimated cost of purchases by every department against the balance remaining in that department's budget. For the purpose of making this check the auditor each month furnishes the purchasing agent with a budget statement showing a breakdown of the budget in each department and setting out the "appropriation for the year," "expenditures to date," and the "unexpended balance" for each budget classification. Below is printed a sample page from the auditor's report sent to the purchasing agent for this purpose.

CITY OF DURHAM, NORTH CAROLINA

MONTH STATEMENT YEAR

FIRE DEPARTMENT	APPROPRIATIONS FOR YEAR	EXPENDITURES TO DATE	UNEXPENDED BALANCE
Salaries	$ 112,365.00	$ 88,951.44	$ 23,413.56
Maintenance of Equipment	250.00	125.08	124.92
Maintenance of Fire Alarms	700.00	264.30	435.70
Telephone & Telegraph	75.00	53.65	21.35
Lights, Current, Fuel & Ice	1,400.00	1,271.22	128.79
Traveling Expense	250.00	38.25	211.75
Water	250.00	204.50	45.50
Auto & Truck Expense	1,950.00	693.56	1,256.44
Supplies	550.00	540.30	9.70
New Equipment	1,150.00	95.41	1,054.59
Meals	30.00	.....	30.00
Uniforms	3,000.00	1,509.28	1,490.72
Laundry	605.00	449.54	155.46
TOTALS	$ 122,575.00	$ 94,196.53	$ 28,378.47
ELECTRICAL DEPARTMENT			
Salary	$ 5,090.00	$ 3,234.10	$ 1,855.90
Maintenance of Equipment	25.00	1.69	23.31
Office Expense	140.00	107.41	32.59
Auto & Truck Expense	330.00	409.03	**—79.03**
Supplies	10.00	6.25	3.75
Uniforms	50.00	.....	50.00
TOTALS	$ 5,645.00	$ 3,758.48	$ 1,886.52
POLICE DEPARTMENT			
Salaries	$ 156,125.00	$ 118,410.04	$ 37.714.96
Maintenance of Equipment	400.00	39.29	360.71
Maintenance of Radio Station	407.00	337.63	69.37
Telephone & Telegraph	2,000.00	1,291.49	708.51
Lights, Current, Fuel & Ice	1,000.00	.....	1,000.00
Office Expense	1,250.00	764.55	485.45
Traveling Expense	500.00	.....	500.00
Water	600.00	.....	600.00
Auto & Truck Expense	13,800.00	9,807.20	3,992.80
Supplies	1,240.00	540.47	699.53
Zone Supplies	2,000.00	734.21	1,265.79
New Equipment	4,268.00	4,620.87	**—352.87**
Uniforms	4,800.00	5,486.07	**—686.07**
Expense—Identification Bureau	1,000.00	926.86	73.14
Laundry	100.00	85.00	15.00
Ammunition & Gloves	1,000.00	587.23	412.77
TOTALS	$ 190,490.00	$ 143,630.91	$ 46,859.09

(2) *A numerical file of open or unfilled purchase orders,* copy 3 (pink) of the purchase order. This file in a small box on Crutchfield's desk is a record of all purchase orders on which deliveries have not been completed. When the purchase orders are filled, this copy 3 (pink) of the purchase orders becomes part of a permanent numerical file in the inner office. This numerical file is always complete since this copy of the purchase order never leaves the purchasing agent's office.

(3) *An alphabetical file by firm names,* copy 2 (blue) of the invoice. This file is broken down into months, and within each month all invoices from a single firm are clipped together. In this file Mrs. O'Brien has worked out a ready means of checking the account of any firm during any given month.

(4) *An alphabetical file of original invoices received from the vendors.* These invoices are filed for reference as a check against the auditor's copy and the purchasing agent's copy of the invoice. The original invoice and the two copies all bear the purchase order number.

(5) *A file, called the "Dead Order File,"* copy 4 (yellow) of the purchase order. This file is kept in the outer office by the serial numbers on the purchase orders and furnishes a ready means of checking by number any past purchase transaction. Some departments keep their own numerical file made up from yellow copies of the purchase orders, and for those departments the "Dead Order File" will show no record, but see (2) above.

(6) In the outer office is an Order Record Book or Order Register. Daily postings on the 12″ by 19″ pages of this ledger are a constant record of current monthly purchase orders and open purchase orders.

On the fifth or sixth of each month all orders from preceding months that have not been filled are brought forward. The oldest purchase order or lowest serial number of old orders on which no delivery or incomplete delivery has been made will head the new month's listings. Entries are made in the Order Record Book in the order of the serial numbers of the purchase orders. After the old orders—brought forward because of their incompleteness — have been listed, new purchase orders are entered day by day.

Each 12″ by 19″ page of this ledger is divided into eight columns, headed from left to right "Day" "Order Number" "Name" "Code" "Voucher Number" "Total" "Appropriations" and "Preference Rating."

When a purchase order is issued, the date, order number, name of the vendor, the code number of the budget account, and the priority rating are entered in the Order Record Book. When delivery is made, the amount due on that purchase order is registered in the column marked "Total." Once this total is entered, payment on that purchase can be obtained in the auditor's office, for at this time the auditor's copy of the invoice is sent to the auditing department.

When the voucher has been issued by the auditor in payment of the invoice, the number of the voucher so issued is recorded in the Purchase Order Book beside the proper purchase order number. In order to prevent unnecessary carrying forward of entries in this Order Record Book, each month's entries are held open until the 5th or 6th of the new month so that all possible invoices will be on hand before the month is closed out and a new one begun, but since payments by the auditor are made by the 10th of each month following delivery in order to obtain discounts, all entries in this ledger are closed out and a new month's entries are begun early in each month.

Payments are made by the auditor throughout the month on invoices sent in by the purchasing department, for orders carrying special or extra discounts when that discount is not allowed on the 10th of month following delivery. No discount is too small to warrant payment therefor.

The above discussion sketches the files kept in the purchasing department; however, there remain the auditor's files relating to purchasing and the file record kept by each city department with reference to its purchases.

Auditor's Purchase Records

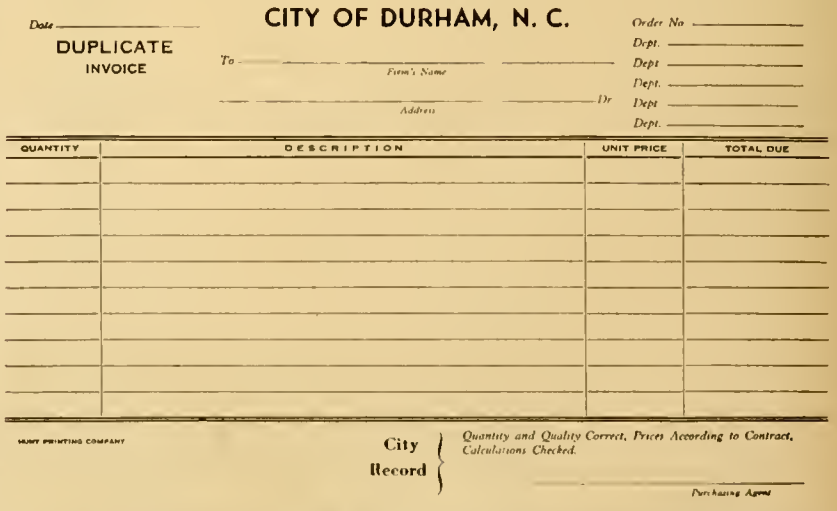
Only two purchasing forms go to the auditor: (1) on all purchases from city stores or stockroom, copy 2 (pink) goes to the auditor, (2) on all purchases from outside sources, copy 1 (white) of the invoice form goes to the auditor as authority for issuing a voucher in payment of goods delivered.

In the auditor's office there are therefore two files kept: (1) a monthly file in "journal entry" form of requistions from various city departments drawn on the city stockroom; such requisition orders from each department are clipped together in monthly bundles and filed under department headings in the auditor's files and (2) an alphabetical file by vendor's names of the invoices, copy 1 (white) furnished the auditor by the purchasing agent; clipped to each invoice is a copy of the voucher issued in payment and the material receipt signed by the department receiving the materials.

These two files in the auditor's office give a complete story of all departmental purchases.

Individual City Department Record Files Relating To Purchases

From the purchasing forms used there is available to every city department a copy of the requisition forms filled out by it and leading to the issuance of purchase orders. The blue copy of this record is retained in each department as a permanent record of each purchase from an outside firm; likewise for requisitions against city stockrooms there is a form available to the city departments as a record of purchases thereform. A copy of each purchase order issued by any department is also available for department records; however, only a few departments keep a file of their purchase orders, preferring to leave this responsibility to the purchasing department.



Date _____

DUPLICATE INVOICE

CITY OF DURHAM, N. C.

Order No. _____

Dept. _____

Dept. _____

Dept. _____

Dept. _____

Dept. _____

To _____ Firm's Name _____

_____ Address _____ Dr

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL DUE

HUNT PRINTING COMPANY

City Record

Quantity and Quality Correct, Prices According to Contract, Calculations Checked.

_____ Purchasing Agent

The 8″ by 5″ invoice form provides a final record for the auditor's office and for the purchasing agent's office of the completed transaction. On this form—of convenient filing size—a copy of the original invoice with other essential information is recorded. Made out in duplicate, this form is a record showing not only that delivery has been made and by what firm, but also showing that quantity, quality, and prices have been checked. This invoice form is the final notice to the auditing department to pay the amount due to the firm named in the invoice. Also on this invoice the proper purchase order number and budget code charge number of the departments sharing the materials listed in the invoice are set out so that the auditing department now has the complete story of the purchase. This invoice form is attached to a copy of the payment voucher and filed in the auditor's office as a permanent record of the purchasing transaction.

The Attorney General Rules

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

★

By writing to the Attorney General to seek some answer to their most trying problems, city and county officials in North Carolina have, since the war began, provided an index to the impact of the war on local government in this State, as indicated in the digests of the opinions appearing in POPULAR GOVERNMENT from time to time. As each new war-born perplexity arose to trouble city and county governing bodies, law enforcement officers, attorneys and others, and added its weight to a burden already made heavy by wartime demands on manpower, its development could be traced in the inquiries addressed to the Attorney General's office.

Can a county contribute to Civilian Defense activities and to other war agencies? Can a city legally enact compulsory blackout ordinances? Can elective and appointive officials be granted leaves of absence from their offices for military service? Can cities which are especially troubled with weekend lawlessness—defense centers and army camp sites—prohibit the weekend sale of beer and wine? Those few questions are sufficient reminders of the myriad problems which have been a natural incident to the war period throughout the State. Many similar inquiries are still arising: who has jurisdiction over the increasing number of juvenile delinquents? can a city or town prohibit fortune tellers from operating within its bounds? what are North Carolina's health regulations as to persons seeking to secure a marriage license?

But in recent weeks a new note seems to have appeared in the Attorney General's rulings, which is best described about as follows: we have been in this war for almost two and one-half years now — so long that being at war has come to seem almost the natural state of things —and some of its lasting effects are appearing.

Surpluses—Because more people are making more money than at any time since the palmy days of the late 1920's, resulting in easier and more complete tax collections, and because cities and counties have had little opportunity to buy needed equipment and accomplish desireable improvement and new building, surpluses are accumulating in their treasuries. The question now comes up, can these surplus funds be expended in view of the necessary expense limitations in Article VII, Section 7, of the Constitution? The Attorney General is of the opinion that the use of surplus funds (in one case, for improvements to a county-owned airport; in another, for repairs and additions to a city-owned building), even through derived from ad valorem taxation, does not seem, under the decisions of the Court in *Adams v. Durham*, 189 N. C., 232, *Goswick v. Durham*, 211 N. C. 687, and *Sing v. Charlotte*, 213 N. C. 69, to be in conflict with Article VII, Section 7. However, the Attorney General points out that what constitutes "surplus funds" within the meaning of the County and Municipal Fiscal Control Acts is often difficult to determine. The suggestion is made that the County and City Capital Reserve Acts of 1943 (Chapters 593 and 467, respectively, Session Laws of 1943) be considered in connection with this problem.

Military discharges — By now enough men are being discharged from the armed forces from day to day to make the registration of their discharges a frequent occurrence in the offices of the Registers of Deeds. The Attorney General has pointed out in answer to several inquiries that the 1943 General Assembly repealed the provision requiring a 25c fee for this registration and it must now be performed free of charge. There is no provision in the law as to the county in which such discharges must be registered and the Attorney General is of the opinion that it is entirely within the wishes of the person registering where he wants the instrument recorded.

HARRY McMULLAN
Attorney General of North Carolina

"Service officers" — In fact, enough men are being discharged to prompt one county to ask whether it has authority to make appropriations for the purpose of employing "service officers" to look after the interests of discharged service men. The Attorney General's office replied that county appropriations, and the taxes levied to produce them, are, of course, entirely controlled by statutes; and there is at present no authority in the statutes for appropriations for such a purpose.

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

I. AD VALOREM TAXES

A. Matters Relating To Tax Listing and Assessing

22. Exemptions—imported goods

To Thomas C. Hoyle:

(A.G.) I am of the opinion that menthol, brought to this country by a manufacturer, to be used in manufacturing products for sale, retains the character of "import" while stored in the original packages in warehouses pending requirement for use, and therefore is not taxable by a county by reason of the prohibition of Art. I, Sec. 10, Ch. 2 of the Constitution of the United States which forbids State taxation of imports or exports.

51. Nature of property

To A. J. Maxwell:

(A.G.) In my opinion, a petroleum pipe line constructed underground on a right of way purchased by Defense Plant Corporation is real estate and subject as such to ad valorem taxation.

CHECKS IN PAYMENT OF TAXES

To T. C. Hoyle. Inquiry: Where a tax collector accepts checks in payment of taxes, and some of the checks are drawn upon non-par banks and the depository bank charges an exchange fee for collecting, is the collector chargeable with the amount of the exchange, or may the county absorb it as an expense of the office of collector.

(A.G.) There is no statute governing the matter of the payment of exchange on checks as between the tax collector and the taxing unit, but since G.S. 105-382 (C.S. 7971(219)) provides that the collector may in his discretion accept checks in payment of taxes, I am of the opinion that the exchange fee incident to the collection of the checks would be a legitimate expense of office to be paid by the county.

B. Matters Affecting Tax Collection

5. Collector's commissions

To R. B. Slaughter.

(A.G.) I am of the opinion that where a tax collector who collects on a commission basis sells tax liens under provisions of Section 1715 of the Machinery Act of 1939, as amended, he would be entitled to a sale fee not exceeding 50c per parcel.

10. Penalties, interest and cost

To Roy Jennings.

(A.G.) Section 1716(b) of the Machinery Act provides that where the governing body of the taxing unit becomes the purchaser in a tax sale, interest at the rate of 8% per annum shall accrue on the amount bid by each unit from the date of sale or upon so much of the bid as represents the amount of taxes, penalties, interest and costs due the taxing unit to the date of sale.

48. Tax collection—witness tickets for taxes

To E. H. Smith. Inquiry: Does a county have the right to accept witness tickets of persons owing taxes to the county?

(A.G.) Witness fees are a part of the bill of cost in a criminal action, so that when a county is required to pay a bill of cost in a criminal action, it is mandatory upon the tax collector to credit the payment of such fees upon any taxes due by the person entitled to the fees on the taxes due by him. See Section 6-44 of the General Statutes.

65. Tax collection—garnishment

To Dr. James E. Shepard.

(A.G.) I am of the opinion that Section 1713(c) of the Machinery Act of 1939 as amended, contemplates the service of notice of garnishment of the wages of employees of State institutions upon the State Treasurer, where the institution itself does not have a treasurer. It is possible that in the case of an institution which does not have a treasurer but does have a bursar, the bursar would be considered the treasurer.

C. Levy of Special Taxes

8. Public library

To Junius C. Brown.

(A.G.) In order to levy and collect a tax for the maintenance or establishment of a public library, the tax must be approved by the affirmative vote of a majority of the qualified voters of the county or municipality, under G.S. 160-65. C.S. 2694 required only an approval by the majority of qualified votes cast, but this was changed in adopting the General Statutes to require the approval of a majority of the qualified voters, upon recommendation of the Division of Legislative Drafting and Recodification upon authority of Twining v. Wilmington, 214 N.C. 655, and Westbrook v. Southern Pines, 215 N.C. 20, which held that a public library is not a necessary expense. Hence, Art. VII, Sec. 7 of the constitution requires the approval of a majority of the qualified voters for the levy of a tax for such purpose.

LIABILITY FOR CHAIN STORE TAX

To Edwin Gill.

(A.G.) Where a hat company operates a chain of leased hat departments in a chain of department stores, and has control over the quality and style of merchandise to be sold therein, as well as the price, and pays as rental to the department stores a percentage of gross sales, it is in my opinion liable for the chain store tax under Section 162 of the Revenue Act, although the department store pays a chain store tax under that section.

III. COUNTY AND CITY LICENSE OR PRIVILEGE TAXES

A. Levy of Such Taxes

11. Privilege license—beer and wine

To John B. Lewis. Inquiry: May a town legally issue "off premises" license for the sale of beer and unfortified wines to applicants who do not come within the classification of a grocery store, hotel, or grade A cafe?

(A.G.) Under Section 509 of the Revenue Act, there is no limitation upon the class of persons to whom off premises license to sell beer may be issued if they can qualify under Section 511 of the Act.

The question as to whom off premises licenses to sell unfortified wines may be issued depends upon what is meant by "unfortified." Such licenses to sell wines of not less than 5% nor more than 14% alcoholic content are not limited to grocery stores, etc. But such licenses to sell "sweet wines"—i.e., not less than 14% nor more than 20%—are limited to grade A restaurants, hotels, drug and grocery stores in wet counties.

To A. B. Carter.

(A.G.) It is mandatory for governing bodies of cities and counties to issue beer and wine licenses to persons qualified under the Revenue Act. But unless the business is one qualified to sell beer and wine for consumption on the premises, a town may refuse to issue an "on premises" license though the applicant may be qualified to receive an "off premises" license. See McCotter v. Reel (Bayboro case), 223 N.C. 486.

40. License tax on peddlers

To W. Kerr Scott. Inquiry: Is a city ordinance requiring all peddlers of milk or dairy products within the municipality to pay a license of $10 valid as applied to a person who produces milk on a farm and sells it in the municipality?

(A.G.) It does not appear whether the tax was levied by the city under the asserted authority of Section 121 of the Revenue Act. If so, such authority was insufficient since that statute specifically prohibits municipalities from taxing peddlers of dairy products. However, if such privilege tax was levied under the charter of the city, authorizing the taxing of trades and businesses carried on within the corporate limits, or under the authority of C.S. 2677, such tax would, in my opinion, be valid under State v. Bridgers, 211 N.C. 235.

IV. PUBLIC SCHOOLS

C. Powers and Duties of City Administrative Units

4. Property

To Clyde A. Erwin.

(A.G.) When a cannery is used as a part of the vocational equipment in a duly established vocational program in the public schools, I am of the opinion that the tax levying authority for the administrative unit would have the authority to provide for the capital outlay necessary for housing this equipment, in the same manner and to the same extent that it could provide for capital outlay for other buildings necessary for the constitutional six months school term. The use of this equipment would be as much a part of the school program as any other school activity when it has been adopted in a manner provided by statute.

F. School Officials

41. School attendance.

To Dr. Clyde A. Erwin.

(A.G.) You ask, "Does a special attendance officer have authority to pick up a child not in school and deliver him to the principal of his or her respective school?"

I do not find any specific statute which would tend to authorize an attendance officer to arrest a child who is out of school without the service of some process issued by the juvenile court. It is my thought that the attendance officer would be authorized to request a child who is out of school to accompany the attendance officer to the school and, in attempting to secure the return of the child, to use the art of persuasion, but I am definitely of the opinion that the attendance officer would not be authorized to arrest the child or use any physical force in securing the child's return to school.

Under the provisions of Section 110-21 of the General Statutes of North Carolina (formerly C.S. 5039) the juvenile court has exclusive jurisdiction of the case of a child less than 16 years of age who is truant, and the judge of the juvenile court would be authorized to issue the proper processes to bring the child before the juvenile court.

62. T. and S. E. Retirement System

To Baxter Durham. Inquiry: Is an employer required, under Chapter 207 of the Session Laws of 1943, amending the Retirement Act, to make the employer's contributions on account of a member on leave of absence who makes monthly contributions to the System?

(A.G.) If an employer gives a member a valid leave of absence for any of the purposes permitted in the Act and the board of trustees of the retirement system has taken favorable action, it is my opinion that the employer would be required to make the employer's contributions under the provisions of the Retirement Act on the basis of the contributions made by the member

during the continuation of the leave of absence.

I. School Property

To John D. Warlick.

(A.G.) Public school property may be assessed for benefits caused by local improvements of streets upon which such property abuts. In case of the non-payment of such assessment, the proper remedy is by mandamus to compel payment and not by foreclosure. See Raleigh v. Public School System, 223 N.C., 316.

11. Proceeds from sale of school property

To Fred Folger.

(A.G.) I am of the opinion that under G.S. 115-86, the proceeds from the sale of abandoned school sites should be paid to the treasurer of the county school fund who under G.S. 115-165 is the county treasurer and I am of the opinion that when such proceeds are deposited with the county treasurer they would become a part of capital outlay fund which is to provide for the purchase of sites, the erection of school buildings, alteration or addition to buildings, installation of heating, lighting, and plumbing, purchase of furniture, etc.

V. MATTERS AFFECTING COUNTY AND CITY FINANCE

K. Unanticipated Revenues and Expenditures

To H. P. Taylor. Inquiry: May a county expend surplus funds for improvements to a county-owned airport?

(A.G.) The use of surplus funds, even though derived from ad valorem taxation, does not seem, under the decisions of our Court (Adams v. Durham, 189 N.C. 232; Goswick v. Durham, 211 N.C. 687; and Sing v. Charlotte, 213 N.C. 60, cited) to be in conflict with Article VII, Section 7, of the Constitution. But when we come to determine what constitutes surplus funds within the meaning of the County Fiscal Control Act, a more difficult question is presented. In solving this problem, I would suggest that you consider the provisions of the County Capital Reserve Act of 1943.

L. Local Budgets and Audits

2. County budget—when passed

To Dr. Carl V. Reynolds. Inquiry: What is the earliest date the board of county commissioners of a county may legally pass and adopt the budget for the various departments of the county government for the ensuing year?

(A.G.) It appears that the date upon which the county commissioners may adopt the budget depends upon the date on which the county accountant, under Section 153-118, files the budget estimate with the commissioners, but not later than the first Monday in July, and it further depends upon how promptly the commissioners file the budget estimate with the clerk of the board as required by Section 153-119, as the board must wait at least 20 days after filing before adopting the appropriation resolution, but not later than the fourth Monday in July in each year.

P. Securing Local Funds

5. Extent of deposit insurance

To George F. Lucas.

(A.G.) In a letter to F. W. McGowen on December 20, 1934, we expressed the following opinion: "We are of the opinion that where the county has funds under several accounts which are, never-the-less, county funds, they are protected only to the extent of $5,000 under the Federal law; that is to say, the aggregate amount of such accounts. Several accounts in the county are set up as a matter of convenience in bookkeeping or because of some law requiring that such separate accounts should be kept by the county."

This opinion was confirmed on April 17, 1939, in a letter to M. O. Wyrick.

ALIAS SUMMONS IN STREET ASSESSMENT CASES

To Calvin Graves.

(A.G.) You inquire whether in a proceeding to foreclose the lien of a street assessment instituted under C.S. 7990 where summons was issued in May, 1943, but the sheriff returned the summons in October of 1943 not served upon the defendants, an alias summons can be issued under the provision of C.S. 7971 (228e), which provides that alias summons may be issued or service by publication begun at any time one year after the issuance of the original summons.

I do not think that the section referred to is applicable to proceedings instituted under C.S. 7990 as it is a part of the foreclosure of tax lien proceedings provided for by the Machinery Act of 1939 and has no reference to proceedings instituted under C.S. 7990. It is my opinion that the issuance of an alias summons in proceedings under C.S. 7990 is governed by the general laws applicable to civil proceedings. C.S. 480 provides that in a civil action or special proceedings in which summons is not served within the time in which it is returnable, the plaintiff may sue out an alias or a pluries summons at any time within 90 days after the date of the issuance of the next preceding summons in a chain of summonses.

VI. MISCELLANEOUS MATTERS AFFECTING COUNTIES

X. Grants and Contributions by Counties

To Zeb V. Turlington. Inquiry: Would a county have authority to make appropriations for the purpose of employing "service officers" to look after the interest of discharged service men?

(A.G.) The appropriations, and taxes levied therefor by a board of county commissioners, are controlled entirely by statutes. I have examined these statutes carefully and I do not find in them any authority to make appropriations for this purpose. Such action would require an act of the Legislature.

20. County agent's office

To Julius C. Brown.

(A.G.) You ask whether the county has the authority to make an appropriation to the county agent's office to be used in payment of salaries of employees whose duties are principally in connection with the effort to reduce or eliminate "black shank," a tobacco disease. G.S. 153-9, Par. 35 (C.S. 1297, Par. 40) authorizes boards of county commissioners "to cooperate with the state and national boards of agriculture to promote the farmer's cooperative demonstration work, and to appropriate such sum as they may agree upon for the purpose."

Power Co. v. Clay County, 213 N.C. 690, discussing the authority of county commissioners to cooperate through the county farm agent with the national, state and county governments in agriculture extension work, held that the salary of a county agent is a necessary expense. I am, therefore, of the opinion that if the board of commissioners finds that it is necessary to employ additional persons in the county agent's office to enable them to carry out the duties of his office, such expenditure should be considered a necessary expense for which the county would have authority to levy a tax.

Prepared by

CLIFFORD PACE

Assistant Director Institute of Government

VII. MISCELLANEOUS MATTERS AFFECTING CITIES

K. Grants by Cities and Towns

To P. V. Critcher.

(A.G.) You ask: "May a city make a substantial donation from earnings of its public utilities toward the construction of a modern up-to-date hospital, which is to be located in the corporate limits of the city, and which hospital is to be managed and operated by a Board of Trustees under the Duke plan?"

I know of no authority under which the municipal authorities would be authorized to make a contribution to a hospital which is not owned and operated by the municipality, established as authorized by G.S. 131-4, et seq., formerly C.S. 7255, and other similar provisions. Under G.S. 105-298 (C.S. 7971 (131)), private hospitals may be allowed certain credits against taxes for valid claims against the county rendered to indigent persons, upon compliance with the provisions of this section.

N. Police Powers

20. Regulation of trades and businesses.

To W. C. Daniel.

(A.G.) I am of the opinion that under G.S. 160-200 (33), which authorizes municipalities to "license, prohibit, and regulate pool and billiard rooms and dance halls, and in the interest of public morals provide for the revocation of such license," a municipality may, by proper ordinance, prohibit the operation of pool rooms within the corporate limits of the town.

T. City Health Matters Other Than School Health

3. Powers of health officer.

To Dr. Carl V. Reynolds. Inquiry: May a city health officer, in a municipality which maintains a health department, give the instructions to persons suffering from tuberculosis in the communicable form, as provided for in Section 357 of the Session Laws of 1943?

(A.G.) After an inspection of the various statutes relating to the organization of the county board of health and those relating to municipal health organizations, there is some doubt in my mind as to whether a municipal health officer would be considered an agent for the county board of health within the meaning of Section 1 of Chapter 357 of the Session Laws of 1943, in the absence of some action taken by the county board of health designating the municipal health officer its agent for such purpose.

7. Operation of abattoir

To Grover H. Jones.

(A.G.) From the reasoning of our Court, particularly in Moore v. Greensboro, 121 N.C. 592, which dealt with the question of whether an abattoir was a necessary expense, I am of the opinion that the establishment and operation of an abattoir by a city is a governmental function of such city and not a proprietary function.

VIII. MATTERS AFFECTING CHIEFLY PARTICULAR LOCAL OFFICERS

B. Clerks of the Superior Court

1. Salary and fees

To W. E. Church. Inquiry: May a sheriff demand his fees in advance for serving subpoenas on defendant's witnesses in criminal actions?

(A.G.) Section 138-2 of the General Statutes provides that the fees in criminal cases are not demandable in advance. This statute would seem to cover the fees of a sheriff for serving subpoenas.

Inquiry: Would the procedure outlined in Section 132-2 of the General Statutes be the proper procedure to be used in the collection of fees for services rendered a municipality?

(A.G.) This section does not specifically refer to municipalities, but in cases where municipalities are not required to advance fees or other costs, I can see no reason why the procedure outlined in this section should not be used in the absence of statutory provisions to the contrary.

27. Appointment of guardians.

To J. E. Swain. Inquiry: May a guardianship be transferred to the Clerk of the Superior Court of another county where the guardian and his wards have moved their residence to such county?

(A.G.) It appears to me that it was not the intention of the Supreme Court to close the door entirely to a transfer of the guardianship to another county in cases where the wards have in truth and in fact acquired residence in a county other than the one in which the guardian was appointed in the first instance. If such a transfer is undertaken, however, the clerk of the county in which the guardian was originally appointed should require a strict accounting before the transfer and see that the guardian is properly appointed in the county of new residence.

50. Costs and fines

To E. M. Lynch.

(A.G.) I am of the opinion that where a defendant is convicted in a county recorder's court created under the provisions of Article 25, subchapter 6 of Chapter 5 of the General Statutes, and is ordered to pay the costs and appeals to the Superior Court, where he is again convicted and ordered to pay the cost, the clerk of the court in making out a bill of costs should include not only the solicitor's fee provided in trials of the Superior Court, but also the solicitor's fee in the Recorder's Court. However, I think it is contemplated that only one process tax should be collected in a case finally disposed of in the Superior Court.

C. Sheriffs

1. Salary and fees.

To Dallas Camphell.

(A.G.) You inquire whether a sheriff is entitled to a fee for the service of a summons where he makes his return and states that after due and diligent search the defendant cannot be found in the county.

In 57 Corpus Juris, page 11 and 12, in discussing the fees of sheriffs in matters of this kind, it is said: "The statutes sometimes allow a sheriff compensation for endeavoring to serve processes, although he is unable to find and serve the party; but in the absence of an applicable provision to this effect, the sheriff is entitled to no fees for unsuccessful attempts to serve processes."

The fees allowed sheriffs in this State are in many instances controlled by local statutes and the question as to whether the sheriff of your county would be entitled to collecting fee where service was not effected, might be settled by a local statute applicable to the county. This matter should be submitted to your county attorney before this office is called upon to render an opinion in the matter.

D. Registers of Deeds

9. Marriage—licenses and certificates.

To A. B. Rhodes. Inquiry: Where a man registers for and enters the armed forces under one name and then marries under another name, and has difficulty in securing an allotment for his wife because of the change, does a Register of Deeds have authority to alter the marriage license by changing the name thereon to the one under which the man entered the army?

(A.G.) There is no provision in the statute for changing these records in any respect. I am of the opinion that a Register of Deeds does not have authority to make corrections on a marriage license in the respect inquired about.

To W. S. Wells. Inquiry: Is a marriage valid when performed in a county other than the county in which the marriage license was purchased, and would there be any duty on the issuing Register of Deeds to prosecute the Justice of Peace who performed the marriage?

(A.G.) I am of the opinion that such a marriage is valid and binding upon the contracting parties, as our Supreme Court has held that even the failure to secure a license to marry will not invalidate a marriage otherwise good. It seems to me that under C.S. 2504, regulating the recording of licenses, it is not incumbent upon the Register of Deeds to inquire as to the validity of the marriage in respect to the county in which it was performed. And I do not think it is mandatory upon the Register in such a case to prosecute the Justice of the Peace who performed the ceremony. The section authorizes any person to bring the suit for the $200 penalty which the statute prescribes in such cases, and any criminal offense was committed in the county in which the marriage was performed. However, if the Register of Deeds felt that it was his duty to do so, there is no reason why he should not report the matter to the Solicitor of the District in which the county is located.

HOSPITAL AS NECESSARY EXPENSE

To John D. Warlick.

(A.G.) I am of the opinion that the maintenance of a hospital is not a necessary governmental expense. See Palmer v. Haywood, 212 N.C. 284, and Nash v. Monroe, 198 N.C. 306.

LOUIS A. CHERRY

Associate Director Institute of Government

14. Birth Certificates

To S. E. Allen. Inquiry: May a Register of Deeds administer the oath of a person making an affidavit in establishing proof of birth on an application for delayed birth certificate?

(A.G.) I do not find any statute which authorizes a Register of Deeds to administer oaths of persons making affidavits. The authority to administer such oaths is limited to those persons named in Ch. 159, Session Laws of 1943, which does not include Registers of Deeds.

16. Military discharges

To S. E. Allen. Inquiry: What charge may a Register of Deeds make for recording discharges of former members of the armed forces?

(A.G.) Section 1 of Ch. 599, Session Laws of 1943, struck out the provision of Chapter 198 of the Public Laws of 1921 which required Registers of Deeds to charge a 25c fee for registering military discharges, so that they are not now authorized to charge any fee.

To William S. Bunn, A. B. Rhodes. Inquiry: In what county should a former member of the armed forces have his discharge recorded?

(A.G.) Ch. 193 of the Public Laws of 1921, providing for the registration of official discharges from the armed forces, makes no provision as to the county in which such discharges should be recorded. I am, therefore, of the opinion that it is a matter entirely within the wishes of the person as to the county in which he desires to have his discharge recorded.

20. Cancellation of mortgages.

To A. B. Rhodes.

(A.G.) I find no provision in the pertinent provisions of the statutes authorizing the cancellation of a deed of trust by the third party therein named.

I am of the opinion that a foreign banking institution does not have authority to mark satisfied and cancel mortgages and deeds of trust under subsection 2 of Section 45-37 of the North Carolina General Statutes.

H. Tax Collector

1. Deputy

To J. W. Ellis. Inquiry: Does the governing body of a municipality have the authority to appoint a deputy tax collector?

(A.G.) C.S. 2630 confers very broad pow-

ers on the governing bodies of municipalities as to the employment of the necessary personnel in order to carry on the affairs of the municipality. It is possible that there is some provision in your city charter which might restrict the authorization contained in the section above referred to, but if there is no such provision I am unable to see why the governing body would not be authorized to appoint a deputy tax collector if the tax collector himself is unable to perform properly all the duties of his office.

L. Local Law Enforcement Officers

33. Worthless checks

To Leslie J. Huntley, Jr.

(A.G.) Under the rule laid down in State v. Levy, 220 N.C. 812, the offense of giving worthless checks being an offense against the public rather than the payee of the check, I see no reason why the payee would not be equally guilty where he aids and abets in the issuance of the worthless check knowing at the time that the person issuing the check has no funds in the bank and, with this knowledge, goes further and puts the check in circulation.

15. Jurisdiction and powers.

To Leon H. Corbett.

(A.G.) It is apparent from Section 20-24 of the General Statutes that upon conviction in a recorder's court of a defendant for driving under influence, it is the duty of the court to require the surrender of the defendant's operator's or chauffeur's license and to forward the same immediately, together with a record of conviction, to the State Department.

When appeal is made in such a case, it is entirely within the discretion of the trial judge as to the recommendation which he makes to the Department as to the suspension of license.

If a license is merely suspended and not revoked, the Department must return the license when the period of suspension is over. If the licens eis revoked, the licensee must make application for a new license after the expiration of one year.

S. Mayors and Aldermen

4. Jurisdiction of mayor's court.

To Wm. D. Herring.

(A.G.) I am of the opinion that although G.S. 160-13 (C.S. 2634) constitutes the mayor an inferior court and gives him the jurisdiction of justices of peace in criminal matters arising within the corporate limits of a municipality, this would not have the effect of making the mayor a justice of the peace as contemplated by the statute authorizing justices of the peace to perform marriage ceremonies.

To W. P. Kelly.

(A.G.) It appears that the ordinary mayor's court only has the jurisdiction of a justice of the peace and would not be authorized to enter judgment absolute on a bond in excess of $200. Of course, if the jurisdiction of the mayor's court of a town is by statute made greater than that of a justice of the peace, his jurisdiction to enter judgment absolute on a bond might be increased.

U. Notary Public

3. Powers and duties.

To Theodore C. Bethea. Inquiry: May Notaries Public be allowed to take the oath of office and qualify prior to the date of the expiration of their current term of office?

(A.G.) In Worley v. Smith, 81 N.C. 304, the Court said: "There can not be an induction into an office for one term until the preceding term is ended, and the qualification and induction are directed to be done at one and the same time, etc." While this case dealt with the qualification of a sheriff, I am of the opinion that it applies to that of a Notary Public.

ELECTION PRECINCTS

To H. Bryce Parker. Inquiry: May a county board of elections establish an election precinct consisting of territory located in two different townships?

(A.G.) Because of the statutory and constitutional requirements that certain officers be elected from townships, this office has previously ruled that a county board of elections could not create an election precinct containing territory in two different townships.

CITY OF DURHAM, N. C.

PURCHASING DEPARTMENT

TRACER

PLEASE GIVE IMMEDIATE ATTENTION

Date _____

_____ Our Order Number _____

_____ Date of Order _____

_____ Your Number _____

With reference to our order as indicated above, please advise fully by return mail, at the bottom of this sheet, the item marked X below.

Have not received notice of ☐ delivery ☐ shipment

Please advise at once date you expect to make ☐ shipment ☐ delivery

☐ Have received partial shipment of order. Please advise fully in regard to balance.

☐ Material has been received but no invoice.

☐ Invoice has been received, but shipment has not arrived.

Please trace and send BILL OF LADING or SHIPPING RECEIPT.

_____

_____

_____

Yours very truly,

_____
Purchasing Agent.

PLEASE REPLY ON THIS SHEET

Above is a mimeographed tracer form of great time-saving value in checking orders on which no delivery or partial delivery has been made. Filling out this form is far easier than writing an individual letter to the vendor.

★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

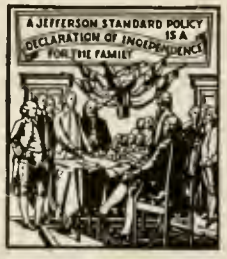
★The gross rate of interest earned on invested assets for 1943 was 5.23%. Jefferson Standard maintains its national leadership in this field.

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

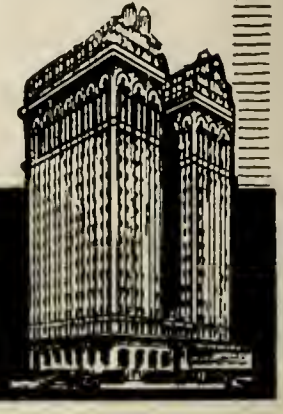
★Less than $25,000 interest is past due on Mortgage Loan investments of $57,342,910. Only one-half million dollars is owned in foreclosed real estate.

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